

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	
THE MCNAUGHTON GROUP, LLC)	FILE NO. 04 120938
)	
Rezone from R-9,600 to R-7,200 with a 248-lot)	
Subdivision on 50.41 acres)	

DATE OF DECISION: November 17, 2005

PLAT/PROJECT NAME: *Creekstone*

DECISION (SUMMARY): The request for a rezone from Residential-9,600 to Residential R-7,200 and a 248-lot subdivision (lot size averaging) are hereby **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located on the north and south sides of 169th Street SE, west of Sunset Road and on the east and west sides of Sunset Road, south of 169th Street SE.

ACREAGE: 50.41 acres

NUMBER OF LOTS: 248

AVERAGE LOT SIZE: 4,543 square feet

MINIMUM LOT SIZE: 3,068 square feet

DENSITY: 4.92 du/ac (gross)
7.62 du/ac (net)

ZONING: CURRENT: R-9,600
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: Mill Creek East
Subarea Plan Designation: Urban Low Density Residential (4-6 du/ac)

UTILITIES:

Water/Sewer: Silver lake Water District

SCHOOL DISTRICT: Everett No. 2

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions

Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on December 8, 2004. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 22, 23 and 24)

A SEPA determination was made on September 21, 2005. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on November 9, 2005, the 168th day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on November 9, 2005 at 3:02 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, The McNaughton Group, LLC, was represented by Brian Holtzclaw. Snohomish County was represented by Bob Pemberton of the Department of Planning and Development Services and by Ann Goetz of the Department of Public Works.
3. No member of the public appeared at the hearing or submitted any pre-hearing documents into the record.
4. The hearing concluded at 3:25 p.m.

Note: For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. The request is for a rezone of 50.41 acres from R-9,600 to R-7,200 in order to construct a 248-lot subdivision using lot averaging. There are 16 existing homes. Thus, average new weekday vehicle trips are 2,220, with 174 being a.m. peak hour trips and 234 being p.m. peak hour trips. Two boundary line adjustments were administratively approved as part of this application are described fully in the record. Also, the applicant was granted an EDDS deviation to park along an arterial road
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$918.00 for each new single-family home.
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
6. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
7. There are seven Category 3 wetlands on-site and two streams, Tambark Creek, a Type 3 stream and a Type 5 stream as well. Tambark Creek lies in the western portion of the site and will be undisturbed and protected with a minimum 100-foot wide Native Growth Protection Area buffer. Some minor impacts to wetlands and their buffers are proposed, with appropriate mitigation provided. The application complies with Chapter 30.62 (32.10), SCC (Critical Area Regulations) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare.
8. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).

9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service will be available for this development as well as electrical power.
11. The subject property is designated Urban Low Density Residential (ULDR: 4-6 du/ac) on the GPP Future Land Use map and the Mill Creek East Urban Growth Area Plan, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the Mill Creek East UGA Plan, the Urban Low Density Residential designation is intended for single-family detached residential development at densities between 4-6 dwelling units per acre. One of the implementing zones is the R-7,200 zone, which is the zoning requested here.
12. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) the proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

13. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
14. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and(4) the applicable design and development standards.

4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. The request should be approved subject to compliance by the applicant with the following preconditions and conditions:

CONDITIONS

- A. The preliminary plat received by the Department of Planning and Development Services on July 15, 2005 (Exhibit 19) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All underlying subdivision applications shall be withdrawn.
 - ii. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - iii. The plat shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iv. A final mitigation plan based on the Critical Areas Report and Conceptual Mitigation Plan prepared by The Jay Group dated April 25, 2005 (Exhibit 18) shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. "The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District No. 2 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 16 existing parcel(s). Lots 1 through 14 and 156 and 171 shall receive credit."
 - ii. Concurrency for Arterial Unit #204:

In accordance with SCC 30.66B.170(6), and as offered in the applicant's letter of December 8, 2004, construction of an extended northbound right turn lane at the intersection of 35th Avenue SE and Seattle Hill Road to a total of 425 feet shall have been completed or under contract prior to the issuance of building permits for Lot 53 through Lot 126 and must be complete prior to approval for occupancy or final inspection. Building permits for a total of 52 lots (Lots 1-52) may be issued prior to the completed or contracted construction of an extended northbound right turn lane at the intersection of 35th Avenue SE and Seattle Hill Road.

iii. Concurrency for Arterial Unit #397:

In accordance with SCC 30.66B.170(6), and as offered in the applicant’s letter of April 24, 2005, construction of a southbound right turn lane at the intersection of Sunset Road and 180th Street SE shall have been completed or under contract prior to the issuance of building permits for Lot 127 through Lot 248 and must be complete prior to approval for occupancy or final inspection. Building permits for a total of 74 lots (Lots 53-126) may be issued prior to the completed or contracted construction of a southbound right turn lane at the intersection of Sunset Road and 180th Street SE.

iv. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,039.73 per lot for mitigation of impacts on county roads paid to the County,

\$71.44 per lot for transportation demand management paid to the County,

\$336.05 per lot for mitigation of impacts on the City of Mill Creek streets paid to the City and provide proof of payment to the County.

Pay the following per lot for mitigation of impacts on state highways paid to the County:

<u>Proj. I.D. #</u>	<u>Description</u>	<u>Improvement Cost</u>	<u>Cost per lot</u>
DOT 11	SR I-5 @ 128 th	\$15,200.96	\$61.79
DOT 13	SR 527	\$ 9,819.00	\$39.91
DOT 38	SR 527	\$ 2,040.64	\$ 8.30
DOT 41	SR 9 @ 164 th	\$ 5,528.32	\$22.47

These payments are due prior to the time of each building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once a building permit has been issued all mitigation payments for that lot shall be deemed paid.

v. On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works (PW) grants a formal deviation.

vi. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$918.00 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- ii. Urban standard frontage improvements shall be constructed along the property frontage on 169th Street SE, and Sunset Road, including the two properties that were excluded from the development by the concurrent BLAs, unless bonding of improvements is allowed by the Department of Planning and Development Services, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- iii. The applicant must provide a channelization plan acceptable to the County Traffic Engineer with the plat construction plans. The channelization plan may include (as warranted and required by the County Traffic Engineer) left turn pockets at the intersections of the plat roads (Road "A" and Road "C") and Sunset Road with 169th Street SE.
- iv. An off site walkway shall be constructed along the west side of Sunset Road, parcel 2-041, for children to safely walk to the closest bus stops indicated by the school district.
- v. Bus waiting areas built to the specifications and at the locations requested by the Everett School District (detailed in their letter dated January 13, 2005, or by any revised written request from them) shall have been constructed.
- vi. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- vii. The final wetland mitigation plan shall be completely implemented.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a rezone from Residential-9,600 to Residential R-7,200 and a 248-lot subdivision (lot size averaging) are hereby **CONDITIONALLY APPROVED**, subject to compliance, with the conditions set forth in Conclusion 5, above.

Decision issued this 17th day of November, 2005.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **NOVEMBER 28, 2005**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **DECEMBER 1, 2005** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;

- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Bob Pemberton
Department of Public Works: Ann Goetz

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.