

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
LORRAINE & ASSOCIATES, INC.) **FILE NO. 05 101218**
)
official site plan approval and removal of the)
development phasing overlay (DPO) in the PCB zone)

DATE OF DECISION: November 1, 2005

PLAT/PROJECT NAME: *C-34 Tom Thumb, Phase 2*

REQUEST: Rezone from Planned Community Business/Development Phasing Overlay (PCB/DPO) to PCB, to remove the DPO overlay, together with an official site plan approval for 29,200 square feet of new office/retail space along with the existing 7,616 square foot building used for daycare.

DECISION (SUMMARY): The application is **CONDITIONALLY APPROVED with preconditions.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 1830 S. Lake Stevens Road, Everett, Washington.

ACREAGE: 3.28 acres

ZONING: CURRENT: PCB/DPO
 PROPOSED: PCB

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Commercial
Subarea Plan: Snohomish/Lake Stevens
Subarea Plan Designation: Community Business

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to preconditions and conditions
Public Works (DPW): Approval subject to preconditions and conditions

INTRODUCTION

The applicant filed the Master Application on April 28, 2005. (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 18, 19 and 20)

A SEPA determination was made on September 16, 2005. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on October 20, 2005, the 100th 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 October 20, 2005 at 1:33 p.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Lorraine & Associates, Inc., was represented by Laurie Carroll of Barclay's North. Snohomish County was represented by Erik Olson of the Department of Planning and Development Services and by Mark Brown of the Department of Public Works.
3. No member of the public attended the hearing. One citizen, Duane Smith, had previously caused to be submitted into the record two letters (Exhibits 23 and 23A) concerning his property's storm drainage onto the subject parcels. In response, the applicant points out (Exhibit 31) that Duane Smith's concerns must be placed before the Lake Stevens Sewer District, which will be extending sewer to the subject site and vicinity.
4. The hearing concluded at 1:47 p.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, 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 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 decision 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 staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a rezone of 3.28 acres from PCB/DPO to PCB to remove the DPO overlay, along with official site plan approval for 29,200 square feet of new office/retail space together with the existing 7,616 square foot building used for a daycare.
4. The project site is located on the northwest corner of the intersection of South Lake Stevens Road and 20th Street SE. The proposal includes the site plan approval of three buildings totaling nearly 30,000 square feet on 5.5 acres: a 3,200 square-foot bank, a 14,000 square-foot specialty retail and a 12,000 square-foot daycare facility. Impervious surface will cover 85 percent of the subject site. Thirty to forty employees and customer traffic will produce 905 average daily vehicular trips for which an impact fee is set at approximately a quarter-million dollars.
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. Particular attention was given to the need for pedestrian improvements to provide safe walking conditions for school children attending Highland Elementary, and Lake Stevens High School. (Safe walking routes already exist to and from North Lake Middle School.) The applicant has agreed to those improvements as required in order to lift the Development Phasing Overlay. 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. There are no critical areas on the subject site. Storm drainage from the subject site and from off site will be collected in a piped system sized to handle the site's drainage and the drainage entering the site from up-stream or up-hill from the site. Storm water will be channeled to an underground vault, treated and released into the Category 3 forested wetland off-site to the northeast.
7. 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).
8. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.

9. The property is designated Urban Commercial on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA) and within the Lake Stevens Development Phasing Overlay. Planned Community Business (PCD) is an implementing zone within the Urban Commercial designation.
10. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.
11. 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.

12. 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.
13. 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.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
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. No evidence was submitted of failure to comply with the requirements of Chapter 30.42A.
5. The request should be approved subject to compliance by the applicant with the following preconditions and conditions:

PRECONDITIONS

- A. A record of developer’s Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.
- B. A Concomitant Agreement shall have been recorded referencing the site plan approved, the hearing examiner decision and the types and sizes of uses approved.

CONDITIONS

- A. The Official Site Plan received by the Department of Planning and Development Services on August 15, 2005 (Exhibit 16A) shall be the official site plan configuration. SCC 30.31A.500 governs changes to the Official Site Plan.
- B. The Official Site Plan is approved for the following types of uses (or similar) and square footages for each type of use (or similar), any increases in square footage or change in use, to a use that is not similar to that approved, will constitute a major revision to the approved Official Site Plan

Daycare	12,000 square feet
Bank	3,200 square feet
Retail	14,000 square feet

- C. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the County:
 - i. The applicant shall obtain final plan approval pursuant to SCC 30.31A.300 and 30.31A.310. Changes to the final plan are governed by SCC 30.31A.400 and 30.31A.500.
 - ii. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - iii. Chapter 30.66B SCC requires traffic mitigation payments in the amounts shown below:
 - a) The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area B in the amount of \$258,932.82. This may be paid proportionately with each building permit.
 - b) The applicant shall make a payment to Snohomish County for the Washington State Department of Transportation in the amount of \$516.59 for mitigation of traffic impacts to state highways. This may be paid proportionately with each building permit.

- D. Prior to the issuance of the first Certificate of Occupancy the features on the approved TDM plan shall be constructed/installed by the applicant and approved by the Department of Planning and Development Services.
- 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.

- 6. Any conclusion in this 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 requests for a rezone from Planned Community Business/Development Phasing Overlay (PCB/DPO) to PCB, to remove the DPO overlay, together with an official site plan approval for 29,200 square feet of new office/retail space along with the existing 7,616 square foot building used for daycare are hereby **CONDITIONALLY APPROVED**, subject to the preconditions and conditions set forth in Conclusion No. 5 above.

Decision issued this 1st 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 11, 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 **November 15, 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: Erik Olson
Department of Public Works: Mark Brown

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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than NOVEMBER 1, 2006.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
