

**CORRECTED
REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: January 25, 2006
DATE OF CORRECTED
DECISION: May 18, 2006

PLAT/PROJECT NAME: *HARVEST RUN*

APPLICANT/
LANDOWNER: The McNaughton Group

FILE NO.: 05 118858

TYPE OF REQUEST: A 48-lot Planned Residential Development (PRD)
subdivision on 7.38 acres with a concurrent rezone from
Residential-9600 (R-9600) to Residential-7200 (R-7200)

DECISION (SUMMARY): Requests APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located on the east side of 35th Avenue SE, approximately ½ mile
south of the intersection of 228th Street SE and 35th Avenue, Bothell

ACREAGE: 7.38 acres

NUMBER OF LOTS: 48

AVERAGE LOT SIZE: 3,801 square feet

MINIMUM LOT SIZE: 3,054 square feet

DENSITY: 6.5 du/ac (gross)
8.6 du/ac (net)

OPEN SPACE: 64,449 feet

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: North Creek
Subarea Plan Designation: Rural (0.4-1 du/ac)

UTILITIES:

Water: Alderwood Water District
Sewage: Alderwood Water District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

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

INTRODUCTION

The applicant filed the Master Application on May 2, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on January 9, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 20, 21 and 22)

A SEPA determination was made on October 24, 2005. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on January 10, 2006, the 142nd 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 January 10, 2006 at 10:55 a.m. and was heard in conjunction with *Porter's Landing*.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Brian Holtzclaw, representing the applicant appeared and stated that he agreed with the PDS staff report and the conditions, except for a proposed change on Exhibit 53. He stated that the proposed connection off 231st is not material to them, and that the county has made the case for that. He stated that they are providing substantial buffers and that there are 64,449 feet of open space.
3. Mr. Mark Brown appeared on behalf of the DPW and said that he doesn't object to the proposed change to page 13 of the staff report as shown on Exhibit 54.
4. Mr. Phelps, City of Bothell, appeared and stated that the frontage improvements are the same for Bothell and that they are working with the applicant.

5. Mr. Craig Cottingham stated that he appreciates the 15 foot barrier here is a landscape buffer. He stated that both developments have their two access points on 35th without having to have access through *Woodcreek*. He wanted to know where the bus stop would be.
6. Mr. Robert Fisher stated that he lives to the south of *Harvest Run* and is concerned as to where the stormwater will be and how it will affect them and he wants the natural vegetation retained. He stated that he would like to request that floodlights not be directed towards his home. He stated that 35th Avenue is too dangerous a road now and the new densities will add problems.
7. Ms. Judy Fisher also spoke.
8. Mr. Holtzclaw responded and stated that they will be discharging into the ditch and they will have the responsibility to be sure that it is adequate.
9. A representative of Phoenix Development stated that they will install the frontage improvements. The Examiner indicated that he would leave the record open for a short time in order to allow responses by the applicant.

The hearing concluded at 11:30

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a 48-lot single-family residential subdivision of 7.3 acres to be built out in one phase of development. There is also a rezone request made and that access will be off 35th Avenue SE.
4. The site is within the Urban Growth Area (UGA). Surrounding properties to the west, south and east being generally undeveloped, are with single-family residential on larger lots. The property is adjacent to the City of Bothell limits on the west and the south, while the property to the north is currently pending PRD site approval and is known as *Porter's Landing*.
5. The main issues of concern relate to connection of roadways into the *Woodcreek* subdivision which has existed there for 30 years.
6. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1244.49 for each new single-family home.

7. 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. (See Pages 3-6, Exhibit 45)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. There are no critical areas, streams or wetlands found on or within 100 feet of the subject property.
10. Runoff will be collected and transported via catch basins and pipes to a detention vault located in the southwest corner of the site, and it will go to the ditch along the east side of 35th Avenue SE. 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).
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Any existing on-site septic systems should be abandoned.
12. Public water and sewer service will be available for this development as well as electrical power.
13. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the ULDR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
14. 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.
15. 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.

16. 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.
17. The aerial photograph (Exhibit 10) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
18. The proposal is to develop the property pursuant to Planned Residential Development under Chapter 30.42B SCC. The PDS staff analysis in this development provides that this may be done and is set forth in detail on Pages 8-11 of the PDS staff report. (Exhibit 45) Specifically, it also provides that the total open space is met with 64,449 square feet, a little over 20 percent of the gross site area which is 321,364 square feet.
19. Mr. Mark Brown, Department of Public Works (DPW), stated that the Wood Creek area was originally intended many years ago to be connected to this area when it developed.
20. Mr. Dave Phelps, who works for the City of Bothell appeared, and stated that the area is within the City and they require certain frontage improvements and are working with Phoenix Development to have this done.
21. Mr. Craig Cottingham appeared and stated that they are concerned that the streets be not used as a short cut through *Wood Creek* since the streets are small and there are no provisions for walking people and they are now being used both as walkways and cars as well. He stated that *Wood Creek* was developed 30 years ago and the homes are situated specifically on ½ acre lots. He stated that any connections are not necessary for vehicles. However, it might be all right if they were not through streets, but it is not desirable as traffic access. He submitted Exhibit 86 which show the issues.
22. Ms. Sharon Roberts appeared and indicated that her main concern is the connection through the subdivisions and sees no real need for it.
23. Mr. Brown, responded and stated that the lots have development potential in *Wood Creek* and that there should be opportunities for traffic to go through.
24. It is the specific finding of the Examiner, with regard to the placing of the road into the *Woodcreek* subdivision, that this would create a serious safety hazard to those persons who have lived and resided in this subdivision for 30+ years, based upon what Snohomish County allowed and encouraged them to do. Now, having lived there and adjusted their lots, their streets and their roads and their lives, to this type of use, it would be premature to allow these more dense developments to access roads in this subdivision unless or until *Woodcreek* changes. Therefore, Snohomish County having encouraged that development, which now comes face-to-face with new developments, under new conditions, the county should not inflict upon the people of *Woodcreek* heavy traffic on roads that are not made for it, and still have a lot of pedestrian traffic.
25. Mr. Cottingham, referring to Exhibit 57, reiterated that the houses are placed on the lots to discourage development, but that it still doesn't solve the walking problem on safety.
26. Mr. Bob Vick indicated that they had discussed the removal of trees and would work that out with the neighbors.
27. Ms. Judy Fisher appeared and stated that there is no funding in place for the Bothell connector.

28. This matter was heard in conjunction with the prior item on the agenda, which is *Porter's Landing*. Information obtained with one, could be applied to the other.
29. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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; however some changes have been made to the conditions to preserve the safety of the existing neighborhoods.
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 GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with 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. As long as there is restriction of vehicles into *Woodcreek*, the request is consistent and will allow for the development of single-family homes.
6. Some objection was raised as to the creation of too much traffic and drainage. However, no expert testimony was submitted which would contradict the testimony of the DPW which indicated that the proposed subdivision is fine for development. Also, PDS's drainage division will make proposals for proper drainage.
7. Limitations should be placed so that traffic does not go through the *Woodcreek* area, thereby protecting the health and safety of those persons who reside there. This is especially true where all circulation can be had without going through *Woodcreek*. However, some provision should be made for bikes and pedestrians and emergency access if and when needed, and this is reflected in a condition. If, at a later time, the *Woodcreek* plat changes, then, putting the road through can be looked at then, but not now
8. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The PRD official site plan/preliminary plat received by PDS on October 28, 2005 (Exhibit 14) shall be the PRD official site plan and approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; 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 site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. A detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 16 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
 - iii. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.
- 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 Northshore School District No. 417 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 five existing parcel(s). Lot(s) 1 through 4 and Lot 15 shall receive credit."
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,707.33 per lot for mitigation of impacts on county roads paid to the county,
\$69.30 per lot for transportation demand management paid to the county,

These payments are due prior to or at 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 building permits have been issued all mitigation payments shall be deemed paid by PDS.
 - iii. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, benches and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."
- D. Prior to recording of the final plat:

- i. The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
- ii. Pedestrian facilities shall be constructed to the specifications of the DPW from the subject plat on 231st St. SE and 38th Ave. SE to 228th St. SE or other suitable pedestrian facilities, namely the east side of 35th Ave. SE to the south side of 228th St. SE to 38th Ave. SE [RCW 58.17.110].¹
- iii. Any needed right-of-way shall be obtained to provide for an adequate connection to 231st St SE.
- iv. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125.

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.

EXAMINER’S CONDITIONS:

- A. 231st Street NE shall not be built beyond the boundary of this plat and shall not be used for any type of vehicular traffic. It may contain only a pass through for pedestrians and/or bicycles, with an emergency bar or chain that can only be used for emergency vehicle access when needed. It shall not be used for vehicle access unless or until there has been a complete change in the neighborhood of *Wood Creek*.
- B. The applicant has indicated that they would make some concessions to the property owner regarding cutting of trees and buffering. This was only done in discussion in front of the Examiner and in order that it might be more precise, the applicant shall submit to the Examiner, with a copy to the adjacent neighbor, what it proposes to do in the way of buffering or of cutting or retaining trees within 10 days of the date of this decision.
- 8. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a REZONE from R-9600 to R-7200, along with a 48-lot Planned Residential Development SUBDIVISION are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 7, and the Examiner’s Conditions, above.

¹ Scrivener’s error corrected May 18, 2006
05118858.doc

Decision issued this 25th day of January, 2006.
Corrected decision issued this 18th day of May, 2006.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **February 6, 2006**. 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing

address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **February 8, 2006** 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

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 this case.

Staff Distribution:

Department of Planning and Development Services: Mona Davis
Department of Public Works: Mark Brown

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| 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. |
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