

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER
ON RECONSIDERATION

In the Matter of the Application of)
)
JEFF LARMORE) **FILE NO. 05 119579 SD**
)
Preliminary plat for a 4-lot subdivision utilizing lot)
size averaging)

DATE OF DECISION ON RECONSIDERATION: August 25, 2006

DECISION (SUMMARY): The application for a 4-lot subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 18406 11th Avenue W, Lynnwood, Washington.

ACREAGE: .92 acres

NUMBER OF LOTS: 4

AVERAGE LOT SIZE: 8,469 square feet

MINIMUM LOT SIZE: 6,291 square feet

DENSITY: 4.33 du/ac (gross)
4.49 du/ac (net)

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds No. 15

FIRE DISTRICT: No. 1

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 September 22, 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 12, 13 and 14)

A SEPA determination was made on February 14, 2006. (Exhibit 11) No appeal was filed.

The Examiner held an open record hearing on March 29, 2006, the 53rd day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

The Examiner issued a decision on April 13, 2006, denying the application due to unsafe vehicular access. A timely petition for reconsideration was filed by the applicant on April 21, 2006. The Examiner distributed that petition to all parties for comment and in consideration of comments received; the Examiner reopened the matter for further hearing, which was held on August 3, 2006.

PUBLIC HEARINGS

The first public hearing commenced on March 29, 2006 at 3:01 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 physical setting. The Examiner’s site visit was on Saturday, March 24, 2006 at 1:30 p.m.
2. The applicant, Jeffrey Larmore, was represented by Jeff Morgan of Triad Associates. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services and Norm Stone of the Department of Public Works.

3. Letters of opposition or concern were received pre-hearing from seven of the 11 Covington Heights households on 12th Avenue W, by which Avenue the plat proposes vehicular access for the three new lots. Persons from three of those 11 households testified at the hearing: Michael Clouse, L. J. Kirkham and Bart Knight.
4. The hearing concluded at 4:30 p.m.

The second public hearing (upon reconsideration) commenced on August 3, 2006 at 1:02 p.m.

5. The parties were the same persons who attended the first hearing but with the addition of Larry Trivett, the applicant's attorney and the addition of Mark Reeves and Mike Swenson as witnesses for the applicant. Only Bart Knight attended the second hearing as a community representative.
6. Jeff Morgan of Triad Associates reviewed the Petition for Reconsideration and argued for amendment of the original decision. He submitted the text of his testimony (Exhibit 51) Bart Knight questioned some of the witnesses and argued in rebuttal.
7. The second hearing concluded at 2:46 p.m.
8. At the conclusion of the second hearing, the Examiner announced that, based on the evidence presented in the second hearing, the Examiner would reverse his first decision and approve the plat, as modified during the second hearing. The Examiner asked the applicant and the county to jointly draft proposed conditions to implement the Examiner's amended decision. That joint language was submitted to the Examiner on August 21, 2006. This decision is being issued four days later, incorporating the jointly submitted language.

NOTE: For a complete record, an electronic recording of each 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 file as if set forth in full herein.
2. The PDS staff report has 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). Except as otherwise noted herein, that staff report is adopted by the Examiner as if set forth in full herein.
3. The request is to construct a 4-lot subdivision using lot size averaging. Average weekday vehicle trips are 29, of which two are a.m. peak hour trips and three are p.m. peak hour trips.
4. There are no critical areas on the subject site.

5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC). School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
6. 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).
7. 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.
8. 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). Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-9,600 zone which is the case here.
9. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, policies were adopted to promote urban densities of development. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.
10. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
11. 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.
12. 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 determined that the development is concurrent and has no objection to the request subject to various conditions.
13. 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, in that it 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.
14. Witness Bart Knight is a registered professional mechanical engineer capable of analyzing the Engineering Design and Development Standards (EDDS) applicable to this application. He believes that the proposed vehicular access for the proposed plat fails to meet the EDDS requirements. Specifically, he asserts that the design of the access fails to provide the 35-foot minimum curb radius required at the intersection of 12th Avenue W and Larch Way: an arterial (EDDS 3-09C and Table 3-10). He asserts that the proposed lot fronting both Larch Way and 12th Avenue W should be considered a corner lot and, as such, the access driveway proposed there fails to meet EDDS 2-05A requiring 10 feet of separation from

the curvature of the curb line at the intersection. He points out that Larch Way fails to meet the 14-foot minimum lane width required by EDDS 3-030A and 12th Avenue W fails to meet the minimum pavement width of 28 feet required by EDDS 3.065. He asserts that the triple driveways fail to meet the 10-foot separation at the near edges required by EDDS 2.04. He asserts that the proposed access fails to meet the requirement to avoid backing into an intersection with an arterial. He argues that if Larch Way is ever widened, it may worsen most of the above failures. Having considered the testimony of the applicant's representatives (Professional Civil and Transportation Engineers), the County and the Reconsideration Exhibit (Exhibit 52) submitted at the August 3, 2006 Reconsideration Hearing the Examiner finds as fact that there is sufficient evidence indicating that the proposal is in compliance with the Snohomish County Engineering Design and Development Standards.

15. The Examiner has considered fully the additional arguments of the Covington Heights neighbors. The Examiner finds as fact that each of those arguments is either addressed convincingly by the staff report at pages 2 and 3, or does not bear scrutiny as a reason to deny the proponent here the right to do essentially the same platting process that brought Covington Heights into existence.
16. 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 conclusions of law immediately above herein are entered with awareness of the public concerns expressed in this record. However, the higher density infill in lieu of sprawl implements the applicable law and policies.
5. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The preliminary plat reviewed and approved by PDS on August 23, 2006, (Exhibit 55) shall be the 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 site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
- 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 Edmonds School District No. 15 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 1 existing parcel. Lot 4 shall receive credit.”
 - ii. Five (5) feet of additional right-of-way shall be dedicated to Snohomish County along this properties frontage on Larch Way.
 - iii. Dedication of additional right-of-way that is tangent to the ultimate right-of-ways of 11th Ave W and 12th Ave W with Larch Way; 35 foot radius curves are required.
 - iv. SCC 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$1,866.15 per lot for mitigation of impacts on county roads paid to the county,
 - \$75.75 per lot for transportation demand management paid to the county,
 - \$344.52 per lot for mitigation of impacts on the state roads paid to the ~~city~~ county.

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.
 - v. The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 (Nakeeta Beach Park District # 307) 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 has been issued within five (5) 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.
- D. Prior to recording of the final plat:
- i. Frontage improvements conforming to county standards shall have been constructed along the development’s frontage along 11th Avenue W.
 - ii. Frontage improvements conforming to county standards shall have been constructed along the development’s frontage along 12th Avenue W.

¹ Scrivener’s error corrected (error in PDS staff report) – 3/25/08
05119579a.doc

- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 10G) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- F. 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.

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:

²The request for a preliminary plat for a 4-lot subdivision utilizing lot size averaging provisions is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 5 above.

Decision on Reconsideration issued this 25th day of August, 2006.

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 **SEPTEMBER 5, 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]**

² Scrivener’s error corrected (no rezone requested) – 9/13/06
05119579a.doc

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 **SEPTEMBER 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 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: Ed Caine
Department of Public Works: Norm Stone

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.