

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

In the Matter of the Application of)
)
SPADAFORA CONSTRUCTION) **FILE NO. 05 120111 SD**
)
120-lot planned residential development subdivision)
of 22.42 acres with concurrent rezone from R-9,600)
and R-8,400 to R-7,200)

DATE OF DECISION: September 5, 2006

PLAT/PROJECT NAME: *Fox Creek*

DECISION (SUMMARY): The proposed rezone from R-9,600 and R-8,400 to R-7,200 and 120-lot planned residential development subdivision are **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: This project is located 100 203rd Pl SW, Lynnwood, Washington.

ACREAGE: 22.42 acres

NUMBER OF LOTS: 120

AVERAGE LOT SIZE: 4,415 square feet

MINIMUM LOT SIZE: 3,537 square feet

DENSITY: 5.3 du/ac (gross)
7.4 du/ac (net)

ZONING: CURRENT: R-9,600 and R-8,400
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds

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 February 27, 2006. (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 June 28, 2006. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on August 23, 2006, the 44th 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 August 23, 2006 at 2:03 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, Spadafora Construction and Development, LLC was represented by Don Miller of GWC Consulting. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services.
3. No member of the public attended the hearing. However, four citizens submitted pre-hearing documents raising concern or opposition. (Exhibits 25 and 27 – 29) Two of those live abutting the proposal: Ford and Cannon. Their primary concern is fencing at the top of rockery walls. The record shows that a four-foot high chain link fence is required on top of any rockery or wall more than 30 inches high and must be shown on the construction plans. A third citizen, Michelle Mason, is the parent of two children under the age of 10 years and fears for the hundreds of children who will be walking the area’s streets which she feels have not had adequate sidewalks built as new construction has occurred. The record shows that this

plat will be required to install sidewalks along its county road frontage and a paved shoulder off-site on the east side of S. Danvers Road between lots 81 and tract 910 for students walking to school or to a bus stop. A fourth citizen, Greg Ford, shares the rockery height concerns noted above and also is concerned lest the rockery displaces the existing French drains on the property lines. The record shows that the drainage plans will stub a drainage pipe between Lots 101 and 102 to the Ford property's east boundary. That pipe will be in a public drainage easement and is designed to handle the existing runoff from the Ford property's natural drainage course.

The hearing concluded at 2:38 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 applicant, Spadafora Construction & Development LLC, filed an application for a 120-lot planned residential development subdivision with a concurrent rezone from the existing R-9,600 and R-8,400 to R-7,200. The site is addressed generally 100 - 203rd Place SW, Lynnwood. The site is 22 acres in size. Seventeen existing single-family homes will be demolished and replaced with the proposed 120 single-family homes.
4. The additional homes will add nearly 1,000 (927) average weekday trips to local traffic, of which 73 are a.m. peak hour trips and 98 are p.m. peak hour trips.
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 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. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,244.49 for each new single-family home.

7. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
8. There are three Category 3 wetlands and one Type 4 stream on the property. Wetland A is 23,510 square feet in size and is located in the center of the property. The stream runs out of wetland A to the south. Wetland C is 969 square feet and is located in the northern portion of the site under the power line easement. Wetland B is 1,458 square feet and is adjacent to 203rd Place SW, approximately 60 feet southeast of Wetland C. Both Wetlands B and C are to be filled to accommodate the development, which is allowed by code due to their small size. Wetland A and the stream will be placed within Native Growth Protection Area (NGPA) tracts. Impacts to 228 square feet of Wetland A will occur from construction of a sewer line. Construction of one of the new roads will result in the net fill of 16 lf of the stream. Critical area buffers will also be impacted. Proposed mitigation for critical areas and buffers will be accomplished by creation of new wetland, stream and buffer areas and by restoration and enhancement of existing areas including controlling invasive species and planting native trees and shrubs within the critical areas and buffers.
9. 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.
10. The Hearing Examiner can condition or deny a rezone if there is substantial evidence in the record of the need to do so in the interest of the public health, safety and welfare. However, none of the assertions listed above achieves that evidentiary level in this record at this stage.
11. The subject site and the surrounding community are zoned R-9,600 and R-8.400. Single-family residential subdivisions predominate. Parcels across the street from the subject site to the west on South Danvers Road have recently been rezoned to LDMR.
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.
13. It is the finding of the Examiner that the request meets these requirements generally and should be approved.
14. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
15. Public water and sewer service will be available for this development from Alderwood Water District (Exhibit 34). Electrical power is available from the Snohomish County P.U.D. No. 1 (Exhibit 32).

16. The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation “covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, which is the case here.
17. The application must meet all applicable requirements for planned residential developments at SCC 30.42B including unit yield and bonus, design criteria as to open space, landscaping, drainage detention, roads, acces, circulation, pedestrian facilities and parking, inter alia. Also, because the subject site is approximately 200 feet from the Interstate 405 right-of-way, it is subject to the County’s noise ordinance at SCC 10.01. The application must also comply with the subdivision code at SCC 30.41A. It is also subject to the platting provisions of Revised Code of Washington (RCW) 58.17. The staff report and the Examiner’s own review show the proposal in compliance with all above-listed enactments.
18. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
19. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

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 for a rezone and, therefore, must be consistent with the GMACP; GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) ULDR designation of the property and meets the required regulatory codes as to density, design and development standards.
4. The request would allow for 120 residences instead of the 17 residences now on the site.
5. 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. Because no substantial evidence was submitted of noncompliance with Chapter 30.42A, the application is presumed to meet those requirements.

6. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The Preliminary Plat (Exhibit 26) received by PDS on August 14, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The PRD Site Plan received by PDS on August 14, 2006 (Exhibit 6A&B), Conceptual Building Elevations received by PDS on April 25, 2006 (Exhibit 18) and Detailed Landscape and Recreation approved per condition B. ii., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.

- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county:
 - i. 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 19 and Exhibit 6H&I and with all required landscape standards for perimeter, streetscape and open space treatment.

 - ii. The plattor 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.

 - iii. A final mitigation plan based on the Critical Areas Report (Exhibit 20) and Conceptual Wetland/Stream Mitigation Plan (Exhibit 40) prepared by Talasaea Consultants, Inc. revised June 13, 2006 and June 14, 2006 shall be submitted for review and approval during the construction review phase of this project.

 - iv. Documentation of approval from Seattle City Light for the uses proposed within their transmission line easement shall be submitted to the county.

 - v. An agreement to terminate the Temporary Dwelling (File number 97-110039 TD – Land Use Permit Binder AF# 9712310080) on parcel 003730-022-049-03/05 shall be executed by the applicant and recorded with the County Auditor.

- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,777.39 per lot for mitigation of impacts on county roads paid to the County,

\$8.06 per lot for mitigation of impacts on state highways paid to the ¹County (WSDOT ID 19DOT-SR 524; 24th to SR 527)

\$212.85 per lot for mitigation of impacts on state highways paid to the County (WSDOT ID 20DOT-SR 524; 24th to SR 527)

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

¹ Scrivener’s error – the word “County” was erroneously left out of this condition. (8/1/07)
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- ii. Right-of-way dedication to the satisfaction of the DPW on South Danvers Road
- iii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 05-120111 SD.
- iv. 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 any open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, 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.
- v. The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit, as mitigation for impacts to the Nakeeta Beach park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by February 27, 2011 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
- vi. The lots within this subdivision will be subject to school impact mitigation fees for the Edmonds School District 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 21 existing lots. Lot 1-21 shall receive credit.
- vii. 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 applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. 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.

- ii. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.
- iii. 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(5)(b).
- iv. 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 plat 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.

- v. The Final Critical Areas Mitigation Plan shall have been satisfactorily implemented.
- vi. The features on the approved TDM plan shall be constructed/installed.
- vii. Urban frontage improvements shall be constructed along the parcel's frontage on Richmond Road, Logan Road, South Danvers Road and West Richmond Road to the satisfaction of the DPW.
- viii. Pedestrian facilities shall be constructed to the satisfaction of the DPW on the east side of South Danvers Road from the north side of lot 81 to the south side of tract 910 [RCW 58.17.110].

E. Prior to occupancy of any unit in the PRD:

- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

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

- 7. 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 requests for a 120-lot Planned Residential Development Subdivision on 22.42 acres with a concurrent rezone from R-9,600 and R-8,400 to R-7,200 are **CONDITIONALLY APPROVED, SUBJECT TO COMPLIANCE** by the applicant, with the **CONDITIONS** set forth in Conclusion 6, above.

Decision issued this 5th day of September, 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 15, 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 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 19, 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: Monica McLaughlin
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.