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

In the Matter of the Application of)
The McNaughton Group) **FILE NO. 05 - 123279**
for a rezone from R-8400 to LDMR, landscape)
modification and site plan approval for 29-lot)
Timberwood Ridge condominiums)

DATE OF DECISION: February 10, 2006

PLAT/PROJECT NAME: *Timberwood Ridge*

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

BASIC INFORMATION

GENERAL LOCATION: This project is located on 6.43 acres at the northeast corner of the intersection of Maplewood Avenue and Picnic Point Road, Mukilteo.

ACREAGE: 6.43 acres

NUMBER OF LOTS: 29

ZONING: CURRENT: R-8,400
 PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential (6-12 du/ac)
Subarea Plan: Paine Field
Subarea Plan Designation: Urban (4-6 du/ac)

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater

SCHOOL DISTRICT: Mukilteo No. 6

FIRE DISTRICT: No. 1

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 August 11, 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 16, 17 and 18)

A SEPA determination was made on October 27, 2005. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on January 26, 2006, the 74th 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 26, 2006 at 1:01 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, The McNaughton Group. LLC, was represented by Brian Holtzclaw. Snohomish County was represented by Paul Lichter of the Department of Planning and Development Services and by Mark Brown of the Department of Public Works.
3. Twenty seven letters from citizens were submitted into evidence, including letters from officers of the two principal homeowners' associations in the vicinity: the WindandTide Community Association and the One Clubhouse Lane Homeowners' Association. Those communities have existed since the 1940's and have lot sizes of at least 20,000 square feet with many lots at or exceeding 40,000 square feet. Vicinity residents who testified at the hearing include Ronald G. Brown, Mark Dombroski, Glenn Godden, Gernot Klussman, Chuck Ogden, Nick Peat, Erik Smith and Bill Sosinsky.

The hearing concluded at 4:29 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 analyzes 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 proposes a rezone of the 6.43-acre subject site from the existing R-8,400 to Low Density Multiple Residential (LDMR) in order to construct - on the northly 2.7 acres - 29 single family detached condominium dwellings. The remaining approximately one-half of the subject site is wetlands and steep slopes.
4. Residents of the long-established 150-home surrounding community of 20,000 – 40,000 square foot and larger lots strongly resent the proposed 4,200 square foot lots and 1,200 square foot homes on land the neighbors assumed was too steep and wet to ever be developed. They argue that the project will overload Maplewood Avenue which, 60 years ago, carried only their own vehicular trips. They point out that about a decade ago, Maplewood Avenue began carrying trips generated by Harbor Point and Regatta Estates developments. They assert that Maplewood Avenue is now the “thoroughfare of choice” (Exhibit 72) for drivers headed to Mukilteo from the south or to Picnic Point, Edmonds, Lynnwood or Seattle from the north. Further, the Horseman's Trail Plat west of Regatta Estates on Picnic Point Road will add the traffic of another 116 homes, some of which will pass through their community. They ask at what point does the County begin to examine cumulative impacts of developments' vehicular traffic.
5. They point out that Maplewood Avenue has no curbs or sidewalks for children to walk to bus stops, often in the dark. The record shows that Maplewood Avenue is steep and with a sharp curve resulting in visible damage to the guardrail at that curve. Their own study in early 2000 showed 1,436 average daily trips generated by WindandTide alone. They assert that adding the 278 average daily trips generated by the proposed Timberwood Ridge will worsen the volume on a road already exceeding the County maximum standard of 1,000 average daily trips on a residential street.
6. A primary issue about any development of the subject site is whether slope failure is likely if the proposed development occurs. The issue was before this Hearing Examiner in September 2005 in the matter of the *Cherba* application (File No. 05 121026) for the same rezone requested herein: from R-8,400 to LDMR. Unlike the instant application, however, the *Cherba* application did not present any site plan for review. The Examiner announced at the hearing on January 26, 2006, that he was taking judicial notice of the decision entered September 15, 2005 in the *Cherba* matter.
7. In *Cherba*, at page 4, it was found as fact that Snohomish County's Director of Road Maintenance pointed out that in the past 10 years Snohomish County has spent:

“...a considerable sum of the taxpayers [sic] money providing slope stability measures and sub-grade repairs on Maplewood Avenue, the main arterial that provides access to Picnic Point Blvd. for several hundred residents of the Wind-n-Tide neighborhood.”

Further, citizen Barbara McMahon, an abutting landowner, asserted in *Cherba* that Maplewood Drive is unstable and has a device installed in the road to measure slippage.

8. The City of Mukilteo comments (Exhibit 58) that the plat's impact on St. Andrews Lane is that City's main concern. The City asserts that St. Andrews Lane is heavily traveled by traffic originating in the County and that speeds are documented in excess of 60 miles per hour. Speed humps have not been entirely effective. The City feels it would not be possible to enforce any condition denying this plat's residents use of St. Andrews Lane.
9. The neighbors assert that the Alderwood Water District treatment facility on Picnic Point road has emitted foul odor for decades which may worsen due to vegetation removal during construction of the proposed plat. They are also concerned about 29 wood-burning fireplaces on less than three acres downwind of their established homes.
10. The applicant requests a landscaping modification along Maplewood Avenue and Picnic Point Road. In essence, the applicant asserts that landscaping screening on the lower two-thirds of the site will be more dense if left in its existing state than it would be if planted in compliance with SCC 30.25. Based on the site visit by the Hearing Examiner and the evidence of record, the Hearing Examiner concurs with the applicant. The less site work done in the lower elevations near Maplewood Avenue, the less risk of slope movement.
11. The staff report had initially recommended that it be a precondition upon approval of this application that the applicant provide a geotechnical report which satisfactorily resolves issues of road stability and erosion control along Maplewood Avenue. During the hearing, the County requested that that precondition be deleted and be made merely a condition to be met prior to any site work and prior to issuance of any development or construction permits. In considering that request, the Examiner reviewed thoroughly the geotechnical engineering study (Exhibit 13) prepared by Liu & Associates, Inc. and the testimony of Jillian Liu, the author. His written report and testimony are impressive, credible, competent and persuasive. However, the scope of his analysis did not extend to the stability of Maplewood Avenue. Therefore, the request to eliminate the precondition is denied.
12. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 for each new single-family home. The DPW reviewed the request with regard to traffic mitigation and road design standards. As a result, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions. 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).
13. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
14. Public water and sewer service will be available for this development as well as electrical power.

15. The property is designated Urban Medium Density Residential (6-12 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 LDMR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. One of the implementing zones is the LDMR zone, which is the zoning requested here.
16. The Urban Medium Density Residential designation covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the requested Low Density Multiple Residential zone. The requested rezone to LDMR and proposed official site plan will be consistent with the General Policy Plan designation of the property.
17. 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.

18. 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.
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 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. The proposal meets the requirements of Chapter 30.42A. Arguments that the smaller lots are incompatible with the existing larger lots and homes in the vicinity are not persuasive as to incompatibility. The two governments, rather than this applicant, need to resolve the traffic impacts that have accumulated on St. Andrews Lane. The odor of the sewage treatment facility has been detected for decades and cannot be fixed by this applicant: the nexus and proportionality tests are not met. The effective date of approval of this plat is delayed pending a geotechnical report on the stability of Maplewood Avenue.
5. The request should be approved subject to compliance by the applicant with the following preconditions and conditions:

PRECONDITIONS

- A. The applicant shall provide the Department of Planning and Development Services with a geotechnical report which satisfactorily resolves issues of road stability and erosion control along Maplewood Ave.
- B. Right-of-way shall be deeded to Snohomish County, as shown, along Picnic Point Road.
- C. A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.

CONDITIONS

- A. The site plan received by the Department of Planning and Development Services on December 28, 2005, (Exhibit 11B-11C) shall be the Official Site Plan and approved configuration.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. The analysis and recommendations in the Geotechnical Engineering Study dated November 21, 2005 by Liu & Associates, Inc. is a primary inducement for this project's approval. Any substantial deviation from the recommendations of that report at any phase in the construction or maintenance of the proposed plat shall be a violation of the terms and conditions of this approval and shall be grounds for the opening of proceedings to consider amendment or revocation of this approval.
 - ii. The project proponent 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 Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor encumbering the critical areas/required buffers in a Native Growth Protection Area (NGPA). The recorded NGPA restrictive language shall state "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.

- iv. A final mitigation plan based on the conceptual Critical Area Study & Mitigation for Timberwood Ridge, prepared by Curran Environmental Services, LLC. Revision #1, dated December 22, 2005 shall be submitted for review and approval during the construction review phase of this project.
- v. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of \$62,721.78 (\$2,162.82/SFR).
- vi. The applicant shall make a payment to Snohomish County for Transportation Demand Management measures within TSA D in the amount of \$2,196.75 (\$75.75/SFR).

C. Prior to occupancy:

- i. 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 project proponent 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

- ii. The approved Final Wetland Mitigation Plan received by PDS on December 28, 2005, (Exhibit 14) and prepared by Curran Environmental Services, LLC shall be satisfactorily implemented.
- iii. Urban frontage improvements shall be constructed along the parcel's frontage on Maplewood Avenue and Picnic Point Road to the specifications of the DPW.
- iv. Bank stabilization along Maple Road shall be provided as required by the DPW.

- D. Dwellings #11-19 and #22-29 shall be provided with NFPA 13-D fire suppression systems. The fire suppression systems will not be required if a code-compliant cul-de-sac turnaround is provided.

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 report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

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

The request for a rezone from R-8,400 to LDMR with official site plan approval and a landscape modification is hereby **CONDITIONALLY APPROVED** subject to compliance by the applicant, with the preconditions and conditions set forth in Conclusion 5, above.

Decision issued this 10th day of February 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 **FEBRUARY 21, 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 **FEBRUARY 24, 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: Paul Lichter
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 FEBRUARY 10, 2007.

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)
