

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: April 19, 2006

PLAT/PROJECT NAME: *Parkview Place*

APPLICANT/
LANDOWNER: The McNaughton Group LLC

APPELLANTS: Kenneth and Kristen Worth-Opsata

RESPONDENT: Department of Planning and Development Services (PDS)

FILE NO.: 05 126028

TYPE OF REQUEST: 1) A 19 lot Planned Residential Development (PRD) subdivision of 2.6 acres with a concurrent rezone from Residential-9600 (R-9600) to Residential-7200 (R-7200) and 2) A SEPA appeal from a Determination of Nonsignificance (DNS)

DECISION (SUMMARY): 1) REZONE request and 19 lot PRD subdivision APPROVED subject to conditions
2) SEPA Appeal DENIED

BASIC INFORMATION

GENERAL LOCATION: The property is located off of 180th Street SW at the nearest intersection with Larch Way, Lynnwood, WA

ACREAGE: 2.621 acres

DENSITY: 7.28 du/ac (gross)
10.57 du/ac (net)

NUMBER OF LOTS: 19

AVERAGE LOT SIZE: 3,136 square feet

MINIMUM LOT SIZE: 2,913 square feet

OPEN SPACE: 26,354 square 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: Suburban (1-4 du/ac)

UTILITIES:

Water: Alderwood Water and Wastewater District
Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve subject to conditions
Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on November 7, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on March 30, 2006 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 15, 16 and 17)

A SEPA determination was made on February 21, 2006. (Exhibit 14) A timely SEPA appeal was filed on March 15, 2006. (Exhibit 34)

The Examiner held an open record hearing on April 4, 2006, the 62nd 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 April 4, 2006 at 11:00 a.m.

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. At this hearing, Mr. Brian Holtzclaw, representing the applicant, made motions to dismiss the SEPA appeal which the Examiner took under advisement. Mr. Holtzclaw introduced all of the experts that he had in attendance, ready to testify as to what was in the file and if there was any evidence submitted contrary.
3. The Examiner indicated that pursuant to discussions at the Status Conference, and the requirements of the Snohomish County Code (SCC), that SEPA appeals would be heard at the same time as the public hearing on the requests. It was agreed that those who would have to leave soon, could speak first. The Examiner

indicated further that in order to avoid confusion, any testimony given would be deemed to apply to both the appeal and the requests for land use approval.

4. Ms. Jill Perander spoke and indicated that 180th Street is a quiet, narrow street. She submitted Exhibit 48, which is a summary of her statements.
5. Mr. Brian Holtzclaw, attorney for The McNaughton Group, stated that he generally agrees with the PDS staff report. He indicated that there are no critical areas on site and that the schools identify mitigation fees based on their capital facilities plans which fees they will pay. He stated that the school has not raised any issues on capacity. He indicated that there will be park fees and traffic mitigation fees and stated that they have submitted exhibits and photos regarding drainage issues. (See Exhibits 45 and 46)

He stated also that there will be a stub road provided for future access.

He also submitted Exhibit 47 which shows where a walkway would be placed. He stated that with regard to Condition D.i., on page 13, he wanted wording added for other alternatives.

He stated that they have options to provide a loop system and they also have three options to extend the sewers.

He indicated that the request meets the requirements of a PRD and that they are meeting all of the square footage requirements for open space.

He stated that they also meet the rezone criteria and that the issues raised have already been raised by the code.

6. Mr. Norm Stone, DPW, stated that the wording “or other routes as approved by the Department of Public Works” could be added providing for another alternative for Condition D.i.
7. Mr. Opsata spoke on behalf of the appeal and stated that the calculation of a school budget is a simple and not a complicated one.

In answer to a question which he had, Mr. Stone stated that traffic parking can be enforced on a street.

Mr. Opsata stated that they need a loop water system and that he feels that a reasonable solution to sewers should be reflected on the plan.

He stated that some of the deficiency on the plans raise questions and that the management of existing roads is not a SEPA issue. He wanted access to the city park if the plat becomes approved and concluded by stating that they want it developed as R-9600 or the allowed 12 houses. (versus 19 that are requested)

8. Others spoke in support of the SEPA appeal as follows:

Mr. Ron Swengel stated that this project will put all cars down 180th Street. (He submitted Exhibit 49 containing his statements)

Mr. Kathy Abrashi appeared and stated that she volunteers at the school and that there are growing problems there. She submitted her comments as Exhibit 50.

Ms. Sonja Tress appeared and stated that she is concerned about the issues under RCW 58.17. She stated that she has lived on 180th Street eight years and has not seen a Sheriff's car there for a long time. She stated that they need a sidewalk here and that lighting is an issue.

Mr. Jim Ward appeared and stated that he wants a county point of contact for problems which may arise.

9. Mr. Opsata concluded and stated that he wants a point of contact from the developer.
10. Ms. Mona Davis, PDS, stated that the applicant will provide access to the park.
11. Mr. Holtzclaw concluded and stated the detention pond will be covered and landscaped. He indicated that the school district goes through an elaborate process for capital facilities. He concluded by stating that dirt will not be turned until all of the issues have been resolved.
12. Mr. Ken Crossman, DPW, appeared and stated that the contact person for Snohomish County would be the county inspector assigned to the project at the time the work commences.

The hearing concluded at 1:20 p.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. The Examiner has viewed the area, reviewed the application request and the PDS staff report, and has reviewed the SEPA appeal as well as a general review of the file and therefore has a general ideal of the particular request and the appeal as they were submitted. 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.
- I. FINDINGS REGARDING THE SEPA APPEAL AND THE MOTIONS TO STRIKE AND DISMISS**
2. The motions to strike and dismiss should be denied in order to allow a full hearing of all of the issues for the record. This is especially true here where the Examiner finds no prejudice in denying the motions to dismiss or strike at this time.
 3. This appeal involved whether there had been sufficient consideration given to the existing school capacity, the requirements of RCW 58.17.110, whether or not there had been significant surface water issues that were not addressed, that the existing traffic in the area will not be managed and will only exacerbate already existing, unsafe conditions, and that the development is not necessary to reach the goals of the Snohomish County Management Plan. This testimony was presented by those persons appearing in opposition to the request. The issues raised in the appeal are identified and discussed in the DNS and were expanded upon at the hearing.
 4. No new evidence was submitted disputing the analysis, testimony and evidence of the applicant and county staff which would show that there would be a probable, significant adverse impact on the environment by clear and convincing evidence. While those appearing expressed concern as to what

might happen in the future, they provided no expert evidence in support of their appeal such as to contradict the evidence supporting the request.

5. The Examiner must compliment those persons who filed the SEPA appeal and appeared to testify thereon and in opposition to the proposed plat. The appeal itself did not meet all of the legal requirements such as to justify its denial. Rather, those persons appearing and testifying did so at the more appropriate time which supported their concerns which were basically in opposition to the plat itself. The Examiner did not find where the issues in the environmental evaluation would have substantially changed because of the appeal.
6. The PDS staff has issued a response with regard to the environmental review. (Exhibit 33, pp. 7 and 8)
7. The appellants did not submit sufficient evidence to justify denial of the request.

CONCLUSIONS REGARDING SEPA APPEAL

1. The decision to issue a DNS under Chapter 30.61.310 SCC is entitled to substantial weight and may be overturned only if proven to be clearly erroneous. The appellants have failed to carry the burden of proof to show this.

II. FINDINGS REGARDING THE REQUEST FOR A REZONE AND PRD

1. 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.
2. The request is for a rezone from R-9600 to R-7200 with a concurrent 19 lot PRD for single family residential development on 2.61 acres. Access to the development is proposed through 180th Street SW, where an internal public road will be connected to serve the new lots.
3. Surrounding properties to the northeast, northwest and south are zoned R-9600 and the property to the southeast is zoned R-8400. All surrounding properties are zoned for single-family development and are developed as urban single-family lots with the exception of the property to the west which is currently owned by the City of Lynnwood and proposed to be developed as a park in 2008. Access will be provided from this plat directly into the park.
4. Persons filing the SEPA appeal, and while not sufficient to overturn the environmental evaluation, set forth adequately and well, their specific concerns to the plat itself.
5. 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.
6. 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 33)

7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions. A letter was received after the hearing was closed from the school district and was made a part of the file as Exhibit 51, but was not considered in reaching the decision of the Examiner.

No evidence was shown by the school district that they could not handle this development or that it should be denied.

8. There are no critical areas, streams, or wetlands which were found on or within 100 feet of the subject property pursuant to Chapter 30.62 SCC.
9. Runoff will be collected and transported via catch basins and pipes to a detention vault located on the south side of the site. Proper analysis has been made pursuant to the procedures of Snohomish County. In this regard 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).
10. 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.
11. 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 33) Specifically, it also provides that the total open space is met with 26,354 square feet, a little over 20 percent of the gross site area.
12. 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. A review of the information received at the hearing, and of the staff review on page 11 of the PDS staff report is correct and has considered the issues raised in the statutes. No evidence has been submitted to the contrary, but only in general concerns as to what might or might not happen.
13. 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.
14. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished and with the understanding that the existing onsite sewage systems will be abandoned in accordance with health district regulations.
15. Public water and sewer service will be available for this development as well as electrical power.
16. The aerial photograph (Exhibit 9) shows the area in detail and how this request fits in.

17. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS REGARDING THE REQUEST FOR REZONE AND PRD:

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 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. The request will allow for the development of the property for single-family homes. Under the existing zoning, 12 homes could be placed as a matter of right. The PRD zoning will allow 19, or only seven more homes, and which should not have a more detrimental effect upon the area, but rather would allow for more open space to be preserved with some buffering. The Examiner believes that this off sets any additional adverse affects from seven more single-family homes.
6. Questions were raised as to contact persons. It was indicated that the contact person for Snohomish County once building commenced, and after all issues of concerns had been resolved, would be the assigned building inspector. The contact person for the applicant would be the applicant himself.
7. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The PRD/preliminary plat received by PDS on February 1, 2006 (Exhibit 11) 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 12 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 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 one existing parcel(s). Lot 1 shall receive credit."

- ii. Chapter 30.66B SCC requires traffic impact mitigation payments in the amounts shown below for each single-family residential building permit (or twice the amount for a duplex):

\$1,767.93 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area F. Credits for credits for certain expenditures may be allowed against said payment to the extent authorized by County Code,

\$71.76 per lot for transportation demand management paid to the county,

These payments are due prior to or at the time of individual building permit issuance for each residence. Notice of these mitigation payments/obligations shall be contained in any deeds involving this subdivision or any of the lots therein. Once a residential building permit(s) has been issued all mitigation payments shall be deemed paid for the respective lot.

- 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."

- iv. 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.

D. Prior to recording of the final plat:

- i. A paved walkway shall have been constructed in accordance with EDDS along 180th Street SE connecting the sidewalk system within the development to the pedestrian facilities on Larch Way or other routes as approved by the Department of Public Works.

- ii. 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.

- 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 SEPA appeal is hereby DENIED, and the requests for a REZONE from Residential-9600 (R-9600) to Residential-7200 (R-7200), and a 19 lot Planned Residential Development (PRD) are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 7, above.

Decision issued this 19th day of April, 2006.

Robert J. Backstein, Hearing Examiner

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| EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES |
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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 **May 1, 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 **May 3, 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: 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.