

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 8, 2006

PLAT/PROJECT NAME: *Summerlyn Place*

APPLICANT/
LANDOWNER: Pacific View Contractors, LLC

FILE NO.: 05 126607 SD

TYPE OF REQUEST: Proposed 20 lot Planned Residential Development (PRD) subdivision on approximately 3.64 acres and rezone from Residential-9,600 (R-9,600) to Residential-7,200 (R-7,200).

DECISION (SUMMARY): **APPROVED** subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 1212 Silver Lake Road, Everett, Washington.

ACREAGE: 3.6 acres

DENSITY: 5.6 du/ac (gross)
10 du/ac (net)

NUMBER OF LOTS: 20

AVERAGE LOT SIZE: 3,504 square feet

MINIMUM LOT SIZE: 2,403 square feet

ZONING: CURRENT: R-9,600
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewage: Silver Lake Water District

SCHOOL DISTRICT: Everett No. 2

FIRE DISTRICT: No. 1

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 March 1, 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 16, 17 and 18)

A SEPA determination was made on October 23, 2006. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on November 21, 2006, the 154th 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 November 21, 2006 at 10:03 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, Pacific View Contractors, LLC was represented by Steve Mason of Harmsen & Associates. Snohomish County was represented by Paul Lichter of the Department of Planning and Development Services.

The hearing concluded at 10:19 a.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:

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 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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. Pacific View Contractors, LLC (applicant) proposes to subdivide a 3.64 acre site at 1212 Silver Lake Road, Everett, into 20 lots for a Planned Residential Development (PRD).
4. The site is vacant, and surrounded on three sides by single-family homes. Access to the site will be from Silver Lake Road by a public road ending in a cul-de-sac. Thirty-three percent will be in open space tracts.
5. The applicant also seeks to rezone the property from R-9,600 to R-7,200. The plat will be developed as a PRD.
6. A Category 3 wetland is located in the southwest corner of the site. It will be placed in a Native Growth Protection Area with a 25 foot buffer to protect the wetland. Stormwater will be collected and detained in a vault with flow control. Run-off will proceed under Silver Lake Road into a wetland and eventually into Silver Lake.
7. The applicant will pay impact fees and other charges as follows:

Parks: \$1,244.49 per single-family unit.
Road: \$51,103.80
State Highway: \$6,820.48
Transportation demand management: \$1,515.00
Schools: at rate in affect when building permits are issued.
8. One letter was received, expressing concern for increased density, traffic, the wetland, and water quality in Silver Lake.
9. The project will generate 15 a.m. peak hour vehicle trips and 20.2 p.m. peak hour trips. The project will not add three or more peak hour trips to any arterial in arrears. A certificate for concurrency was issued for the proposal on April 6, 2006. Frontage improvements will be required, including a waiting area for school children waiting for their buses.
10. 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.
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
12. Public water and sewer service will be available for this development as well as electrical power by Silver Lake Water District.
13. 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-7,200, which is the case here.

14. The applicant proposes to utilize the PRD provisions of SCC in the design of the subdivision. Seven duplexes on zero lot lines and six single-family residential buildings on individual lots are proposed. Chapter 30.42B SCC sets forth the modifications permissible in a PRD, including unit yield, design criteria, open space, landscaping, tree retention, drainage detention, roads, access, pedestrian facilities and parking, bulk regulations, and housing types.
15. Any Conclusion of Law in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

CONCLUSIONS of LAW:

1. The Examiner has reviewed the PDS staff report and finds that it sets forth the issues, the land use requests, and cites applicable regulations and policies and their effect upon the request. The PDS staff report is adopted by the Examiner as a conclusion of law to avoid needless repetition. The Examiner does not propose any changes to the recommendations of staff.
2. 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.

The Examiner concludes that the proposal to rezone the property from R-9,600 to R-7,200 is consistent with these criteria. The R-7,200 zone is an implementing zone for the ULDR land use designation.

3. 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 and with the Planned Residential Development provisions of SCC 30.42B. The proposed subdivision 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. Hereto, the proposal satisfies these criteria.
4. A PRD must satisfy the criteria in Chapter 30.42B SCC. Staff has carefully considered these criteria in their recommendation, and the Examiner agrees that the proposal will qualify as a PRD.
5. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.

6. 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.
7. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion of Law, 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 to rezone the above described property from Residential-9,600 to Residential-7,200 and for approval of the Summerlyn Place subdivision and Planned Residential Development are hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The PRD official site plan/preliminary plat received by PDS on May 23, 2006 (Exhibit 14A-14I) 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. The plat 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 Study and Buffer Mitigation Plan* prepared by Gribble Consulting, dated February 23, 2006 (Exhibit 6) shall be submitted for review and approval during the construction review phase of this project.
 - iv. 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(s) 14H-14I and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
 - v. 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 Everett School District No. 2 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. Lot 1 shall receive credit.”
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

~~\$2,555.19 per unit~~ ~~\$2,515.19~~ (\$5,110.38 for each duplex building) ~~per lot~~ for mitigation of impacts on county roads paid to the County,

~~\$75.75 per unit~~ ~~\$75.17~~ (\$151.50 for each duplex building) ~~per lot~~ for transportation demand management paid to the County for TSA D.

\$344.52 per unit (\$689.04 for each duplex building) ~~per lot~~ for mitigation of impacts on state roads paid to the 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.
 - iii. 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.”
 - 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 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.”
 - v. The developer shall pay the County \$1,244.49 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

¹ Correction to Condition C.ii. – correcting fee amounts as requested by Ann Goetz (7/30/09)
05126607

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall be constructed along the property frontage on Silver Lake Road, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. A hard surfaced student bus waiting area shall have been constructed, approximately 10' x 15' located behind the sidewalk on Silver Lake Road, adjacent to open space Tract 998, shall have been constructed.
- iii. 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 platator 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.

- iv. The final wetland mitigation plan shall be completely implemented.
- v. 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 recommended 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 issued this 8th day of December, 2006.

Gordon Crandall, Hearing Examiner Pro Tem

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 **DECEMBER 18, 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 **DECEMBER 22, 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 / Ann Goetz

<p>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.</p>
