

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

In the Matter of the Application of)
)
THE MCNAUGHTON GROUP, LLC) **FILE NO. 05 128235**
)
246 lot planned residential development of 33.90 acres)
with concurrent rezone from R-9,600 to R-7,200)

DATE OF DECISION: December 15, 2006

PLAT/PROJECT NAME: *Jewell Assemblage*

DECISION (SUMMARY): The proposed 246-lot planned residential development and concurrent rezone from R-9,600 to R-7,200 are **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 3624 195th Street SE et al, Bothell, Washington.

ACREAGE: 33.90 acres

NUMBER OF LOTS: 246

AVERAGE LOT SIZE: 3,136 square feet

MINIMUM LOT SIZE: 2,097 square feet

DENSITY: 7.25 du/ac (gross)
9.94 du/ac (net)

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

COMPREHENSIVE PLAN DESIGNATION:

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

Subarea Plan: North Creek
Subarea Plan Designation: Rural (.4-1 du/ac)

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

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 January 19, 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 19, 20 and 21)

A SEPA determination was made on September 22, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on December 6, 2006, the 55th 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 December 6, 2006 at 9:05 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, The McNaughton Group, was represented by Brian Holtzclaw. Snohomish County was represented by Monica McLaughlin and Dwayne Overholser of the Department of Planning and Development Services and by Andy Smith of the Department of Public Works.
3. Pre-hearing written statements of concern or opposition were submitted by residents of 15 vicinity households (Exhibits 23 – 35 and 47). Residents of two of the households testified at the hearing: Dorothy Nesbit and Yoshi Shelton. Ms. Nesbit also submitted into the record as Exhibit 55 a folder containing her speaking notes, the September 26, 2006 Planning Commission Briefing on the GMA Comprehensive Plan Final Docket, the agenda for the (then forthcoming) December 11, 2006 public hearing on that docket, and excerpts from the related Draft Supplemental Environmental Impact Statement and related correspondence. In specific response to the citizens' letters and other exhibits, the applicant submitted a letter of November 29, 2006 (Exhibit 48) addressing 10 separate issues including transportation issues, Little Bear Creek, Fernwood Elementary School capacity, wildlife and wetland habitat, the proposed rezone's consistency with the Comprehensive Plan and an asserted lack of park facilities. The staff report to the Hearing Examiner (Exhibit 46) highlighted and addressed most of the issue, including a concise summary at page 3 of that staff report. The Examiner has read and considered all of the above-mentioned exhibits in examining this record.

The hearing concluded at 10:13 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 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 246-lot development will generate a net average of 2,230 weekday vehicular trips, of which 175 will be a.m. peak-hour trips and 235 will be p.m. peak-hour trips.
4. 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. Because the intersection of York Road and Jewell road has been identified as an "Inadequate Road Condition" (IRC) pursuant to SCC 30.66B.210, the applicant has agreed by submittal of September 11, 2006 to make sufficient changes to the road system to allow the county engineer to determine that the location no longer constitutes an inadequate road condition.
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. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
7. A site investigation found no wetlands or other critical areas as defined by Snohomish County Critical Areas Regulations (SCC 30.62) on or within 100 feet of the subject property, nor within the 150-foot associated critical area set by the Salmonid Habitat Management Administrative Rule nor the Riparian Management Zone. There is no endangered species stream within 300 feet of the subject site (Exhibit 51). The evidence of record demonstrates that storm drainage will not flow to the Little Bear Creek basin (Exhibits 48, 52, 53).
8. 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).

9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service will be available for this development as well as electrical power.
11. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
12. The request is for a rezone and, therefore, must demonstrate compliance with the criteria established by RCW 58.17.100, .110, .120 and .195. SCC 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 provide 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 finds as fact that the request meets these requirements generally and should be approved.

13. The request is for approval of a planned residential development (PRD), governed by SCC 30.42B. The staff report thoroughly examines compliance with that Chapter, including unit yield and bonus calculations, open space, landscaping, retention of vegetation, drainage, transportation (roads, access, circulation, pedestrian facilities, parking), bulk regulations, specific housing types, and site plan and decision criteria.
14. 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.
15. 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 issues raised by the general public have been reported above herein. The Examiner concludes as a matter of law that those issues are resolved in favor of project approval by a preponderance of the

evidence of record, including testimony at the open record hearing and including the applicant's Exhibit 48 and the County's Exhibit 46, both described under "Public Hearing" above herein.

3. The Department of Public Works recommends that the request be approved as to traffic use subject to specified conditions.
4. 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.
5. The request is for a rezone and therefore must comply with Chapter 30.42A. The preponderance of the evidence of record establishes that this site specific rezone conforms to the Comprehensive Plan and meets the requirements of SCC 30.42A and RCW 58.17 as to the rezone and SCC 30.42B as to the planned residential development.
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 requests for a preliminary plat for a 246-lot subdivision and for a rezone from Residential-9,600 to Residential-7,200 are hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The Preliminary Plat received by PDS on November 8, 2006 (Exhibit 17B & C), 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 November 8, 2006 (Exhibit 17D & E) and Detailed Landscape and Recreation approved per condition B. i., 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 22 and with all required landscape standards for perimeter, streetscape and open space treatment.
- 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:
\$1,767.53 per lot for mitigation of impacts on county roads paid to the county,

\$5.13 per lot for impacts to WSDOT project DOT-19 (SR 524 between 24th St and SR 527) paid to the county,

\$126.96 per lot for impacts to WSDOT project DOT-20 (SR 524 between 24th St and SR 527) paid to the county,

\$97.17 per lot for mitigation of impacts on City streets for the city of Mill Creek paid to the City. Proof of payment shall be provided.

\$71.75 per lot for TDM paid to the county.

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

- ii. Twenty to forty feet of right-of-way for a total of forty feet shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel's frontage on east side of 35th Avenue SE along with a 35 foot radius right-of-way at the northeast and southeast corners of 196th Street SE and 35th Avenue SE, on the final recorded plat [SCC 26B.55.060]. 35th Avenue SE is listed as an impact fee cost basis project and therefore any right-of-way dedication associated with the ultimate improvement of 35th Avenue SE in accordance with the Transportation Needs Report can be credited against the traffic impact fee.
- iii. Thirty feet of right-of-way shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel's frontage on north side of Jewell Road along with a 25 foot radius right-of-way at the northeast and northwest corners of Jewell Road and Road A and Jewell Road and 39th Avenue SE, on the final recorded plat. [SCC 26B.55.060]
- iv. Thirty-five feet of right-of-way shall be dedicated to Snohomish County, along the parcel's frontage on west side of the alignment of 39th Avenue SE, on the final recorded plat. [SCC 26B.55.060]
- v. In accordance with SCC 30.66B.220, construction of the necessary improvements to remove the IRC at the intersection of York Road and Jewell Road in accordance with DPW shall have been completed or under contract prior to the issuance of building permits, and must be complete prior to approval for occupancy or final inspection.
- vi. The driveways for Lots 110, 158, 167 and 180 shall not be constructed within 50 feet of their respective road end.
- vii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 05-128235 SD.
- viii. 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 critical areas and their buffers, 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.

- ix. 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 January 19, 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.
- x. The lots within this subdivision will be subject to school impact mitigation fees for the Northshore 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 15 existing lots. Lots 1-15 shall receive credit.
- xi. In accordance with SCC 30.42B.150(1)(d), floor plans and street elevations of the proposed single family homes in the plat shall be designed to reduce the visual impact of the garage doors and emphasize the entry living space.

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. Urban frontage improvements shall be constructed along the parcel's frontage on 35th Avenue SE and Jewell Road to the specifications of the DPW [SCC 30.66B.410]. 35th Avenue SE is listed as an impact fee cost basis project and therefore any frontage improvements associated with the ultimate improvement of 35th Avenue SE in accordance with the Transportation Needs Report can be credited against the traffic impact fee.
- v. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].

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.

Decision issued this 15th day of December, 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 December 26th 2006 **(10 days)**. 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 29th 2006 **(14 days)** 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 / Andy Smith

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.
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