

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 06 102212 LU
ALDERWOOD WATER AND)	
WASTEWATER DISTRICT)	
)	
Major modification to a conditional use permit)	
(CU-7-73) setback, height variance and landscape)	
modification for wastewater treatment facility upgrade)	

DATE OF DECISION: November 9, 2006

DECISION (SUMMARY): The application for a major modification to an existing conditional use permit (CU 7-73), a setback variance, a height variance and modifications to landscape requirements is **CONDITIONALLY APPROVED** along with preconditions.

BASIC INFORMATION

LOCATION: The subject property is located at 6315 Picnic Point Road, Edmonds, Washington.

ACREAGE: 10.2 acres

ZONING: Heavy Industrial (HI), Residential-9,600 (R-9,600) and Low Density Multiple Residential (LDMR)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Public / Institutional

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo No. 6

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to preconditions and conditions

Public Works: Approval subject to preconditions and conditions

INTRODUCTION

The applicant filed the Master Application on February 9, 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 49, 50 and 51)

A Mitigated Determination of Non-significance was issued on August 29, 2006. (Exhibit 48) No appeal was filed.

The Examiner held an open record hearing on October 25, 2006, the 56th 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 October 25, 2006 at 2:23 p.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. The applicant, Alderwood Water and Wastewater District, was represented by Laura Brent of Shockey Brent, Inc. Snohomish County was represented by Scott Whitcutt of the Department of Planning & Development Services. No contested issue of fact or law was raised between the applicant and the County. No member of the public appeared at the hearing to offer support or to raise concern or opposition. However, by pre-hearing letters concerns were raised asserting that the proposed major upgrade of the Picnic Point Wastewater Treatment Facility would stimulate more growth and vehicular traffic, cause landslides and erosion, harm the salmon-bearing creek, and delay a city-like sewer system for the Meadowdale area, and requires preparation of an Environmental Impact Statement. (See Exhibits 54–57 and 67 by Carla and Ross Haddow, Robert W. Hammond, Michael Knight, Duane Uusitalo.) The applicant arrived at the hearing with six letters in support, some by immediate neighbors.

The hearing concluded at 2:52 p.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, 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 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 staff report is hereby adopted by the Examiner as if set forth in full herein. In case of inconsistency between that report and the text of this decision, the latter controls.
3. The applicant, the Alderwood Water & Wastewater District (hereinafter "the District") filed an application to upgrade its Picnic Point facility as a major modification to a conditional use (CU 7-73) approved three decades ago on February 26, 1973. That permit had been revised on February 4, 1981 but further increased capacity is required by vicinity population growth since then and yet to come. Also, Washington State requires redundancy to meet anticipated population growth and resultant wastewater flows.
4. The proposed upgrade will not occur on the subject site's steep slopes or wetlands on the northern half of the site. Thus, because the area for staged redevelopment is only the southern strip along Picnic Point Road, the District requests:
 - A. A height variance within a building setback in order to construct a perimeter wall of 10-foot height.
 - B. A setback variance for the perimeter wall along the street frontage and within the required buffer along the easterly property line.
 - C. A building height variance of nine feet in order to attain a 34-foot height for a portion of the proposed Solids Handling Building.
 - D. A landscape modification for parking area landscaping within the perimeter screen.
5. Eight deviations from the Engineering Design & Development Standards were granted at the request of Brigitte McCarty, P.E. along the main access in order to tailor the frontage improvements to the challenges of Picnic Point Road's tapered shoulder, curve and slope. Those deviation approvals are fully described in the staff report to the Hearing Examiner and need not be repeated herein.
6. The surrounding area is zoned for single-family residential development and open space designated R-8,400 immediately adjacent to the east and north and combined R-8,400 and PRD-LDMR immediately across Picnic Point Road to the south and southwest.
7. Only seven employees would be traveling to the site daily: one more than at present. A truck would remove biosolids every two to three weeks and a truck would deliver chemicals every second week. Consequently, weekday trips would total 21 trips instead of the current 18: an increase of three vehicular trips. There would be no impact to Fisher Road. (See Exhibit 44.)

8. Under project manager Brigitte I. McCarty, P.E., the applicant and its consultant Shockey/Brent, Inc., prepared an expanded environmental checklist issued February 9, 2006. The massive document is tantamount to an environmental impact statement. The thoroughness of that document gives this decision-maker confidence that the environmental full disclosure goal of the State Environmental Policy Act of 1971 (RCW 43.21C) has been honored in this application.
9. Further, the applicant conducted a committed public outreach effort described, in part, at Exhibit 74 as:

“...set up a web page, had articles published in the District Newsletter, held District-wide open houses and smaller localized interest group meetings as well as set up an e-mail for interested individuals to ask questions or provide comments throughout the duration of the project....”
10. The request will not generate impacts to the County’s park system or the school system.
11. 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.
12. 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. There are no critical areas within 100-feet of any proposed development and therefore this project is not subject to the requirements of Chapter 30.62 SCC. There are five wetlands on the site and an urban Type 3 stream with steep-sloped banks. Chum salmon have been observed as recently as 1975 above the culverts under Picnic Point Road. Much of the site is developed under the above-mentioned earlier permits. A CASP (AFN 200006060103) protects the critical areas. The Examiner concurs with the staff report’s finding that the proposal is consistent with Snohomish County’s Critical Areas Regulations’ (SCC 30.62) intent to serve the public health, safety and welfare.
14. The subject property is designated Heavy Industrial, R-9,600 and LDMR, which allow the proposed use. A CUP may be granted in those zones if the requirements for a CUP are met.
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 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 by the applicable design and development standards.
4. The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the decision criteria therein for a CUP as set forth in SCC 30.42C.100. An examination of those CUP decisional criteria alongside the proposal demonstrates that the standards are met and that the area will suffer no adverse affects as a result of allowing the expansion of the Picnic Point Wastewater Treatment Facility.
5. 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.
6. The request is consistent with the decision criteria applicable to a variance at SCC 30.43B.100 and meets the intent of the landscape requirements at SCC 30.25.020.
7. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

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

The requests for a conditional use permit and a landscape variance are hereby **CONDITIONALLY APPROVED**, subject to compliance with the following preconditions and conditions:

PRECONDITIONS

- A. Right-of-way along Picnic Point Road shall be deeded to Snohomish County to the satisfaction of the Department of Public Works.
- B. A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.

CONDITIONS

- A. The CUP site plan elevations, site plan, and conceptual site landscape plans received by PDS on February 9, 2006 (Exhibits 5, 6, 8, 12, 13, and 14) shall constitute the CUP official site plan. Any revisions to the CUP and/or development plan exhibits shall be in accordance with SCC 30.42C.110.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:

- i. A Land Use Permit Binder shall be filed for the subject Decision.
- ii. The applicant 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 Areas Site Plan (CASP) shall be recorded with the county auditor for critical areas and buffers that lie within a Native Growth Protection Area (NGPA). The following NGPA restrictive language shall be reflected on the CASP: "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 Detailed Riparian Vegetation Enhancement Plan shall be submitted for review and approval during the construction review phase of this project, based on the enhancement areas depicted on the February 9, 2006 Conditional Use Permit Proposed Site Plan.
- v. All site development work shall comply with the requirements of the plans, variances, landscape modification, and permits approved pursuant to Condition A, above.

C. Prior to the issuance of any Building Permit:

- i. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area 'D' in the amount of \$227.00.
- ii. The applicant shall make a payment to Snohomish County for Transportation Demand Management measures within Transportation Service Area 'D' in the amount of \$31.50.

D. Prior to any final inspection and/or Certificate of occupancy being issued:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on Picnic Point Road to the satisfaction of the DPW.

E. In conformity with applicable standards and timing requirements:

- i. Storm water drainage measures shall be implemented.
- ii. Facility buffering and interior circulation area improvements and general site landscaping shall be implemented consistent with the official site plan, exhibits.
- 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 applicant 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.
- iv. 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 Planning and Development Services for review and approval prior to installation.

- v. The Detailed Riparian Vegetation Enhancement Plan shall have been satisfactorily implemented.

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.

Decision issued this 9th day of November, 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 **NOVEMBER 20, 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 **NOVEMBER 27, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Scott Whitcutt

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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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 NOVEMBER 9, 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)
