

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: September 28, 2006

PLAT/PROJECT NAME: 164th Street Townhomes

APPLICANT/
LANDOWNER: 164th Street Townhomes LLC

FILE NO.: 06 102535

TYPE OF REQUEST: Preliminary plat approval with official site plan and plat modification to subdivide an 8.24 acre site zoned Multiple Residential (MR) into 112 lots utilizing the townhouse provisions of Chapter 30.31E SCC

DECISION (SUMMARY): Requests APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located 126 and 204 164th Street SE, Bothell, WA

ACREAGE: 8.24 acres

NUMBER OF LOTS: 112 lots

AVERAGE LOT SIZE: 2,178 square feet

MINIMUM LOT SIZE: 1,254 square feet

DENSITY: 13.6 du/ac (gross)
17.98 du/ac (net)

OPEN SPACE: 16,470 square feet

ZONING: Multiple Residential (MR)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban High Density Residential

UTILITIES:

Water: Alderwood Water & Wastewater District
Sewage: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Edmonds

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services (PDS): Approve subject to conditions
Public Works (DPW): Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on February 17, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on September 13, 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 19, 20 and 21)

A SEPA determination was made on July 24, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on September 21, 2006, the 58th 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 September 21, 2006 at 2:00 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. Mr. John Murante appeared on behalf of the applicant and described the request and the area. He stated that the request for modification is because many lots are 17 feet in width. He indicated that they are proposing 112 units vs. 179 that could be allowed under the existing MR zone.

He stated that the number of parking stalls will be 229, rather than the allowed 392 and that the sidewalks would be on both sides and that they will provide a six-foot sight-obscuring buffer.

He indicated that he desired to have one change to Condition E.iii., by changing the fourth paragraph by removing the word "street" and replacing it with "place".

3. Ms. Monica McLaughlin, representing PDS, submitted a new comment letter that was received from Dr. and Mrs. David Phippen. (Exhibit 43)

4. Mr. David Phippen appeared and stated that he lives on the southeast corner and while he is not against the request generally, he is mostly concerned about the traffic that will be on 164th Avenue.
5. Mr. Edward Koltonowski, Gibson Traffic Consultants, the applicant's traffic engineer responded and stated that 164th Street has a left turn lane which will help some on the traffic impacts. He indicated that all of the standards have been met for traffic and the requirements for approval will be complied with.
6. Mr. Andy Smith, DPW, indicated that they have required all that can be required at this time.
7. Mr. Murante stated that they will have two turning lanes at each entrance so that cars can go both ways. He indicated that they will also provide walkways for school children where there are none.

The hearing concluded at 2:30 p.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. Concern was expressed regarding the general development impacts and particularly traffic. The traffic engineers present indicated on behalf of both the county and the applicant that all would be done to meet the traffic requirements and to mitigate them.
4. The request is for preliminary plat approval with official site plan and plat modifications to subdivide an 8.24 acre site zoned MR into 112 lots, utilizing the townhouse provisions of the code. The project will consist of two, 2-unit buildings, eight 3-unit buildings, and 21 4-unit buildings. An existing 10-unit multi-family complex and a commercial kennel will be demolished. Access to the complex will be provided from two entrances on 164th Street SE. Two plat modifications are proposed, one to allow private roads to be constructed within the development, and one to allow the lots to abut to the roads by less than 20 feet.
5. The properties adjacent to the east and west are zoned MR and are developed with single-family homes as are properties to the south zoned R-9600. Property across the street is zoned MR and is developed with condominiums, a chiropractor's office and single-family and multi-family residential buildings.
6. 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.

7. 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 3-5, Exhibit 42)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. There are no critical wetlands on or within 100 feet of property.
10. Rainwater runoff will be collected and transported via catch basins and pipes to an underground detention area vault where a storm water will be released at a controlled rate in two directions. 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).
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Any existing on-site septic systems shall be abandoned. Any existing septic systems shall be abandoned.
12. Public water and sewer service will be available for this development as well as electrical power.
13. The subject property is designated as Urban High Density Residential (12-24 du/ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). According to the GPP, the Urban High Density Residential designation “allows high density residential land uses such as townhouses and apartments generally near other high intensity land uses. Land in this category may be developed up to a maximum of 24 dwelling units per acre. Implementing zones include the MR, PRD-MR, LDMMR, and PRD-LDMMR zones.”
14. The townhouse dwellings are a permitted use in the MR zone and the proposal meets the minimum net density requirements of SCC 30.23.020. There are no rezones proposed with this application.
15. The request for modification are reasonable under the facts of this proposal and should be allowed to provide for better development of the plat.
16. This is the first project developed in Snohomish County which utilizes Chapter 30.31E SCC, the townhouse zone provisions for MR zoned property. PDS staff has reviewed the request for conformance with Chapter 30.31E and this review is found on pages 7-8 , of the PDS staff report (Exhibit 42)
17. 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.
18. The aerial photograph (Exhibit 11) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
19. The Examiner appreciates the concerns expressed by Dr. and Mrs. David Phippen for bringing to the attention of the county issues which should be considered.

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

CONCLUSIONS:

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. There has been one slight modification in the wording of Condition E.iii.: 165th Street SE has been replaced with 165th Place SE”.
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. This project is the first request which utilizes Chapter 30.31E SCC. The request is a reasonable request and will allow for townhouse units to be constructed in this part of Snohomish County for use by its citizens.
5. By comparison, were the property to be developed as it is presently zoned MR, there could be 179 units vs. the 112 units proposed, thereby having more of an adverse impact upon the area than is proposed by this development.
6. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS:

- A. The Preliminary Plat (Exhibits 16A-C) received by PDS on August 25, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The preliminary plat and townhouse site plans (Exhibits 16A-C & E) received by PDS on August 25, 2006, Conceptual Building Elevations received by PDS on June 16, 2006 (Exhibit 15) and Landscape Plans (Exhibits 17A-C) received by PDS on August 25, 2006, shall constitute the Townhouse Official Site Plan. Changes to the Townhouse Official Site Plan are governed by SCC 30.31E.300.
- B. Prior to initiation of any further site work, and/or prior to issuance of development permits by the county;
 - i. An agreement to terminate the special use permit for the existing commercial kennel on the site (File number ZA9103145) shall be executed by the applicant and recorded with the County Auditor.
- C. The front building faces of the townhouse structures shall have horizontal or vertical variation to provide visual diversity and provide individual identity to townhouse units.
- D. 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 unit:
\$1,215.47 per lot for mitigation of impacts on county roads paid to the county,

\$80.04 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.

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

- ii. Fifty five feet of right-of-way shall be shown from the centerline to be dedicated to Snohomish County, parallel to and along the frontage of 164th Street SE on the final recorded plat [SCC 26B.55.060].
- iii. All development within the plat is to be consistent with the Townhouse Official Site Plan approved under file number 06-102535 SD.
- 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, 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 February 17, 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.
- v. The lots within this subdivision will be subject to school impact mitigation fees for the Edmonds 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 4 existing lots. Lot 1-4 shall receive credit.

E. 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 Townhouse 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 30.31E.170 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. Pedestrian Facilities shall be constructed to the specifications of the DPW from the entrance of the proposed development and 164th Street SE to the school bus stop located at the intersections of: 165th Place SE and 3rd Avenue SE, and; 1st Avenue SE and 165th Street SE or 3rd Avenue SE and 165th Place SE [EDDS].

F. 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.

G. In the event construction has not commenced within 4 years after the date of approval of the townhouse official site plan the Hearing Examiner shall hold a Type 2 public hearing to determine whether the official site plan should be revised or continued as approved. Construction shall mean actual construction begun on some permanent structure, utility or facility on the site. Notice of the hearing shall be provided in accordance with the notice requirements described in SCC 30.72.030.

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.

- 7. 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 112 lot preliminary plat with official site plan and plat modifications utilizing provisions of the townhouse code is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion !, above.

Decision issued this 28th day of September, 2006.

Robert J. Backstein, 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 **OCTOBER 9, 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 **OCTOBER 12, 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: Monica McLaughlin/Andy Smith

<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>
