

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of	)	
	)	<b>FILE NO. 04 116395</b>
<b>THE MCNAUGHTON GROUP</b>	)	
	)	
Conditional use permit for a sewer lift station and	)	
landscape modification	)	

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DATE OF DECISION:      January 26, 2007

PROJECT NAME:            *Silver Lake Water District Sewer Lift Station*

DECISION (SUMMARY): The requested conditional use permit and landscape modification are both  
**CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

LOCATION:                    The subject property is located on the north side of 180<sup>th</sup> Street SE, approximately 300 feet west of the intersection of 180<sup>th</sup> Street SE and Sunset Road. Site address is 3915 180<sup>th</sup> Street SE.

ACREAGE:                    .10 acre (4,536 square feet)

ZONING:                     Residential-7,200 (R-7,200) - PRD

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation:	Urban Low Density Residential (4-6 du/ac)
Pre-GMA Subarea Plan:	Mill Creek East UGA Plan
Subarea Plan Designation:	Urban Low Density Residential (4-6 du/ac)

**SELECTED AGENCY RECOMMENDATIONS:**

Department of:

Planning and Development Services: Approval subject to conditions

Public Works: Approval subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on September 15, 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 13, 14 and 15)

A SEPA determination was made on September 24, 2003. (Exhibit 4) No appeal was filed.

The Examiner held an open record hearing on January 11, 2007, the 62<sup>nd</sup> 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 January 11, 2007 at 3.21 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, The McNaughton Group, was represented by Don Miller of GWC Consulting. Snohomish County was represented by Monica McLaughlin of the Department of Planning & Development Services. No member of the public appeared at the hearing to offer support or to raise concern or opposition. No contested issue of fact or law was raised between the applicant and the County.
3. At the hearing, after considering the evidence of record and arguments thereon, the Examiner orally ruled that noise from an emergency propane-powered generator with no function but to provide standby power to the sewage lift station is exempt from the noise regulations of Snohomish County Code Title 10 unless the facts of a given case demonstrate that such exemption is contrary to the public interest. No such facts are demonstrated herein. Thus, the maximum permissible sound levels set by SCC 10.01.030(2) and (3) are not applicable to the generator in this instance.

The hearing concluded at 3:37 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 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 staff report is hereby adopted by the Examiner as if set forth in full herein.
3. No letters were received in opposition to the request nor did anyone appear in opposition.
4. The applicant, The McNaughton Group, filed an application for a conditional use permit in order to construct and operate a sewage lift station in Tract 990 of the preliminary plat of Sommerwood (04-996395) located at 3915 – 180<sup>th</sup> Street SE, Bothell. The site is located on the north side of 180<sup>th</sup> Street SE approximately 300 feet west of the intersection of 180<sup>th</sup> Street SE and Sunset Road. The purpose of the lift station is provide sewer service for existing and future developments in the vicinity. The ownership of the pump station will be transferred ultimately to the Silver Lake Water District. The boundary of the conditional use permit is the entire area shown as Tract 990.
5. To avoid unnecessary impacts to the wetland buffer to the west, and pursuant to SCC 30.25.040, the applicant requests a five-foot reduction to 15 feet instead of the 20-foot perimeter landscaping required of a conditional use by SCC 30.25.020. The lift station will be located 200 feet from the nearest single-family residence and alongside a busy street. The applicant argues that the lesser 15-foot of landscaping width is adequate to meet the intent of the Code where, as here, a six-foot high vinyl-slat fence will shield the conditional use, which will be only four to five feet in height but for the small roof over the electrical controls. The County recommends approval of the landscape modification. The Examiner concurs.
6. The surrounding area is zoned R-7,200, R-9,600 and MR and either developed as single-family or proposed as such.
7. The request will not generate impacts to the County's park system or the school system.
8. 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 no objection to the requests subject to various conditions.

9. 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. A 2,000 square foot Category 3 wetland next to 180<sup>th</sup> Street SE will be filled to accommodate the sewer lift station and the plat of Sommerwood, which is allowed by SCC 30.62.360 due to its smaller size (under 5,000 square feet). Mitigation for impacts to this wetland was previously approved per the review of Sommerwood. While there is a proposed revision to be reviewed for Sommerwood which has not yet been approved, there is adequate mitigation potential on the Sommerwood project such that any revised approval can easily accommodate the mitigation for the sewer lift station impacts.
11. The subject property is designated R-7,200 which allows the proposed use. A CUP may be granted in that zone if the requirements for a CUP are met.
12. 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. A review of those CUP standards demonstrates that the standards are met and no adverse affects will occur as a result of granting the conditional use permit.
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 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.
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.
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 proposal meets all four decisional criteria applicable to a conditional use set out at SCC 30.42C.100.
5. 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 modification are hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant of the following conditions:

**CONDITIONS**

- A. The site plan (Exhibit 6) and landscape plans (Exhibit 8) received by PDS on November 22, 2006, shall constitute the official site plan. Any discrepancy between the content of the official site development plan and the performance standards of Title 30 SCC shall be resolved in favor of Title 30. SCC 30.42C.110 governs revisions to conditional use permits.
- B. Prior to building permit issuance and/or prior to issuance of any development/construction permits by the county:
  - i. Per SCC 30.42C.200, a land use permit binder, on a form provided by PDS, shall be executed by the applicant and recorded with the County Auditor.
- C. Prior to the issuance of certificate of occupancy/final inspections;
  - i. Frontage improvements along 180<sup>th</sup> Street SE as required by the traffic section of PDS per the approved plans shall be constructed by the developer.
  - ii. The landscape buffers and sight obscuring fencing depicted on the approved plans shall be installed, inspected and approved.
- D. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

Nothing in this permit/approval shall excuse the applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.

Decision issued this 26<sup>th</sup> day of January, 2007.

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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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **FEBRUARY 5, 2007**. 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **FEBRUARY 9, 2007** 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.

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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.

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Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin

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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