

**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. 04 116395 SD**  
 )  
for a major modification to increase density of the plat/ )  
PRD, reduce land area and reduce the number of lots )  
from 131 to 98. )

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DATE OF DECISION: August 28, 2007

PLAT/PROJECT NAME: *Sommerwood*

DECISION (SUMMARY): The proposed major modification to the preliminary plat and PRD are **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: This project is located at 17615 35<sup>th</sup> Avenue SE, Bothell, Washington.

ACREAGE: 16.64 acres

NUMBER OF LOTS: 98

AVERAGE LOT SIZE: 3,739 square feet

MINIMUM LOT SIZE: 3,053 square feet

DENSITY: 5.8 du/ac (gross)  
10.68 du/ac (net)

ZONING: R-7,200

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 7

**INTRODUCTION**

The applicant filed the master application on February 23, 2007. (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 20, 21 and 22)

A SEPA determination addendum was made on June 4, 2007. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on August 1, 2007, the 73<sup>rd</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 August 1, 2007 at 10:04 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 of the Department of Planning and Development Services and by Norm Stone of the Department of Public Works.
3. No member of the general public participated in this matter.

The hearing concluded at 10:14 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 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. The applicant, The McNaughton Group, LLC, filed an application for a major modification to the planned residential development named Summerwood previously approved on March 23, 2005. The proposed modification would increase the project's density from the original 9.42 dwellings per net acre to 10.68 dwellings per net acre – a gain of 1.26 dwellings per net acre – as a result of reducing the total acres by eight acres (from 24 to 16) and reducing the number of lots by 33 (from 131 to 98).
4. Four existing homes on the subject site will be demolished.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$918.00 for each new single-family home.
6. The DPW reviewed the request with regard to traffic mitigation and road design standards. That review covered Title 13 SCC and Chapter 30.66B 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.
7. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. The Everett School District requests two hard surfaced student waiting areas each 10 feet by 15 feet and located behind the sidewalks. Those will be located at the south end of Tract 995 and at Tract 997.
8. 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 that wetland's smaller size (under 5,000 square feet). Mitigation for impacts to this wetland was previously approved per the review of Sommerwood. 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.
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.
10. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development via the Silver Lake Water District. A conditional use permit for a sewer lift station on Tract 991 was approved on January 26, 2007 (04-116395 LU).
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 proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, where policies promote urban densities of development, a comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.
13. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC as well as the State Subdivision Code, RCW 58.17. The proposed plat 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.
14. The staff report thoroughly review compliance of the modification with the planned residential development decisional criteria set out at SCC 30.43B concerning unit yield and bonus, design criteria, including open space, drainage detention, perimeter landscaping, tree retention, drainage detention design and road/pedestrian/parking requirements.
15. 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.
16. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

## **CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

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 relationship to 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 conditions specified below herein.
3. 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.
4. 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. 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.

5. Any conclusion in this 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 major modification to increase density of the plat, reduce land area and change the number of lots from 131 to 98 is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

### **CONDITIONS:**

- A. The Preliminary Plat received by PDS on May 10, 2007 (Exhibit 24), 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 May 10, 2007 (Exhibit 24) 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, tree retention and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 14 and with all required landscape standards for perimeter, streetscape and open space treatment.
  - ii. 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) and SCC 30.42B.210(3) (PRD development and landscaping).
  - iii. The platlor 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.
  - iv. A final mitigation plan based on the conceptual Addendum to the Critical Areas and Mitigation Report for Sommerwood by The Jay Group, Inc. dated May 10, 2007 (Exhibit 23) with reference to the original CAS dated February 23, 2007 shall be submitted for review and approval during the construction review phase of this project.
  - v. The civil drawings submitted to and approved by PDS shall be consistent with the significant tree retention plan and show how the trees earmarked for preservation are to be protected during construction.
  - vi. An agreement to terminate two Temporary Dwellings on the property (Land Use Permit Binders AF# 8610290463 and AF #9401060403) shall be executed by the applicant and recorded with the County Auditor.
  - vii. The applicant shall provide evidence that Boundary Line Adjustment applications 05-126766 BA, 06-102331 BA and 04-116395 BA have been approved by PDS and recorded with the county Auditor.

- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:
    - \$2,074.54 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area D. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.
    - \$62.51 per lot for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-11 – Interstate-5 & 128th Street SE Interchange
    - \$70.64 per lot for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-13 – SR-527 from 132nd Street SE (SR-96) to 112th Street SE)
    - \$1.42 per lot for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-29 – Junction 35th Avenue SE on SR-96)
    - \$264.24 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.
    - \$72.66 per lot for transportation demand management paid to the county,

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.
  - ii. No building permit shall be issued for lots 44 through 98 until such time as either:
    - a. Improvements by the applicant to remedy the level of service deficiency on Arterial Unit #204 are under contract; or
    - b. Public Works determines that Arterial Unit #336 is no longer in arrears.

If building permits are issued based upon compliance with the condition (a) (i.e., improvements under contract), then the construction of the improvements shall be completed prior to approval for final inspection for lots 43 through 98.
  - iii. Additional right-of-way, parallel and adjacent to the existing right-of-way of 180<sup>th</sup> Street SE shall have been dedicated to the County along the development's entire frontage such that 40 feet of right-of-way exists from centerline of the 180<sup>th</sup> Street SE right-of-way.
  - iv. Additional right-of-way, parallel and adjacent to the existing right-of-way of Sunset Road shall have been dedicated to the County along the development's entire frontage such that 35 feet of right-of-way exists from centerline of the Sunset Road right-of-way.
  - v. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-116395-002 SD.
  - vi. 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.

- vii. The dwelling units within this development are subject to park impact fees in the amount of \$918 per newly approved dwelling unit, as mitigation for impacts to the North Creek park service area of the County parks system in accordance with SCC 30.66A.
- viii. The lots within this subdivision will be subject to school impact mitigation fees for the Everett 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 5 existing lots. Lots 1-5 shall receive credit.
- ix. 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.
- x. 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 30.91N.010 are allowed when approved by the County."

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 unless PDS approves deferral until building occupancy and a bond or other guarantee of performance is submitted to and accepted by PDS.
- iii. Construction of urban standard frontage improvements on 180th Street SE and Sunset Road shall have been completed.
- iv. School pedestrian waiting areas shall have been constructed as outlined in the Everett School District letter of 5/25/2007. Location and construction of the waiting areas shall have been approved by the DPW.
- v. An eastbound to northbound left turn pocket shall have been constructed at the 180<sup>th</sup> Street SE/Sunset Road intersection to the satisfaction of the DPW.

- vi. 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 plat 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, 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.

- vii. The Final Critical Areas Mitigation Plan shall be completely implemented.

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 28<sup>th</sup> day of August, 2007.

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Ed Good, Deputy Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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 **SEPTEMBER 7, 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 **SEPTEMBER 11, 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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Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin

<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>
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