

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

**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**BELLA PARK, LLC** ) **FILE NO. 05 127554 SD**  
 )  
64-lot planned residential development (PRD) with )  
concurrent rezone from R-9,600 to R-7,200 )

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DATE OF DECISION: June 6, 2007

PLAT/PROJECT NAME: *Bella Park*

DECISION (SUMMARY): The proposed 64-lot planned residential development and concurrent rezone from R-9600 to R-7200 are both **CONDITIONALLY APPROVED**.

**BASIC INFORMATION**

GENERAL LOCATION: This project is located 1319 – 126<sup>th</sup> Street SE, Everett, Washington.

ACREAGE: 9.58 acres

NUMBER OF LOTS: 64

AVERAGE LOT SIZE: 3,747 square feet

MINIMUM LOT SIZE: 2,969 square feet

DENSITY: 6.68 du/ac (gross)  
8.56 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)

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 1

**INTRODUCTION**

The applicant filed the Master Application on May 18, 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 22, 23 and 24)

A SEPA determination was made on April 3, 2007. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on May 23, 2007, the 79<sup>th</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 May 23, 2007 at 2:03 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, Bella Park, LLC was represented by Debbie Rothfus of Peak Engineering. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services and by Ann Goetz of the Department of Public Works.
3. Pre-hearing letters of concern or opposition were submitted by vicinity residents Craig and Lois Alton (Exhibit 30) and Mike and Sheryl Feskens (Exhibit 29). Storm water drainage was their primary concern. The Alton's detail a long history of flooding of their property due to filling on the subject site by the prior nursery use. The Feskens are concerned about a culvert being lower than an outflow ditch crossing 126<sup>th</sup> Street SE at 16<sup>th</sup> Avenue SE. The Feskens are also concerned about salmon habitat east of the subject property, hours of construction work, and dust and noise control. Vicinity resident Susan Sheehan testified that she is concerned about traffic impact and safety on 10<sup>th</sup> Drive SE to the west of the subject site. The Altons had written a year ago in June 2006. Since then, the applicant's representative has met with them to inform them that the applicant will be removing the existing French drain system and replacing it with a new drainage system that will drain to the south, away from the Altons, who abut on the north. (Exhibit 39, also Exhibit 40 by Associated Earth Sciences, Inc.) The concerns of the Feskens are addressed by Exhibit 39 also and by the fact that dust and noise will be controlled consistent with Snohomish County requirements. In response to Ms. Sheehan's concerns, it was noted at hearing that the Gibson traffic analysis (Exhibit 8) shows that of the approximately 600 average weekday trips generated by the development, only about one quarter (15 to 20 trips) of the peak-hour trips will be distributed to 10<sup>th</sup> Drive SE.

The hearing concluded at 2:58 p.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 applicant, Bella Park, LLC, filed an application for a 64-lot planned residential development (PRD) on nearly 10 acres with a concurrent rezone from R-9,600 to R-7,200 addressed 1319 – 126<sup>th</sup> Street SE, Everett: for many years used as a nursery. Storm drainage concerns attributable to fill for the nursery use are described in the record and above herein. The applicant's responses and drainage plans demonstrate that the development will actually lessen, rather than compound, drainage problems. Total open space of 85,681 square feet exceeds the 83,426 square feet required by SCC 30.42B.115 as a PRD design criterion.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,244.49 for each new single-family home.
5. The proposal would generate approximately 570 net average weekday trips, of which 46 would be morning peak-hour trips and 63 would be p.m. peak-hour trips. 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.
6. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. The Everett School District reports (Exhibit 37) that all levels of students will use a bus stop at the plat entrance on 126<sup>th</sup> Street SE.
7. A Category 3 wetland of 1,226 square feet on the northeast corner of the subject site will be filled as allowed by SCC 30.62.360, with mitigation in form of Native Growth Protection Area designation and planting of native trees and shrubs.

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.
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 by the Silver Lake Water District as well as electrical power by Snohomish County PUD No. 1.
11. The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7,200, which is the case here.
12. 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.
13. 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 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 certain conditions.
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 and with the Planned Residential Development provisions of SCC 30.42B. 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. The request is for a rezone and, therefore, must be consistent with the GMACP; GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) ULDR designation of the property and meets the required regulatory codes as to density, design and development standards.
6. A rezone must also comply with SCC 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no substantial evidence was submitted of non-compliance with the requirements of Chapter 30.42A, the application is presumed to meet those requirements.
7. Chapter 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 provides 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.

It is the finding of the Examiner that the request meets these requirements and should be approved.

8. 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 request for a 64-lot Planned Residential Development Subdivision on 9.58 acres together with a concurrent rezone from Residential-9,600 to Residential-7,200 are **CONDITIONALLY APPROVED**, subject to the following conditions:

## **CONDITIONS**

- A. The Preliminary Plat received by PDS on April 20, 2007 (Exhibit 13), 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 April 20, 2007 (Exhibit 13) 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 21 and with all required landscape standards for perimeter, streetscape and open space treatment.

- ii. 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.
- iii. The plat 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 Critical Area Study and Wetland Mitigation Plan for Bella Park, prepared by Wetland Resources, Inc., dated May 24, 2006 (Exhibit 7) shall be submitted for review and approval during the construction review phase of this project.
- v. 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).

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:
  - \$2,375.22 per lot for mitigation of impacts on county roads paid to the county,
  - \$314.47 per lot for mitigation of impacts on State roads paid to the county,
  - \$124.50 per lot for mitigation of impacts on Mill Creek roads paid to the city.
  - \$64.01 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. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 05-127554 SD.
- iii. 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.
- 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 May 25, 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 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.
- vi. 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.
- vii. 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 UDC 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. Urban standard frontage improvements shall be constructed along the property frontage on 126<sup>th</sup> Street SE, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- iv. The applicant shall provide evidence that Boundary Line Adjustment application 07-101109 BA has been approved by PDS and recorded with the county Auditor.
- v. 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 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 the Land Use Division for review and approval prior to installation.

vi. The Final Critical Areas Mitigation Plan shall have been satisfactorily implemented.

E. Prior to occupancy of any unit in the PRD:

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 6<sup>th</sup> day of June, 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 **JUNE 18, 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 **JUNE 20, 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 / Ann Goetz

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.