

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: January 31, 2007

PLAT/PROJECT NAME: *CLAIREMONT DIVISION 2*

APPLICANT/
LANDOWNER: Clairemont Division 2, LLC

FILE NO.: 06 126176 SD

TYPE OF REQUEST: REZONE of a 6.13 acre site from Residential-9600 (R-9600) to Residential-7200 (R-7200) and a 30 lot SUBDIVISION utilizing the lot size averaging provisions of SCC 30.23.210

DECISION (SUMMARY): APPROVE subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 22221 39th Avenue SE, Bothell, WA

ACREAGE: 6.13 acres

DENSITY: 4.89 du/ac (gross)
7 du/ac (net)

NUMBER OF LOTS: 30

AVERAGE LOT SIZE: 7,230 square feet

MINIMUM LOT SIZE: 4,613 square feet

OPEN SPACE: 17,511 square feet

ZONING: CURRENT: R-9600
PROPOSED: R-7200

UTILITIES:
Water: Alderwood Water and Wastewater District
Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions

Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on July 31, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on January 15, 2007.

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 was made on November 27, 2006. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on January 17, 2007, 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 January 17, 2007 at 2:03 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.

The hearing concluded at 2:15 p.m.

NOTE: Audio tapes of this 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 Report and Decision, 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. Clairemont Division 2 LLC (Applicant) requests that a 6.13 acre tract at 22221 39th Avenue SE, Bothell, be rezoned from R-9600 to R-7200 and that a preliminary plat of 30 lots on the site be approved, using the lot size averaging provisions of the Snohomish County Code. The site is generally rectangular and is occupied by three homes, two of which will be demolished. Applicant is also proposing a 15 lot subdivision immediately to the east.

4. There is one small wetland on the site, and it will be filled. As mitigation, Applicant will provide an additional buffer area to an off-site wetland. Other than this, there are no critical areas on the site.
5. Surrounding properties are all zoned and used or planned for single-family residences.
6. Notice of the application was given as provided by ordinance. There were no comments from the public.
7. The proposal will generate 249 average daily vehicle trips, with 20 in the a.m. peak hour and 26 in the p.m. peak hour. The proposal was deemed concurrent as of September 9, 2006.
8. Urban standard frontage improvements will be provided on 39th Avenue SE, including a bicycle lane. An additional 10 feet of right-of-way will be dedicated to the county. Access to the plat will be from 39th Avenue SE. The access road will be stubbed to the east to accommodate the planned subdivision there.
9. Applicant will pay impact fees for schools, parks and county roads.
10. Safe walking conditions will be provided throughout the plat. The plat adjoins the recorded plat of *Clairemont*, which has already provided safe walking conditions for school children, and will satisfy the requirement for this plat as well.
11. PDS has approved a storm water concept whereby runoff will be collected and conveyed to an underground vault, and after water quality treatment to the existing drainage system in 39th Avenue SE. The details of the concept will be approved prior to site development.
12. The site is designated for Urban Low Density Residential uses in the Comprehensive Plan, and is currently zoned R-9600. The R-7200 zone is one of the implementing zones for this land use designation. The requested rezone is therefore consistent with the Comprehensive Plan.
13. 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.
2. The rezone approval criteria are set forth in SCC 30.42A.100. Staff concludes that the proposed rezone is consistent with the comprehensive plan and bears a substantial relationship to the public health, safety and welfare, and should be approved. The Examiner concurs.
3. The criteria for approval of a preliminary plat are contained in Chapter 30.41A and RCW 58.17.100-120 and 195. Staff's analysis of these criteria concludes that the proposal satisfies these standards and should be approved. The Examiner concurs.
4. The request to rezone the property to R-7200 and approve the preliminary plat should be approved subject to compliance by the applicant with the following Conditions:

- A. The preliminary plat, received by Planning and Development Services (PDS) on December 13, 2006 (Exhibit 18), shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
- i. 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.
 - ii. The applicant shall provide evidence that the temporary drainfield easement on proposed Lots 17 and 18 has been recorded with the county auditor.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Northshore 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 four existing parcels. Lots 1-4 shall receive credit."
 - ii. 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 July 31, 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.
 - iii. 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."
 - iv. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit or double the amount for a duplex:

\$1,874.74 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area E. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- v. Additional right-of-way adjacent to the existing right-of-way of 39th Avenue SE shall have been dedicated to the County along the development's entire frontage such that a minimum of 40 feet of right-of-way exists from centerline of the 39th Avenue SE right-of-way.
- vi. A temporary cul-de-sac turnaround easement shall be placed at the east end of (222nd Place SE) unless there is a simultaneous recording of Clairemont Division 2 and Clairemont Division 3.

D. Prior to recording of the final plat:

- i. Construction of urban standard frontage improvements on 39th Avenue SE shall have been completed and approved.
- ii. Pedestrian Facilities shall be constructed to the specifications of the county throughout the development in conformance with the TDM plan.
- 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 platlor 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.

- iv. The applicant shall provide evidence that Boundary Line Adjustment applications 06-126176-001 and 06-126176-002 BA have been approved by PDS and recorded with the county Auditor.

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.

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

DECISION:

The request to **REZONE** the property to R-7200 and the **PRELIMINARY PLAT** of *Clairemont Division 2* are hereby **APPROVED**, **SUBJECT TO COMPLIANCE** by the applicant, with the **CONDITIONS** set forth in Conclusion 4, above.

Decision issued this 31st day of January, 2007.

Gordon Crandall, Hearing Examiner Pro-Tem

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 **FEBRUARY 12, 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, 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 **FEBRUARY 14, 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.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin

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| 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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