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BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
CAM WEST DEVELOPMENT, INC.) **FILE NO. 05 117632 SD**
Request for a 55-lot subdivision on 17 acres utilizing)
lot size averaging)

DATE OF DECISION: January 18, 2008

PLAT/PROJECT NAME: *Nickell-Backman*

DECISION (SUMMARY): The application for a 55-lot subdivision is **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: This project is located at 3425-102nd Avenue NE, Lake Stevens, Washington.
The site has been annexed by Lake Stevens (Exhibit 65) but vested to County codes.

ACREAGE: 17 acres

NUMBER OF LOTS: 55

AVERAGE LOT SIZE: 5,496 square feet

MINIMUM LOT SIZE: 3,779 square feet

DENSITY: 3.28 du/ac (gross)
6.93 du/ac (net)

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: Snohomish/Lake Stevens
Subarea Plan Designation: Suburban (2-4 du/ac)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: City of Lake Stevens

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

INTRODUCTION

The applicant, Cam West, filed the Master Application on January 3, 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 September 18, 2006. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on October 25, 2006 which was continued at the applicant's requests until November 14, 2007. Witnesses were sworn, testimony was presented, and exhibits were entered at both hearings.

PUBLIC HEARING

The continued public hearing commenced on November 14, 2007 at 9:03 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, CamWest Development, Inc., was represented by its attorney, Tom Ehrlichman and by Aaron Hollingbery. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services and by Andrew Smith of the Department of Public Works. Pre-hearing letters of concern, mainly about traffic, were received from vicinity residents Sandra L. Dressel and from Jeff Reed. (Exhibits 26 and 27, respectively.) Appearing and testifying were Raymond and Sandra Axford and their adult daughter, Angel Tippin.

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.

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.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all the evidence of record, the following findings of fact are entered.

1. The applicant, CamWest, filed an application for a 55-lot subdivision using lot size averaging on 17 acres zoned R-9600 located at 3425 – 102nd Avenue NE, Lake Stevens. No rezone is proposed. The proposal is not for a rural cluster subdivision or a planned residential development. The 55-lot proposal is consistent with the density provisions of Snohomish County's zoning regulations under Snohomish County Code (SCC) 30.2, which are based on the Growth Management Act.
2. The PDS staff report has 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 unless noted specifically otherwise herein.
3. The subject site contains Lundeen Creek: a presumed bull trout Type 3 stream discharging to Lake Stevens. The Creek lies below steep slopes of up to 40% slope and has three riparian Category 2 associated wetlands. The subject site also contains two small, isolated wetlands (a Category 3 and a Category 4) which will be filled. A mitigation plan is of record and is acceptable to the County. All other wetlands, steep slopes and related buffers will be protected by containment within a designated Native Growth Protection Tract (Tract 998). The staff recommends finding that the application meets Chapter 30.62 requirements for the protection of critical areas. The Examiner so finds as fact.
4. Utilities will be underground consistent with an agreement between the City of Lake Stevens and CamWest (Exhibit 66). Snohomish County PUD No. 1 will provide potable water (Exhibit 31) and the City of Lake Stevens will provide public sewer (Exhibit 28). Thus, the Health District has no objections to the proposed subdivision.
5. The project will generate average weekday vehicular trips at the rate of 9.57 trips per each of the 55 homes totaling 526 trips per day. With credit for existing homes, the new trips will be 498, of which 39 will be morning peak-hour trips and 56 will be p.m. peak-hour trips. 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 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. The only vehicular access for the proposed subdivision is 101st Avenue NE. That Avenue is substandard between 30th and 32nd Streets NE, where right-of-way width is only 30 feet. Future right-of-way acquisitions will be under the jurisdiction of the City of Lake Stevens. Based on the public concerns in this record about the access issue, the applicant's engineers did a title review and a field survey and concluded that the plat of Bailey's Addition had been laid out incorrectly resulting in that plat's northern boundary being five feet too far to the north, which had placed the right-of-way of 32nd Street NE five feet north of where it should have been. Subsequent review by the County confirmed that conclusion.

7. That issue is of concern to neighbors Raymond and Sandra Axford and their daughter Angel Tippin, in part because the Axford home, built in 1935, is only eight to ten feet from the street edge. In October 2006 the Axford's had submitted a survey related to the right-of-way issue in order to clarify whether the subject plat would result in a five-foot intrusion into the Axford's property. If so, their home would be two to three feet from the street. In response, CamWest has agreed to quit claim any ownership interest in a four-foot wide strip along the north side of 32nd Street NE before final plat approval. (Exhibits 66, 68, 69, 70) That action is consistent with the above-mentioned survey by the Axfords.
8. In response to questions by the Axfords and Ms. Tippin, CamWest and the County state on the record that no activity of this project will intrude into the Axford property nor cause the Axfords to perform any action until the Axfords file an application to develop their own property.
9. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,361.22 for each new single-family home.
10. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. The Lake Stevens School District reports (Exhibit 33) that elementary level school children will walk to Sunnycrest Elementary at 3411 – 99th Avenue NE. Middle school and junior high students will be served by busses at the entrance to the proposed subdivision. However, high school students will be walking to and from school but existing walkways along that route are intermittent. Therefore, adequate walkways will be required to be completed or in place from the proposed subdivision to the high school before the recording of the subject plat.
11. 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.
12. 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.
13. 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, policies where adopted 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.
14. 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.
15. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.

16. 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.
17. 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 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 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 is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no evidence was submitted contrary to the requirements of Chapter 30.42A, the application is presumed to meet these requirements.
5. The conclusions of law immediately above herein are entered with awareness of the public concerns expressed in this record. However, the findings above demonstrate that the applicant and County responded to the citizen concerns by amending the application to prevent any intrusion onto the Axford property and to provide adequate right-of-way on vicinity streets.
6. 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 request for a 55-lot subdivision utilizing lot size averaging provisions is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The revised preliminary plat received by PDS on August 3, 2006 (Exhibit 19) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.

- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. 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.
 - iii. A final mitigation plan based on the conceptual Critical Area Study/Habitat Management Plan for Nickell-Backman, prepared by Adolphson Associates, Inc., dated June 2006 (Exhibit 15) shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. “The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”
 - ii. “The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens 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 eight existing parcels. Lots 1 through 8 shall receive credit.”
 - iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$3,049.18 per lot for mitigation of impacts on county roads paid to the county,
 - \$64.37 per lot for impacts to WSDOT project DOT-37 (SR 9 at 60th Street SE) paid to the county,
 - \$92.29 per lot for impacts to WSDOT project DOT-08 (SR 9/SR 2 intersection modification) paid to the county,
 - \$71.62 per lot for TDM paid to the county.

These payments are due at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision of the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid.
 - iv. Along 102nd Avenue NE, additional right-of-way necessary to achieve a total width of 51 feet of right-of-way north of Road B and 60 feet of right-of-way width from 32nd Street NE to Road B shall be dedicated to the city of Lake Stevens on the final recorded plat. Said right-of-way dedication shall be parallel with and adjoining the existing right-of-way along the parcel’s frontage on the east and west sides of 102nd Avenue NE. Additionally, a 25-foot radius right-of-way shall be dedicated at the intersections of the development’s accesses with 102nd Avenue NE.

- v. Eleven feet of right-of-way shall be dedicated to the City of Lake Stevens on the final recorded plat, parallel with and adjoining the existing right-of-way along the parcel's frontage on the north side of 32nd Street NE along with a 25 foot radius right-of-way at the northwest corner of the intersection with 102nd Avenue NE.
- vi. 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."

- vii. The applicant voluntarily agrees to place utilities underground pursuant to the letter agreement dated November 13, 2007 between the applicant and the City of Lake Stevens (Exhibit 66).

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on 32nd Street NE and 102nd Avenue NE to the specifications of the County.
- ii. Pedestrian facilities shall be constructed to the specifications of the County throughout the development.
- iii. 101st Avenue NE shall be required to be widened to a minimum 20 feet between 30th Street NE and 32nd Street NE to the specifications of the County.
- iv. The vacation of any right-of-way as shown on Exhibit 19 shall be completed through the City of Lake Stevens.
- v. Adequate walkways for school children shall be constructed or in place within Tract 007 shown on Exhibit 19, from the proposed development to the east property line of the adjacent Sunnycrest Elementary property located at 3411 – 99th Avenue NE to the specifications of the County.
- vi. Off-site improvements for turning movements at the intersections of 101st Avenue NE and 32nd Street NE and 102nd Avenue NE and 32nd Street NE shall be constructed in accordance with those improvements described in the November 2, 2007 letter from David Ostergaard, Public Works director for Lake Stevens, to Paul MacCready (Exhibit 70).
- vii. 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 Development, Review & Construction Division for review and approval prior to installation.

viii. The final critical area mitigation plan improvements shall be completely implemented. Completion of the mitigation monitoring program shall not be required prior to final plat recording.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this recommended 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.

Decision issued this 18th day of January 2008.

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, 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 **JANUARY 28, 2008**. 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 1, 2008** 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: Paul MacCready

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.