

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 07-103707-000-00 SD
THE MCNAUGHTON GROUP)	
)	Final Decision and Order
<i>Hillard Addition - Planned Residential Development</i>)	
<i>& Subdivision; Rezone from R-9,600 to R-7,200</i>)	

DATE OF DECISION: January 22, 2008

PLAT/PROJECT NAME: Hillard Addition

DECISION (SUMMARY): **Approved with Conditions**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 4314 212th Street SE, in Bothell, Washington in Section 28, Township 27 North, Range 5 East, W.M., in Snohomish County, Washington.

ACREAGE: 2.06 acres

NUMBER OF LOTS: 14

AVERAGE LOT SIZE: 2,886 square feet

MINIMUM LOT SIZE: 2,625 square feet

DENSITY: 6.8 du/ac (gross)
12.51 du/ac (net)

CURRENT ZONING: R-9,600; PROPOSED ZONING: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6-du/ac)

UTILITIES: Water/Sewer: Alderwood Water District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

INTRODUCTION

The applicant requests a rezone of a 2.06 acre site, from Residential-9,600 (R-9,600) to Residential-7,200 (R-7,200) and Preliminary Plat and Official Site Plan approval for a 14-lot subdivision/Planned Residential Development. The square shaped property is situated on the south side of 212th Street SE, approximately 400 feet west of 45th Avenue SE. The property is developed with a single family residence and associated outbuildings. Vegetation on the site consists of lawn, ornamental landscaping and scattered mature trees. A manmade pond is located at the southern part of the property. The pond was excavated within a Category 3 wetland located in the south/southeast property boundary. Terrain on most of the site is generally flat, varying between 2-10%.

One existing single family residence and associated outbuildings on the property will be removed, and the new lots developed with single family homes. A new public cul-de-sac road proposed from 212th Street SE will provide access to 4 of the lots, while two auto courts intersecting with the new public road will provide access to the remaining 10 lots. Associated with the proposal are open space tracts, a stormwater management system incorporating an underground detention vault and vegetated bioswale, utilities, and right of way improvements consisting of curb, gutter, planter strip and sidewalk along the development's road frontages. A wetland on-site and its associated buffer will be preserved from development. Water and sewer service is to be provided by the Alderwood Water and Wastewater District.

B. Project Chronology/Background

The subject land use application was submitted to Planning and Development Services (PDS) on May 16, 2007, and was determined to be complete, as of the date of submittal, on June 13, 2007. In response to review comments by the county on July 11, 2007, the applicant submitted revised review materials on August 30, 2007. As of the date of the hearing, 111 days of the 120 day review period will have elapsed. The 120 day time frame could not be met due to a lack of available public hearing dates.

PUBLIC HEARING

The public hearing commenced on December 7, 2007 at approximately 2:00 p.m.

1. The Examiner stated that she had read the PDS staff report, reviewed the file and was familiar with the subject property.
2. The McNaughton Group was represented by Brian Holzclaw and Cher Anderson. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services.

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

The following findings of fact are entered, based on the exhibit, testimony and record in this matter:

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 (Exhibit 33) 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. Section 30.42B.200 - Approval of PRD official site plan - Decision criteria. PDS has recommended approval of the PRD official site plan, subject to certain conditions. The applicant has provided all of the minimum submittal requirements and demonstrated the project can comply with the requirements of Chapter 30.42B SCC as noted above.
4. Zoning. Single family dwellings are a permitted use in the R-7,200 zone. There are no duplexes proposed for any of the lots. Prior to the issuance of building permits for the proposed dwellings, PDS staff shall confirm that building setbacks and lot coverage requirements are met, as well as the building height requirements outlined in SCC 30.23.030(1) Bulk Matrix. The proposal meets the minimum net density requirements of SCC 30.23.020.
5. Rezone Request pursuant to Ch. 30.42A SCC. The applicant has submitted the necessary application documents required for a rezone as required per Chapter 30.42A SCC. Chapter 30.42A SCC covers rezone 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.

In the context of the Growth Management Act, development regulations, and therefore rezones, must be consistent with and implement the comprehensive plan [RCW 36.70.040]. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447.

This rezone is a request to up-zone the subject 2.06 acre property in the Urban Low Density Residential (ULDR) designation from R-9,600 to R-7200 to allow a total of 14 lots. Although it is clear that the subject rezone request fits within the ULDR designation, recent Hearing Examiner's Decisions have opined that an analysis of consistency must go well beyond the designation and identify how the project is consistent with the policies in the comprehensive plan. To this end, the Examiner requested that applicants, who carry the burden of proof, provide an analysis to a series of questions (see 06-103099 SD for a listing of the questions) relating to a project's compliance with applicable GPP land use policies. The applicant has provided a thorough response to these questions and the Examiner finds that the applicant has adequately addressed the rezone criteria (*See*, Exhibit 21).

The preliminary plans submitted for the project have been deemed to be in compliance with county GMA development regulations relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation and critical areas protection. During the construction plan review stage of the project the applicant will submit more detailed plans for county review. Construction permits will not be issued until compliance with these codes is again verified. PDS has recommended approval of the requested rezone.

6. State Environmental Policy Act (SEPA) - Chapter 30.61 SCC. A Determination of Nonsignificance (DNS) was issued for the subject application on September 21, 2007. (Exhibit 17) The DNS was not appealed.

7. Subdivision Code - Chapter 30.41A SCC and RCW 58.17.100. The proposed plat meets Chapter 30.41A SCC requirements. The proposed plat as conditioned meets the general requirements under SCC 30.41A.100 with respect to health, safety and general welfare of the community and also as noted below under the section titled RCW 58.17 of this report. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.

The plat has been reviewed and conforms to the criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the 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. Adequate provisions for all such factors have been made by the proposed application as designed.

In addition, the proposed plat with accompanying rezone request will conform to applicable zoning codes and the comprehensive plan. There is open space within the plat in the form of open space tracts. The single-family homes on individual lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State Department of Ecology drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying county requirements with respect to road and walkway design standards, and with parks and recreation, traffic and school mitigation. Confirmation of availability of water, sewer and electrical service to the project has been obtained from the respective local utility purveyors.

8. 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.
9. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.
10. Chapter 30.42A SCC applies to rezone 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 Hearing Examiner that the request meets these requirements and should be approved.

11. 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 PRD/subdivision 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 revised proposal 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. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.
6. The requirements for a rezone from R-9,600 to R-7,200 have been met. The proposed rezone is consistent with the Comprehensive Plan.

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 requested rezone from R-9,600 to R-7,200 is **CONDITIONALLY APPROVED**, and the Preliminary Plat and PRD Official Site Plan of *Hillard Addition* is **CONDITIONALLY APPROVED**, subject to the following **CONDITIONS**:

CONDITIONS

- A. The Preliminary Plat (Exhibit 13) received by PDS on August 30, 2007, 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 August 30, 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 14 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. 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).
- iv. 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.

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:

\$2,043.88 per lot to Snohomish County as mitigation for project impacts on county roads.

\$70.39 per lot for Transportation Demand Management paid to the county

\$971.75 per lot for mitigation of impacts on Bothell roads paid to the city. Proof of payment is required.

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. The final plat shall show a 35-foot right-of-way dedication from the centerline of the right-of-way (the section line) along the property frontage on 212th Street SE.
- iii. No lot shall be permitted direct access to 212th Street SE.
- iv. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 07-103707 SD.
- v. 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.
- vi. 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 16, 2012 (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.
- vii. 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 1 existing lot. Lot 1 shall receive credit.

- viii. 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.
- ix. 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. Urban standard frontage improvements shall be constructed along the property frontage on 212th 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. Construction of an offsite walkway to the nearest bus stop location for the public school students as identified by the Northshore School District (currently the intersection of 212th Street SE and 45th Avenue SE) must have been completed along a legal and the most direct route in any location where none exist.
- v. A paved turnaround shall be shown on the plans for lot 8, so that no user has to back out to the main roadway.
- 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 platator 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.

- 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.
- F. The approval of the rezone from R-9,600 to R-7,200 is substantially based on the current development application for an Official Site Plan and PRD approved as a part of this decision. In the event that the applicant chooses not to proceed with the Official Site Plan/PRD approved in this decision, or abandons the application that is the subject of this decision, the rezone shall be null and void.

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.

Decision issued this 22nd day of January, 2008.

Millie Judge, Pro Tem 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 **February 1, 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 5, 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: Monica McLaughlin

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.” A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.