

**DECISION OF THE SNOHOMISH COUNTY
HEARING EXAMINER PRO TEMPORE**

DATE OF DECISION: October 1, 2010
PROJECT NAME: **SILVER CREEK ESTATES DIVISION 6**
OWNER/APPLICANT: Mike Mietzner, Mietzner Silver Creek LLC
FILE NO.: 08 106641 LU
TYPE OF REQUEST: Preliminary Subdivision, Planned Residential Development Site
Plan and Landscape Modification
DECISION: **APPROVE** with conditions

BASIC INFORMATION

GENERAL LOCATION: In the southeast quadrant of the intersection of 189th Place SE and Bothell-Everett Highway (SR527) within SW1/4 Sec. 17 and the SE1/4, Sec. 18, T27N, R5E, W.M. being about one mile south of the city limits of Mill Creek.

ACREAGE: 1.88 acres
NUMBER OF LOTS: 20
AVERAGE LOT SIZE: 3,036 square feet
SMALLEST LOT: 1,664 square feet
GROSS DENSITY: 10.6 du/ac
ZONING: PRD-LDMR
COMPREHENSIVE PLAN: Urban High Density Residential
SCHOOL DISTRICT: Everett No. 2
FIRE DISTRICT: No. 7
WATER AND SEWER: Alderwood Water and Wastewater District
PDS RECOMMENDATION: Approve with conditions

INTRODUCTION

The application was initially filed on July 3, 2008, and on July 31, 2008, was determined to be complete as of the date of submittal for regulatory purposes but insufficient for further review. Planning and Development Services (PDS) responded to the application on October 28, 2008, and on January 22, 2009, the applicant resubmitted the application with a substantially revised lot configuration and access arrangement. After further PDS response on July 2, 2009, the applicant resubmitted again on August 25, 2009.

PDS gave proper public notice of the open record hearing as required by County Code.

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on July 27, 2010. No appeal was filed. An Addendum to the DNS, incorporating the previous DNS for the overall development of Silver Creek Estates was issued on September 10, 2010.

The Examiner Pro Tempore held an open record hearing on September 16, 2010. Witnesses were sworn, testimony was presented and exhibits were entered. The decision here is based on the record made.

PUBLIC HEARING

The public hearing commenced on September 16, 2010, at 2:00 p.m.

1. The applicant was represented by Angela Larsh of Urban Concepts and by Mike Mietzner, applicant.
2. PDS was represented by Robert Pemberton, Senior Planner.
3. There was no public testimony.

The hearing concluded at 2:46 p.m.

NOTE: For a complete record, an electronic recording of this hearing is available through the Office of the Hearing Examiner

FINDINGS OF FACT

1. The master list of exhibits is in the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. The PDS Staff Report, as supplemented at the hearing, correctly analyzes the nature of the application and the application's consistency with adopted codes, policies and land use regulations. The Staff Report and Supplemental Staff Report are hereby adopted by the Examiner as if set forth in full herein.
3. Comments were received from neighboring property owners. One questioned whether the proposed sanitary sewer easement along the eastern property line might be used a

means of general access into the site. The easement will be a part of Lot 1 and not a common area. No trail is proposed there. The other comments expressed concern about the potential for glare from headlights from cars using the eastern cul-de-sac on the site. This concern has been resolved via a private agreement involving fencing and landscaping.

4. The applicant is requesting approval of a Planned Residential Development Site Plan and Preliminary Plat for 1.88 acres. The development will be known as Silver Creek Estates Division 6. Twenty lots are proposed, ranging in size from 1,664 square feet to 5,581 square feet. The average lot size is 3,036 square feet. There will be 6,564 square feet of open space on site. The site will be developed in a townhouse configuration in groups of attached zero-lot-line single-family residences.
5. Access to the lots will be by internal private auto courts. Auto Courts A and B will connect at different places to 189th Place SE, a public road. Auto Court C will traverse the interior of the development intersecting Auto Courts A and B. There will be three internal cul-de-sacs.
6. A small wetland adjacent to the southeast corner of the site will be protected by a previously established Native Growth Protection Area (NGPA) buffer.
7. The proposal is within the boundaries of Silver Creek Estates, previously approved under County file number ZA 8808351, which dealt with a master permit application consisting of a rezone to PRD-LDMR and a preliminary plat of 239 lots in eight divisions. The PRD-LDMR rezone for the entire site and preliminary plat approval for Divisions 1, 2, 3 and 4 was granted on January 19, 1992.
8. In the rezone and plat approval of January 19, 1992, the current site is described as Division 6, "a future development tract" Condition D of the approval states:

"The dwelling unit yield for Divisions 5, 6 and 7 has not yet been calculated. The dwelling unit yield for each division shall be calculated based upon zoning code and comprehensive plan provisions applicable at the time binding site plan applications are presented for subsequent public hearing review."

The condition also states:

"Development within Divisions 6 and 7 may be of any multiple family type consistent with the requirements of the PRD-LDMR zone."

9. The subject site lies in the southeast quadrant of intersection of State Route 527 and 189th Place SE. The topography is basically flat, with a gradual slope down from the northwest corner to the southeast corner of the site. A wetland lies just off site to the southeast. There are two existing buildings and driveways on the site. It is vegetated with native maple and fir trees, grasses, blackberry bushes, and small landscaping trees.
10. The site is in the southwest corner of the overall Silver Creek Estates development, which has been zoned and developed as a PRD-LDMR subdivision. Immediately to the north and east are small-lot subdivisions containing single-family residences and duplexes. SR 527 borders the west side of the property. Across the highway to the

west are developed multi-family developments. To the south is an MR zoned area developed with town-houses.

11. Under the Planned Residential Development regulations, the maximum number of residential units allowable on this site would be 25. The proposed development will consist of 20 dwelling units. All dimensional requirements of the underlying zone will be met.
12. The 6,564 square feet of open space proposed within this site is less than to the 20% of gross site area required by Code. However, the overall preliminary plat for the whole of Silver Creek Estates established a total of 12.84 acres of open space comprising 26% of the total site area. The plat notes show 5.28 acres of "Open Space Credit" for future phases 6 through 8. The current Division 6 proposal uses 10,000 square feet of this credit to count toward its required open space. With this credit, the open space provided is 16,564 square feet, which exceeds the 20% requirement.
13. Total open space must contain usable open space for active or passive recreation purposes in the amount of 600 square feet per dwelling unit. The developer has designated 4,981 square feet of usable open space in Division 6. The residents will also have access to 7,500 square feet of usable open space provided for Divisions 1-5. In total this provides 12,481 square feet of usable open space for the proposed development, slightly more than the 12,000 square feet (20 x 600) required. Usable open space will be developed with an open play grass area, all of which qualifies as active recreation area. This will satisfy the requirement of 30% of usable open space for active recreation uses.
14. The residential lots will be provided with water and sewer service by the Alderwood Water and Wastewater District. The District has provided preliminary certificates of water and sewer availability. The Snohomish County Public Utility has indicated that they can provide electrical service for the project
15. Stormwater runoff from the proposed impervious surfaces will be routed via a system of catch basins and pipes to a detention vault sized for the 100-year storm, located in the southeast corner of the site. The outflow from the vault will be directed to the existing wetland in the southeast corner of the site. Water will be released a pre-project rates. Water quality will be maintained by a manhole storm-filter upstream of the detention vault.
16. Traffic mitigation was required for the original overall proposal of Silver Creek Estates. The initial decision stated that "traffic mitigation measures imposed herein are valid for development of the site generating up to but not more than 4,492 average daily trips." Development of the first six divisions (including the current proposal) is predicted to generate 2,766 total average daily trips, far below the threshold for additional mitigation.
17. The applicant is vested to the traffic mitigation initially required. Calculation using the methods then applicable produces a total impact fee of \$1,834.35 for Division 6 to be paid to the County for impacts of the development on county roads.
18. The Cities of Mill Creek and Bothell have requested mitigation for the impacts of this development on their streets. The applicant has voluntarily agreed to pay the fees

requested. The applicant has likewise agreed to pay the Washington State Department of Transportation a fee which WSDOT has accepted.

19. The subject development was evaluated for traffic concurrency and deemed to be concurrent as of August 25, 2008. The expiration date of the concurrency determination is six years from that date.
20. Private auto courts will provide access to all of the units. None will be accessed from the public road, 189th Place SE. An auto court is a type of private road but there is no County standard for auto courts at present. The applicant submitted a deviation request relating to auto court design. Auto Courts A and B between 189th Place SE and Auto Court C were proposed with pavement width of 24 feet for two 10-foot travel lanes and a four-foot at-grade walkway on the south leg of Auto Court A. Auto Court C was proposed with a 16-foot-wide travel way and one at-grade four-foot wide pedestrian facility. This design was accepted by the Deviation Review Board with a condition that approaches to the auto courts on 189th Place SE have drop curbs. Written approval of this design was provided by the Fire Marshal on March 19, 2009. The Review Board also required Hearing Examiner approval for modification of the requirement that the road within and abutting a PRD shall provide planter strips adjacent to the curb.
21. In the absence of an adopted standard for auto courts, the Department of Public Works issued design guidelines. The proposed design meets these guidelines. There is an adequate clear zone width between opposing garages; no users will have to back out to the main road; there are alternative pedestrian facilities connecting all building fronts not already provided with a sidewalk; and at least one parking stall per unit outside of the auto court is provided.
22. At present 189th Place SE is already constructed to better than applicable standards, so frontage improvements will not be required. However, a section of the existing improvements will have to be removed and replaced with drop curb driveway approaches in order to build the new auto courts accesses.
23. The subject development will not impact any locations with inadequate road conditions. Transportation demand management (TDM) regulations did not exist when the traffic mitigation requirements for Silver Creek Estates vested.
24. The proposed development meets the requirement that safe walking conditions be provided for school children who may reside in the subject development. The School District by letter dated August 30, 2010 withdrew a request for construction of a hard surface student waiting area at the intersection of 189th Place SE and Bothell-Everett Highway. The District determined that students from Division 6 will walk to the bus stop located at 189th Place SE and 20th Avenue SE for which safe walking conditions exist.
25. The applicant has agreed to pay the currently effective impact fee for impacts to public parks. The impact fee which vested with the original Silver Creek Estates approval will be paid for school impacts.
26. A landscape modification was requested to allow planting of street trees and other plants outside of the auto court right-of-way to satisfy planter strip criteria. Because of the limited width of the auto courts, the entirety of the surface must be available for vehicular travel. The Landscape Plan shows landscaping along all of the auto courts in front of

every structure except for driveway locations. The landscaping installed on private property will be the same as would otherwise be required in the right-of-way. The Examiner finds that this proposal fulfills the intended purpose of the planter strip criteria for PRD's. A landscape maintenance easement along the streetscape will be required to insure continued maintenance of the vegetation.

27. The Comprehensive Plan designation for the subject property allows a combination of detached homes on small lots, townhouses, apartments and multifamily residential developments. The proposed density is within the range contemplated by the plan.
28. The application was reviewed by various County departments. Their recommendations are reflected in the conditions of approval set forth below.
29. For information purposes, the DNS for the overall Silver Creek Estates approval was included as a supplement to the DNS of July 27, 2010, issued for the subject proposal. The referencing of the previous DNS did not substantially change the analysis of significant impacts.
30. The Examiner concurs with the Staff's findings and agrees that the project, as conditioned, will be consistent with the County's adopted codes and policies.
31. The proposed plat makes appropriate provisions: for the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, potable water supplies, sanitary wastes, recreation, schools, safe walking conditions for students, and other planning features.
32. The public use and interest will be served by the platting of the subdivision.
33. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over this proceeding.
2. The requirements of SEPA have been met.
3. The proposal is consistent with the GMA-Comprehensive Plan and with the applicable development regulations. RCW 58.17.100, RCW 58.17.195. In particular the proposal, as conditioned, meets the requirements of Chapter 30.42B SCC, Planned Residential Development.
4. The proposal provides for items of design and infrastructure as required by RCW 58.17.110. Adequate public services are available to serve the project.
5. The requirement that planter strips in the PRD be provided adjacent to the curb should be modified to allow planting as requested in the landscape modification request.
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The request for preliminary approval of a 20-lot subdivision with a PRD official site plan and a landscape modification is **GRANTED**, subject to the following conditions:

CONDITIONS

- A. The PRD official site plan/preliminary plat received by PDS on January 22, 2009 (Exhibits B1 and B3) shall be the PRD official site plan and approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any 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 detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibits B1, B3 and B4 in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
 - iv. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. 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. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.
- 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 \$491.05 per newly approved dwelling unit pursuant to Chapter 30.66A SCC. 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. No unit in this development shall have direct vehicular access to 189th Place SE or SR 527. Vehicular access to all lots shall be to and from the private auto courts created by this subdivision.
- iii. "The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District No. 2 in the amount of \$806.40 per unit 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 through 4 shall receive credit."
- iv. 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."
- 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 open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, 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. A Landscape Maintenance Easement shall be established for areas of streetscape landscaping to ensure its continued maintenance pursuant to the approved Landscape Plan.
- vii. Each new, individual, dwelling unit shall not exceed 3,600 square feet.

D. Prior to recording of the final plat:

- i. Mitigation payments in the amounts shown shall have been paid:
 - \$1,834.35 -- mitigation of impacts on County roads paid to the County.
 - \$1,184.30 -- mitigation of impacts to DOT-38 (SR 527 at 186th Place SE), paid to the County.
 - \$2,063.18 -- mitigation of impacts on Mill Creek streets paid to the City.
 - \$6,370.10 -- mitigation of impact on Bothell Streets paid to the City
- ii. The auto courts shall have been constructed to the satisfaction of DPW/PDS.

- iii. The construction plans shall show the drop curb driveway approaches for the two auto court access points per EDDS 2-025, and they shall have been constructed in accordance with the approved construction plans.
 - iv. 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 plattor 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 PDS for review and approval prior to installation.
 - 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.
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit B7) shall be implemented. All required landscaping shall be installed in accordance with the approved landscape plan.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this 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 1st day of October 2010.



Wick Dufford, Hearing Examiner Pro Tempore

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 **OCTOBER 11, 2010**. 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 **OCTOBER 15, 2010** 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: Bob Pemberton

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.