

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER
DENYING PETITION FOR RECONSIDERATION**

DATE OF DECISION: April 2, 2010

PLAT/PROJECT NAME: *Regency at Manor Way*

APPLICANT/
LANDOWNER: Pearce A. Riggs

FILE NO.: 09-101888-000-00-SD

INTRODUCTION

Paul D. Colvin filed a petition for reconsideration dated and received by the Hearing Examiner's office on February 26, 2010. (Exhibit K10) The applicant responded to Mr. Colvin's petition on March 17, 2010. (Exhibit K12)

The Examiner addresses the merits of the petition below.

1. Ground #1. The Traffic Study is Fraudulent and Invalid. Mr. Colvin claims that the traffic study is invalid because he has personally measured certain distances. This is not an appropriate ground for reconsideration. The traffic study was conducted by expert traffic engineers and reviewed by expert traffic engineers and found to be valid. Mr. Colvin is not a traffic engineer, nor has he presented any expert testimony. **Ground #1 is denied.**

2. Ground #2. Comments of Fire District #1. Mr. Colvin claims that Fire District #1 went on record requiring three points of access for building access of less than 30 feet. The Hearing Examiner continued the hearing for the purpose of requiring the applicant to resolve the issues with Fire District #1. They did so, and were able to get agreement on issues by the following week. **Ground #2 is denied.**

3. Ground #3. The Examiner made a mistake of law regarding installation of sidewalks. The Examiner did not make a mistake of law regarding the frontage improvements the applicant is required to install. **Ground #3 is denied.**

4. Ground #4. Mr. Colvin has talked with Dick Swanson of the state about the project. The Hearing Examiner finds whatever Mr. Colvin has discussed with someone at the state about this project irrelevant. The only relevant matter before the Examiner is the county code requirements. **Ground #4**

is denied.

5. Ground #5. Mr. Colvin again questions applicant's ability to manage the facility. The Examiner has repeatedly told Mr. Colvin that the business management aspect of the facility is not within the jurisdiction of the Hearing Examiner. **Ground #5 is denied.**

6. Ground #6. There is an error of law by not imposing elimination of an IRC. Mr. Colvin incorrectly assumes that because the facility will produce more than 10 PHT, all of those trips will affect an IRC. He is incorrect. According to the traffic study, the development will not impact any IRC locations with 3 PM peak-hour trips; therefore the development is not required to eliminate any IRC locations. **Ground #6 is denied.**

7. Ground #7. There is an error by the Examiner if the usage of the "average person" categorization was applied to this development. Mr. Colvin argues that the "average person" will walk about 1500 feet to a bus stop. Since the nearest bus stop is 1200 feet, he claims the Examiner erroneously relied on this information to approve the development.

The Examiner does not believe that residents of the facility will often use the bus stop. The facility has its own van service that will provide transportation on demand to its residents. (Testimony at open record hearing) The Examiner did not rely on the "average person" standard to approve this Conditional Use Permit. **Ground #7 is denied.**

8. Ground #8. "According to Dick Swanson of the DOH, all boarding houses must be classified as R2 occupancies, as zoned accordingly." Mr. Colvin could have brought this evidence in at hearing, but did not. He cannot bring in new evidence at reconsideration. **Ground #8 is denied.**

9. Ground #9. The allocation of parking violates SCC 30.26.040(2). SCC 30.26.040(2) applies to retirement housing, which is not the same use under the zoning code as an assisted living facility. This code provision is inapplicable to this facility. **Ground #9 is denied.**

DECISION

Mr. Colvin's Petition for Reconsideration is **DENIED**.

Decision issued this 2nd day of April, 2010.

Barbara Dykes, Hearing Examiner

EXPLANATION OF APPEAL PROCEDURES

An appeal to the County Council of the Decision after reconsideration may be filed by any aggrieved Party of Record. "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." [SCC 30.72.070(2)] 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 East-Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 16, 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

Appeals will 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 this case.

Distribution:

Parties of Record

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.

