

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

In the Matter of the Application of)
ADAM BORSETH) **FILE NO. 03 109252**
Six lot short subdivision on 2.37 acres)

DATE OF DECISION: March 2, 2006

PLAT/PROJECT NAME: *Borseth Short Plat*

DECISION (SUMMARY): The six-lot short subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 229 S. Rhodora Heights Road, Lake Stevens, Washington.

ACREAGE: 2.37 acres

NUMBER OF LOTS: 6

AVERAGE LOT SIZE: 9,163 square feet

MINIMUM LOT SIZE: 8,401 square feet

DENSITY: 2.53 du/ac (gross)
4.75 du/ac (net)

ZONING: R-7,200

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: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services (PDS): Approval subject to conditions
Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on October 31, 2003. (Exhibit 1) An administrative approval was issued May 20, 2004 in error because a plat involving a new public road (as this plat is) requires a decision by the Hearing Examiner pursuant to SCC 30.41B.030(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 14-19)

A SEPA determination was made on January 26, 2004. (Exhibit 9) No appeal was filed.

PUBLIC HEARING

The public hearing commenced on January 4, 2006 and was continued to February 15, 2006 at 9:02 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant was represented by Kelley Wrigg. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services and by Andy Smith of the Department of Public Works. Abutting neighbors at 229 Rhodora Heights Road, Lisa R. Browne and Keith N. Browne, (a marital community), participated by letters and by appearance and testimony. The second hearing session followed time set aside for negotiation between the Brownes and the applicant concerning asserted adverse impacts of the plat upon the Brownes.

3. No other member of the public participated nor are there any contested issues between the County and the applicant.

The hearing concluded at 10:00 a.m.

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

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

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 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 staff report is hereby adopted by the Examiner as if set forth in full herein unless otherwise expressly noted.
3. The request is for a six-lot short plat. Average weekday vehicle trips are 57, with five being a.m. peak hour trips and seven being p.m. peak hour trips.
4. The six-lot plat raises no concern in the opinion of the County staff nor the Hearing Examiner except for a heated and protracted dispute with neighbors Lisa and Keith Browne, who own the lot abutting on the north. The issues raised by the Brownes occupied several hours of testimony before the Examiner on the combined hearing dates. The Examiner ruled orally that many of those issues are beyond the jurisdiction of the Hearing Examiner because the issues deal with private covenants and with issues of private ownership of real estate. The Examiner finds as fact that the proposed conditions offered by the applicant at the hearing of February 15, 2006 address the issues raised by the Brownes to the extent that the quasi-judicial process can address those issues in this instance. Those conditions have been added to the conditions recommended by the County staff.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,019.00 for each new single-family home.
6. 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 (Title 26B 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.
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

8. 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 (Title 24 SCC).
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
10. 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.
11. 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 were adopted to 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.
12. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 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.
13. 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.
14. 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. In addition, the Examiner intends to ratify the good-faith effort on the part of the Brownes and the applicant to resolve disputed issues concerning access and potable water lines by adding conditions suggested by the applicant and apparently largely, if not totally, satisfactory to the Brownes.

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 should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The preliminary short plat received by the Department of Planning and Development Services on January 22, 2004, (Exhibit 4) shall be the approved short plat configuration except as amended to meet conditions imposed herein. Changes to the approved plat are governed by SCC 30.41B.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 right-of-way use permit is required for work within the county road right-of-way.
- C. Prior to final plat approval:
 - i. A driveway be installed on the north side of the proposed public road 125 feet back from the centerline of Rhodora Heights Road for both units on the existing Lot 1 of SP 39 (5-82) recorded under AFN 8210120211. (Exhibit 44) Also the existing driveway surface within the easement area be slightly enlarged to provide for a straight access from the Roberts existing driveways to the new driveway cut (see Exhibit 45). Access (ingress and egress) and utility work is allowed by the original road easement agreement as recorded under AFN 8210120211 (see Exhibit 44).
 - ii. All of the existing asphalt pavement within the 60-foot easement on the three-lot short plat west of the Browne property be overlaid with a one-inch coat of new class "B" asphalt.
 - iii. If any existing utilities within the easement area are damaged by the work proposed by Conditions i. or ii. above, Mr. Guy Willette is required to repair said damage to its original condition or better (prior to damage).
 - iv. Mr. Willette will replace the portion of the existing fenceline which encroaches onto his property. He will do so under the terms of the already existing Common Boundary Line agreement recorded under AFN: 9803030044 (see Exhibit 43) **and in conformance with his verbal agreement with Brownes (See Exhibit 42, last sentence and Exhibit 47, first and third bullet.)¹**

¹ 3/24/06 – Bold print added by the Examiner after review of Exhibits 46-48.
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D. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. Native Growth Protection Area (NGPA) buffers shall be established as shown on the short plat received January 22, 2004. All critical areas and their respective buffers are to be identified on the face of the plat and recorded as Native Growth Protection Area (NGPA) Tract 999.

NGPA language shall be included to read as follows:

“NATIVE GROWTH PROTECTION AREA is to 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 Section 30.91N.010 (1, 3, and 4) SCC are allowed when approved by the County.”

- ii. The dwelling units within this development are subject to park impact fees in the amount of \$1,019.00 (Lake Stevens Park District # 6) 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 has been issued within five (5) 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.
- iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence (SFR) or twice the amount shown for a duplex:

\$3,225.09 per lot for mitigation of impacts on county roads paid to the County,
\$75.75 per lot for mitigation TDM to be paid to the County,

This payment is due prior to or at the time of building permit issuance for each single-family residence. Notice of this mitigation payment shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by the Department of Planning and Development Services.

- iv. The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens School District # 4 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 Chapter 30.66C.010. Credit shall be given for the pre-existing lot. The credit shall be applied to Lot 1.

E. Prior to recording of the final plat:

- i. Pedestrian facilities shall be constructed to the specifications of the Department of Public Works along the site's proposed public road. [RCW 58.17.110]
- ii. The wetland mitigation plan, prepared by Cascade Surveying & Engineering, received January 22, 2004, shall have been implemented. Approval from the county biologist is required.

- 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 plat 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. Sewer shall have been installed in accordance with the standards of Lake Stevens Sewer District. A statement confirming approved installation with sewer availability shall be required from the District.
- v. Water shall have been installed in accordance with the standards of Snohomish County PUD # 1. A statement confirming approved installation with water availability shall be required from the District.
- vi. A statement confirming appropriate provision for sewage disposal and potable water supplies shall be required from Snohomish Health District.
- vii. Covenants, deeds, and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneous with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum, establish a Homeowner's Association, guaranteeing maintenance Tract 999 and Tract 998.
- viii. There shall be resolution to all encroachments such as fences, buildings, slabs, driveways or a physical appurtenance, which indicates encroachments as outlined in RCW 58.17.165 and RCW 58.17.255, if applicable.

F. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 5C) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

G. All development activity shall conform to the requirements of Chapter 30.63B SCC.

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 30.41B.300.

5. 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 six-lot short plat is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 2nd day of March, 2006.

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 **MARCH 13, 2006**. 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 **MARCH 16, 2006** 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: Ed Caine
Department of Public Works: Andy Smith

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.