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CORRECTED REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: March 8, 2006

DATE OF CORRECTED
DECISION: March 14, 2006

PLAT/PROJECT NAME: *PANTHER LAKE RIDGE*

APPLICANT/
LANDOWNER: Cimmaron West

FILE NO.: 04 112029

TYPE OF REQUEST: A 32-lot subdivision of approximately 107.5 acres utilizing
the Rural Cluster Subdivision provision within the
Snohomish County Code

DECISION (SUMMARY): APPROVED subject to Conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at the southwest corner of the property is at the north end of
151st Avenue SE, approximately one-half mile north of Three Lake Road. The
southeast property corner is one-half mile north and quarter-mile west of 163rd
Avenue SE and Three Lake Road

WHEREAS, this matter was originally heard by Deputy Hearing Examiner Peter Donahue on January
26, 2005, whereby he denied the request for the subdivision without prejudice and approved the DNS and denied
the appeal; and

WHEREAS, a Petition for Reconsideration was filed and this Examiner reaffirmed all of the decisions
after reconsideration on May 26, 2005; and

WHEREAS, on July 20, 2005 the applicant provided a resubmittal of the application to the Department
of Planning and Development Services and a supplemental staff report was issued on November 17, 2005 (Exhibit
179); and

WHEREAS, this Examiner set matter for a hearing on December 1, 2005; and

WHEREAS, this Examiner desired further information and the matter was set for hearing on February
21, 2006; and

WHEREAS, this Examiner viewed the area for the second time on February 16, 2006, in the morning;
and

WHEREAS, testimony was accepted from all parties including neighbors, experts and the attorneys representing the parties; and

WHEREAS, the matter was taken under advisement and this Order was issued containing supplemental findings, conclusions and decision.

SUPPLEMENTAL FINDINGS

1. A new preliminary plat was submitted as evidenced by Exhibit 173B-F. The hearing was held on the 1st day of December, with the supplemental hearing on the request held on February 21, 2006. The Examiner considered all of the evidence, testimony and exhibits which were submitted from the prior hearings and entered as Exhibits 180-203 as shown on the exhibit list in the file.
2. It is to be noted that all requirements were met when Examiner Donahue first issued his opinion and those findings and conclusions pertaining to the initial plat and to the environmental evaluation have not changed and remain the same.
3. Mr. Donahue, however, denied the plat for basically one reason: Conclusion 1 which states as follows: “Since it has been found above that it has not been demonstrably shown that the proposed RCS cluster on the eastern ridge would not be visible, under SCC 30.41C.200(15), the RCS must be revised to relocate as many of the RCS lots as possible to the available alternative area discussed above. Pending that revision, the application cannot be found to be in conformity with the RCS standards and must be denied.”
4. The issue turns upon the county regulations for a rural cluster subdivision found in Chapter 30.41C of the Snohomish County Code. First, SCC 30.41C.010 entitled “purpose” provides, among other things, the following standards.
 - 1) To produce a development pattern in rural areas that is consistent with rural character and to produce a rural development pattern which will be better than traditional lot-by-lot development on either consolidated lots or unsubdivided property in that it allows for variety in design, placement of buildings, use of open space, more efficient use of the most buildable portion of sites, and retention of the environmentally sensitive and scenic portions of sites as permanent open space;
 - (2) To permit flexibility that will encourage a more creative approach in the development of land in rural areas and will result in a more efficient, aesthetic, and environmentally sound use of land, while harmonizing with adjoining development and preserving the county’s attractive rural character;
 - (3) To encourage the development of cluster housing which provides greater compatibility with surrounding development and land uses in rural areas by providing larger buffer areas;
 - ...
 - (11) To protect rural natural features and landscape by minimizing tree, vegetation, and soil removal... (emphasis added); and

These set forth purpose and intent.

Next, SCC 30.41C.200 entitled “design standards” states:

...

(2) The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the EDDS, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of SCC [Table 30.41C.210](#)(1). Existing wind resistant vegetation providing such a screen shall be preserved. Between proposed residences and any adjoining natural resource lands, a setback shall be established consistent with the setback shown in SCC [Table 30.41C.210](#)(1);

...

(11) Each rural cluster subdivision or short subdivision shall be divided into physically separated clusters with a maximum of 30 residential lots per cluster. The minimum physical separation shall consist of a buffer of wind resistant native vegetation with an average width of 75 feet and a minimum width of 50 feet (see SCC [Table 30.41C.210](#)(1)) (emphasis added);

...

(15) Each cluster of lots within the subdivision or short subdivision shall be located near the interior of the site, if feasible, and also located where the cluster and/or the building sites are within existing forested areas of the site; except individual clusters shall be sited as far as possible from adjacent natural resource lands as permitted in chapters [30.32A](#) - 30.32C SCC. Individual clusters shall not be located on ridgelines and other prominent topographic features visible to adjacent and vicinity properties when other locations are available;

5. The issue then in this decision is simple. Can the unit Rural Cluster Subdivision be shielded from view, either by location or buffering?
6. The evidence shows that if development were allowed under the existing zoning classification, approximately 22 lots can be developed, and located without the restrictions of Rural Cluster Subdivisions.

However, the RCS provides that in return for the protection of environmental areas, more lots can be provided, as long as they can conform to the respective standards.

7. Testimony was presented as to whether more alternative sites were available and while there is not an abundance of such sites, it was not disputed that there were some sites that could be made available in the more level areas.
8. Adjacent property owners were concerned about views to/from their property, from the proposed rural cluster lots.
9. While the RCS provides some guidelines, nevertheless testimony from adjacent property owners that the lots developed would interfere with one's view one way or the other, are not critical issues, standing alone.
10. The buffers provided are necessary and must be generally sight-obscuring. The question is raised whether trees and distance can provide and meet this requirement.

CONCLUSIONS

1. It is the conclusion of the Examiner that the requirements of the RCS as proposed, still does not meet all of the requirements.
2. It does, however, meet the general requirements as to most of the lots, and to that extent should be approved.
3. Specifically, however, the Examiner believes that Lots 30 and 31 do not meet the requirements and standards and should be deleted.
4. It is the conclusion of the Examiner that the retention of trees, with a minimum in the buffer areas would help to provide the rural atmosphere desired by the Council.

Buffering should be provided pursuant to the standards of a minimum of 50-75 feet, and that would include especially Lots 5, 6, 7, 8 and 9.

5. If the applicant desires to place these lots elsewhere, he may submit a revised plan. Otherwise, the plat must meet the minimum requirements, which it does not totally do at this time.

It is the conclusion of the Examiner that the RCS requirements were adopted by the Snohomish County Council to provide an alternative to development of a rural area, while at the same time providing protections for that area. The Examiner believes that with modifications in Conclusions 3 and 4 it can be done.

6. The Examiner is very appreciative of the method and manner in which the parties testified and presented evidence. This issue was not an easy one. The decision was rendered on the simple issues left for determination.
7. It is the final conclusion of the Examiner that the proposed RCS as submitted in Exhibit 173B-F and as changed by these conditions, meets the minimal requirements of the RCS and if followed, should provide that the buffering and visible protection areas and compatibility will have been met.
8. Since the Examiner is not in the position of drawing up plats, the applicant, if he desires to accept the changes, should do so and submit the plat to all parties for review and comment.
9. The PDS staff in its supplement report (Exhibit 179) has listed various conditions with which the Examiner agrees. In addition to those conditions, the Examiner has also provided conditions if the request is to be approved.
10. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The revised preliminary plat received by PDS on September 21, 2005 (Exhibit 173B through F) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330, and will be allowed by the submission and approval of a revised plat map under the Examiner's Conditions.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:

- i. The plat 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.
- ii. A final mitigation plan based on the Critical Area Study, Wetland Mitigation Plan, and Habitat Management Plan for Panther Lake Ridge, prepared by Wetland Resources, Inc. dated October 5, 2004 -- Revision #3 (Exhibit 28) shall be submitted for review and approval during the construction review phase of this project.
- iii. There shall be no grading or stockpiling of soil in Tract 997, the restricted open space tract.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. “The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 201 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 the four existing parcels. Lots 1 through 3 and Lot 32 with the existing house shall receive these credits.”
- ii. “Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,114.97 per lot for mitigation of impacts on county roads paid to the county,
\$344.52 per lot for impacts to WSDOT roads paid to the county,
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.”
- iii. 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 UDC 30.91N.010 are allowed when approved by the County.”
- iv. The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.
- v. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
- vi. The site obscuring buffer on Lot 5 shall not be cleared.

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$1,128.00 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided,

however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

- ii. Rural frontage improvements shall be constructed along that portion where the new public road intersects with 163rd Avenue SE to the specifications of the DPW [SCC 30.66B.410].
- iii. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].
- 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 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.

- v. The final wetland mitigation plan shall be completely implemented.
- vi. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously 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:
 - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
 - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan.
- vii. PDS staff shall confirm that the sight obscuring buffer shown on Exhibit 173 continues to perform its sight obscuring function.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibits 22U and 22V) shall be implemented. All required detention facility 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 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 30.41A.300.

EXAMINER'S CONDITIONS

1. Lots 30 and 31 should be deleted and a buffer provided therein. A minimum buffer of 50-75 feet shall be provided around the property which is a sight-obscuring buffer.
2. If the applicant desires to meet the required conditions as stated herein, he may do so by submitting an amended plat showing the changes listed.

DECISION:

The request for a Rural Cluster Subdivision is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 10, above.

Decision issued this ~~9th~~ 8th day of March, 2006.

Corrected decision issued this 14th day of March, 2006.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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.

¹ Issuance date was March 8, 2006
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Reconsideration²

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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **March 20, 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 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;
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner’s decision which could not reasonably have been produced at the Examiner’s hearing; and/or
- (f) changes to the application proposed by the applicant 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.

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, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **March 23, 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 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

² Reconsideration process inadvertently omitted on the original decision issued March 8, 2006

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 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 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.