

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

In the Matter of the Application of)
US LAND DEVELOPMENT ASSOC.) **FILE NO. 04 112044**
Preliminary plat for a 22-lot subdivision utilizing lot)
size averaging)

DATE OF DECISION: February 8, 2006

PLAT/PROJECT NAME: *Charles Brown Plat*

DECISION (SUMMARY): The subdivision application is **DENIED**.

BASIC INFORMATION

GENERAL LOCATION: This project is located at 1929 Atlas Road, Bothell, Washington.

ACREAGE: 5.86 acres

NUMBER OF LOTS: 22

AVERAGE LOT SIZE: 5,044 square feet

MINIMUM LOT SIZE: 3,745 square feet

DENSITY: 3.75 du/ac (gross)
8.46 du/ac (net)

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: Alderwood
Subarea Plan Designation: Suburban (2-4 du/ac)

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Northshore No. 417

FIRE DISTRICT: No. 1

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 September 14, 2004. (Exhibit 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 26, 27 and 28)

A SEPA determination was made on December 23, 2005. (Exhibit 25) No appeal was filed.

The Examiner held an open record hearing on January 24, 2006, the 143rd day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on January 24, 2006 at 9:06 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, U.S. land Development Associates, was represented by Michael Romano of Centurion Development Services. Snohomish County was represented by Darryl Eastin of the Department of Planning and Development Services and by Norm Stone of the Department of Public Works.
3. Pre-hearing letters of opposition or concern were submitted: (A) by Richard Wennberg on his own behalf and on behalf of the Swamp Creek/Locust Way Neighborhood Association, with Leonard Goodisman (Exhibits 31 and 48), (B) by Brad Wilkins, (C) by Dale Oddson and (D) by Jim Bride III. (Exhibits 31, 32, 33 and 35), (E) Edward M. Denning, (Exhibit 49), (F) Of those writers, Messrs. Bride and Wilkins testified at the public hearing. Letters (Exhibits 34 and 52) and testimony at the hearing was supplied also by Paul Sweum, Development Director for the City of Brier. A letter is also in the record from Jorge Garcia, City of Briar Engineer and from Gerald and Nancy Jang. Issues raised by the above-mentioned parties include traffic, vehicular access, street infrastructure and design, storm drainage, pedestrian facilities, on-site recreation, impact on schools and sewer connectivity for homes in Brier about 300 yards west of the subject plat.

The hearing concluded at 10:04 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. Except as stated otherwise herein, the Hearing Examiner finds as fact that 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). Except where inconsistent with this decision, that staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is to construct a 22-lot subdivision using lot size averaging. Average weekday vehicle trips are 210, with 16 being a.m. peak hour trips and 21 being p.m. peak hour trips. Vehicular access for 17 lots will be via the internal plat cul-de-sac onto Atlas Road approximately midway between that road's intersection with Barker Road to the east and the center of a curve uphill to the west. Three lots will have access via Barker Road. Proposed Lot 21 and 22 will each have its own separate driveway about 55 feet from one another about 175 feet west of that cul-de-sac access for 17 lots onto Atlas Road. (Because of the small size of the subject lots, drivers may have to back in or back out. Also, the plat (Exhibit 30) shows an unbuilt plat ("Bon Meadows") of unspecified number of lots on the south side of Atlas Road to the west. When built, that plat may need access to Atlas Road. That access might be via Sage Road, shown south of Atlas Road and centered on proposed Lots 21 and 22. Further, a plat of approximately 111- 113 lots is proposed to the south of the subject site and the record does not disclose where that plat's access will be.
4. The subject plat was submitted in September 2004 and required a year and a half to reach the Hearing Examiner partly because of immediate concerns in 2004 about site distance for Lots 21 and 22. The County's Land Development Analyst Norm Stone testified that the County required review of the Engineering Design and Development Standards as to this plat's access and drivers' sight distance. Mr. Stone reports that the grade's average slope was factored into the computation. The applicant's representative, Michael Romano, testified that the applicant would prefer that Lots 21 and 22 have access via the same cul-de-sac proposed to serve 17 other lots. That would require a shared use driveway for Lots 21 and 22 but, according to Mr. Romano, the County will not allow that shared use driveway but, instead, requires a separate 20-foot driveway for Lot 21 and 22, resulting in a loss of one lot from the proposed 22 total. Mr. Romano testifies that Atlas Road is a collector but it is a residential collector and so the County allows lots to take direct access to it. Atlas Road is heavily used for a neighborhood collector because Atlas Road and Barker Road and Locust Way form a twisted link joining 228th Street's western segment to Interstate 5 and Alderwood Mall to its eastern segment to Route 9.

5. The applicant proposes to build on Barker Road full standard width of pavement, curb, gutter and sidewalk and the same along Atlas Road but only along the “developed portion” of the subject plat; i.e., only northwesterly along Atlas Road to the farthest lot line of proposed Lot 22. Beyond Lot 22 to the plat’s northwest corner, Atlas Road borders the 10,000 square foot wetland habitat replacement area mitigating the loss of a wetland used as the proposed plat’s stormwater detention tract. Asserting, “That’s never going to be developed through there.”, the applicant argues that a seven foot wide paved pedestrian shoulder will be sufficient alongside that habitat replacement area instead of conventional curb, gutter and sidewalk design. In testimony, the applicant indicated that it might merit installation of rumble bars to help separate vehicles from pedestrians. The result is a sidewalk to nowhere, which may be worse than no sidewalk at all because pedestrians or bicyclists traveling the quarter mile to either Brier City Park or the new Creek Side County Park along Locust Way need safe passage along this entire plat, not only along the developed portion of this plat.
6. The importance of the full curb, gutter and sidewalk is seen in the testimony of vicinity resident Brad Wilkins, who testifies that an eastbound (downhill) car’s headlights do not show walkers until the vehicle has dropped to Lots 21 and 22. There, vehicles may also be backing out of or entering either Lot 21 or 22 or other above-described access points in the immediate vicinity. Witness Wilkins opines that cars backing out of either Lot 21 or 22 will be “t-boned”. Witness Jim Bride points out the need to protect pedestrians by preventing downhill drivers from cutting to the inside of the curve. Vicinity resident Ryan Larsen writes (Exhibit 33) that it is now:

“...extremely dangerous to attempt a walk along side the road in either direction. This contributes to an even more dangerous situation for our kids waiting at the bus stop.”

Based on that evidence, the Hearing Examiner finds as fact that a curb is needed. It also appears that the need for such a curb outweighs the need to preserve every square foot of the proposed 10,000 square foot habitat replacement area.

7. Above-mentioned local residents Wennberg and Goodisman at Exhibit 48 and Denning at Exhibit 49 note that the Engineering Design and Development Standards (EDDS) allow the County Engineer to determine and use the 85th percentile speed rather than the posted speed when circumstances create a safety concern. They note the evidence of record that few cars travel at the posted 25 miles per hour at the site in question and that the grade limits visibility. They calculated stopping sight distance based on 6 percent grade using visual alignment or laser beam at a height of 3.5 feet with targets per EDDS 3.06 and found that, even at only 25 miles per hour, the available stopping sight at the plat’s cul-de-sac entrance is required by the EDDS to be nearly 300 feet (280 feet) but is only 171 feet here.
8. The City of Briar’s Community Development Director at Exhibits 52 and 53 urges that sewer connectivity to Briar be required of this plat in order to provide gravity sewer service to Briar’s Golden View, Old Poplar Way and portions of the Vine Road sewer basins, which communities are now either without sewer service or must pump to a gravity system. Paul Sweum of Briar testified that 50 to 100 homes need this plat’s connectivity in order to decommission septic systems. The City of Briar specifies two specific extensions of this plat’s sewer that would accomplish that objective. The applicant’s representative’s testimony is that the two governments should work that out between themselves.
9. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$974.00 for each new single-family home.

10. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
11. The site contains one isolated Category 2 non-riparian wetland measuring 4,475 square feet and one Category 2 riparian wetland measuring 41,824 square feet that extends off-site to the northwest. The site also contains a Type 4 stream. The stream, a tributary to Swamp Creek, transects the larger wetland to the west. The wetland and stream will be protected within a Native Growth Protection Area (NGPA) that covers approximately the western one-half of the site. (See Exhibit 4 – Wetlands Function Replacement Report and Exhibit 7 – Plat Map). Urban Category 2 riparian wetlands in Snohomish County typically receive 50-foot protective buffers. Proposed development will eliminate the small isolated Category 2 wetland to allow construction of the stormwater detention facility and create developable areas for lots 2 and 3.
12. 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).
13. 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.
14. 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-9,600 zone which is the case here.
15. 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.
16. 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.
17. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
18. 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.
19. 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 proposed plat does not meet the requirements of Snohomish County's Subdivision Code at SCC 30.412A.100 concerning the public health, safety and general welfare as required at RCW 58.17.
2. Specifically, the plat (1) fails to provide the requisite safe stopping sight distance and entering sight distance in view of all of the surrounding physical circumstances of the topography, (2) fails to provide a safe pedestrian walkway along the plat's entire frontage on Atlas Road, (3) fails to consider conflicts with access to be needed by other plats in the vicinity and now in the planning stages and (4) fails to provide sewer connectivity to nearby communities document by the record to need such connection.
3. Thus, for failing to satisfy the basic requirements of any plat as listed above, the proposed subdivision should be denied.
4. 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 requests for a preliminary plat for a 22-lot subdivision utilizing lot size averaging provisions is hereby **DENIED**.

Decision issued this 8th day of February 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 **FEBRUARY 21, 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 **FEBRUARY 22, 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: Darryl Eastin
Department of Public Works: Norm Stone

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.