

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

In the Matter of the Application of)
) **FILE NO. 04 113164**
ROBERT WASHBURN)
)
19 lot Rural Cluster Subdivision (RCS) on 43.65 acres)

DATE OF DECISION: November 17, 2005

PLAT/PROJECT NAME: *Meadows at Quail Run*

DECISION (SUMMARY): The proposed 19-lot rural cluster subdivision on 43.65 acres is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located one-quarter mile north of the intersection of 115th Avenue NE and 228th Street NE at 23407 107th Avenue NE, Arlington.

ACREAGE: 43.65 acres

NUMBER OF LOTS: 19

AVERAGE LOT SIZE: 48,454 square feet

MINIMUM LOT SIZE: 43,656 square feet

DENSITY: .44 du/ac (gross)
.44 du/ac (net)

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 ac – Basic)
Subarea Plan: Arlington
Subarea Plan Designation: Rural (0.2 – 0.4 du/ac)

UTILITIES:

Water/Sewer: Individual

SCHOOL DISTRICT: Arlington No. 16

FIRE DISTRICT: No. 21

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 April 28, 2005. (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 15, 16 and 17)

A SEPA determination was made on September 27, 2005. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on November 8, 2005, the 116th 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 November 8, 2005 at 3:04 P.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, Robert Washburn, P.E., represented himself. Snohomish County was represented by Ed Caine of the Department of Planning & Development Services and by Andy Smith of the Department of Public Works. No member of the public participated in the hearing.
3. Pre-hearing letters of citizen concern or opposition were filed by Howard Knoepfle (Exhibit 21) and by Bruce and Ellen Malmstead (Exhibit 20). Mr. Knoepfle is concerned that the interpretation of the term “rural cluster” is not preserving the required “reserve” in this instance. He feels that the concept of “rural cluster” to soften the impacts of development in rural areas should be adhered to. The Malmsteads want the area to remain rural in character, want the aquifer that supplies their dug, 26-foot deep well protected from over-use and contamination, want sewage and storm drainage controlled, want less traffic, trespassing and roaming pets and wants easements with the current owner to be honored. The findings below address those concerns.

The hearing concluded at 3:31 p.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, for a full and complete record, electronic recordings of the hearing are 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 applicant proposes 19 lots as a rural cluster subdivision on 43.6 acres zoned R-5 whereon there now exists one single family dwelling. The plat will be served by on site septic systems with drain fields and by wells for potable water. The record shows an estimated 10 to 19 wells, each drawing up to 5,000 gallons per day. The Snohomish Health District approves that volume of withdrawal, subject to conditions. (Exhibit 27)
3. The applicant testified that he has developed other properties in the vicinity and has become informed about potable water and soil conditions there. He points out that a 1991 aquifer study concluded that 3,000 homes could be served by the Arlington Heights Aquifer. He notes that an annual 35 inches of rainfall in the sandy soil here recharges the aquifer at a rate greater than this plat could deplete at 400 gallons per home per day. He notes that new wells in the area are to 70-foot depth and the existing wells such as the Malmstead's are at approximately 30 feet. He also notes that it is about 700 feet from the Malmstead well to any well in the subject plat.
4. The applicant testifies that the sandy soil retains so high a percentage of rainfall that storm runoff is not a threat here. Further, he points out that a vegetative buffer is required around the entire site. Mr. Cain of the Department of Planning & Development Services verifies by his own testimony that the vegetative buffer required by the rural cluster subdivision provisions of the code is met in this instance.
5. The plat creates 18 new lots which produce 172 average daily trips, of which 13.5 are a.m. peak hour trips and 18 are p.m. peak hour trips.
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. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$48.82 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

9. The only critical area on site is a small area with slopes in excess of 33 percent. That area has been designated as native Growth Protection Area in compliance with critical area regulations.
10. 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).
11. 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.
12. The subject property is designated Rural Residential (RR: 1 du/5 ac Basic) with a Rural Urban Transition Area Overlay. This designation identifies all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation (RC). Also included are lands which have a higher density subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption date. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres. The implementing zone in this designation will continue to be the R-5 zone. The base density of one dwelling unit per five acres may be increased consistent with Policy LU 6.B.9.
13. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. 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.
14. 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.
15. 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.
16. 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.

2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
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 plat received by the Department of Planning and Development Services on August 24, 2005 (Exhibit 6F) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.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.
- 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 Arlington School District No. 16 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 2 existing parcel(s). Lot 1 and Lot 10 shall receive credit.”
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,143.68 per lot for mitigation of impacts on county roads paid to the County,
\$344.52 per lot for impacts to Washington State Department of Transportation roads paid to the County,
\$838.70 per lot for mitigation of impacts on the City of Arlington streets paid to the City. Proof of payment shall be provided.

Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once a 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 SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

- iv. Well protection zones are shown in the Snohomish Health District records for Lots 1-9 and Lots 11-19 of this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.
- v. A 100 foot radius well protection zone covenant is hereby established on Lot 10 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owner(s).

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel's frontage on 115th Avenue NE to the specifications of the Department of Public Works.
- ii. Pedestrian facilities shall be constructed to the specifications of the Department of Public Works throughout the development.
- iii. A bus pullout shall be constructed to the specifications of the Department of Public Works at the intersection of the proposed private road and 115th Avenue NE.
- 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 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 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:
 - 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 Tracts 989 through 999.
- vii. A statement confirming appropriate provision for sewage disposal and potable water supplies shall be required from Snohomish Health District.

E. In conformity with applicable standards and timing requirements:

The preliminary landscape plan (Exhibit 6D) 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.

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 19-lot rural cluster subdivision on 43.65 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 17th day of November, 2005.

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 **NOVEMBER 28, 2005**. 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 **DECEMBER 1, 2005** 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: Andrew 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.
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