

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: January 25, 2006

PLAT/PROJECT NAME: *MORNING SUN*

APPLICANT/
LANDOWNER: Russell Van Wyngarden

FILE NO.: 05 100703

TYPE OF REQUEST: 7-lot Rural Cluster Subdivision (RCS) on 18.37 acres

DECISION (SUMMARY): APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 38325 SR 2, Gold Bar, WA

ACREAGE: 17.9 acres

DENSITY: 0.38 du/ac (gross)
0.39 du/ac (net)

NUMBER OF LOTS: 7

AVERAGE LOT SIZE: 48,687 square feet

MINIMUM LOT SIZE: 43,622 square feet

OPEN SPACE: 8.81 acres

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 Acre-Basic)
Subarea Plan: Skykomish Valley
Subarea Plan Designation: Rural (1 du/2.3 acres)

UTILITIES:

Water: Individual wells
Sewage: Individual septic systems

SCHOOL DISTRICT: Sultan

FIRE DISTRICT: 5

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions

Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on September 6, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on January 9, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 16, 17 and 18)

A SEPA determination was made on October 27, 2005. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on January 10, 2006, the 50th 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 10, 2006 at 3:00 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Jim McDaniel appeared on behalf of the applicant and stated that he agrees with the PDS staff report and referred to Exhibit 37.

He stated that he agrees with the PDS staff report and the conditions. He indicated that 387th Avenue is not used very much and only goes to the fish hatchery and a couple of homes. He stated that he did not object to the 15 foot dedication, but does not feel that the improvements to 383rd Avenue SE are necessary. He has no objection to the improvements on 387th Avenue SE.

3. Ms. Ann Goetz, DPW, referred to Policy 4222.040(E) and stated that in this type of factual situation, the policy allows the waiver on 383rd Avenue or Fish Hatchery Road. She stated that with regard to the conditions, the wording could be stricken in Condition D.ii. on page 11 which states that “and 383rd Avenue SE (Fish Hatchery Road).”
4. No one appeared in opposition to the request.

The hearing concluded at 3:38 p.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a 7-lot RCS on an 18.37 acre parcel. The eastern half of the property is a combination of trees and shrubs, while the western half is pasture and cultivated fields with an existing residence and accessory buildings. The surrounding area is zoned R-5 with the southwest corner of the property bordering on SR 2. The property is approximately 400 feet west of the City of Gold Bar and there are subdivision developments immediately within the city limits.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$344.52 for each new single-family home.
5. 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. (See Pages 3-5, Exhibit 36)
6. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
7. There is an off-site Type 3 stream with an ESA designation and an associated Category 3 riparian wetland. PDS has reviewed the critical area study and mitigation plan under Chapter 30.62 SCC and determined that the project complies with the Critical Area Regulations.
8. The drainage proposal is to capture the storm water runoff and direct the water to an infiltration system located in the northwestern corner of the property. 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. There will be individual wells and individual septic systems as well as electrical power.
10. The property is designated Rural Residential on the GPP Future Land Use Map and is located outside of any Urban Growth Area. The requested Rural Cluster Subdivision is consistent with the GPPs Rural Residential designation of the property and the seven lots proposed are consistent with the density provisions. (SCC Title 30 GMA-based zoning regulations)

11. The proposal complies with the provisions of Section 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 49.5% (8.81 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage-related problems; the project complies with Snohomish County's Critical Areas Regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

In this regard, the staff has correctly analyzed the effect of the Rural Cluster Subdivision on pages 7 and 8 of the PDS staff report. (Exhibit 36)

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. The aerial photograph (Exhibit 10) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
15. The Shoreline Management Permit pursuant to Chapter 30.44 SCC was required and the PDS staff has correctly analyzed its effect and status on pages 8 and 9 of the staff report. (Exhibit 36)
16. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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, except that Condition D.ii. has been corrected to delete 383rd Avenue SE – Fish Hatchery Road.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The request will allow for the development of seven clustered lots, thereby preserving the large open spaces. It will allow for homes in this area and near to SR 2 and the Gold Bar area.

5. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The preliminary plat received by PDS on December 7, 2005, (Exhibit 12A and 12B) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41C.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 Flood Hazard Permit is required for the infiltration/detention facilities located within Tract 998.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. A Flood Hazard review is required for each individual lot, Lots 1-7, when building applications are submitted for that lot.
 - ii. “The lots within this subdivision will be subject to school impact mitigation fees for the Sultan School District No. 311 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 1 existing parcel. Lot 1 shall receive credit.”
 - iii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:
\$1,812.83 per lot for mitigation of impacts on county roads paid to the county,
\$295.30 per lot for mitigation of impacts on State highways paid to the county,
These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
 - iv. The final plat shall show a 15-foot right-of-way dedication along the property frontage with 383rd Avenue SE (Fish Hatchery Road) to total 30 feet from the right-of-way centerline.
 - v. 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.”

- vi. Lot 6 and Lot 7 shall have pressure distribution septic systems per WAC 246-272 Table IV. All soil logs on Lot 7 and SL3 on Lot 6 were found to be coarse sand, soil type 2A.

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$344.52 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 standard frontage improvements shall be constructed along the property frontage with 387th Avenue SE; unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- iii. The private road and the 40-foot radius cul-de-sac shall have been constructed per EDDS 3-080 and EDDS 3-150.
- 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 platlor 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. Well protection zones are shown in the Snohomish Health District records for Lots 1-7 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.
- vi. The existing wells on proposed Lot 5 and proposed Tract 999 shall be decommissioned by a licensed contractor per WAC 173-160. Documentation shall be provided.
- 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:

- 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 999, 998, and 997, including the private road.
- viii. 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:
- i. The preliminary landscape plan (Exhibit 13) 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.

- 6. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a 7-lot Rural Cluster Subdivision is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 5, above.

Decision issued this 25th day of January, 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.

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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **February 6, 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.

Appeal

An appeal to the County Council may be filed by any aggrieved Party of Record. 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 **February 8, 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 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.

Staff Distribution:

Department of Planning and Development Services: Ed Caine
Department of Public Works: Ann Goetz

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.