

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
CASTLE DWELLERS, INC.) **FILE NO. 05 101155 SD**
)
24-lot Rural Cluster Subdivision (RCS) on 83 acres)
in a Rural Urban Transition Area (RUTA))

DATE OF DECISION: November 13, 2006

PROJECT NAME: *Pilchuck Meadow Estates*

DECISION (SUMMARY): The 24-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 8404 Robe-Menzel Road, Granite Falls, Washington.

ACREAGE: 83 acres

NUMBER OF LOTS: 24

AVERAGE LOT SIZE: 18,970 square feet

MINIMUM LOT SIZE: 18,001 square feet

DENSITY: .29 du/ac (gross)
.30 du/ac (net)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential – 5 (1 du/ 5 ac) within RUTA
Subarea Plan: Granite Falls
Subarea Plan Designation: Rural-5 (1 du/ 5 ac)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: Individual Septic

SCHOOL DISTRICT: Granite Falls No. 332

FIRE DISTRICT: No. 17

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 December 19, 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 20, 21 and 22)

A SEPA determination was made on September 6, 2006. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on October 26, 2006, the 79th 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 October 26, 2006 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, Castle Dweller, Inc., was represented by Debbie Rothfus of Peak Engineering. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services.
3. Pre-hearing correspondence raising concern or opposition was filed by Travis Wait and, separately, by Diana Meyer Stark. Ms. Stark also testified at the hearing as did Ken Oakes. Their written and oral concerns focused on protection of the Pilchuck River and its associated wetlands, and salmon, eagles, and various other wildlife using the riparian corridor. Written (Exhibit 40) and oral rebuttal were made by the County and the applicant.

The hearing concluded at 4:22 p.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 applicant, Castle Dwellers, Inc., filed an application for a rural cluster subdivision of 83 acres zoned R-5 at 8404 Robe-Menzel Road, Granite Falls. The northern boundary of the subject site borders the Urban Growth Area (UGA) of the City of Granite Falls. The cluster subdivision is proposed to be located on a relatively level portion of the north central portion of the site. That location tends to preserve more of the more environmentally sensitive wetlands and streams to the east, south and west portions of the site. No development is proposed within the Shoreline Master Program jurisdiction and no flood hazard review is required. But for the area proposed for development, the site is natural, pasture or forest. The Pilchuck River lies on the southwestern portion of the site. Surrounding areas are zoned R-5 also and either undeveloped or in pasture or single-family use.
3. The number of lots which could be developed without the rural cluster option appears to be approximately 18 here. A bonus of six lots is gained by using the cluster option. Thus, 24 lots are proposed. The project will retain 84% of the subject 83 acres as open space. Although much of that is "interim open space", which can be developed if the adjoining UGA grows to include it, much of it will be protected even then as Critical Areas and Native Growth Protection Areas or habitat areas. The importance of that protection is emphasized by long-term vicinity owners and residents, the above-mentioned Diana Meyer Stark and Ken Oakes. Ms. Stark knows the area with particular intimacy, having lived in the vicinity for decades. She owns timber adjoining the subject site and her concerns include fire protection for her 100-year-old trees and for the area forests in general. Mr. Oakes owns land immediately west of the Pilchuck River and prefers that the residents of the proposed subdivision not have access to the river due to the river's sensitivity as wildlife habitat, including salmon habitat. He and Ms. Stark speak with personal knowledge of the numerous species frequenting the vicinity, including eagles. The Examiner knows no lawful and effective way to preclude the new residents from access to the river. Involving the new owners as stewards might be the most effective undertaking in any event.
4. The 24 proposed single-family dwellings will generate 9.57 trips per day each for a total daily trip generation of 230 trips, of which 18 will be A.M. peak-hour trips and 24 will be P.M. peak-hour trips. Transportation Development Reviewer Andrew Smith's review covered Title 13 SCC and Chapter 30.66B 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 that review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
5. There are no park mitigation requirements for this proposal.
6. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.

7. 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.
8. The Snohomish County Health District has no objection to this proposal provided that water and sewer or septic are available. Water and electricity will be supplied by Snohomish County Public Utility District No. 1 (Exhibits 28 and 31). Based on review of the applicant's information regarding septic drainfields and reserve areas, the Snohomish Health District recommends approval (Exhibit 34). Witness Diana Meyer Stark testified about the importance of maintaining setbacks of septic systems from all streams and wetlands in the area.
9. The subject property is designated Rural Residential -5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
10. 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.
11. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A 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.
12. The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on May 31, 2005. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community as noted in this report. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.
13. The subject rural cluster subdivision (RCS) application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on February 1, 2006 (Exhibit 15), and in an open space management plan (Exhibit 8) that is to be implemented by a homeowners' association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200.
14. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
15. 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. 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 24-lot rural cluster subdivision on 83 acres is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The preliminary plat received by PDS on August 10, 2006, (Exhibit 17) 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 plattor 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 final mitigation plan based on the *Critical Areas Study and Buffer Mitigation Plan* prepared by Wetland Resources dated June 9, 2006, (Exhibit 14) shall be submitted for review and approval during the construction review phase of this project.

C. Restrictions During Development

- i. This property is in the vicinity of, but not directly on a Washington State Registered archaeological site. It is possible that ground disturbance may reveal previously unknown archaeological materials. The site should be closely monitored for artifacts. In the event that archaeological materials are discovered during project activities, work in the immediate vicinity shall be discontinued, the area secured, and Washington State Office of Archaeology and Historic Preservation (OAHP). If human remains are found work must cease, the area shall be secured, and both OAHP and the Snohomish County Coroner shall be notified.

D. 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 Granite Falls School District No. 332 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 3 existing parcels. Lots 1 through 3 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:

\$3,521.76 per lot for mitigation of impacts on county roads paid to the county,
\$1,750 per lot for impacts to the City of Granite Falls paid to the city. Proof of payment is required.

These payments are due prior to or at the time of building permit issuance for each SFR. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- 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."

E. Prior to recording of the final plat:

- i. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].
- ii. Adequate walkways shall be provided from the lots to the school bus stop located at the intersection of the developments access and Robe-Menzel Road.

- 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. 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, 997, 996, and 995, including the private road within Tract 999 and drainage facilities within Tract 998.
- v. The final wetland mitigation plan shall be completely implemented.

E. In conformity with applicable standards and timing requirements:

The preliminary landscape plan (Exhibit 11) shall be implemented.

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.

Decision issued this 13th day of November 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 **November 27, 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 **November 27, 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

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| <p>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.</p> |
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