

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

In the Matter of the Application of)
)
JOSEPH MEANS III) **FILE NO. 05 116280**
)
) *Skinny Joe's Paintball*
for a Conditional Use Permit for a paintball)
recreational facility)

DATE OF DECISION: March 14, 2006

DECISION (SUMMARY): The zoning conditional use permit for a paintball facility is **CONDITIONALLY APPROVED with preconditions.**

BASIC INFORMATION

LOCATION: The subject property is located in the southwest corner of the intersection of Burn Road and 172nd Street NE in Arlington, Washington.

ACREAGE: 32 acres

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural-5 Acre (1du/5 ac Basic)
Subarea Plan: Arlington
Subarea Plan Designation: Rural (0.2 – 4 du/ac)

SCHOOL DISTRICT: Arlington No. 16

FIRE DISTRICT: No. 21

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to preconditions and conditions

Public Works: Approval subject to preconditions and conditions

INTRODUCTION

The applicant filed the Master Application on March 7, 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 16-19)

A SEPA determination was made on January 13, 2006. (Exhibit 13) No appeal was filed.

The Examiner held an open record hearing on March 8, 2006, the 136th 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 March 8, 2006 at 9:04 a.m.

1. The Examiner indicated that he had read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, Joseph S. Means III was present and gave testimony and responded to questions. The Snohomish County Department of Planning & Development Services was represented by Roxanne Justice. No member of the public attended the hearing. One letter of opposition was received from John and Elizabeth McElroy dated April 4, 2006 (Exhibit 22) and is discussed below herein.

The hearing concluded at 9:31 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 of 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 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). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a conditional use permit (CUP) for a paintball recreational facility on 32 wooded acres zoned R-5 at the southwest corner of the intersection of Burn Road and 172nd Street NE, Arlington. Such a sport facility is authorized in the underlying R-5 zoning as a conditional use, subject to the decision criteria set out at SCC30.42C.100. Of the 32 acre subject site, one acre would be used for parking and approximately eight acres are under a power line and, thus, not available for paintball play. The remaining 21 acres are available for paintball play but for a 130-foot vegetative buffer required at the perimeter. No residence abuts the subject site.
4. No structures are proposed. No water, power, sewer or telephone will serve the site. Port-o-potties will be provided. Play will be on weekends for up to 10 players at any one time. The play is closely monitored at all times by referees of age 18 or older pursuant to rules of the Washington State Department of Labor and Industries. Netting will be placed at all appropriate locations to insure that paintballs do not leave the site. The applicant described the speed and ballistics of the paintballs in response to questions by the Hearing Examiner, demonstrating that the netting and setbacks will assure that the public will not be threatened by the projectiles. The applicant testified that a national rating entity for sports injuries rates the game of paintball as one of the lowest-injury forms of recreation.
5. By letter (Exhibit 22) John and Elizabeth McElroy oppose this paintball facility in a residential area. They argue that an Internet search shows paintball to be inherently dangerous to life, eyesight and hearing and that errant paintballs could strike passing vehicles. (The subject site has no paintball play area on any frontage of a public road.) The applicant asserts that the McElroys' comparison facility is of different size in different environs in Colorado not fairly comparable to the proposed facility. The Examiner finds as fact that the negatives pointed out by the McElroys are not substantial in this instance.
6. The facility will produce less than two average daily vehicular trips when averaged over a one-year period. None of those trips will affect peak-hour traffic. All analysis of traffic-related issues has been completed to the Examiner's satisfaction in the staff report.
7. There are Category 3 wetlands and an unnamed Type 4 stream on the site. The stream is a tributary of the South Fork Stillaguamish River. The applicant requested and was granted administratively an Innovative Development Design Plan in order to account for critical area mitigation. The Plan was prepared by Wetland Resources, Inc. and is of record. A noise report is also of record and shows compliance with the County Code.
8. The applicant points out that paintballs are made up of the same food dyes used in ice cream and are non-toxic, non-caustic, water-soluble and contain structural material that is either biodegradable or naturally-occurring.
9. The request will not generate impacts to the County's park system or the school system.

10. 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.
11. 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).
12. A review of these CUP standards with the request, indicates that the standards are met and no adverse affects will be made to the area as a result of allowing a paintball facility.
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. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

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. That staff report 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.
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 should be approved subject to compliance by the applicant with the following preconditions and conditions:

PRECONDITIONS

1. A Critical Areas Site Plan (CASP) shall be recorded with the county auditor for critical areas and buffers that lie within a Native Growth Protection Area (NGPA). The following NGPA restrictive language shall be reflected on the CASP: "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."

2. A record of developer obligations and Certificate of Concurrency shall have been recorded with the County Auditor against the real property on which the development is proposed.
3. 20 feet of property (to total 40 feet from the right-of-way centerline) shall be deeded for right-of-way along the property frontage with Burn Road.

CONDITIONS

Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:

1. The applicant shall have paid an impact fee to Snohomish County for traffic impacts to Transportation Service Area “B” totaling \$408.93. [SCC 30.66B.310]
2. The applicant 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.
3. All site development work shall comply with the requirements of the plans and permits approved.
4. A Land Use Permit Binder (LUPB) shall be recorded with the county auditor.

PRIOR TO USE OF THE SITE:

5. 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 applicant 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.
 - a. 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 Planning and Development Services for review and approval prior to installation.
6. The Final Mitigation Plan shall have been satisfactorily implemented.
7. Signs for daytime use of the facility shall be clearly marked at the 130’ setback from property line.
8. Signs for nighttime use of the facility shall be clearly marked at the 280’ setback from property line.
9. Netting shall be installed around the perimeter of the playing field to ensure that no paintballs travel outside of the designated playing area.

10. A paved commercial driveway approach per EDDS 2-040 shall have been constructed.
11. All development activity shall conform to the requirements of Chapter 30.63A SCC.
12. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

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.

5. Any conclusion in this report and 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 conditional use permit for a paintball facility is hereby **CONDITIONALLY APPROVED**, subject to the preconditions and conditions set forth in Conclusion 4 above.

Decision issued this 14th day of March, 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 **MARCH 24, 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 **MARCH 28, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Roxanne Justice
Department of Public Works: Reiner Blanco

<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>

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than MARCH 14, 2007.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
