

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
) **FILE NO. 05 118451**
BURT & DAN MCCORMACK)
)
5-lot Rural Cluster Subdivision (RCS) on 18.88 acres)

DATE OF DECISION: January 20, 2006

PLAT/PROJECT NAME: *Homestead Meadows*

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

BASIC INFORMATION

GENERAL LOCATION: The property is located 15404 Dubuque Road, Snohomish, Washington.

ACREAGE: 18.88 acres

NUMBER OF LOTS: 5

AVERAGE LOT SIZE: 33,134 square feet

MINIMUM LOT SIZE: 19,707 square feet

DENSITY: .26 du/ac (gross/net)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 (1 du/5 ac)

Subarea Plan: Snohomish/Lake Stevens

Subarea Plan Designation: Rural 5 Acre (1 du/5 ac)

UTILITIES:

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

SCHOOL DISTRICT: Snohomish No. 201

FIRE DISTRICT: No. 4

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 July 26, 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, 17 and 18)

A SEPA determination was made on November 17, 2005. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on January 5, 2006, the 62nd 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 5, 2006 at 3:30 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 Burt and Dan McCormack was represented by Jim Gardner of Cavassa & Associates. Snohomish County was represented by Ed Caine.
3. Vicinity landowner Bob Bisnett testified that his family has owned a parcel to the east for nearly 30 years (since 1978), that his children helped to buy it when they were very young, that it is a family dream to keep it and use it but that it needs better access if it is to realize the dream. He requests that access be allowed through the subject plat. (See Finding No. 5 herein.)

The hearing concluded at 4:05 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 proposes to construct a five-lot single-family rural cluster subdivision on 19 acres abutting the south side of Dubuque Road, approximately three miles northeast of Snohomish.
3. The developable area of the site is small due to several wetlands. The southern half of the site is forested. A Type 3 stream flows west to east across the subject parcel and is rated as potential Bulltrout habitat.
4. The site's hills and wetlands so restrict vehicular access that such access will have to await use of the plat road of an 11-lot development (*Homestead Creek*) on property abutting to the west. That access also avoids the severe driver sight distance limitation noted by the Examiner on a pre-hearing site visit at the current driveway access to the existing home on the subject site.
5. Exhibits 4 and 5 point out that the above-mentioned physical constraints make future phasing impossible here. Extension of the private road into this plat to future developments is not a possibility and, thus, the road will end in a permanent cul-de-sac of 40-foot radius. As a consequence, the help sought by Bob Bisnett for his 28-year-old access quest cannot come through the subject plat.
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 \$1,361.22 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. There is a Category 1 wetland and a Category 3 wetland on site. Appropriate buffers are provided. Buffer averaging is applied. PDS has reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with the critical areas 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 -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.
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 November 2, 2005 (Exhibit 13A) 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 final mitigation plan based on the Critical Areas Study and Buffer Mitigation Plan prepared by Wetland Resources dated October 14, 2005 (Exhibit 14) shall be submitted for review and approval during the construction review phase of this project.

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 Snohomish School District No. 201 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(s). Lot 5 receives credit.”

ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:

\$3,521.76 per lot for mitigation of impacts on county roads 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 the Department of Planning and Development Services.

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.”

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$1,361.22 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. The development road (through the neighboring development to the west for Homestead Creek 04 114270) shall be designed and constructed in accordance with EDDS 3-090 for a private rural subcollector road from Dubuque Road to the access road for the subject property.
- iii. The road within the subject development shall have been constructed in accordance with EDDS 3-080 for a private rural low volume access road.
- iv. A walkway meeting the requirements of EDDS shall have been constructed from the intersection of the two private roads to Dubuque Road. [RCW 58.17.110, and SCC 30.66B.430 (O)]
- v. Rural standard frontage improvements consisting of 20 feet of pavement width from the centerline of the right-of-way shall have been constructed along the subject property frontage to the intersection with the private road. [RCW 58.17.110, SCC 30.66B.430 (O)]
- vi. 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.

- vii. The final wetland mitigation plan shall be completely implemented.
- viii. 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.

- ix. 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 (Exhibits 13A and B) 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 5-lot rural cluster subdivision on 18.88 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 20th day of January, 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 **JANUARY 30, 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 3, 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

<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>
