

CORRECTED
**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: December 23, 2005

PLAT/PROJECT NAME: *LAKE VIEW PARK*

APPLICANT/
LANDOWNER: Lake View Partners

FILE NO.: 05 119215

TYPE OF REQUEST: A 25-lot preliminary plat of approximately 6.5 acres utilizing
lot size averaging provisions of the Snohomish County Code

DECISION (SUMMARY): APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The project is located at 124 N Davies Road, at the northwest corner of N Davies
Road and Chapel Hill Road, Lake Stevens, WA

ACREAGE: 6.5 acres

DENSITY: 3.8 du/ac (gross)
4.4 du/ac (net)

NUMBER OF LOTS: 25

AVERAGE LOT SIZE: 7,845 square feet

MINIMUM LOT SIZE: 5,617 square feet

OPEN SPACE: 44,363 square feet (16% of the site)

ZONING: R-9600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: Lake Stevens
Subarea Plan Designation: Urban Low Density Residential

UTILITIES:

Water: PUD No. 1 of Snohomish County
Sewage: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to preconditions conditions
Public Works: Approve subject to conditions

INTRODUCTION

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

The Hearing Examiner (Examiner) made a site familiarization visit on December 5, 2005 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 18, 19 and 20)

A SEPA determination was made on September 9, 2005. (Exhibit 17) No appeal was filed. (However, it should be noted that an appeal was originally filed and then later withdrawn. See Exhibits 45-49)

The Examiner held an open record hearing on December 6, 2005, the 155th 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 December 6, 2005 at 10:10 a.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. Steven Michael Smith appeared on behalf of the applicant and stated that he agrees with the PDS staff report and the conditions.
3. Ms. Mona Davis, PDS, appeared.
4. Mr. James Steinruck appeared and stated that the upper cul-de-sac puts out traffic in front of his house and he will be a traffic flow victim. He stated other concerns as well.

5. Mr. Andrew Smith, DPW, responded and indicated that the road would be improved in this area and that it would be 23 feet and 18 feet wide.
6. Mr. Michael Smith, by way of rebuttal, stated that they have looked at several proposals carefully and this is the best design which they could submit. He indicated that there is an existing signal at Davies Road and Chapel Hill Road.
7. No other persons spoke on the matter.

The hearing concluded at 10:41 a.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. There were several neighborhood concerns regarding increased traffic congestion and rates of speed of vehicles traveling on N Davies Road and as to the intersection of Davies Road and Chapel Hill Road. The DPW has indicated that sight-distance was adequate and they had no changes to the road conditions.
4. The request is for a 25-lot single-family residential subdivision with access to the lots being proposed off N Davies Road to two internal public roadways.
5. The surrounding properties are all zoned R-9600 and consist of single-family residential development with a county-maintained public park (Wyatt Park) located east of Chapel Hill Road and N Davies Road intersection.
6. 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.
7. 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 3-6, Exhibit 44)

8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. A Category 3 wetland and associated Type 5 stream is located on the western boundary of the site. PDS has reviewed the critical areas studies and determined that the project complies with the Critical Areas Regulations (CAR) of Chapter 30.62 SCC.
10. Site runoff will be collected in a system of pipes, roof and yard drains and catch basin inlets within the project. Water runoff for the streets, sidewalks and driveways for every lot will be collected and routed to a detention vault. 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, and with the understanding that the existing onsite sewage systems will be abandoned in accordance with health district regulations.
12. Public water and sewer service will be available for this development as well as electrical power.
13. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the ULDR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-9600 zone which is the case here.
14. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
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. The aerial photograph (Exhibit 9) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
17. 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.
18. 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.
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 to develop the 6.5 acres is a reasonable request and would allow for the development of single-family homes in this very attractive and desirable area of Lake Stevens.
5. The concerns of the citizens regarding the traffic are reasonable concerns based upon Davies Road, which goes around the lake, and the intersection with Chapel Hill Road near Wyatt Park. However, the DPW has reviewed the concerns and has indicated approval. The approval of the road in this location with its amenities, would offset some of the concerns expressed. However, if those persons desiring to proceed further want to have the traffic division review what additional safeguards could be placed in this location or at this intersection, they should contact the DPW traffic division directly.
6. The Examiner also recognizes the concerns of Mr. Steinruck with regard to the traffic emptying out across from him. If there are concerns on this particular issue, Mr. Steinruck should also contact the DPW to see what safeguards could be placed, such as landscape screening for his property. If recommended by the DPW traffic division, then the applicant shall be responsible for the placement of those screenings or landscaping.
7. The request should be approved subject to compliance by the applicant with the following Preconditions and Conditions:

CONDITIONS

- A. The preliminary plat received by PDS on July 29, 2005 (Exhibit 11) 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 IDD Wetland Mitigation Plan* prepared by Wetland Resources, Inc. dated July 29, 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 Lake Stevens School District No. 4 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 three existing parcel(s). Lot(s) 4, 14 and 25 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:

\$2,838.08 per lot for mitigation of impacts on county roads paid to the county,

\$66.66 per lot for transportation demand management paid to the county,

Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once 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."

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. Urban frontage improvements shall be constructed along the parcel's frontage on N Davies Road and Chapel Hill Road to the specifications of the DPW [SCC 26B.55.050].

- 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 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.

iv. The final wetland mitigation plan shall be completely implemented.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

EXAMINER'S CONDITION

If required, the applicant shall comply with any screening devices required under the Conclusions, above.

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:

The request for a 25-lot subdivision utilizing lot size averaging is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 7, above.

Corrected Decision issued this 23rd day of December, 2005.

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 **January 3, 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 **January 5, 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: Mona Davis
Department of Public Works: Hamid Aslani

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.