

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

In the Matter of the Application of)
)
CHAPEL HILL LLP) **FILE NO. 05 124881 SD**
)
Preliminary plat approval for a 12-lot Subdivision)
on 4.4 acres)

DATE OF DECISION: November 1, 2006
PROJECT NAME: *Chapel Hill 12*
DECISION (SUMMARY): The proposed 12-lot preliminary plat is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located at the northwest corner of 103rd Avenue NE and Chapel Hill Road, Lake Stevens, Washington.
ACREAGE: 4.4 acres
NUMBER OF LOTS: 12
AVERAGE LOT SIZE: 7,945 square feet
MINIMUM LOT SIZE: 7,220 square feet
DENSITY: 4.3 du/ac (gross)
5.8 du/ac (net)
ZONING: Residential-7,200 (R-7,200)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (6 du/ac – Lake Stevens UGA only)
Subarea Plan: Lake Stevens
Subarea Plan Designation: Urban Low Density Residential (6 du/ac – Lake Stevens UGA only)

UTILITIES:

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

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: 8

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 September 14, 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 18, 19 and 20)

A SEPA determination was made on August 18, 2006. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on October 24, 2006, the 124th 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 24, 2006 at 9:12 a.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, Chapel Hill LLP, was represented by Shirley Allen. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services.
3. No member of the general public attended the hearing. However, David and Trish Thorkildsen by letter of October 5, 2005 (Exhibit 23) pointed out that they had not released their water line easement of record across the subject site. However, they released that easement (AF #1091892) by letter of their attorney dated June 6, 2006 (Exhibit 37-A) pursuant to a written agreement of May 30, 2006 (Exhibit 37-B) provided preliminary plat approval becomes final and not subject to further appeal. (See Condition D.viii. below.)

The hearing concluded at 9:22 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 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, Chapel Hill LLP, filed an application on September 14, 2005, for approval of a 12-lot subdivision on 4.4 vacant acres zoned R-7,200, which is the same zoning abutting in all directions. No rezone is proposed herein. The proposed single-family homes on individual lots are in character with the surrounding, existing neighborhood. (No duplexes are proposed.)
3. The proposed homes will generate 109 daily trips, of which nine will be a.m. peak-hour trips and 12 will be p.m. peak-hour trips. Access is from Chapel Hill Road. Stopping sight distance for downgrade traffic is 415 feet and 407 feet is the minimum required; thus, stopping sight distance and intersection sight distance is adequate. A luminare at the access point is a condition upon approval.
4. The School District reports that children will be picked up by school busses at the intersection of Chapel Hill Road and 103rd Avenue NE. Thus, frontage improvements required as a condition upon approval will provide adequate walkways to the nearest school bus stop.
5. The western half of the site slopes steeply to the east but the eastern half is largely flat. The targeted drainage plan (Exhibit 14B) and drainage report (Exhibit 13) show catch basins and pipes to an above-ground two cell wet detention/water quality pond in the northeast corner of the site with controlled release.
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 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.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,361.22 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.

9. There is a forested riparian Category 3 wetland with an associated Type 5 stream on the eastern half of the site. The stream and wetland will be preserved and placed in a Native Growth Protection Area (NGPA) tract. There will be some impacts, however, to the critical areas and buffers caused by installation of frontage improvements, the detention pond and utilities. PDS has approved a preliminary critical areas mitigation plan which utilizes innovative development design as allowed by SCC 30.62.370. Proposed mitigation for critical area and buffer impacts will be accomplished through creation of additional buffer as well as by restoration and enhancement of existing areas including controlling invasive species and planting native trees and shrubs within the critical areas and buffers.
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.
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Snohomish County PUD No. 1 will supply public water. The Lake Stevens Sewer District will provide sewer service.
12. The subject property is designated as Urban Low Density Residential (ULDR) – Limited (6du/ac) on the Future Land Use Map and is located within an Urban Growth Area (UGA). According to the GPP, the Urban Low Density Residential- Limited (6) designation:

“...allows mostly detached housing developments on larger lot sizes. It is applied to most of the non-constrained ULDR land in the Lake Stevens UGA. Land in this category may be developed at a density of six dwelling units per acre. Implementing zones include R-7,200 and PRD 7,200.”
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 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 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.
16. 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.
17. 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 12-lot subdivision on 4.4 acres is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS:

- A. The preliminary plat, received by Planning and Development Services (PDS) on May 25, 2006 (Exhibit 14A) shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. 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.
 - ii. A detailed detention pond landscape plan shall have been submitted to and approved by PDS.
 - iii. A final mitigation plan based on the conceptual Critical Area Study and Innovative Development Design Plan for Chapel Hill 12, prepared by Wetland Resources, Inc., Revision #1, dated May 19, 2006 (Exhibit 15) 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 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 parcels. Lots 1-3 shall receive credit.”
 - ii. “The developer shall pay the County \$1,361.22 per single family unit as mitigation for impacts to the Centennial park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by September 14, 2010 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”
 - 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.”
 - iv. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence (SFR)

\$3,063.84 per lot for mitigation of impacts on county roads paid to the County;

\$327.30 per lot for impacts to WSDOT roads paid to the County.

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.
 - v. Fifteen feet of right-of-way shall be dedicated to Snohomish County on the final recorded plat, parallel and adjoining the existing right-of-way along the parcel’s frontage on the north side of Chapel Hill Road along with a 35 foot radius right-of-way at the northeast and northwest corners of the intersection of Chapel Hill Road and the proposed public road [SCC 26B.55.060].
 - vi. Ten feet of right-of-way shall be dedicated to Snohomish County on the final recorded plat, parallel and adjoining the existing right-of-way along the parcel’s frontage on the west side of 103rd Avenue NE along with a 35 foot radius right-of-way at the northwest corner of the intersection of Chapel Hill Road and 103rd Avenue NE [SCC 26B.55.060].

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on Chapel Hill Road and 103rd Avenue NE to the specifications of the DPW. [SCC 30.66B.410]
- ii. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].
- iii. Elements of the TDM plan shall have been constructed to the specifications of the DPW.
- iv. A luminaire shall have been installed at the intersection of the proposed public road and Chapel Hill Road to the specifications of DPW.
- v. 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.
- vi. The final critical areas mitigation plan shall be completely implemented.
- vii. The detention pond landscaping shall be installed and inspected.
- viii. The 50 foot wide water line easement bisecting the property, AF#1091892, shall either be extinguished or the final plat shall indicate that the new homes will not be allowed to be constructed within the easement, pursuant to the May 30, 2006 agreement (Exhibit 23-B).

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 1st 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 13, 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 15, 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: Monica McLaughlin/ Andrew Smith

<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>
