

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

In the Matter of the Application of)
)
J&D BUILDERS) **FILE NO. 05 119764**
)
12-lot Rural Cluster Subdivision (RCS) on 41.3 acres)

DATE OF DECISION: January 19, 2006

PLAT/PROJECT NAME: *Wardrum Woods*

DECISION (SUMMARY): The proposed Rural Cluster Subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located on the east side of Creswell Road approximately 1000 feet north of the intersection of Dubuque Road and Creswell Road, Snohomish, Washington.

ACREAGE: 41.3 acres

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 48,581 square feet

MINIMUM LOT SIZE: 44,103 square feet

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 (1 du/5 ac)
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: Snohomish No. 201

FIRE DISTRICT: No. 16

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 May 18, 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 24, 25 and 26)

A SEPA determination was made on November 1, 2005. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on January 4, 2006, the 106th 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 4, 2006 at 10:02 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, J & D Builders, Inc. was represented by Ry McDuffy of Land Resolutions. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services.
3. No member of the public appeared at the hearing or by submittal of any document.

The hearing concluded at 10:08 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 proposes 12 single family lots on 41.30 acres consistent with SCC 30.41C and the underlying R-5 zoning.
3. All surrounding property is also zoned R-5, largely undeveloped, and forested. The subject site was logged many years ago and is covered with second growth forest of alder, maple, fir and cedar.
4. Slope is to the west and 33 percent slope is found on the most easterly end of the site.
5. Vehicular access to the subject site is off Creswell Road via a private road.
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. There are no mitigation requirements required for parks
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. Seven Category 3 wetlands are located on the site. Wetland A sits between the two clusters and is mostly contained within the restricted open space. It extends across the northern boundary of the plat. Wetland B is located on Lots 6 and 7. Wetland C, situated on Lot 12 and the restricted open space Tract 998, extends beyond the southern boundary of the plat. Wetland D, located between Lots 11 and 12, is a small BMP wetland (840 square feet), which will be filled. The remaining three wetlands are all located on the large eastern portion of the restricted open space Tract 998. Wetlands E and G also extend across the northern boundary. All the wetlands, with the exception of Wetland D, will be contained within Native Growth Protection Area Easements (NGPA/E).
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 property is designated Rural Residential 5 (1 du/5 acres) on the pre-GMA Granite Falls Subarea Plan. In resolving the GPP text discussion regarding the structural relationship of the subarea plans to the GPP, previous hearing examiner decisions have held that the definitive statement in the GMACP adoption ordinance that "the existing subarea comprehensive plans are not part of the county's GMA comprehensive plan..." must be accorded primacy. Therefore, the comprehensive plan to be utilized in the consistency determination procedure required by RCW 36.70B.030(2) and SCC 32.50.100 is the GMACP, and not the pre-GMA subarea plan. 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 revised preliminary plat/rural cluster subdivision received by the Department of Planning and Development Services on October 18, 2005 (Exhibit 20) shall be the approved plat configuration unless revised to meet the precondition. 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 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.

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 2 existing parcels. Lots 1 through 2 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.

This 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. Lot 1 shall not have direct access to Creswell Road. All access shall be from the cul-de-sac road.
- iv. 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 30.91N.010 are allowed when approved by the County."

D. Prior to recording of the final plat:

- i. The road within the subject development shall have been constructed in accordance with EDDS 3-080 for a private rural subcollector road.
- ii. Rural standard frontage improvements consisting of 19 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.
- iii. Ten feet of property shall be dedicated on the east side of the existing 30 feet of right-of-way, to total 40 feet of right-of-way east of the Creswell Road right-of-way centerline.
- iv. 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.

- v. The Critical Area Study and Wetland Mitigation Plan for Wardrum Woods (additional buffers only) prepared by Wetland Resources, Inc. dated October 18, 2005 shall be satisfactorily implemented.
- E. In conformity with applicable standards and timing requirements:
- i. A preliminary landscape plan (Exhibit 7) 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 staff recommendation 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 12-lot rural cluster subdivision on 41.3 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 19th 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 2, 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: Paul MacCready
Department of Public Works: Ann Goetz

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| 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. |
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