

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: June 21, 2006

PLAT/PROJECT NAME: *Lincolnshire*

APPLICANT/
LANDOWNER: Ron Bennett

FILE NO.: 05 120365

TYPE OF REQUEST: A subdivision of a 39.58 acre property into 17 lots utilizing the Rural Cluster Subdivision (RCS) provisions.

DECISION (SUMMARY): APPROVED subject to a precondition and conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 20726 SR 9, Snohomish, Washington.

ACREAGE: 38.30 acres

NUMBER OF LOTS: 17

AVERAGE LOT SIZE: 46,150 square feet

MINIMUM LOT SIZE: 43,714 square feet

DENSITY: .43 du/ac (gross)
N/A (net)

OPEN SPACE: 45 percent or 750,831 square feet

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

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

Subarea Plan: North Creek

Subarea Plan Designation: Rural (.4-1 du/ac and Watershed Site Sensitive)

UTILITIES:

Water: Wells
Sewage: Septic systems

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services (PDS): Approval subject to precondition and conditions
Public Works (DPW): Approval subject to precondition and conditions

INTRODUCTION

The applicant filed the Master Application on November 10, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on June 1, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 20, 21 and 22)

A SEPA determination was made on March 30, 2006. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on June 6, 2006, the 90th 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 June 6, 2006 at 9:00 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. Jim Gardner of Cavassa & Associates on behalf of the applicant appeared and stated he needed to make square footage changes to Exhibit 36, otherwise he had no objection to the PDS staff report.
3. Ms. Monica McLaughlin of PDS stated that they could add a precondition on the site plan.
4. No one appeared in opposition to the request.

The hearing concluded at 9:17 a.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the 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. One email was received from a citizen asking general questions about the project. PDS responded to his questions and has had no further contact from him.
4. The request is to subdivide a 38.30 acre property into 17 lots utilizing the RCS provisions of SCC 30.41C. All lots are to be developed with single-family residences and to be served by individual wells and septic systems. The northeast portion of the site abuts SR-9. Single-family residences situated on larger lots about the site.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 for each new single-family home.
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. (See Pages 3-5, Exhibit 35)
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. One stream, Great Dane Creek, and 7 wetlands are located on the eastern half of the property. The wetlands and the creek will be preserved and placed within NGPA tracts in accordance with Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations. Approximately 16,728 square feet of wetland and stream buffer will be removed to allow for the construction of the new private road. Impacts to the buffers will be mitigated by providing 199,831 square feet of additional wetland and stream buffer (approximately 12:1 ratio). Additionally, one of the wetland buffers, which had been previously damaged, will be restored by planting native trees and shrubs within the impacted area.
9. A large portion of runoff from the developed lots will be routed toward a combination detention/wetpond located in the southeastern corner of the property. 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).

10. The Snohomish County Health District has no objection to this proposal provided that the wells and septic systems are placed pursuant to the direction of the Snohomish Health District.
11. Electrical power will be available.
12. The property is designated Rural Residential on the GPP Future Land Use Map and is located outside of any Urban Growth Area. The requested Rural Cluster Subdivision is consistent with the GPPs Rural Residential designation of the property and the 17 lots proposed are consistent with the density provisions. (SCC Title 30 GMA-based zoning regulations)
13. The proposal complies with the provisions of Section 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 45% (758,051 square feet) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage-related problems; the project complies with Snohomish County's Critical Areas Regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

In this regard, the staff has correctly analyzed the effect of the Rural Cluster Subdivision on Pages 7 and 8 of the PDS staff report. (Exhibit 35)

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. The aerial photograph (Exhibit 11) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
17. The site map set forth as Exhibit 36 shall contain all of the required information and shall be listed as a precondition, the square footage is 750,831.
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 is for a RCS of 17 lots on 38.30 acres and this will allow for development of this area with single-family homes consistent with what is there, while at the same time preserving environmentally sensitive areas.
5. The request should be approved subject to compliance by the applicant with the following Precondition and Conditions:

PRECONDITION:

1. A revised preliminary plat map shall be submitted to and approved by Planning and Development Services (PDS) which demonstrates compliance with all the provisions of Chapter 30.41C SCC.

CONDITIONS:

- A. The revised preliminary plat map, approved pursuant to the precondition outlined above, shall constitute 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 landscape plan for the required perimeter buffers and detention pond shall have been submitted to and approved by PDS.
 - iii. A final mitigation plan based on the Wetland Assessment report for Lincolnshire, prepared by Raedeke Associates, Inc. dated May 1, 2006, 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 Northshore 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 \$1,244.49 per single family unit as mitigation for impacts to the Nakeeta Beach 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 November 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 each single-family residential building permit:

\$2,038.41 per lot for mitigation of impacts on county roads paid to the county,
 \$345.18 per lot for mitigation of impacts on State highways paid to the county. Note: WSDOT has indicated that the fees can be credited toward the donation of needed right-of-way for the SR 9 widening project.

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 PDS.
 - v. All utilities shall be underground.
 - vi. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
- D. Prior to recording of the final plat:
- i. The road within the subject development shall have been constructed in accordance with EDDS, and with the terms of the deviation request approvals.
 - ii. Frontage improvements on SR-9 shall have completed to the satisfaction of WSDOT.

- iii. Right-of-way shall be dedicated to WSDOT as requested by WSDOT.
- iv. An access permit shall have been obtained from WSDOT, and the conditions met to the satisfaction of WSDOT.
- 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 mitigation plan shall be completely implemented (buffer restoration and additional buffer).
- vii. The landscaping shown on the approved landscaping plan shall be installed and inspected.
- viii. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously 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. The restricted open space areas shall be protected in perpetuity and restricted to those uses specified on the plans.
 - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space, including required sight obscuring buffers, open space, detention facilities, and all other commonly owned and operated property in a manner which assures continued use for the purpose intended. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a binding requirement of lot ownership.
- ix. PDS staff shall confirm that the sight obscuring buffer continues to perform its sight obscuring function.

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.

6. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for approval of a 17-lot Rural Cluster Subdivision is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the PRECONDITION and CONDITIONS set forth in Conclusion 5, above.

Decision issued this 21st day of June, 2006.

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 **July 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 **July 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: Monica McLaughlin
Department of Public Works: Ann Goetz

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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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 June 21, 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)
