

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

In the Matter of the Application of)
)
BRUCE CRAWFORD, BARGALS, LLC) **FILE NO. 05 120623**
)
18-lot Rural Cluster Subdivision (RCS) on 41.88 acres)

DATE OF DECISION: March 1, 2006

PROJECT NAME: *Hidden Acres*

DECISION (SUMMARY): The application for an 18-lot rural cluster subdivision on 42 acres is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located 26311 Tronson Road, Arlington, Washington.

ACREAGE: 41.88 acres

NUMBER OF LOTS: 18

AVERAGE LOT SIZE: 50,237 square feet

MINIMUM LOT SIZE: 43,577 square feet

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 ac Basic)
Subarea Plan: Arlington
Subarea Plan Designation: Rural (.02 – 4 du/ac)

UTILITIES:

Water: Individual wells
Sewer: On-site septic

SCHOOL DISTRICT: Arlington No. 16

FIRE DISTRICT: No. 18

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 October 24, 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 19, 20 and 21)

A SEPA determination was made on January 4, 2005. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on February 14, 2006, the 60th 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 February 14, 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, Bruce Crawford, Bargals, LLC, was represented by Debbie Rothfus and Scott Stewart of Peak Engineering, Snohomish County was represented by Paul MacCready and Jack Hurley of the Department of Planning and Development Services and by Ann Goetz of the Department of Public Works. Vicinity residents Emma and Glenn Burkins testified with concern about traffic, water wells and impacts to streams and wetlands. Their concerns are mirrored in the letters submitted into the record pre-hearing by themselves and by Dale and Tina Russell (Exhibits 24 and 25). By letter (Exhibit 23), vicinity resident Paul Marczin raises concern as a downstream landowner about impacts on water quality and habitat. He asserts federal jurisdiction here. That assertion is addressed by letter (Exhibit 37) of attorney Bill Clarke representing the owners of the subject property. By letter (Exhibit 33), the Stillaguamish Tribe points out new and proposed culverts in the vicinity intended to assist fish passage and urges consideration to fish passage as part of the re-alignment of Tronson Road proposed by this plat applicant. The stream at issue (WRIA #50073) is a tributary to Pilchuck Creek, which has importance to the Tribe. Response to the Tribe dated January 19, 2006 by Peak Engineering's Debbie Rothfus is that the culvert will be replaced in coordination with the Washington State Department of Fish and Wildlife.

The hearing concluded at 11:10 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 main issues of concern expressed by the neighbors (see above) are the greater density proposed compared to the existing country setting, the resultant additional vehicular traffic, the draw upon the aquifer from which all existing homes acquire their potable water, and impacts to the stream.
3. The hearing progressed for an hour in a question-answer format largely, as citizens raised concerns and the staff and applicant responded. As a result, it became clearer that the Snohomish County Health District concludes that there is ample water in the subject vicinity to accommodate the proposed new homes without adversely impacting the water supply or quality for the existing homes. The applicant, Bruce Crawford, testified that the 17 new wells will be deep at approximately 100 feet of depth. The Examiner takes that depth as a promise and a material inducement to approve the plat in view of Emma Burkins' comment:

“For 30 years our home has had good and plentiful supply of water. How will 18 additional homes, upstream, on wells, affect our water quality and supply? What recourse will we have, if a year after development, our water quality and /or quantity diminishes?”

4. The applicant used the plat drawings during the hearing to demonstrate to the concerned neighbors and to the Examiner how the now-dangerous curve of Tronson Road will be reconfigured into a safer “T” intersection as part of the plat design. That addresses the need for safe passage for the 163 additional trips daily to be generated by the plat. Of those trips, 13 will be a.m. peak-hour trips and 17 will be p.m. peak hour trips. Proposed condition C.iv in the staff report requires a 30-foot dedication of land to insure sufficient right-of-way for that alignment.
5. Four Category 3 wetlands exist on the property and are described fully in the staff report incorporated by reference into this decision. The tributary to Pilchuck Creek (mentioned above) is a Type 3 stream flowing northward along the western boundary of the subject plat. Community concern for the preservation of the stream and wetlands highlights the importance of the staff review of the Critical Areas Study and Mitigation Plan. A *Notice of Moratorium on Non-Forestry Use of Land* has been recorded on the site (Recording Number 200409220942.) The applicant will need to demonstrate that critical areas on the subject property were not damaged as a result of forest practices prior to the issuance of grading permits or authorization of other development activities.
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 \$48.82 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. 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 public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
11. The subject property is designated Rural on the pre-GMA Arlington Subarea Plan.
12. 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.
13. The proposed plat meets the requirements set out at SCC 30.41C for a rural cluster subdivision. The purpose of the rural cluster concept is to provide a more environmentally sensitive alternative to a traditional plat so that sensitive areas can be retained in restricted open space tracts. This proposal complies by designating nearly one-half (45.2%) of the site as restricted open space, at least 75% of the residential lots about a required vegetative buffer or open space and all utility lines are underground and in other ways described at length in the staff report.
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 December 16, 2005 (Exhibit 16) 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. A Critical Areas Site Plan (CASP) for the off-site stream buffer mitigation shall be recorded prior to the issuance of grading permits or authorization of other development activities.
 - iii. The applicant shall demonstrate that critical areas on the subject property were not damaged as a result of forest practices prior to the issuance of grading permits or authorization of other development activities.
 - iv. 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 Arlington School District No. 16 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 five existing parcels. Lots 1 through 5 shall receive credit.”
 - ii. “The dwelling units within this development are subject to park impact fees in the amount of \$48.82 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”

- iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,143.68 per lot for mitigation of impacts on county roads paid to the County,

\$622.80 per lot for mitigation of impacts on Arlington streets paid to the City,

\$332.42 per lot for mitigation of impacts on Stanwood streets paid to the City,

\$344.52 per lot for mitigation of impacts on State highways paid to the County.

These payments are due at the time of each single family 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.

- iv. The final plat shall show a 30-foot right-of-way dedication along the property frontage with Tronson Road to total 30 feet from the right-of-way centerline; and sufficient right-of-way for the intersection realignment.
- v. 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. Rural standard frontage improvements shall be constructed along the property frontage with Tronson Road and intersection realignment shall have been completed unless bonding of improvements is allowed, in which case construction is required prior to any occupancy of the development.
- ii. The public road and the temporary turnaround capable of supporting a 25 ton vehicle shall have been constructed to the east property line per EDDS 3-040 and EDDS 3-150.
- 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 platator 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 Stream and Buffer Mitigation Plan for Hidden Acres (additional buffers and plantings within the off-site stream buffer) prepared by Wetland Resources, Inc. dated October 20, 2005 shall be satisfactorily implemented.
- v. The following statement shall appear on the face of the plat and be recorded with the final plat restrictions, as required by Snohomish Health District;

For Proposed Wells:

“Well protection zones are shown in the Snohomish Health District records for lots of this plat. The well protection zones are not based on actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owners. After installation of any water well to serve lots within this subdivision, all owners and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.”

For Existing Wells:

“A 100 foot radius will protection zone covenant is hereby established on Lot 17 around the existing well as located on the plat. The well protection zone is based on the actual constructed well. All owners of property shown within this protection zone agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius will protection zone shall not extend beyond the subdivision boundaries without written consent and recorded will protection covenant from the affected property owners.”

- E. In conformity with applicable standards and timing requirements:
 - i. The preliminary landscape plan (Exhibit 22) 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 recommended 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 an 18-lot rural cluster subdivision and boundary line adjustment on 41.88 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 1st day of March, 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 **MARCH 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 **MARCH 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: Paul MacCready
Department of Public Works: Ann Goetz

<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>
