

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: November 17, 2006

PLAT/PROJECT NAME: *L 147-1 ST. ANDREWS*

APPLICANT/
LANDOWNER: L 147-1 St. Andrews, LLC

FILE NO.: 05 126648

TYPE OF REQUEST: 184 lot Rural Cluster Subdivision (RCS) of 421.6 acres

DECISION (SUMMARY): APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located north of 132nd Street NE, east of McElroy Road, west of Burn Road, Arlington, Washington.

ACREAGE: 421.60 acres

NUMBER OF LOTS: 184

AVERAGE LOT SIZE: 26,121 square feet

MINIMUM LOT SIZE: 18,000 square feet

OPEN SPACE: 288.26 acres

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 acres Basic)

Subarea Plan: Arlington

Subarea Plan Designation: Rural (0.2-0.4 du/acre)

UTILITIES:

Water: Snohomish County PUD No. 1

Sewage: On-site septic

SCHOOL DISTRICT: Arlington/Granite Falls

FIRE DISTRICT: No. 22

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions

Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on January 10, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on November 1, 2006.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 32, 33 and 34)

A SEPA determination of non-significance was made on September 28, 2006. (Exhibit 31) No appeal was filed.

The Examiner held an open record hearing on October 31, 2006, the 37th 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 31, 2006 at 3:02 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and therefore had a general idea of the particular request involved. The Examiner made a site visit the next day.

The hearing concluded at 3:39 p.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. The applicant proposes to subdivide a 421.6 acre site east of McElroy Road into 184 single-family lots. The plat would provide 51 restricted open space tracts for stormwater detention and water quality, recreation, native growth protection and recreation. Three streams flow through the site and 50 wetlands are scattered throughout the site. Two power easements and one gas pipeline easement cross the site. The site is relatively flat.

2. The site is outside of the Urban Growth Area (UGA) and is zoned R-5. The applicant proposes to utilize the RCS standards of Chapter 30.41C.SCC.
3. Access to the site will be via a new public road from McElroy Road. Interior roads will be dedicated as public roads. Additional road connections will be provided by a future east/west collector. Roads in the plat to the north and south would be stubbed at four places, pending development of adjoining properties. No frontage improvements will be required.
4. Mark Anderson, who lives at 14325 McElroy Road, objected to the proposal, as he sees the subdivision as a violation of the rural character of the area. He lives adjacent to 144th Street NE and is concerned about increased traffic within 100 feet of his house. He is also concerned about increased traffic on Highway 9 and the impact of the project on salmon in Star Creek. Anderson's house is about 600 feet from the boundary of the project.
5. Water service to the plat will be provided by Snohomish County PUD No. 1. Sewage will be disposed of on site.
6. A traffic concurrency determination was made for the proposal, as the project would not add three directional peak hour trips to any arterial unit in arrears, or to any critical arterial units. Stopping sight distance to the south on McElroy Road from the new public road, however, does not meet county standards. The applicant has proposed three alternatives to satisfy the standard, which involves cutting down a hump in McElroy Road. The extent of this work will be delayed to the construction plan review stage.
7. The applicant will pay impact fees as follows:

State highway	\$63,391.68
Marysville	\$147,510.50
Arlington	\$157,971.72
Parks	\$48.82 per dwelling unit
Roads	\$394,437.12
8. School children will be provided with bus service to school. The bus stop will be on McElroy Road at the entrance road. A safe waiting area will be provided off the travel portion of the road.
9. The proposal will cluster the lots in the most buildable and least environmentally sensitive portion of the site. Approximately 65.4% of the property will be reserved in restricted open space. All utility lines will be underground.
10. Any Conclusion of Law in this Report and Decision, which should be deemed a Finding of Fact, 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. Compliance with the Rural Cluster provision of Chapter 30.41C SCC will assure that the development is consistent with the rural character of the area and minimizes adverse environmental impacts.
4. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.
5. 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 PDS on September 27, 2006 (Exhibit 29) 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 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.
 - iii. A final mitigation plan based on the *Critical Areas and Conceptual Mitigation Report* and *Habitat Management Plan* prepared by The Jay Group dated January 10, 2006 (Exhibits 6 & 7) with addendum dated August 31, 2006 (Exhibit 25 & 26), and revised critical area mitigation plans dated August 31, 2006 (Exhibit 16) 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 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.
 - ii. The lots within this subdivision will be subject to school impact mitigation fees for the Arlington and Granite Falls School Districts 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 20 existing parcels. Lots 1 through 5 and Lots 169 through 184 shall receive credit.

- 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,

\$344.52 per lot for mitigation of impacts on state roads paid to the county,

\$801.69 per lot for mitigation of impacts on Marysville roads paid to the city,

\$858.54 per lot for mitigation of impacts on Arlington roads paid to the city.

These payments are due prior to or at the time of building permit issuance for each single family residence. 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..

- iv. On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless a formal deviation is granted.

- 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."

D. Prior to recording of the final plat:

- i. Temporary turnarounds and easements shall be required for the two road stubs at the north property line if the preliminary plat of Nysether (PFN 05 127298) is not constructed before or concurrently with this development.
- ii. A plan acceptable to the County shall be included in the construction plans, and construction of the work completed to obtain the required amount of stopping sight distance to the south on McElroy Road from the new public road (144th Street NE) per EDDS 3-08.
- iii. The Boundary Line Adjustment to obtain right-of-way for the public road from McElroy Road to the current west boundary of the development property shall have been granted.
- iv. 144th Street NE shall be constructed in accordance with EDDS 3-040 / 3-060 for a public rural collector road from McElroy Road to the current west boundary of the development property; and the right-of-way for the road shall be dedicated.
- v. A safe waiting area outside of the traveled way of either McElroy Road or Road A shall be shown on the approved construction plans, and construction shall have been completed.
- vi. 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 Planning and Development Services for review and approval prior to installation.

vii. The final mitigation plan shall be completely implemented.

E. In conformity with applicable standards and timing requirements:

i. The preliminary landscape plan (Exhibit 17) 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.

DECISION:

The request for a 184 lot Rural Cluster Subdivision (RCS) of 421.6 acres is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant with the CONDITIONS set forth in Conclusion 5, above.

Decision issued this 17th day of November, 2006.

Gordon F. Crandall, Hearing Examiner Pro Tem

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 27, 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 **December 1, 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 this case.

Staff Distribution:

Department of Planning and Development Services: Paul Lichter

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.