

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

In the Matter of the Application of)
)
BOYDEN, ROBINETT & ASSOC.) **FILE NO. 05 128311 SD**
)
Preliminary plat for a 142-lot subdivision utilizing lot)
size averaging in two phases)

DATE OF DECISION: September 27, 2006

PLAT/PROJECT NAME: *Meadows at Two Cedars*

DECISION (SUMMARY): The application for a 142-lot subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located east of 55th Avenue NW, south of 124th Place NW and north of 119th Place NE, Marysville, Washington.

ACREAGE: 30 acres

NUMBER OF LOTS: 142

AVERAGE LOT SIZE: 5,622 square feet

MINIMUM LOT SIZE: 5,001 square feet

DENSITY: 4.79 du/ac (gross)
6.05 du/ac (net)

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (5-6 du/ac)

UTILITIES:

Water/Sewer: City of Marysville

SCHOOL DISTRICT: Marysville

FIRE DISTRICT: No. 12

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 February 1, 2006. (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 17, 18 and 19)

A SEPA determination was made on July 28, 2006. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on September 12, 2006, the 61st 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 September 12, 2006 at 9:04 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, Richard Boyden of Boyden, Robinett & Associates, was represented by Ry McDuffy. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services and by Ann Goetz of the Department of Public Works.
3. No member of the general public attended the hearing. However, correspondence (Exhibits 21 and 23 – 29) was received from eight vicinity households expressing concern primarily about traffic and drainage.

The hearing concluded at 9:26 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 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 Policy Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is to construct a 142-lot subdivision using lot size averaging in two phases. Average weekday vehicle trips are 1,291, of which 100 are morning peak hour trips and 136 are p.m. peak hour trips. Residents in the vicinity express dismay at the addition of that number of daily and peak hour trips. Gary McKeeman (Exhibit 21) points out that the only ingress to, and egress from, his neighborhood is the intersection of 121st Place NE and 51st Avenue NE. He is concerned about whether proposed improvements to that intersection will take into account this plat's additional trips. Gary Baunsgard (Exhibit 23) expresses similar concerns about the combined trips of the subject plat and also the plat of Pacific Meadows. He notes that Shoultes Road is "way overloaded" now at 108th Street NE and 100th Street NE and 88th Street NE "in all directions". Related concerns are expressed by Rick Seibert (Exhibit 27) and by Richelle Fisher (Exhibit 25), the latter of whom states concern about the safety of children on 121st Street NE. John Radder (Exhibit 28) shares the concerns listed above and asks several questions about how the proposed plat herein will affect development options for his own property.
4. Water and sewer are being provided by the City of Marysville. The Health District has no objection to the plat, therefore.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$48.82 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 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. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
8. No wetlands are located on or within 100 feet of the subject property. A watercourse on the south boundary of the proposed plat flows westerly in Tracts 997 and 998 as a ditched stream. This watercourse is a Type 5 stream which requires a 10-foot buffer from the ordinary high water mark (OHWM) of the stream. There are no requirements for designation of this area as Native Growth Protection Area (NGPA) and the watercourse may continue to be maintained as a ditched stream via an easement and per the requirements as may be needed through the Washington State Department of Fish &

Wildlife's (WDFW) Hydraulic Project Approval (HPA) process. The preliminary plat map correctly labels the stream and buffer. Larry Lindquist (Exhibit 24) points out that the farm drainage ditch has grown with development in the area and its water crosses the sites of four homes in the 5500 block of 126th Place NE. He is concerned that shoring up of the ditch that he was required to do by the County has been removed for ditch expansion during the last few years. Nick VanDam describes the ditch and shows its course in more detail on a map and points out: "This ditch is crucial to the appropriate drainage of all surrounding land to the North and East, the majority of it still being farmed." He asks that the ditch be piped because trash is thrown into it now which he has been removing to prevent serious damage. Arthur Wright (Exhibit 29) lives on the south side of the subject ditch which he asserts has flooded his home due to NGPS's required downstream. His two recommendations are noted for consideration during detailed drainage plan review.

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.
10. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
11. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, policies were adopted to promote urban densities of development. 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.
12. 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.
13. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with those provisions.
14. 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.
15. 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. 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 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. Because of asserted flooding, the two recommendations made by Arthur Wright in this record should be given thorough consideration during final drainage plan review.
5. The conclusions of law immediately above herein are entered with awareness of the public concerns expressed in this record. However, the higher density infill in lieu of sprawl implements the applicable law and policies.
6. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The revised preliminary plat received by PDS on July 13, 2006 (Exhibit 15) 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.
- 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 Marysville 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 one existing parcel. Lot 1, Phase 1 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:
 - \$2,200.14 per lot for mitigation of impacts on county roads paid to the county,
 - \$24.68 per lot for mitigation of impacts to WSDOT project DOT-1 (I-5 at SR-531) paid to the County,
 - \$33.50 per lot for mitigation of impacts to WSDOT project DOT-34 (SR-9 at 108th Street NE) paid to the County,
 - \$2,565.40 per lot for mitigation of impacts on Marysville streets paid to the City; proof of payment is required,
 - \$209.68 per lot for mitigation of impacts on Arlington streets paid to the City; proof of payment is required.

These payments are due 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 of 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, access shall be restricted to the minor road, unless a formal deviation is granted.

D. Prior to recording of the final plat:

- i. The extension of 121st Street NE, from the present end to the west property line of the development shall be converted to public right-of-way, and designed and constructed in accordance with EDDS 3-050 for a public non-arterial urban collector road or to the equivalent standard approved by the City of Marysville.
- ii. Construction of an offsite walkway to the nearest bus stop location for the public school students as identified by the Marysville School District (currently the intersection of 51st Ave. NE at 121st Street NE for the elementary and middle school students; and at 51st Ave. NE and 128th Place NE for the high school students) shall have been completed along the most direct legal route where no walkway currently exists.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 13) 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.

7. 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 requests for a preliminary plat for a 142-lot subdivision utilizing lot size averaging provisions is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 6 above.

Decision issued this 27th day of September, 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 **OCTOBER 9, 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 **OCTOBER 11, 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

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.