

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

In the Matter of the Application of)
)
LIFESTYLE HOMES & CONSTRUCTION, INC.) **FILE NO. 05 129036 SD**
)
45-lot Rural Cluster Subdivision (RCS))
on 104.427 acres)

DATE OF DECISION: September 27, 2006
PROJECT NAME: *River View East*
DECISION (SUMMARY): The 45-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located 18429 107th Avenue NE, Arlington, Washington.
ACREAGE: 104.427 acres
NUMBER OF LOTS: 45
AVERAGE LOT SIZE: 25,771 square feet
MINIMUM LOT SIZE: 24,714 square feet
DENSITY: .43 du/ac (gross)
.46 du/ac (net)
ZONING: R-5
COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Rural Residential (1 du/5 ac – Basic)

UTILITIES:

Water: City of Arlington
Sewer: Individual septic

SCHOOL DISTRICT: Arlington No. 16

FIRE DISTRICT: No. 21

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 April 6, 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 19, 20 and 21)

A SEPA determination was made on July 25, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on September 12, 2006, the 71st 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 11:05 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, Lifestyle Homes and Construction, Inc., was represented by Merle Ash of Land Technologies. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services.
3. Pre-hearing letters were submitted by residents of five vicinity households raising concern or opposition based on perceptions of (1) environmental impacts, (2) traffic impacts to local roadways and pedestrian/equestrian uses common in the area and (3) infringement upon seclusion, privacy and safety of some of the homes of writers Daniel and Lisa Bruce, Clifford and Stacy Bullard, Roland Heise, Joan Johnson and Timothy Jones. Only the latter testified at the hearing, at which time he thanked the applicant for amending the plat to meet some of the neighbors' primary concerns.

The hearing concluded at 11:25 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, Lifestyle Homes & Construction, Inc., filed an application for a 45-lot rural cluster subdivision on 104.4 acres zoned R-5 and addressed 18429 – 107th Avenue NE, Arlington.
3. Surrounding zoning is R-5. The area is mainly undeveloped and, where developed, it is with large lot single-family households. Those homes range from utilitarian to elegant and in all sizes but share a rural separation and open spaces engendering feelings of security. The parties of record write of fear that the proposed 45 homes and trail with buffer would adversely change the environment, increase crime, invade their privacy and burden their local roadways, where much recreational use is also made for walking, biking and equestrian use.
4. The applicant points out that the proposed homes will be priced in the range of \$700,000 to nearly one million dollars, which will be compatible with the existing homes. It is presumed that the owners share the existing residents' desire for privacy and safety. A principal contested issue was the perimeter trail segment extending east/west onto Tract 997 from the west loop of the main trail and which would end at the current gate of a PUD easement. The applicant agreed by letter of September 8, 2006 (Exhibit 39) to eliminate that segment of the trail and to retain and plant trees to discourage foot traffic there. (See Condition No. 4.B.iii below herein.)
5. The 45 proposed homes will generate 412 average weekday trips, of which 32 will be morning peak hour trips and 43 will be p.m. peak hour trips. The staff report analyzes traffic impacts and road design standards, road system capacity, access and circulation and pedestrian facilities, including facilities for children who will live in the proposed subdivision and will walk to the school bus stop 107th Avenue NE adjacent to the subdivision's new public 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 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 that 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 by the payment of \$48.82 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
9. There are two Type 3 streams that are presumed habitat for ESA listed species of fish, a Type 4 stream, and seven Category 3 wetlands. All wetlands are associated with the streams. Appropriate buffers are established around each of the critical areas.

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.
11. The Snohomish County Health District has no objection to this proposal provided that water and sewer are available. Water will be supplied by the City of Arlington (Exhibit 33) and the proposed lots will be served by private, on-site septic drain fields and reserve areas already approved by the Snohomish Health District (Exhibit 31).
12. The subject property is designated Rural Residential - 5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. 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 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. A complete application for the proposed plat was received by PDS on May 31, 2005. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.
16. The subject rural cluster subdivision (RCS) application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on February 1, 2006 (Exhibit 15), and in an open space management plan (Exhibit 8) that is to be implemented by a homeowners' association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200.
17. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
18. 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 preliminary plat received by PDS on July 5, 2006 (Exhibit 14A, 14B, and 14C) 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 platter 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. The platter shall amend the face of the plat to show that the former, proposed perimeter trail will be replaced with planted trees or retained native vegetation from the existing gate eastward to the power lines, as may be more fully described at Exhibit 39, which is Land Technologies, Inc., letter of September 8, 2006 to Timothy Z. Jones.
- 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 5 existing parcels. Lots 1 through 5 shall receive credit."

- ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:

\$2,463.33 per lot for mitigation of impacts on county roads paid to the County,
\$912.97 per lot for mitigation of impacts on Arlington streets paid to the City,
\$336.69 per lot for mitigation of impacts on State highways paid to the County.

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.

- iii. The final plat shall show a 10-foot right-of-way dedication along the property frontage with 107th Ave. NE to total 30 feet from the right-of-way centerline.

- 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 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

- v. The developer shall pay the County \$48.82 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. Rural standard frontage improvements shall be constructed along the property frontage with 107th Avenue NE unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- ii. The public road and the temporary turnaround shall have been constructed to the south 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 plattor 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.

E. In conformity with applicable standards and timing requirements:

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 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.

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 45-lot rural cluster subdivision on 104.427 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 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: Ed Caine
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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