

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: November 17, 2006

PLAT/PROJECT NAME: *JORDAN RIVER ESTATES*

APPLICANT/
LANDOWNER: CHB Development, LLC

FILE NO.: 06 125852

TYPE OF REQUEST: 3 lot Rural Cluster Subdivision (RCS) on 6.85 acres

DECISION (SUMMARY): APPROVE subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 21912 Jordan Road, Arlington, WA

ACREAGE: 6.85

DENSITY: .437 du/ac (gross)

NUMBER OF LOTS: 3

AVERAGE LOT SIZE: 52,570 square feet

MINIMUM LOT SIZE: 43,562 square feet

OPEN SPACE: 3.23 acres

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Individual wells

Sewage: Individual septic systems

SCHOOL DISTRICT: Arlington

FIRE DISTRICT: No. 21

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 April 24, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on November 2, 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 14, 15 and 16)

A SEPA determination of non-significance was made on September 20, 2006. (Exhibit 13) No appeal was filed.

The Examiner held an open record hearing on October 31, 2006, the 99th 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 2:01 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 on November 2, 2006.

The hearing concluded at 2:10 p.m.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. CHB Development, LLC proposes to subdivide a 6.85 acre site off Jordan Road, east of the City of Arlington, into three single-family residential lots. The subject property is Lot 2 of the recently approved Walker short plat. Full subdivision approval is required because a lot created by a short plat may not be further subdivided by short plat within five years. (RCW 58.17.060). The site is zoned R-5.
2. Adjacent uses to the north and west are also zoned R-5, and properties to the east and south are zoned A-10. All are large single-family lots.

3. Access to the site will be by a private road from Jordan Road. Individual lots will be served by individual and shared driveways.
4. Electrical service will be provided by Snohomish County PUD. Water will be obtained from wells, and sewage will be disposed of on-site.
5. The access road to the site was constructed by the applicant in connection with the Walker short plat. No additional access to Jordan Road will be permitted. The proposal was granted a certificate of concurrency on June 19, 2006. Frontage improvements on Jordan Road will not be required.
6. The applicant will be required to pay impact fees as follows:

| | |
|---------------------------|---|
| Parks | \$48.82 per new dwelling unit |
| Road System Capacity | \$5,052.96 |
| State Highway | \$689.04 |
| City of Arlington | \$1,826.88 |
| Arlington School District | At rate in effect when building permit is applied for |
7. The rural private road will provide a safe route for children to their school bus stop on Jordan Road.
8. Stormwater will be handled by infiltration, subject to conditions to be imposed by PDS (Engineering) during full drainage plan review.
9. Critical areas were addressed in the Walker short plat approval. Native Growth Protection signs for steep slopes were required for that approval and will remain in place.
10. The site is designated Rural Residential on the comprehensive plan and is zoned R-5.
11. Any Conclusion of Law in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

CONCLUSIONS of LAW:

1. A preliminary subdivision proposal is processed as a Type 2 application. (Chapter 30.72 SCC) The Hearing Examiner may approve, approve with modifications or deny a subdivision application under the circumstances set forth in Chapter 30.41A SCC.
2. RCW 58.17.100-120 and 58.17.195 establish the criteria for approval of a preliminary plat: conformance to zoning ordinances and comprehensive plans; appropriate provisions for public health, safety and general welfare; open spaces, drainage ways, streets and roads, alleys and other public ways; transit stops; potable water supplies; sanitary wastes; parks and recreation, playgrounds and school grounds; and other planning features including safe walking conditions for students.
3. The PDS staff has analyzed the proposal for conformance with the criteria for subdivision approval. The plat conforms to applicable zoning and the comprehensive plan, and makes appropriate provision for all of the requirements of the subdivision statute. (RCW Chapter 58.17)

4. Chapter 30.41C SCC permits a property owner of rural residential property to cluster lots on the most buildable and least environmentally sensitive portions of their property, while retaining a substantial portion of each site, including most resource lands and environmentally sensitive areas, in restricted open space tracts.
5. PDS staff also concluded that the proposal complies with Chapter 30.41C Rural Cluster Subdivisions and Short Subdivisions. The lots are clustered in the most buildable and least environmentally sensitive portions of the site, and 47.1% of the site will be kept as restricted open space. Critical areas have been identified and designated as Native Growth Protection Areas. All utilities will be underground. The proposal will be consistent with the rural character of the area and will be better than a traditionally lot-by-lot development.
6. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
7. 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.
8. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as a conclusion of law as it properly sets forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. There are no changes to the recommendations of the staff report.
9. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.
10. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The preliminary rural cluster subdivision received by PDS on July 31, 2006 (Exhibit 10) shall be the PRD official site plan and approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; 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 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 1 existing parcel(s). Lot 2 shall receive credit."

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

\$2,526.48 per lot for mitigation of impacts on county roads paid to the county.

\$913.44 per lot for mitigation of impacts on the City of Arlington streets paid to the city.

\$344.52 per lot for mitigation of impacts on state highways paid to the county.

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- iii. No direct driveway access to Jordan Road will be permitted by any lots of this rural cluster short plat.
- iv. 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. 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.

DECISION:

The request for a Rural Cluster Subdivision is hereby APPROVED, subject to compliance by the applicant, with the conditions set forth in Conclusion 10, 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 17, 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: Roxanne Pilkenton/Anh-Tuan Dinh

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.