

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
BLACKTAIL FOREST, LLC.) **FILE NO. 01 110742 SD**
)
Plat alteration changing the designation of 40 percent)
Slopes, in Tract 999, from NGPA to Natural Resource)

DATE OF DECISION: September 5, 2007

PLAT/PROJECT NAME: *Blacktail Forest*

DECISION (SUMMARY): The application for a plat alteration is **DENIED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located on the east side of Frank Waters Road, approximately 1500 feet north of its intersection with Lakewood Road, Stanwood.

ACREAGE: 167 acres

NUMBER OF LOTS: 49

AVERAGE LOT SIZE: 46,858

MINIMUM LOT SIZE: 43,587

DENSITY: .29 du/ac (gross)
.86 du/ac (net)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 ac)
Subarea Plan: Northwest County
Subarea Plan Designation: Rural (1 du/ 2.3-5 ac)

UTILITIES:

Water: Seven Lakes Water District
Sewer: Individual septic

SCHOOL DISTRICT: Stanwood No. 401

FIRE DISTRICT: No. 19 and 20

INTRODUCTION

The applicant filed a Revised Land Use Permit Application on December 21, 2006. (Exhibit 83)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 80, 81 and 82)

An addendum to the SEPA determination was made on July 11, 2007. (Exhibit 79) No appeal was filed.

The Examiner held an open record hearing on August 21, 2007, the 116th 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 August 21, 2007 at 1:05 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, Blacktail Forest, LLC was represented by Angela Jones or Urban Design Concepts.. Snohomish County was represented by David Radabaugh of the Department of Planning and Development Services. Vicinity resident Lance Larson testified in opposition to the requested alteration of the plat.

The hearing concluded at 2:04 p.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 of 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 is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. The applicant, Robinett Development Company, L.L.C. (Blacktail Forest, L.L.C.), received approval of the 49-lot rural cluster subdivision of Blacktail Forest on May 21, 2002. There was community opposition due, in part, to steep slope banks of a Type 4 stream with associated wetlands. During preliminary plat review, the applicant offered to designate the area with slopes greater than 40 percent as Native Growth Protection Area (NGPA), which prohibited logging. Approval was granted subject to that offer. As so approved, the plat was recorded on May 5, 2004 with the slopes to be protected as NGPA in perpetuity.
4. However, within less than a year thereafter, on March 2, 2005 Snohomish County Hearing Examiner Robert Backstein approved the same plat modification requested herein, allowing logging of the area exceeding 40 percent slope. However, a pre-condition upon that approval expired unfulfilled. The current application is, therefore, necessary or the plat will remain subject to the condition protecting the slopes in excess of 40 percent.
5. The slopes at issue are in Tract 999, which is a required open space tract. Of the 167 acres in the plat, Tract 999 contains 98 acres: 59% of the total. Of the 98 acres of Tract 999, more than 80 acres can be logged now. The modification at issue herein applies to only the 7.41 acres of greater than 40 percent slope where logging is now barred.
6. Exhibit 2 received August 30, 2001 is the rural cluster supplemental narrative. It describes the physiographic features as follows:

*“Major physiographic or natural features found onsite include the following: (i) a Type 4 stream which crosses the northeast corner of the site, (ii) a Category 2 wetland associated with the stream, (iii) four isolated Category 3 wetlands to the north of the stream, (iv) a drainage way for a culvert under 60th Street NW at the southeast corner of the site, and (v) four areas where the slopes equal or exceed 33%. The largest of these areas is located north of the stream and between the Category 2 and Category 3 wetlands. **The stream, wetlands and steep slopes are all located in Tract 999.**”*
(Emphasis supplied.)

7. No evidence in the current application file examines the potential impacts of the logging of more than seven acres of steep slopes on the stream and wetlands at the base of those slopes. Witness Larsen expresses concern that failure of those slopes could result in harm to homes within the plat of Blacktail Forest itself but his testimony is not supported by any geotechnical analysis.
8. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The request to remove the NGPA designation on 7.41 steep-sloped acres and to replace that designation with a designation of Natural Resource Lands may be approved by the Hearing Examiner only if the application is found to be consistent with the general decision criteria of SCC 30.41A.100. (SCC 30.41A.740) Further, a written statement of how the public interest would be served by approval of the alteration must be submitted. (SCC 30.41A.710(6))
2. The above-cited decision criteria require that the Examiner inquire into whether the proposed plat alteration serves the public use and interest by making appropriate provision for the public health, safety and general welfare. In doing so, the Examiner “shall consider” all other relevant facts, including the physical characteristics of the site. (SCC 30.41A.100(1)).
3. Based on a preponderance of the evidence of record as cited in the findings of fact above, the Examiner concludes as a matter of law that allowing logging of the unbuildable steep slopes is not shown by this record to make appropriate provision for the public health, safety and general welfare or serve the public use and interest. (SCC 30.41A.100(2)). No evidence or argument in this matter addresses why the concerns of the public expressed in the original public hearing on the subdivision should be disregarded now to eliminate slope, stream and wetland protection then offered to dispel their concerns. Further, environmental review done for the plat with the subject slopes protected is not adequate to approve the same plat without those protections because the probable, significant, adverse environmental impacts of the project are likely to be materially different if the steep slopes are logged.
4. The burden of proof is upon the applicant. (Examiner Rule 724(a) The applicant has not met that burden in this instance. Therefore, the application for the plat modification should be denied.
5. Any conclusion in this report and 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 plat alteration changing the designation of 40 percent slopes in Tract 999 from Native Growth Protection Area (NGPA) to Natural Resource (NR) is **DENIED**.

Decision issued this 5th day of September, 2007.

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 **SEPTEMBER 17, 2007**. 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 **SEPTEMBER 19, 2007** 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: David Radabaugh

<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>
