

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 04 110091-002 SD
JOHN NORRIS, NORRIS HOMES)	
)	
Major revision to extend the exterior plat boundary,)	
increase the number of lots by nine to total 82 lots,)	
phase the original preliminary plat and rezone)	
additional acreage from RC to R-7,200)	

DATE OF DECISION: January 31, 2007

PLAT/PROJECT NAME: *Fransson Farms*

DECISION (SUMMARY): The application is **CONDITIONALLY APPROVED** with a precondition.

BASIC INFORMATION

GENERAL LOCATION: This project is located at 5804 Lowell-Larimer Road, Everett, Washington.

ACREAGE: 27.24 acres

NUMBER OF LOTS: 82

AVERAGE LOT SIZE: 7,301 square feet

MINIMUM LOT SIZE: 4,229 square feet

DENSITY: 3.01 du/ac (gross)
 5.46 du/ac (net)

ZONING: CURRENT: Residential-7,200 (R-7,200) and Rural Conservation (RC)
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: North Creek
Subarea Plan Designation: Suburban (1 du/ 2.2 ac)

UTILITIES:

Water: Cross Valley Water District
Sewer: Silver Lake Water District

SCHOOL DISTRICT: Snohomish No. 201

FIRE DISTRICT: No. 1

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 June 9, 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 24, 25 and 26)

A SEPA determination was made on November 14, 2006. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on January 11, 2007, the 79th 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 January 11, 2007 at 2:03 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, John Norris, was represented by Mike Petry and Jodey Odegard of CES NW, Inc. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services and by Norm Stone of the Department of Public Works.

3. No citizen submitted any pre-hearing documents into the record or testified except Carolyn Grove and John Grove (a marital community), both of whom testified at the hearing concerning a private agreement between them and George H. Brown Jr. of the Brown –VWS Joint Venture, developers of the plat known as High Valley Ranch. The Examiner held the record open for one week to permit written response to the Groves by the applicant, John Norris, who timely filed the response on January 18, 2007.

The hearing concluded at 3:18 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 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 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 except where findings or conclusions contrary to that report are entered below.
3. The applicant, John Norris for Norris Homes, filed an application for a major revision to a 73-lot preliminary plat (with a concurrent rezone and boundary line adjustment) approved on September 29, 2005. A subsequent minor revision approved administratively on July 5, 2006 reduced the lots by 13 to 60 lots in order to increase the detention ponds' size to accommodate Phase 2, which is the instant application to add 22 new lots for a total of 82 lots: a net increase of nine lots. Phase 2 also requests a rezone of the expanded plat area from RC to the R-7,200 zoning of the earlier phase.
4. The net of 82 new lots will generate 785 average weekday vehicle trips, of which 61 trips will be morning peak-hour trips and 83 will be p.m. peak-hour trips. Traffic impacts are analyzed by the report (Exhibit 7) of Gibson Traffic Consultants, which is summarized and supplemented in the staff report to the Hearing Examiner (Exhibit39) and supplemental staff report (Exhibit 42). Because that staff report is incorporated herein by reference, the Examiner needs not reprint that report here.
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. That review covered Title 13 SCC and Chapter 30.66B SCC as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, 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.

6. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$918.00 for each new single-family home.
7. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
8. The subject site contains three Category 3 wetlands and two streams. The characteristics of each and protection required for each are discussed in the record of the original plat application and in the April 6, 2005 Critical Areas Study (Exhibit 6).
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 Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
11. The only contested issue in this matter is raised by abutting owners Carolyn and John Grove. (Exhibits 8, 9, 37, 40, and 41) The preponderance of the evidence establishes as fact that the prior owners of the subject and adjoining property (Brown-VWS Joint Venture), while installing water and sewer lines for its plats, intercepted the natural spring which had been for decades the cost-free water source of the Grove's dug well. As a result, the Groves had to purchase water from a neighbor for a fee, delivered by a garden hose which froze at times. Further, the intercepted spring flooded and flowed onto 56th Avenue SE, which resulting in separating the Groves from access to the Joint Venture's water and sewer lines. Still further, the flooding of the Groves' property significantly (perhaps irrevocably) damaged or destroyed the Groves' septic drainfield so that the Groves' now live daily with an apparently illegal septic system.
12. On February 2, 2003, the Groves and George H. Brown, Jr., manager of Brown-VWS Joint Venture, executed a written agreement (Exhibit 40) by which the Joint Venture was to perform six actions, which included paying installation costs of hookups of the Grove's two residential structures to the Cross Valley Water line and hook up of both sewer lines of Groves to the Joint Venture's sewer line. The County accepted the two plats for recording based on that February 2, 2003 agreement.
13. The applicant's consultant (Exhibit 41) asserts that the promises of the agreement have been substantially met at the subject application because the Groves have been supplied with two water hookups ("services") from Cross Valley Water. Also, the consultant asserts that two sanitary sewer stubs have been provided along with the necessary permit from Silver Lake Water District.
14. It would exceed the Examiner's authority to render a decision on a contract dispute. However, it does not serve the public health, safety or welfare to approve a plat which would exist at the expense of pre-existing neighbors. Therefore such approval is prohibited by RCW 58.17. The County implements that State mandate and, in fact, did so by refusing to record the proposed plats of Cascade East and High Valley Ranch until:

“...a successful resolution to the Grove's [sic] well and septic system failure....”

(Emphasis supplied. See Joe W. Hattendorf letter, October 23, 2002 at Exhibit 40.)

15. The Examiner leaves contract issues for the Courts. The Examiner does have regulatory authority to condition the subject application upon prior “successful resolution” of the Groves’ plight. Specifically, the plat shall not be recorded until the Groves have, at no expense to themselves, potable water in both dwellings and the ability lawfully use the toilets in both dwellings. That condition has a rational nexus to the series of plats of which the subject plat is a part and that condition is reasonable and it is capable of being accomplished.
16. 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.
17. 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 where adopted 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.
18. As conditioned below herein, the request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC as well as the State Subdivision Code, RCW 58.17. As so conditioned, 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.
19. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

 - (1) the proposal is consistent with the comprehensive plan;
 - (2) the proposal bears a substantial relationship to the public health, safety, and welfare; and
 - (3) where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.
20. 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.
21. 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 proposed plat is one of a series of plats which has had a substantially adverse impact on the Groves as set out herein. If the applicant herein purchased in good faith as an innocent purchaser without knowledge of the obligation to make the Groves whole, the applicant might seek recovery from the seller but cannot thereby avoid meeting plat requirements set by RCW 58.17 and Snohomish County Code Chapter 30.41A and related provisions. If the Groves have already been made whole, nothing further is required of this application. If the Groves do not, in fact, have water and sewer service installed, this plat approval must await that service to the Groves.
3. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
4. 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.
5. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no evidence was submitted of non-compliance with the requirements of Chapter 30.42A, the rezone application is presumed to meet these requirements.
6. 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 major revision to extend the exterior plat boundary, increase the number of lots by nine to total 82 lots, phase the original preliminary plat and rezone additional acreage from Rural Conservation to Residential-7,200 are hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following precondition and conditions:

PRECONDITION:

This approval shall not be effective until the record contains an affidavit of the applicant that the Groves have full water and sewer service installed in their two subject dwellings at the applicant's expense.

CONDITIONS:

- A. The revised preliminary plat received by PDS on October 16, 2006 (Exhibit 16) amending the original preliminary plat approved on December 12, 2005 (Exhibit 15) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. The revised preliminary plat is subject to all restrictions and conditions originally imposed by the Hearing Examiner's decision on September 29, 2005 and the minor revision approved administratively on July 5, 2006 unless specifically changed by this decision.
- C. Prior to initiation of any 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 plat 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 conceptual wetland mitigation plan titled Wetland and Buffer Overview for Fransson Farms, prepared by B & A, Inc. dated December 21, 2004 shall be submitted for review and approval during the construction review phase of this project.
- D. 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 Snohomish School District No. 201 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 two existing parcels. Lots 1 and 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:
 - Phase 1
\$2,162.82 per lot for mitigation of impacts on county roads paid to the county,
\$338.78 per lot for mitigation of impacts on state highways paid to the county,
73.90 per lot for Transportation Demand Management paid to the county,
\$110.18 per lot for mitigation of impacts on city streets for the City of Mill Creek paid to the City of Mill Creek. Proof of payment is required.
 - Phase 2
\$2,439.05 per lot for mitigation of impacts on county roads paid to the county,
\$328.86 per lot for mitigation of impacts on state highways paid to the county,
72.31 per lot for Transportation Demand Management paid to the county,
\$106.96 per lot for mitigation of impacts on city streets for the City of Mill Creek, paid to the City of Mill Creek. 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.”

- iii. 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 30.91N.010 are allowed when approved by the County.”

- iv. The dwelling units within this development are subject to park impact fees in the amount of \$918.00 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.
- v. No lot will take direct access from Lowell-Larimer Road and no lot will take direct access from 56th Ave SE.

E. Prior to recording of the final plat:

Prior to the recording of Phase 1:

- i. Frontage improvements conforming to county standards shall have been constructed along the development’s frontage along 56th Avenue SE and Lowell Larimer Road.
- ii. The 56th Avenue SE/116th Street SE intersection shall have been constructed to a 4-way intersection to the specifications of the County.

Prior to the recording of Phase 2:

- iii. Frontage improvements conforming to county standards shall have been constructed along the development’s frontage along 56th Avenue SE.
- iv. 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.
- v. 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.

- vi. The final wetland mitigation plan shall be completely implemented.
- vii. Boundary Line Adjustment (BLA) # 04-111853-000-00-BA shall be recorded prior to recording of the final plat.
- viii. The covenant set forth in Exhibit 39, shall be included in the project's CC&Rs.

F. In conformity with applicable standards and timing requirements:

- i. Type A landscaping at least three feet in height which will grow to at least eight feet in height within three years and shall be installed in an area with a minimum width of six feet along the outside edge of the detention facility fence. All landscaping shall be shown on the construction plans and shall comply with SCC 30.25.023.

G. 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. This major revision approval will expire on September 29, 2010, the expiration date of the original preliminary plat.

Decision issued this 31st day of January, 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 **FEBRUARY 12, 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 **FEBRUARY 14, 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: Paul MacCready
Department of Public Works: Norm Stone

<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>

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than JANUARY 31, 2008.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
