

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 04 118491-02 SD
L147-1 ST. ANDREWS, LLC)	
)	
Major revision of an approved 12 lot Rural Cluster)	
Subdivision (RCS) on 27.5 acres to a 10 lot RCS on)	
on 23.3 acres with access to be from a new road)	
connecting to McElroy Road)	

DATE OF DECISION: March 8, 2007

PROJECT NAME: *L147-2 Heavey Estates*

DECISION (SUMMARY): The request for major revision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 14715 McElroy Road, on the east side of McElroy Road, Arlington, Washington.

ACREAGE: 23.33 acres

NUMBER OF LOTS: 10

AVERAGE LOT SIZE: 43,471 square feet

MINIMUM LOT SIZE: 36,239 square feet

DENSITY: .43 du/ac (gross)

ZONING: Rural-5 (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 ac, Basic)
Subarea Plan: Arlington
Subarea Plan Designation: Rural (.2 to .4 du/ac)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: Individual wastewater septic

SCHOOL DISTRICT: Arlington No. 16

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 October 23, 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 16, 17 and 18)

A SEPA determination addendum was made on January 19, 2007. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on February 21, 2007, the 78th 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 February 21, 2007 at 1:01 p.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, L147-1 St. Andrews, LLC, was represented by Ryan Larsen of Barclays North. Snohomish County was represented by David Radabaugh of the Department of Planning and Development Services Works.
3. No member of the general public participated in this matter.

The hearing concluded at 1:12 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 applicant, L147-1 St. Andrews, LLC, filed an application for a major amendment to an approved subdivision formerly known as Heavy Estates in order to change the vehicular access, reduce the lot count from 12 to 10 and reduce acreage from 27.49 acres to 23.33 acres. In all other material issues, all approvals, stipulations or conditions applicable to the formerly approved subdivision remain in effect and are incorporated into the revised set of conditions as shown in the Supplemental Staff Report of February 20, 2007 (Exhibit 26). Thus, this review process is limited to only the requested revisions.
3. The revision will provide vehicular access via a new public road provided as a condition upon approval of a separate subdivision approved for the same applicant. In view of the multiple wetlands on-site and in the vicinity, the revision has been reviewed thoroughly for any environmental impacts not previously considered and mitigated. No significant new impacts are shown by this record.
4. 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.
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. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
7. There are four Category 3 wetlands on site and five Category 4 wetlands. The wetland mitigation proposal has been reviewed by PDS and found to be consistent with the critical area regulations. Two of the category 4 wetlands are proposed to be filled for road construction. Additional wetland creation is proposed as mitigation. PDS has reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with the critical areas regulations.
8. 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.
9. The Snohomish County Health District has no objection to this proposal because public water will be supplied by the PUD and 10 on-site sewage disposal drainfields and 100% reserve drainfields will be provided.

10. 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.
11. 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.
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 proposed plat also meets Chapter 30.41A SCC requirements. 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 noted in this report. 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.
14. 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.
15. 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.
16. 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. 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 is for major revision to an approved subdivision with changing access from a new road connecting to McElroy Road, reduction in the number of lots from 12 to 10 and reduction in acreage from 27.49 to 23.33 is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS:

- A. The preliminary plat received by the Department of Planning and Development Services on December 29, 2006 (Exhibit 13B) 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 platlor 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 revised detention plan landscape plan shall be provided for the Department of Planning and Development Services review and approval that provides Type A landscaping or a living fence around the entire perimeter of the detention pond exclusive of the maintenance access unless a landscape modification is approved.
 - iv. A revised landscape plan shall be provided for the proposed supplemental plantings in the site obscuring buffer to include sufficient vegetation to create a site obscuring buffer in portions of the site obscuring buffer where open pasture exists. The Department of Planning and Development Services shall review this plan.
 - v. There shall be no grading or stockpiling of soil in Tract 997, the restricted open space tract.
 - vi. A final mitigation plan based on the Critical Area study for the Heavey Rural Cluster prepared by GECCO dated May 5, 2005 shall be submitted for review and approval during the construction review phase of this project.

- 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 one existing parcel. Lot 1 shall receive credit.”
 - ii. The following items/restrictions shall be shown on the face of the final plat:

SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit or double the amount for a duplex:

 - a. \$1,946.54 per lot for mitigation of impacts on county roads paid to the County,
 - b. \$568.13 per lot for mitigation of impacts on Marysville streets paid to the City.
 - c. \$660.48 per lot for mitigation of impacts on Arlington streets paid to the City,
 - d. \$310.07 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 the Department of Planning and Development Services.
 - 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 32.10.110(29)(a), (c), and (d) are allowed when approved by the County.”
 - iv. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
 - v. The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.
 - vi. Prior to the issuance of a building permit on each lot, 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.
- D. Prior to recording of the final plat:
- i. An opened and accepted county road, constructed to standards acceptable to the Department of Planning and Development Services and the Department of Public Works, shall connect McElroy Road to the entrance of the plat.
 - ii. A boundary line adjustment, approved by the Department of Planning and Development Services, shall be recorded matching the approved plat boundaries and obtaining right-of-way for the public road from McElroy Road to the current east boundary of the development.

- iii. A plan acceptable to DPW shall be included in the construction plans, and construction of the work completed to obtain the required amount of sight distance to the south on McElroy Road from the new public road (144th Street NE) per EDDS 3-08.
- iv. 144th Street NE shall be constructed in accordance with EDDS 3-040 / 3-060 for a public rural collector road from McElroy Road to the current west boundary of the development property; and the right-of-way for the road shall be dedicated.
- v. A safe waiting area outside of the traveled way on McElroy Road at 144th Street NE shall be shown on the approved construction plans, and construction shall have been completed.
- vi. A temporary turnaround and easement will be required for the road stub at the north property line of the development road.
- vii. 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 plat 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.

- viii. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
 - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
 - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan, Exhibit 9.
- ix. The Department of Planning and Development Services staff shall confirm that the sight obscuring buffer performs its sight obscuring function.

E. In conformity with applicable standards and timing requirements:

- i. The approved landscape plan shall be implemented.
- ii. There shall be no grading or stockpiling of soil in Tracts 997 and 998, the restricted open space tracts.

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 original approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300. The expiration date for the preliminary approval of 1147-2 Heavey Estates is November 5, 2010.

Decision issued this 8th day of March, 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 **MARCH 19, 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 **MARCH 22, 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>
