

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

In the Matter of the Application of)
) **FILE NO. 05 120996 SD**
SAT 1, LLC (Martin Robinett))
)
49-lot Rural Cluster Subdivision (RCS) on 111.36 acres)

DATE OF DECISION: June 27, 2007

PROJECT NAME: *Forest Park*

DECISION (SUMMARY): The proposed 49-lot rural cluster subdivision on 111.36 acres is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located near the intersection of 128th Street NE and Burn Road, Granite Falls, Washington.

ACREAGE: 111.36 acres

NUMBER OF LOTS: 49

AVERAGE LOT SIZE: 47,056 square feet

MINIMUM LOT SIZE: 43,583 square feet

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 acre basic)

Subarea Plan: Arlington

Subarea Plan Designation: Rural (0.2 – 0.4 du/ac)

UTILITIES:

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

SCHOOL DISTRICT: Granite Falls No. 332

FIRE DISTRICT: No. 17 and No. 22

INTRODUCTION

The applicant filed the Master Application on June 20, 2005. (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 27, 28 and 29)

A SEPA determination was made on May 9, 2007. (Exhibit 26) No appeal was filed.

The Examiner held an open record hearing on June 12, 2007, the 152nd 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 June 12, 2007 at 9:04 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, Martin Robinett and SAT I, LLC, was represented by Rick McArdle of Triad Associates and by the applicant's attorney, Brent Carson. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services and by Andrew Smith of the Department of Public Works.
3. Public documents had been received into the hearing record on the St. Andrews subdivision in 2006 (Campbell, Carper, Hoge, Johannes, Lindquist, Morris, Smith, Stanton). None of those testified at that 2006 hearing. Several of those and others (Brandstetter, Harstad, Kendrick, Ohm, Wigren,) also submitted letters into the records of some of the six additional subdivisions at issue herein. Testimony was given at the instant hearing by Robert Carper, Connie Hoge, Dick Kendrick, Nettie Stanton and Lin Wigren. The Examiner believes that the record acknowledges and responds to their concerns. Nettie Stanton has lived in Snohomish County for 70 years (since 1937) and laments the rate of change marked by the fact that hers is the only family to have made silage this year. Lin Wigren seeks access for Horner Estates to the east. Dick Kendrick is angry about runoff onto his property. Connie Hoge, a 20-year resident, argues that the subject site's wetlands are one of the largest on the west side of Washington State. Robert Carper argues that an unnamed stream through his property runs for five miles northward but is not acknowledged in this record. He is concerned that the access road will change that stream's drainage. The applicant's witnesses, John Laufenberg of Wetland Resources and Geoffrey Tapert of X-SOUND Engineering responded effectively to concerns about wetlands, streams, runoff and drainage.

The hearing concluded at 11:19 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 subject proposal is one of this applicant's seven contiguous residential subdivisions totaling 303 single-family homes on approximately 700 acres (695 acres) in rural Snohomish County. That group of seven subdivisions was known collectively as the "Teanaway" project in earlier stages of the application. The project is referred to more recently as the "St. Andrews Assemblage". The entire acreage is located outside any urban growth area and lies to the northeast of the terminus of 107th Street NE and westerly of Burn Road. The subdivisions are:

Phase III-A:	Cascade Crest	37 lots
Phase II:	Forest Park.	49 lots
Phase III-B:	Granite Hills	21 lots
Phase VI:	Pilchuck Heights . . .	49 lots
Phase I:	St. Andrews	49 lots
Phase V:	Stilly Ridge	49 lots
Phase IV:	Timber Trails.	<u>49 lots</u>
	Total:	303 lots

3. The seven plats are linked by their ownership, their roads, their drainage and their critical areas. (However, each lot will be served by its individual septic drainfield system.) They are also linked by the requirement to restore stream and wetland damage which occurred on June 10 – 13, 2005 as the result of the intentional destruction of a beaver dam and other stream and wetland degradation. The linkages are demonstrated graphically by the applicant's wall map (Exhibit 51) labeled "Exhibit Map of Teanaway" listing the seven subdivisions as separate phases of the Teanaway project. In view of those linkages, when the first of the seven plats (St. Andrews, 05-120236) was reviewed before the Deputy Hearing Examiner (the "Examiner") in June 2006, the Examiner approved only Phase I in order for permits to be issued for stream restoration work. The Examiner also required that a final stream restoration plan be submitted as a precondition. The Examiner also noted (Finding 16) that analysis of cumulative traffic impact for all seven subdivisions must precede any consideration of the any of the other six phased subdivisions.
4. In response to the Examiner's above-mentioned decision (issued June 22, 2006), the remaining six subdivisions were each listed in one common Environmental Checklist. A Determination of Nonsignificance was then issued on May 9, 2007. During the preceding year, Associated Earth Sciences, Inc. completed for each of the six subdivisions an assessment of development impacts on wetland recharge. (See respective exhibit lists.) Wetland Resources, Inc., completed for each of the six subdivisions a consolidated report termed "Critical Area Study, Habitat Management Plan and Wetland Mitigation Plan. (See respective exhibit lists.) Wetland Resources, Inc. also completed the Stream

Restoration Plan for all seven plats revised June 21, 2006 (Exhibits 18A and 18B). Detailed grading plans for the in-stream restoration were submitted on July 6, 2006 and issued September 6, 2006. X-SOUND Engineering on October 9, 2006 completed a final drainage report on all six subdivisions (Exhibit 15). Drainage plans specific to each of the six subdivisions at issue are described in detail in corresponding sections of each of the six staff reports.

5. On September 25, 2006, Gibson Traffic Consultants completed a report (Exhibit 16) on the cumulative impacts of the St. Andrews Assemblage, noting:

“These developments have been submitted separately and have each individually obtained concurrency based on Snohomish County rules, codes and review, but at the request of the hearing examiner the cumulative impacts of these individual applications is being analyzed. The cumulative impacts of these individual applications will result in 303 total new units.” (Exhibit 16, p. 1)

6. The above-mentioned Gibson report (Exhibit 16) at Table 1 concludes that the 303 homes in the St. Andrews Assemblage will generate nearly 3,000 vehicular trips per weekday (2,900 trips), of which 227 will be a.m. peak-hour trips and 306 will be p.m. peak-hour trips. The distribution of those trips is calculated to be 85% using 123rd Avenue NE and 15% using Burn Road. All of the traffic using 123rd Avenue NE is calculated to use 84th Avenue NE. Of the 15% of traffic using Burn Road, one-third is calculated to be to and from the north and two-thirds to be to and from the south. Approximately three percent of the Burn Road trips to and from the south will use 84th Avenue NE to reach SR-92. Based on those traffic volumes and trip distribution, the report concludes that the St. Andrews Assemblage set of subdivisions will not cause any arterial units to operate at deficient levels of service. The most heavily impacted roadway segment will be the 84th Street NE arterial between SR-9 and SR-92 (Arterial Unit No. 153) and the report concludes that the unit will operate at Level of Service C or better with the additional traffic of the 303 homes proposed.
7. 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, 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. In view of the analysis in Findings Nos. 6 and 7, no transportation impact analysis of each of the proposed subdivisions is merited herein.
8. 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.
9. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
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 on-site septic systems are available. Water will be supplied by Snohomish County PUD No. 1.

Findings of Fact Re. Forest Park

12. Twenty-two wetlands and three streams are located on the site. The wetlands are forested and are all classified as Category 3. Eleven of the wetlands are located within the western portion of the plat and are either part of larger off site stream/wetland systems or are associated with the on-site streams. A Type 3 stream flows south through the western portion of the site and is a tributary to Little Pilchuck Creek. A Type 4 stream flows west and a Type 5 stream flows east into the tributary. The Type 3 stream will support anadromous salmonids and is presumed habitat for bull trout. All of these wetlands, along with the three streams, will be protected by Native Growth Protection Area Easements (NGPA/E). Eleven BMP wetlands are scattered throughout the eastern portion of the site and are proposed to be filled. See the Critical Area Study (Exhibit 21) to see a map of the wetland/stream systems.

Slopes between 33 and 40 percent are located at the southeastern corner of the site. These slopes are partially within the site obscuring buffer and will be protected by a Native Growth Protection Area Easement (NGPA/E) whether within the buffer or on the building lots.

13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.

19. 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 that staff report as properly setting forth the issues, the land use requests, and consistency with existing regulations, policies, and conditions. The staff report is therefore 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 for a 49-lot rural cluster subdivision on 111.36 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The revised preliminary plat/rural cluster subdivision received by PDS on April 3, 2007 (Exhibit 25 A-D) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. 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 plattor 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 Critical Area Study, Habitat Management Plan, and Wetland Mitigation Plan for Forest Park prepared by Wetland Resources, Inc. Revision 2, dated March 9, 2007 (Exhibit 21) 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 dwelling units within this development are subject to park impact fees in the amount of \$48.82 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.”

- ii. “The lots within this subdivision will be subject to school impact mitigation fees for the Granite Falls School District No. 332 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.”

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

\$3,521.76 per lot for mitigation of impacts on County roads paid to the County,

\$22.78 per lot for impacts to WSDOT project DOT-9 paid to the County,

\$750.00 per lot for mitigation of impacts on City streets for the City of Granite Falls paid to the City. Proof of payment to the City is required prior to issuance of the building permit.

These payments are due prior to or 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 or the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.”

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

D. Prior to recording of the final plat:

- i. Pedestrian facilities shall be constructed to the specifications of the County throughout the development.

- ii. Either the plat of Cascade Crest (05-120459 SD) or the plat of St Andrews (05-120236 SD) shall be recorded prior to the recording of Forest Park.

- 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 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.

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 Development Review Division for review and approval prior to installation.

- iv. The final wetland mitigation plan shall be completely implemented.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 6) 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 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 issued this 27th day of June, 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 **JULY 9, 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 **JULY 11, 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

<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>
