

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
PAUL LEAVITT) **FILE NO. 05 121783 SD**
)
69 lot Rural Cluster Subdivision (RCS) on 234.76 acres)

DATE OF DECISION: January 24, 2007

PROJECT NAME: *Greendale North*

DECISION (SUMMARY): The request for a 69-lot rural cluster subdivision on 234.76 acres is hereby APPROVED subject to conditions.

BASIC INFORMATION

GENERAL LOCATION: The property is located west of Lake Goodwin between 172nd Street NW and 164th Street NW, and between 60th Avenue NW and 72nd Avenue NW, Stanwood, Washington.

ACREAGE: 234.76 acres

NUMBER OF LOTS: 69

AVERAGE LOT SIZE: 44,285 square feet

MINIMUM LOT SIZE: 35,914 square feet

DENSITY: .294 du/ac (gross)
.310 du/ac (net)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Rural Residential – 5 (1 du/ac)

UTILITIES:
Water: Seven Lakes Water District
Sewer: Individual Septic

SCHOOL DISTRICT: Stanwood No. 401

FIRE DISTRICT: No. 14

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 March 21, 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 18, 19 and 20)

A SEPA determination was made on October 27, 2006. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on January 9, 2007, the 135th 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 9, 2007 at 1:04 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, Paul Leavitt, was represented by attorney Curtis Smelser of the firm Ryan, Swanson & Cleveland and by Jack Molver of David Evans and Associates, Inc. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services.
3. Two citizens testified at the hearing: (1) Sheree Berg concerning road vacations, impacted animals and construction noise and (2) Charles Smith concerning vehicular access issues and his potable water well. Residents of twelve vicinity households submitted pre-hearing letters of concern. The primary issue was asserted crime, vandalism, speeding and garbage dumping on the private roads of the community such as 56th Avenue NW and concern that the proposed plat will worsen that problem, especially in the area of the Whiteside Homeowners Association.

The hearing concluded at 2:13 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, Paul Leavitt, filed an application for a 69-lot rural cluster subdivision on 235 acres zoned R-5 and located west of Lake Goodwin between 172nd Street NW and 164th Street NW and between 60th Avenue NW and 72nd Avenue NW. An appeal of the County's SEPA threshold determination was withdrawn by the appellants after a pre-hearing conference. The applicant points out that the average lot size will be approximately one acre. That lot size can accommodate upscale homes and grounds and can provide optional sites for septic drainfields and storm drainage facilities. The site is undeveloped.
3. The 69 proposed lots will generate 670 average daily vehicular trips, of which 52 will be morning peak-hour trips and 71 will be p.m. peak-hour trips. The staff report examines the roadway and traffic issues in detail and the Examiner has adopted that report by reference above herein. There is no benefit from a repeat of that analysis here.
4. The applicant's representative, Jack Molver, testified that the subject site had been platted nearly a century ago and that 65% of the site will be preserved as restricted open space. Mr. Molver responded fully to vicinity resident Charles Smith's concerns about vehicular access and about Mr. Smith's well. Mr. Molver pointed out that no septic drainfield would be closer than 400 feet to that well.
5. Mr. Molver also responded to the concerns of vicinity resident Sheree Berg (Exhibit 51). However, her concern with construction noise was not resolved by the testimony of the applicant. The Examiner has considered her concerns and her request that significant noise be limited to the hours of 7:00 a.m. to 5:00 p.m. The Examiner finds as fact that the predominantly one-acre lots in the proposed plat will provide sufficient building setback from existing homes that the work of laborers on site will seldom be onerous. The sounds of heavy mechanical equipment and vehicles cannot be abated fully but also will not be constant for any given existing homeowner. Consequently, the Examiner concludes that sound permitted pursuant to Snohomish County's Noise Control Chapter 10.01 is acceptable here but, of course, no sound violating that Chapter is to be generated.
6. 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.

7. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$811.29 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
9. There are three Type 4 streams and 17 Category 3 wetlands on site. Mitigation is provided for development impacts to seven wetlands and a Type 4 stream. All undisturbed critical areas, and buffers, are established as NGPA/E.
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 because public water will be supplied by the Seven Lakes Water Association and the lots will be served by individual septic systems. Electrical power also will be available for this development.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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 for a 69-lot rural cluster subdivision on 234.76 acres is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The preliminary plat received by PDS on October 10, 2006, (Exhibit 14 A-G) 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 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 *Critical Areas Study and Buffer Mitigation Plan* prepared by David Evans and Associates, Inc., dated June 5, 2006 (Exhibit 12), 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 Stanwood School District No. 401 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 5 existing parcels. Lots 1 through 5 shall receive credit."

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

- \$2,526.48 per lot for mitigation of impacts on county roads paid to the county.
- \$344.52 per lot for mitigation of impacts on State roads paid to the county.
- \$425.34 per lot for mitigation of impacts on Arlington roads paid to the city.

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 PDS.

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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 developer shall pay the County \$811.29 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording any phase of the final plat:

i. 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 platator 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.

- ii. The final wetland mitigation plan shall be completely implemented.
- iii. The right-of-way vacation process must be completed prior to recording the development.

Prior to recording Phase One (lots 1 through 24) of the subdivision:

- iv. Bollards that meet EDDS requirements shall block access to the north on 62nd Avenue NW until such time that the private gravel road system north of the development property has been constructed to minimum county design standards and converted to public from the subject property to Lakewood Road.
- v. A temporary turnaround and easement shall be provided at the north end of 62nd Avenue NW, south of the bollards.
- vi. The petition to vacate the right-of-way within and adjoining the development (except for 164th Street NW along the entire south property line and 72nd Avenue NW along the entire west property line) shall have been granted.
- vii. 164th Street NW shall be constructed in accordance with EDDS 3-040 / 3-060 for a public rural residential road, and in accordance with the approved deviation request, from West Lake Goodwin Road to the east intersecting interior plat road (Road A).

Prior to recording Phase Two (lots 1 through 46) of the subdivision:

- viii. 164th Street NW shall be constructed in accordance with EDDS 3-040 / 3-060 for a public rural residential road, and in accordance with the approved deviation request, from the east intersecting interior plat road (Road A) to the west intersecting interior plat road (Road E).

- E. In conformity with applicable standards and timing requirements:
 - i. The preliminary landscape plan (Exhibit 14A, 14F, and 14G) 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 permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

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Decision issued this 24th 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 **FEBURARY 5, 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 7, 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: Ed Caine / Ann Goetz

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.
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