

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: February 5, 2007

PLAT/PROJECT NAME: *HARVEST HILLS*

APPLICANT/
LANDOWNER: Darling Investments, LLC

FILE NO.: 06 100423 LU

TYPE OF REQUEST: **PRELIMINARY PLAT** of 20.10 acres, utilizing lot size averaging provisions, into 71 lots

DECISION (SUMMARY): APPROVE

BASIC INFORMATION

GENERAL LOCATION: The property is located at approximately 4901 79th Avenue NE, Marysville, WA

ACREAGE: 20.10 acres

DENSITY: 3.53 du/ac (gross)
4.15 du/ac (net)

NUMBER OF LOTS: 71

AVERAGE LOT SIZE: 6,055 square feet

MINIMUM LOT SIZE: 4,231 square feet

OPEN SPACE: 141,160 square feet

ZONING: Residential-7200 (R-7200)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

UTILITIES:

Water: City of Marysville
Sewage: City of Marysville

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions

Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on June 16, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on January 15, 2007.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 20-23)

A SEPA determination was made on December 13, 2006. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on January 18, 2007, the 65th 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 18, 2007 at 3:05 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.

The hearing concluded at 3:31 p.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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 correctly 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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. Scott Darling of Darling Investments (Applicant) proposes to subdivide a 20.10 acre tract at approximately 4901 79th Avenue NE, Marysville, into 71 single-family lots, utilizing the lot size

averaging provisions of the Snohomish County Code (SCC). The site is undeveloped and relatively flat. A series of wetlands occupy the center of the property.

4. The site was annexed to the City of Marysville while the application was pending. It was agreed that the County would continue review of the application for preliminary plat approval, using Marysville development standards.
5. The site is close to a future park planned by the City of Marysville. One letter was received from a nearby resident concerning the proximity of the plat to the park site. By working with Marysville staff, Applicant has satisfied that city's concerns regarding the proposed park.
6. Seven open space tracts are provided for native growth, wetlands, and stormwater detention. Easements for Olympic Pipeline and Puget Sound Energy form the western boundary of the site.
7. The site is designated for Urban Low Density Residential use and is zoned R-7200. It is in an Urban Growth Area.
8. Access to the site will be by three existing roads: two to the north property line and one to 79th Avenue NE to the south. Two road connections are planned to the east when that property is developed. The access via 79th Avenue NE to the south will be barricaded. If and when Applicant is able to use that street for access, he will need a variance from the City of Marysville to allow direct access from lots to this arterial.
9. The subdivision will generate an average of 718 vehicle trips per day, with 76 in the a.m. peak hour and 56 in the p.m. peak hour. The project was deemed concurrent on August 4, 2006.
10. Applicant will pay impact fees for roads, state highways and Arlington and Marysville streets. In addition, Applicant will discharge his transportation demand management responsibility by payment of \$5,378.25.
11. Sidewalks will be provided along the property frontage from 79th Avenue NE and on both sides of new roads. Children will have safe walking conditions to school bus stops.
12. Stormwater will be routed to a detention pond at the southwest end of the property. The proposed system has been conceptually approved and will be subject to full drainage review and approval prior to construction of improvements.
13. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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. There are no changes to the recommendations of the staff report.
2. The design criteria for approval of a subdivision are set forth in RCW 58.17.100-120 and .195 and require that the proposed plat conform to applicable zoning ordinances and comprehensive plan, and make

appropriate provisions for the 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.

3. Staff concludes that the proposed plat satisfies these criteria and the Examiner concurs. The plat should be approved, subject to the following Conditions to assure compliance with the statutory criteria:

CONDITIONS

- A. The revised preliminary plat received by PDS on October 24, 2006 (Exhibit 14) 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 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 Critical Area Study and Conceptual Mitigation Plan for Harvest Hills, prepared by Curran Environmental Services revised October 18, 2006 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 Lake Stevens School District 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 five existing parcels. Lots 1 through 5 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:
\$2,315.94 per lot for mitigation of impacts on county roads paid to the county,
\$75.75 per lot for transportation demand management paid to the county for TSA A,
\$2,540.00 per lot for mitigation of impacts on Marysville streets paid to the city,
\$209.68 per lot for mitigation of impacts on Arlington streets paid to the city.
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.”

- iv. On lots with more than one road frontage, County Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works grants a formal deviation.
- v. 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. Urban standard frontage improvements shall be constructed along the property frontage with 79th Avenue NE in conformance to the City of Marysville design standards and the deviation request approval, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- ii. Bollards or a barrier that meet EDDS requirements and/or the Fire Marshal’s requirements shall block access to the south on 79th Avenue NE until such time that it has been constructed to minimum county design standards from the subject property to 44th Avenue NE. A temporary turnaround shall have been constructed north of the bollards/barrier as a turnaround for the south section of 79th Avenue NE.
- 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 Land Use Division for review and approval prior to installation.

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

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 4) 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 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.

4. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for approval of the **PRELIMINARY PLAT** of *Harvest Hills* is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 3, above.

Decision issued this 5th day of February, 2007.

Gordon F. Crandall, Hearing Examiner Pro-Tem

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 15, 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 19, 2007** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Paul MacCready

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.