

# **REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: October 9, 2007

APPLICANTS: *DALE & SANDRA KIRKPATRICK*

APPELLANTS: DAVID & JODY BULLARD  
SUE KLINKER & SCOTT CHENOWETH

FILE NO.: 06 102796 SP

TYPE OF REQUEST: Appeal from the approval by the Department of Planning and Development Services of a two-lot short subdivision

DECISION (SUMMARY): Appeal granted in part/denied in part

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located at 13207 178<sup>th</sup> Drive SE, Snohomish, WA

## **INTRODUCTION**

The Examiner held an open record hearing on July 17, 2007 and on August 29, 2007. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

## **PUBLIC HEARING**

1. The public hearing commenced on July 17, 2007 at 10:00 a.m. and was continued to August 29, 2007 at 3:03 p.m.
2. The Applicants, Dale and Sandra Kirkpatrick, were represented by Stephen Roos. The Appellants, Bullard, Chenoweth & Klinker, were represented by Gregory Ursich. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services.
3. The hearing concluded on August 29, 2007 at 5:44 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. Dale and Sandra Kirkpatrick (Applicants) own a five acre parcel in unincorporated Snohomish County at 13207 178<sup>th</sup> Drive SE, Snohomish, WA. The site is in an unsewered enclave of an Urban Growth Area. Applicants applied for and received approval of an application for a short plat of their property into two lots. The short plat was approved on April 26, 2007.
2. Applicants' property is one lot of a four lot short plat served by a private road, identified as 178<sup>th</sup> Drive SE. The road is jointly owned by Applicants and three other owners: the Bullards, Scott Chenoweth, Sue Klinker, (Appellants).and Sean and Joni Mayer (who are not Appellants).
3. One of the conditions of the short plat was that 178<sup>th</sup> Drive SE be widened from its current 10 or so feet to a minimum of 20 feet, as specified in the county's EDDS standards. An application for a waiver of the full drainage plan requirement was granted, and compliance with that requirement was delayed to the single-family phase of the proposal. No drainage facilities were proposed.
4. Applicants widened 178<sup>th</sup> Drive to 20 feet by improving the west side of the right-of-way, and constructed a berm there to channel stormwater to the south. As a result, drainage on the Bullard property increased, leaving puddles in their yard and driveway and making their basement damp. The roadwork was completed on March 16, 2007. Following complaints that stormwater was being channeled toward the home of neighbors, the berm was removed by Applicants' contractor on March 29, 2007.
5. Even after the berm was removed, water continued to flow towards the Bullards and Chenoweth/Klinker lots. Apparently there was a sufficient ditch remaining even after the berm had been removed.
6. Appellants now ask that the earthen shoulder on the west side of the road be removed to a depth of three inches minimum below the elevation of the road, and that the terrain be sloped so that the stormwater will sheet flow across the property to the west. Appellants also ask that the roadside drainage course on the east side of the roadway be extended to the south to a point that is beyond the Bullards' driveway.
7. Applicants make various legal challenges to the appeal, and contend that Appellants have failed to sustain their burden of proof that the PDS findings are incorrect, that the short plat is inconsistent with various sections of the Snohomish County Code, that the Examiner has no jurisdiction to interpret or enforce the 1979 short plat declaration, that Appellants sole remedy is a land use petition to Superior Court, and that the county's grading and drainage decisions were proper. They contend that the drainage problem is a minor, long standing problem of the Bullards. To remedy the situation, Applicants offer to "remove any remnants of the previously constructed berm..."
8. Any conclusion of law deemed to be a finding of fact is adopted as such.

### **CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Hearing Examiner is authorized to conduct a hearing and make a decision on an appeal of a decision of PDS granting a short plat. Title 30 SCC.
2. In essence, the appeal is of the failure of PDS to specify that 178<sup>th</sup> Drive SE be widened in a manner which would not increase stormwater flowing onto developed property downstream. The resulting flooding from the road improvements demonstrates the need for such a condition. The full drainage plan requirement was waived.
3. Applicants offer to perform the following condition to resolve the appeal: “Within 30 days after approval of this short plat, the applicant shall take all necessary steps to remove any remnants of the previously constructed berm along the west edge of the gravel portion of 178<sup>th</sup> Drive.”
4. Appellants request a decision requiring Applicants to remove the earthen shoulder on the west side of the road to a depth of three inches minimum below the elevation of the gravel road, and to slope the resulting earth shoulder away (westerly) from the gravel road consistent with an attached sketch. Appellants also ask for extension of the roadside drainage course on the east side of 178<sup>th</sup> Drive SE to a point that is beyond the Bullards driveway.
5. Any finding of fact deemed to be a conclusion of law is adopted as such.

## **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the appeal as follows:

The appeal of the Bullards and Chenoweth/Klinker is **GRANTED**. Applicants’ legal arguments, while formidable, are denied. Applicants shall within 30 days after the date of this decision take all necessary steps to remove any remnants of the previously constructed berm along the west edge of the gravel portion of 178<sup>th</sup> Drive SE, to a depth of three inches minimum below the elevation of the gravel road. The resulting earthen shoulder shall slope away from the gravel road.

The request that Applicants be required to extend the roadside drainage course on the east side of 178<sup>th</sup> Drive SE is **DENIED**. This condition was not caused by Applicants’ road improvement and it is a pre-existing condition unaffected by the short plat approval. .

Decision issued this 9<sup>th</sup> day of October, 2007.

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Gordon 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **October 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.

## EXPLANATION OF APPEAL PROCEDURES

The following paragraphs summarize the appeal process. For more information about appeals to Superior Court, please see Chapter 36.70C RCW, RCW 43.21C.075, WAC 197-11-680, Chapter 30.85 SCC and applicable court rules.

Pursuant to Chapter 30.85 SCC and Chapter 36.70C RCW, any person having standing under RCW 36.70C.060 may file a Land Use Petition in Superior Court. Service on parties must be as required by RCW 36.70C.040.

The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent in copying and assembling the record and preparing the return for filing with the court shall be borne by the petitioner. [RCW 36.70C.110] Please include the county file number in any correspondence regarding this case.

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Staff Distribution:

Department of Planning and Development Services: Ed Caine

<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>
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