

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

In the Matter of the Application of)
)
SAMIS LAND COMPANY, INC.) **FILE NO. 06 103514 SD**
)
23 lot Rural Cluster Subdivision (RCS) on 78.5 acres)

DATE OF DECISION: July 13, 2007

PROJECT NAME: *Menzel Lake Estates North*

DECISION (SUMMARY): The application for a 23-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located approximately three miles south of Granite Falls on the west side of Menzel Lake Road and on both sides of Menzel Lake, Granite Falls, Washington.

ACREAGE: 78.5 acres

NUMBER OF LOTS: 23

AVERAGE LOT SIZE: 24,196 square feet

MINIMUM LOT SIZE: 20,000 square feet

DENSITY: .29 du/ac (gross)
.30 du/ac (net)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 (1 du/5 ac)

UTILITIES:

Water: Snohomish County PUD No. 1

Sewer: Individual septic

SCHOOL DISTRICT: Granite Falls No. 332

FIRE DISTRICT: No. 17

INTRODUCTION

The applicant filed the Master Application on June 29, 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 19, 20 and 21)

A SEPA determination was made on April 26, 2007. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on July 10, 2007, the 124th 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 July 10, 2007 at 9:02 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, Samis Land Company, Inc., was represented by John Bissell of Higa Burkholder Associates. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services. Washington State's Department of Ecology was represented by wetland specialist Paul S. Anderson, assigned to Snohomish County.
3. No member of the general public attended the public hearing. However, written inquiries about the location of the proposed development, the zoning, the lot sizes and comment opportunities were submitted by Chuck and Debra Holland (Exhibit 22) and by Kathryn Piland (Exhibit 23).

The hearing concluded at 10:04 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 applicant, Samis Land Company, Inc., filed an application for a 23-lot rural cluster subdivision on 78.5 acres adjacent to, and on the east and west sides of, Menzel Lake, three miles south of Granite Falls on Menzel Lake Road.
3. The applicant's representative, John Bissell, testifies that the proposed 23 lots are a lot yield permitted by the underlying zoning and the rural cluster subdivision regulations. Approximately 81% of the site will be retained in restricted open space, which exceeds the 65% required.
4. The locating of the ordinary high water mark (OHWM) on site has a convoluted history. The OHWM shown in the original plans submitted with the initial project application was challenged by Washington State's Department of Ecology's wetland specialist Paul S. Anderson by his letter dated July 21, 2006 (Exhibit 28). Subsequently, a revised OHWM determination showing a continuous OHWM line for Menzel Lake, Little Menzel Lake and their connecting channel was verified by Tong Trann of Snohomish County's Department of Planning and Development Services in a November 2, 2006 e-mail to Scott Brainerd of Wetland Resources, Inc. Mr. Brainerd testifies that that OHWM was revised in November 2006 and is shown on plans submitted in February 2007. He also points out that Washington States' Department of Fish and Wildlife and Washington Trout personnel met on site to verify that OHWM.
5. With that OHWM correctly delineated as the measuring base, the 150-foot fish and wildlife habitat conservation area (FWHCA) is established landward thereof and, beyond it, another 150-foot riparian management zone (RMZ) is established. The two buffers are 300 feet wide. Proposed Lots 6 through 23 to the west are well landward of those two buffers. However, Lots 1, 2 and 3 on the east side of the Lake have approximately one half of each lot located waterward of the RMZ. Although the building pad for the dwelling for each appears to be landward of the RMZ, the septic drainfields and drainfield reserve areas for the three lots are within the RMZ. (See Exhibits 17-A, 17-B, and 36.)
6. Further revisions to the original proposal include deletion of a 1,200 square-foot wetland fill originally proposed as part of road access to the western portion of the development. Had that wetland impact not been deleted, the Department of Ecology asserts that failure to have performed a functional analysis of the wetland would have prevented any determination of the extent of loss of the Category 1 habitat function and, thus, would have prevented a determination of what width of buffer would be warranted there by application of best available science. (Exhibit 28)
7. The applicant asserts that the Hearing Examiner has no authority to rule on the concerns expressed by the Department of Ecology's wetland specialist, Paul Anderson. On the contrary, County subdivision and related development regulations must be interpreted and applied consistent with applicable, adopted statutes or regulations of the State of Washington, with RCW 58.17 as one obvious and sufficient example. Further, because the County invited DOE to comment as an agency with expertise, DOE's response to that request for review is properly before the Examiner as evidence of record and must be

considered although DOE is not a permitting entity in this proceeding at this time. As noted by Mr. Anderson, permitting decisions by both DOE and the Corps of Engineers likely will yet be required as to this subdivision.

8. The 23 proposed lots will generate 220 average weekday daily trips, of which 17 will be a.m. peak-hour trips and 23 will be p.m. peak-hour trips. The Granite Falls School District reports (Exhibit 30) that students of all grade levels will be bussed to school from a bus stop at the entrance to the proposed development. The School District asks that safe walking and waiting areas be provided.
9. 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.
10. There are no park mitigation requirements for this project.
11. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
12. Menzel Lake divides the property, with a smaller portion of the site to the east of the lake and a larger portion to the west of the lake. A small portion of Little Menzel Lake extends onto the southern portion of the site. Both Menzel Lake and Little Menzel Lake have associated Category 1 wetlands. Wetlands and related buffers are depicted on the face of the plat and related sheets and at Exhibit 36.
13. 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.
14. Each proposed lot will be served by its individual septic system and drainfields. Water and electricity will be supplied by Snohomish County PUD No. 1 (Exhibit 26). The Snohomish County Health District has no objection to this proposal (Exhibit 31).
15. 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.
16. 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.

17. 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.
18. 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.
19. 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.
20. 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.
21. 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 relationship to 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 23-lot rural cluster subdivision on 78.5 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on February 27, 2007 (Exhibit 17A) 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.
- 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 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 1 existing parcel. Lot 1 shall receive credit.”
 - ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for a single-family residence:
 - \$3,799.29 per lot for mitigation of impacts on county roads paid to the county,
 - \$625.00 per lot for mitigation of impacts on city roads paid to the City of Granite Falls.

These payments are due prior to or at the time of 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.
 - 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 30.91N.010 are allowed when approved by the County."

- iv. The developer shall pay the County \$0.00 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 of the final plat:

- i. 20 feet of right-of-way shall be dedicated such that 40 feet of right-of-way exists from the right-of-way centerline of Menzel Lake Road on both sides, along the property frontage.
- ii. Construction of frontage improvements conforming to EDDS shall have been completed along Menzel Lake Road, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- iii. The access road between Menzel Lake Road and the west area of the property (serving lots 6 through 23); shall be dedicated or deeded to the County and constructed in accordance with EDDS 3-040 for a public rural collector road.
- iv. Lots 1 through 5 shall each have an adequate turnaround shown on the construction plans.
- v. 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.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 17F) 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.

Decision issued this 13th day of July, 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 23, 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 27, 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

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.
--