

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**WILLIAM SCRUPPS** ) **FILE NO. 06 125162 SD**  
 )  
21-lot Rural Cluster Subdivision (RCS) on 48.11 acres )

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DATE OF DECISION: September 7, 2007

PROJECT NAME: *Nasman Ridge*

DECISION (SUMMARY): The application is **CONDITIONALLY APPROVED with precondition.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at the existing terminus of 150<sup>th</sup> Street SE approximately 1,000 feet south of Old Owen Road, Monroe, Washington.

ACREAGE: 48.11 acres

NUMBER OF LOTS: 21

AVERAGE LOT SIZE: 42,875 square feet

MINIMUM LOT SIZE: 28,485 square feet

DENSITY: .46 du/ac (gross)

ZONING: R-5 and A-10

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 ac, Basic)  
Rural Residential-5 (1 du/5 ac)  
Riverway Commercial Farmland

UTILITIES:

Water: Highland Water District  
Sewer: Individual septic

SCHOOL DISTRICT: Monroe No. 103

FIRE DISTRICT: No. 3

**INTRODUCTION**

The applicant filed the Revised Master Application on June 1, 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 33, 34 and 35)

A SEPA determination was made on June 27, 2007. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on August 22, 2007, the 142<sup>nd</sup> 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 August 22, 2007 at 1:02 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, William Scrupps, was represented by David Gipson of Harmsen and Associates. Snohomish County was represented by David Radabaugh of the Department of Planning and Development Services.
3. Three vicinity residents submitted pre-hearing letters of concern: Barb Armstrong (Exhibit 37), Marc Bhend (Exhibit 36) and Elaine Pfeiffer (Exhibit 38). All three express concerns about traffic in the vicinity. None of those three testified at the hearing. Testimony was taken from vicinity residents Diana and Joe Keeley and George Tappert. They live in the adjoining Cougar Ridge Community and, although they expressed numerous concerns, their principal issue is whether this proposal will result in opening a through-traffic route through their neighborhood, which has no frontage improvements.

The hearing concluded at 2:15 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, William Scrups, filed an application for a 21-lot rural cluster subdivision on 48 acres zoned R-5 and A-10 located at the terminus of 150<sup>th</sup> Street SE approximately 1,000 feet south of Old Owen Road near Monroe. Because property zoned A-10 cannot be included in a rural cluster subdivision, the approximately one-acre A-10 portion of the subject site is designated open space Tracts C, D, E and F not included in the 47 acres allocated to the rural cluster subdivision, of which 24 acres are proposed to be open space.
3. A boundary line adjustment has been negotiated between the applicant and the Monroe School District to facilitate joint development of a 27,439-square foot area astride the western access road and beginning approximately 200 feet south of Old Owen Road to meet the needs of both the School District and the proposed subdivision. No evidence of record raises concern about that boundary line adjustment. The Examiner intends this decision to validate the boundary line adjustment and the Examiner has signed that boundary line adjustment which is Exhibit 53 in this record.
4. The aforementioned area for joint development ends at approximately the eastern terminus of 150 Street SE, which is now blocked or dead-ended without forming a connection to Old Owen Road to the north. Because it is unknown what the eventual design of the jointly developed portion of the plat access road will be, neighbors in the Cougar Ridge community are concerned that their neighborhood streets will be used for construction trucks and other traffic during and after construction of the proposed plat.
5. In testimony, the applicant's representative stated that the applicant does not desire or need to have construction or other vehicular access through Cougar Ridge. Further, testimony indicates that few vicinity residents would use 150<sup>th</sup> Street SE through the Cougar Ridge community after the proposed subdivision is built. Thus, it appears that the Cougar Ridge neighbors need protection from the intrusion of construction traffic but not likely from future, daily residential traffic. The Examiner adds a condition upon approval to provide protection from the construction traffic.
6. 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.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$344.52 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. The Monroe School District requests that the cul-de-sac of the southern internal plat road have a school bus turning radius of 60 feet and the plat so depicts that feature.

9. The applicant has identified a potential wetland area within Tract 998. This area has been proposed to be Native Growth Protection Area. PDS staff has agreed that this is acceptable.
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 sewer are furnished. The Highland Water District will supply potable water but sewage disposal will be by individual wastewater septic systems.
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 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 21-lot rural cluster subdivision on 48.11 acres is hereby **CONDITIONALLY APPROVED**, subject to the following precondition and conditions:

### **<sup>1</sup>PRECONDITION:**

- A. The plat map shall be revised to demonstrate that there is adequate area in the rural cluster subdivision portion of the plat to yield 21 lots or revise the plat to yield 20 lots.

### **CONDITIONS**

- A. The preliminary plat received by PDS on May 18, 2007 (Exhibit 32), as revised by Precondition A, 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. The applicant shall provide documentation that there will be adequate fire flow in the plat, if not adequately documented by the water flow analysis prepared by Roth Hill Engineering Partners, LLC (Exhibit 51).

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<sup>1</sup> Scrivener's error: Precondition A erroneously left off of the September 7, 2007 decision. (9/12/07)  
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- iv. The applicant shall place temporary barricades at the eastern terminus of 150<sup>th</sup> Street SE at its intersection with the plat road so that no through traffic can pass into or through the Cougar Ridge community. The barricades will be removed after completion of all construction if the Department of Public Works determines that it is in the interest of the public health, safety and welfare to do so.

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 Monroe School District No. 103 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.”

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

\$1,588.62 per lot for mitigation of impacts on county roads paid to the county,

\$344.52 per lot for mitigation of impacts to state highways paid to the county for the state.

Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- 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 \$344.52 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.

- v. The Agriculture lands disclosure text in SCC 30.32B.220 shall be included of the face of the final plat.

D. Prior to recording of the final plat:

- i. The private road shall have been constructed to the EDDS Private Road Rural standard shown on Plate 3-060 of the EDDS (with the 7 foot shoulder) which will provide safe walking conditions for the students from this development to a local school bus stop.

- ii. 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.

- iii. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
  - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
  - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan (Exhibit 19).
- iv. The proposed right-of-way in the Area of Joint Development with Monroe School District creating a public road connection between the plat road and Old Owen Road shall be constructed and opened as a public road.
- v. A boundary line adjustment establishing the preliminary plat boundaries shall have been approved and recorded.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary rural cluster landscape plans (Exhibit 28 and 30) shall be implemented. All required landscaping shall be installed in accordance with the approved landscape plan. Exhibit 28 shall be applied to the site obscuring buffer, where site obscuring vegetation is insufficient. Exhibit 30 shall be applied to the 15 foot building setbacks near the centers of lots 13 through 18.

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 7<sup>th</sup> day of September, 2007.

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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, 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 **SEPTEMBER 17, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 21, 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.

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**Staff Distribution:**

Department of Planning and Development Services: David Radabaugh

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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**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than SEPTEMBER 7, 2008.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

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**ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of \_\_\_\_\_, \_\_\_\_\_.

Certified by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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