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

In the Matter of the Application of)
)
TRI MET DEVELOPMENT, LLC) **FILE NO. 06 125755 SD**
)
28-lot Rural Cluster Subdivision (RCS) on 93.63 acres)

DATE OF DECISION: April 13, 2007

PROJECT NAME: *Snohomish Golf Estates*

DECISION (SUMMARY): The proposed 28-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located north of 88th Street SE, adjacent to the east boundary of the Snohomish Golf Course, Snohomish, Washington.

ACREAGE: 93.63 acres

NUMBER OF LOTS: 28

AVERAGE LOT SIZE: 39,714 square feet

MINIMUM LOT SIZE: 29,423 square feet

DENSITY: .29 du/ac (gross)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Roosevelt Water Association
Sewer: Individual Septic

SCHOOL DISTRICT: Snohomish No. 201

FIRE DISTRICT: No. 4

INTRODUCTION

The applicant filed the 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 17, 18 and 19)

A SEPA determination was made on February 12, 2007. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on April 3, 2007, the 78th 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 April 3, 2007 at 11:04 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, TriMet Development, LLC, was represented by James Barnett of DR Strong and by wetland biologist Jason Walker. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services.
3. Pre-hearing documents expressing concern or opposition were submitted by vicinity residents Lynn DeBroeck (by Jeffrey School e-mail), Howard E. Hilton, Gayla and Ken Jenner, Janet and Lee McElvaine, Juliet and Thomas Paulson and Jeffrey Scholl. The Jenners appeared and testified at the public hearing. (See Findings below.)

The hearing concluded at 11:50 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, Trimet Development, LLC, filed an application for a 28-lot rural cluster subdivision on 93.63 acres zoned R-5 located north of 88th Street SE adjacent to the east boundary of the Snohomish golf course in Snohomish.
3. Concerns expressed by the above-listed vicinity residents include (1) storm water drainage and maintenance of individual lot storm drainage devices, (2) vehicular traffic impacts, especially at the intersection of 147th Avenue SE and 80th Street SE, where deaths have occurred, and the need to lower speed limits, (3) species not listed on the Environmental Checklist, (4) possible use of the 100-foot City of Everett water supply line easement and Tract 997 for recreation such as motorized recreation with resultant loss of privacy and security for existing residents, (5) whether firing of guns will be prohibited by covenants in the proposed subdivision, and (6) general objection to use of the rural cluster subdivision to exceed density allowed by the underlying R-5 zoning.
4. Much of the one hour hearing was devoted to responding to those public concerns. As to storm drainage, the evidence and argument of record establish that the concept of detention in the rear portions of many lots will enable storm runoff to follow the natural course downslope towards the wetlands. That concept mitigates for the conversion from young forest to lawns better than would tightlined conveyance of storm water. Further, wetponds will control drainage from Tracts 988, 992, 996 and 998 and rooftops of Lots 1 through 5 will drain to Tract 997. Maintenance of the stormwater detention devices on individual lots is assured by Drainage Facility Maintenance Covenants, which make maintenance the responsibility of each lot's owner but which authorize Snohomish County to perform needed maintenance at that owner's expense. (See also Conditions C.vi and D.i below herein regarding Lots 1, 2 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 22, 23, 25, 26 and 27.)
5. As to traffic impacts, the Examiner finds that the analysis by SnoCo Traffic consultants and review by PDS Traffic staff demonstrate that the local infrastructure can absorb the additional traffic generated by the proposed subdivision. The proposed 28 single-family detached homes will generate 268 new daily trips of which 21 will be a.m. peak-hour trips and 28 will be p.m. peak-hour trips. (The Environmental Checklist at page 19 overstates the trip generation.) 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. That review did not indicate a need to reduce speed below the design speed of the roadway despite, as Mr. Scholl points out, the lack of sidewalks and the high speed even now on the straight section of road at the proposed plat entrance.

6. As to the Environmental Checklist not listing every creature on-site, the Examiner finds that the Critical Areas Report (Exhibit 11) supplements the Checklist adequately so that no significant under-reporting of wildlife has occurred. As to potential recreational use of the water supply easement, it appears that such use would most adversely impact the residents of the subject subdivision and, consequently, their homeowners association would likely help prevent such use rather than promote it. As to the firing of guns, the applicant testified that the covenants do prohibit firing of guns. As to use of the rural cluster subdivision bonus to increase density, the County Code grants that bonus in trade for more environmentally sensitive and buffered rural development.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,361.22 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. Snohomish School District No. 201 reports (Exhibit 33) that students of all grades will be picked up at a school bus stop at the plat entrance road at 88th Street SE. That District requests a safe bus waiting area there and Condition D.v below herein specifically requires that waiting area.
9. There are 36 Category 3 wetlands and nine streams (one Type 3, two Type 4, and six Type 5) on site. There are now 491,856 square feet of wetlands on-site (11.29 acres) and, at build-out of the proposed subdivision, that will be slightly larger at 494,095 square feet (11.34 acres). In summary, there is no net loss of wetland. PDS has reviewed the document titled "Critical Areas Report, Wetland Mitigation Plan and Habitat Management Plan (Exhibit 11) and finds the project to comply with the critical areas regulations.
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 viable septic drain fields are available. (Exhibit 35) The Health District requires that each drain field be planned and graded as described in a February 5, 2007 e-mail by James Barnett to the Health District's Bruce Straughn with no portion of a drain field graded over and in conformance with WAC 246.272 and Health District requirements. Water will be supplied by the Roosevelt Water System. (Exhibit 27) Electricity will be supplied by Snohomish County Public Utility District No. 1. (Exhibit 34) Individual septic systems will serve each lot.
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 plan 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 28-lot rural cluster subdivision on 93.63 acres is hereby **CONDITIONALLY APPROVED**, subject to the following stipulations.

CONDITIONS

- A. The preliminary plat received by PDS on January 29, 2007 (Exhibit 15A) 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.

 - iii. A final mitigation plan based on the *Critical Areas Study and Buffer Mitigation Plan* prepared by Talasea Consultants, Inc., dated November 10, 2006 (Exhibit 11) 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 Snohomish School District No. 201 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 4 existing parcels. Lots 1 through 4 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,

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. 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 \$1,361.22 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. Ten feet of right-of-way shall be dedicated to Snohomish County on the final recorded plat, parallel and adjoining the existing right-of-way along the parcel's frontage on north side of 88th Street SE and on the east side of 155th Avenue SE along with a 25 foot radius right-of-way at the intersection of 155th Avenue SE and 88th Street SE [SCC 30.66B.510].
- vi. Lots 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 22, 23, 25, 26, and 27 have individual lot detention systems. The following will apply to each of these lots:
 - a) The lots where private detention facilities are located shall also share the responsibilities associated with the Drainage Facility Maintenance Covenant for the plat.
 - b) The rights granted to Snohomish County in the Drainage Facility Maintenance Covenant shall apply to the lots where individual detention facilities are constructed.
 - c) The maintenance of the individual detention facilities shall be the responsibility of the lot owner where the facility is located.

D. Prior to recording of the final plat:

- i. Lots 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 22, 23, 25, 26, and 27 have individual lot detention systems. The individual detention facilities for proposed lots shall be constructed and functioning prior to final plat recording.
- ii. Rural frontage improvements shall be constructed along the parcel's frontage on 155th Avenue SE and 88th Street SE to the specifications of the DPW (SCC 30.66B.410).
- iii. Additional pavement shall be provided on the inside of the curve at the intersection of 155th Avenue SE and 88th Street SE.
- iv. Pedestrian facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].
- v. A 10-foot by 15-foot hard surfaced school pedestrian waiting area shall be constructed at the intersection of the new plat road and 88th Street SE.

- vi. 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.

- vii. The final wetland mitigation plan shall be completely implemented.

E. In conformity with applicable standards and timing requirements, the preliminary landscape plan (Exhibit 13 A, B, C, and D) 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 April, 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 **APRIL 13, 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 **APRIL 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

<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>
