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

In the Matter of the Application of)
)
Tim & Kerry Kaintz) **FILE NO. 06 127825 SD**
SNOWBERRY COURT)
)
Preliminary plat for a 15-lot subdivision utilizing lot)
size averaging and a rezone from R-9,600 to R-7,200)

DATE OF DECISION: October 19, 2007

PLAT/PROJECT NAME: *Snowberry Court*

DECISION (SUMMARY): The 15-lot subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located on the east side of 81st Avenue NE opposite its intersection with 3rd Street NE about one mile west of Lake Stevens.

ACREAGE: 4.03 acres

NUMBER OF LOTS: 15

AVERAGE LOT SIZE: 9,746 square feet

MINIMUM LOT SIZE: 3,603 square feet

DENSITY: 3.7 du/ac (gross)
6.2 du/ac (net)

ZONING: R-9,600

UTILITIES:

Water/Sewer: Snohomish County PUD No. 1/ Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

INTRODUCTION

The applicant filed the Master Application on August 25, 2006 (Exhibit 1) and resubmitted the application on March 27, 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 18, 19, 20)

A SEPA determination was made on July 18, 2007. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on September 20, 2007: the 108th 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 September 20, 2007 at 3:10 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicants, Tim and Kerri Kaintz, were represented by Bob Nehring of Sound Design Engineering, Inc. Snohomish County was represented by Robert Pemberton of the Department of Planning and Development Services and by Kamal Mahoud, County Traffic Engineer.
3. Pre-hearing documents expressing concern or opposition were submitted by Skip and Neva Alf (Exhibit 23), Ron Cressell (Exhibit 25) and Jeanne Sparks (Exhibit 24). Of those, Cressell and Sparks appeared and testified at the hearing, as did vicinity resident Larry Benfield.

The hearing concluded at 4:00 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 PDS staff report has 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 Policy Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The applicants, Tim and Kerri Kaintz, filed an application for a 15-lot subdivision using lot size averaging on approximately four acres zoned R-9,600 located at or near a hillcrest on the east side of 81st Avenue NE opposite its intersection with 3rd Street NE. The site slopes gently to the north, is covered mostly with second growth trees and contains a residence, outbuildings, lawn and orchard. Excluding the existing home, 14 proposed additional lots will produce 127 average weekday trips, of which 10 will be morning peak-hour trips and 13 will be p.m. peak-hour trips.
4. Because (as noted above) the site slopes gently to the north, its storm drainage is mostly to the north via public storm drains. Only the drainage of four or five of the proposed homes' roofs will reach an on-site Category 3 wetland in the eastern portion of the subject site. That wetland (Tract 999) is protected by designation as a Native Growth Protection Area. Also, the site's drainage will not reach a pond on the Alf and Johnson properties to the south and west. 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.
5. Neighbors Alphs, Benfield and Sparks express concern about traffic and school bus traffic safety at the hillcrest access point into the proposed plat. They assert that excessive speed is common along 81st Avenue NE, that at many locations in the vicinity there are neither sidewalks nor waiting areas for students using school buses. Lake Stephens School District reports (Exhibit 29) that students of all grade levels will have school bus service to and from the entrance to the proposed development. A condition upon approval requires the installation of safe walking paths and bus waiting areas.
6. The applicant's representative, Bob Nehring, responds (1) that excessive speed is an enforcement issue, not a platting issue, (2) that frontage improvements required here will add to safety at the summit, (3) that drivers' sight distance and stopping distance and intersection distance have been measured and found adequate at the proposed plat's access drive, and (4) that the access drive is aligned with 3rd Street NE for safety.
7. 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, the DPW determined that the development is concurrent and has no objection to the requests subject to various conditions.
8. Abutting neighbor Ron Cressell's southwestern property corner is within approximately seven feet of the proposed plat's internal road cul-de-sac terminus. Mr. Cressell points out that if he were to sell his northern lot, that southern lot would be landlocked. The County Traffic Engineer, Kamal Mahmoud, agrees that the EDDS require that connectivity on these facts and argues that proposed condition C.iv be imposed to require a 20-foot-wide access for Mr. Cressell in the cul-de-sac bulb. The applicant's representative resists that requirement but acquiesces if ordered to do so. The Examiner was reluctant to so order absent compelling evidence of the need to do so and so announced at the hearing. On review of the evidence, the Examiner finds that the requirement to provide the access is warranted pursuant to the EDDS provisions cited in the record and the circumstances of the potentially landlocked Cressell parcel.

9. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions and require payment of school impact mitigation fees at the time of building permit issuance based on the fee schedule of Lake Stevens School District then in effect.
10. 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.
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
12. 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. Such provisions serve the public use and interest.
13. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
14. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
15. 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. There are no changes to the recommendations of the staff report.
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. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed subdivision 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.

5. 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 preliminary plat for a 15 lot subdivision utilizing lot size averaging provisions is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on May 29, 2007 (Exhibit 16) 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 *Revised Critical Areas Study and Conceptual Mitigation Plan* prepared by Wetland Resources, Inc. dated March 21, 2007 (Exhibit 10) 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 Lake Stevens School District No. 4 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:

\$3,088.68 per lot for mitigation of impacts on county roads paid to the county,

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

- iii. Additional right-of-way, parallel and adjacent to the right-of-way centerline of 81st Ave NE shall be dedicated to the County along the development's frontage such that 30 feet of right-of-way exists from centerline of the 81st Ave NE.
- iv. The applicant shall provide tax parcel number 0060480000102 with a 20 foot wide access onto 3rd St NE.
- v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) 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."

- vi. The developer shall pay the County \$1361.22 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.

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on 81st Ave NE to the satisfaction of the County.
- ii. The features on the approved TDM plan shall be constructed and installed.
- 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 wetland mitigation plan shall be completely implemented.

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 19th day of October, 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 **October 29, 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 **NOVEMBER 2, 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: Bob Pemberton

<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>
