

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

In the Matter of the Application of)
)
JOHN SCHILATY) **FILE NO. 06 132970 SD**
)
Preliminary plat for a 12-lot subdivision on 3.75 acres)
utilizing lot size averaging)

DATE OF DECISION: October 18, 2007

PLAT/PROJECT NAME: *Sadie Plat*

DECISION (SUMMARY): The proposed 12-lot subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 7726 10th Street SE, Everett, Washington.

ACREAGE: 3.75 acres

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 5,376 square feet

MINIMUM LOT SIZE: 4,882 square feet

DENSITY: 4.05 du/ac (gross)
6.9 du/ac (net)

ZONING: R-7,200

UTILITIES:

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

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

INTRODUCTION

The applicant filed the Master Application on February 26, 2007. (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 16, 17 and 18)

A SEPA determination was made on July 30, 2007. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on September 12, 2007, the 90th 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 12, 2007 at 2:33 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, John Schilaty, was represented by Raylyn Hulquist and Brian Caferro of Group Four, Inc. Snohomish County was represented by Monica McLaughlin and Dwayne Overholser of the Department of Planning and Development Services. Ty Lochardt, who resides on the subject site, testified that he knows the vicinity well and that the parcel owned by Forrest Bathurst at the foot of the hill has always had stormwater problems. Mr. Lochardt states his opinion that the subject development might reduce that problem.
3. Pre-hearing documents were submitted by two vicinity residents. Cheryl Zeigler (Exhibit 22) expresses concern about vehicular traffic increases and impact to her livestock caused by this application and another application across the street from her on 10th Street SE. Forrest Bathurst (Exhibit 21) writes that he lives three parcels downhill from the subject site, has experienced increasing flooding as parcels develop around him, has filed a lawsuit about flooding against another development uphill near the subject site, and pleads for assurance that the subject project will not worsen the flooding.

The hearing concluded at 2:56 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 correctly 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 applicant, John Schilaty, filed an application for a 12-lot subdivision using lot size averaging in existing R-7,200 zoning on 3.75 acres addressed 776 – 10th Street SE, Everett. The lot size averaging allows four more lots for a total of 16 but only 12 are permitted to be developed at this time because the vicinity streets cannot accommodate the additional daily trips. (Exhibit 13 at Executive Summary) One of the twelve lots permitted now has an existing single-family home; thus, only 11 new lots are used to calculate concurrency. However, in order to examine traffic and drainage impacts, the Hearing Examiner considers the impact of all 16 lots which, at 9.57 trips per average weekday each, will add 153 daily trips to local roads and streets when two reserved future development tracts are developed. The Examiner finds as fact that the 153 additional daily trips result in 16 p.m. peak-hour trips (approximately a car every four minutes) and 12 morning peak-hour trips. Those trips are not so significant an increase at this location as to warrant denial or conditioning of the proposed development beyond the conditions recommended in the staff report. The Examiner so finds as fact with awareness of the concern expressed by vicinity resident Cheryl Zeigler (Exhibit 22) about traffic and the responses to her concerns in the staff report (Exhibit 36, p. 3).
4. Stormwater drainage is of concern to vicinity resident Forest Bathurst (Exhibit 21) who owns a parcel downslope from the subject site. He writes of having filed a lawsuit against a developer of a parcel near the subject site because of increased flooding of his property. He asserts that as development occurs all around his parcel, the flooding has worsened into what he terms a "nightmare".
5. The applicant filed a letter (Exhibit 34) responding to Mr. Bathurst's concerns and the applicant's licensed engineer, Brian Caferro, testified at the hearing that the water flooding Mr. Bathurst's property is the result of sheet flow from the east, not from the vicinity of the subject site. Further, the engineer's opinion is that because 14 of the 16 lots proposed will drain to the northerly of two sub-basins on site, runoff will be adequately captured by detention pipes to be installed along 10th Street SE. pursuant to full drainage review. Duane Overholser of PDS testified that the applicant's consultants conferred with Mr. Bathurst while preparing the Targeted Drainage Report (Exhibit 13). Monica McLaughlin of PDS testified that she responded to Mr. Bathurst's concerns but received no reply. The Examiner notes that Mr. Bathurst did not attend the public hearing.
6. 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.

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 of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. Lake Stevens School District reports that all grade levels of public school students will be served by school busses from near the proposed plat's main entrance road at the intersection of 10 Street SE and 77th Drive SE. A condition upon approval requires specific frontage improvements with walkways for those students.
9. PDS has reviewed the Critical Areas and Mitigation Report (Exhibit 5) and supplementary Revised Impact Areas and Mitigation Areas Map (Exhibit 10) submitted with the application and has determined that the project complies with county Critical Areas Regulations (CAR). A 1,749 square feet Category 4 wetland is located in the middle of the site and a Type 4 stream/drainage ditch is situated along the north property line (on the south side of 10th Street SE). The wetland is to be filled to accommodate construction of the new plat road and the stream/drainage ditch will be put into a culvert. As mitigation for these critical area impacts the applicant proposes to set aside 4,253 square feet of forested area, located at the west central portion of the property, as a Native Growth Protection Area tract (Tract 997).
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 because public water and sewer will be furnished by Snohomish County PUD No. 1 and by Lake Stevens Sewer District.
12. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
13. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, where policies promote urban densities of development, 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. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) the proposal is consistent with the comprehensive plan;
- (2) the proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements and should be approved.

16. 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.
17. 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.
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. 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. Site specific issues raised by residents of the vicinity were reviewed in the staff report and by the Examiner herein; i.e., issues of traffic and drainage. The Examiner found as fact that the evidence of record establishes that traffic attributable to the proposal (including future lots) does not significantly impact peak hour traffic or traffic-related safety. Likewise, the Examiner found as fact that drainage is addressed adequately to protect downslope neighbors. Therefore, the Examiner concludes as a matter of law that the proposal serves the public use and interest.
6. 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 12-lot subdivision utilizing lot size averaging provision is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat, received by Planning and Development Services (PDS) on June 28, 2007 (Exhibit 11), shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. 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 Lake Stevens School District 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. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per single family unit as mitigation for impacts to the Centennial parks service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by February 26, 2012 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

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

\$3,193.19 per lot for mitigation of impacts on county roads paid to the County,

\$69.44 per unit for transportation demand management paid to the county for TSA B,

These payments are due prior to or at the time of each 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."

- v. 20 feet of right-of-way shall be dedicated along the property frontage on 10th Street SE, to total 35 feet from the right-of-way centerline.
- vi. Lot 12 shall not have direct access to 10th Street SE. Access to Lot 12 shall be from 77th Drive SE.
- vii. The impacts for concurrency of this entire subdivision (existing lots and future development tracts) will be evaluated at the time of application for development of the "Future Development Tracts".
- viii. "If, in the development of Future Development Tract 996, it is necessary to encroach within Tract 995, to construct a storm detention facility within Tracts 995 and 998, the open space amenities, if any, within Tract 995 will be restored to their condition prior to alteration of Tract 995. This will be required in order to maintain the existing Lot Size Averaging provisions within SCC 30.23.210 of the Sadie Plat." The owners of Lots 1 - 12 in the Sadie Plat hereby agree to waive any right to protest the future alteration of Tract 995 so long as it is returned to its original condition prior to alteration."

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall be constructed along the property frontage with 10th Street SE unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. 77th Drive SE shall be constructed to EDDS requirements for a public urban collector road.
- 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 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.

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 18th 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 1, 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: Monica McLaughlin

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.