

**DECISION OF THE SNOHOMISH  
COUNTY HEARING EXAMINER  
PARTIALLY GRANTING AND  
PARTIALLY DENYING RECONSIDERATION**

DATE OF DECISION: February 24, 2009

PLAT/PROJECT NAME: ***DUBUQUE WOOD CREEK ESTATES***

APPLICANT/  
LANDOWNER: Titan Operations, LLC

FILE NO.: 08-104140-000-00-SD

**TYPE OF REQUEST: Rural Cluster Subdivision**

**DECISION (SUMMARY): APPROVAL WITH CONDITIONS**

**INTRODUCTION**

The applicant, Titan Operations, LLC, appeals the following conditions:

1. Condition D (iii). The applicant shall provide an affidavit or declaration of Ms. Hanley or her representative verifying that she claims no ownership interest in the property within the plat as documented in the final plat documents submitted to be recorded.
2. Condition E (ii). Existing vegetation shall be supplemented with Type A landscaping as required pursuant to chapter 30.25 SCC.
3. Condition E (vii) (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 8).

Exhibit K2.

The Examiner issued An Order Calling for Comments in this case, specifically requesting PDS to respond to the Petition for Reconsideration. (Exhibit K3) The Examiner received no responses from any parties.

## ANALYSIS

**I. Condition D (iii)** the applicant argues that this condition is onerous and places too much power with Ms. Hanley. Exhibit K2 at 2-3. The applicant urges the Examiner to strike the condition altogether or in the alternative, to allow Ms. Hanley to provide an affidavit or declaration stating that she claims no ownership interest at any time in this property at any time during this plat approval process.

The Examiner cannot simply strike the condition, after being put on notice of the potential claim, as outlined in the body of the decision. However, the Examiner did not mean to imply that this could not be resolved prior to final plat, nor did the Examiner intend that the applicant be held hostage by Ms. Hanley. In fact, the sooner Ms. Hanley can supply an affidavit or declaration stating she has no interest in the subject property to the planning department file, the better. The Examiner will change the wording of the condition accordingly:

The applicant shall provide an affidavit or declaration of Ms. Hanley or her representative verifying that she claims no ownership interest in the property within the plat ~~as documented in the prior to final plat documents submitted to be recorded approval.~~ The applicant may utilize alternative methods for dealing with this potential boundary dispute, so long as it does not compromise any compliance with any of the bulk and setback regulations, as determined by PDS.

**2. Condition E (ii).** The applicant states that most of the areas of the plat already contains site obscuring buffers and although there may be small areas that might require supplemental plantings, the applicant seems to indicate that Type A landscaping goes beyond what the purpose of what the site obscuring buffer, in that Type A landscaping is designed to provide a “very dense site barrier to significantly separate residential uses and zones from nonresidential uses and zones and to buffer single-family development from multifamily development.” Exhibit K2 at 4. The applicant argues that a Type A landscaping buffer should not be required and that PDS can simply review the buffer at final plat.

At the hearing, the Examiner reviewed the submittal requirements with the applicant and PDS. The applicant failed to submit a landscaping plan as required by the code. Because there are areas of significant deficiencies in the site obscuring buffer, PDS suggested the condition. The applicant’s representative agreed to the condition on the record. The petition for reconsideration is denied on this ground.

**3. Condition E (vii) (b).** The applicant states that while it agrees with the request, it feels it could also be achieved by recording Covenants, Conditions and Restrictions (CC&R’s) as a means of guaranteeing maintenance. Exhibit K2 at 5.

SCC 30.41.675 states, “A homeowners association established for purposes of tract ownership and maintenance pursuant to this title shall be incorporated as a profit or non-profit corporation and shall remain the owner unless tract ownership by all lots within the subdivision is authorized pursuant to a final plat alteration.”

While not particularly artfully worded, the Examiner interprets this provision to require ownership of common tracts by a homeowners’ association. The request is denied.

## DECISION

The petition for reconsideration is **partially GRANTED and partially DENIED**.

Dated this 24th day of February, 2009.

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Barbara Dykes, Hearing Examiner

<b>EXPLANATION OF APPEAL PROCEDURES</b>
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An appeal to the County Council of the Decision after reconsideration may be filed by any aggrieved Party of Record. "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." [SCC 30.72.070(2)] 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 East-Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **MARCH 10, 2009** 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

Appeals will 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 this case.

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Distribution:

Parties of Record

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.