

# DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

DATE OF DECISION: November 19, 2008

PLAT/PROJECT NAME: **LOST ACRES**

APPLICANT/  
LANDOWNER: DHB Enterprises

FILE NO.: 06 129486 SD

TYPE OF REQUEST: Seven lot Rural Cluster Subdivision (RCS)

DECISION (SUMMARY): GRANTED subject to CONDITIONS

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located at 11424 115<sup>th</sup> Ave. NE, Lake Stevens, WA 98258.

ACREAGE: 18.88 acres

NUMBER OF LOTS: 7

AVERAGE LOT SIZE: 44,797 square feet

MINIMUM LOT SIZE: 43,598 square feet

DENSITY: 0.37 du/ac (gross)

ZONING: Rural Residential-5 (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 acres, Basic)

UTILITIES:

Water: Individual wells

Sewer: Individual on-site septic

SCHOOL DISTRICT: Arlington No. 16

FIRE DISTRICT: No. 22

## **INTRODUCTION**

The applicant filed the Revised Master Application on April 24, 2008. (Exhibit A-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 F1-3)

A SEPA determination of non-significance was made on September 23, 2008. (Exhibit E-2) It was not appealed.

The Examiner held an open record hearing on November 4, 2008, the 88th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The master list of exhibits and witnesses considered by the Examiner is hereby made a part of this file as if set forth in full herein.

## **PUBLIC HEARING**

The public hearing commenced on November 4, 2008 at 2:04 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 applicants, David and Erika Sigmon, were represented by Merle Ash. Snohomish County was represented by Ed Caine of PDS. No members of the public appeared in support or in opposition to the project.
3. No public comment letters were received by PDS. No significant issues were raised by any agencies. Testimony presented during the public hearing indicated that certain conditions proposed in the staff report were inappropriate at the current stage of development.

The hearing concluded at 2:43 p.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available through 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 applicant is requesting a 7-lot RCS on an 18.88 acre parcel. Access is proposed VIA individual driveways off of a new private road that abuts with 115<sup>th</sup> Ave. NE. Traffic circulation

will be provided by connecting the private road that is internal to the plat with the private access road for the plat of Bailey Lane (07-102747-SD), which is immediately to the south. Each lot will be served with individual wells and individual septic systems.

2. The rectangular site is developed with a single-family residence with outbuildings. A small area around the residence is landscaped. The remainder of the site is a combination of trees and shrubs. The southeastern portion of the site is upland, with the remainder a combination of two Category 1 wetlands that extend offsite, and an interconnecting Type 4 stream with associated Category 3 wetlands.
3. Adjacent zoning is R-5. The plat of Bailey Lane (07-102747-SD was approved with conditions by Hearing Examiner Pro Tempore on September 17, 2008, and neither appeals nor motions for reconsideration have been filed), is immediately south of the subject property. Other surrounding properties are either undeveloped or developed as single-family residences.
4. The proposed RCS is within Park District No. 302 (River Meadows) which currently requires a \$48.82 payment per each new single-family residential unit. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
5. The Department of Public Works (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. Approval to an EDDS deviation (Exhibit G.1.) request for a lesser road standard has been granted on 115<sup>th</sup> Ave. NE with the condition that the private road shall be physically opened at all times, i.e. no gated may be installed. When the parcel to the east develops, this roadway will be completed. (See PFN 06 129155 SD)

A "T" intersection is created between the private road located within Tract 997 and 115<sup>th</sup> Ave. NE midway up the subject parcel's east boundary. The proposed private road will extend to the west and then to the south and connect with a private road that is being constructed via the subdivision of Bailey Lane (07-102747-SD).

The "S" curve created on 115<sup>th</sup> Ave. NE near the southeast corner of the subject parcel does not meet current EDDS design standards. 115<sup>th</sup> Ave. NE will be straightened with the development of the adjoining parcel to the east. In the intervening time, 115<sup>th</sup> Ave. NE needs to be constructed so that an acceptable curve is created. The private road design shown on Exhibit B.1. is acceptable. Review and approval of an acceptable S-curve on 115<sup>th</sup> Ave. NE will occur during construction review.

6. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. The County is required to make findings regarding safe walking conditions for school children who may reside in the subject development. On October 12, 2006 PDS received comments from the Arlington School District dated October 3, 2006 (Exhibit H.3.). Those comments indicate that all students will be picked up by a school bus at the intersection of 108<sup>th</sup> St NE/123<sup>rd</sup> St NE. The roadway is wide enough to accommodate two lanes of vehicular travel and a walkway. Striping of walkway areas on public roadways outside this project is a responsibility of DPW.

7. The Snohomish Health District (SHD) expressed approval for the preliminary plat on May 28, 2008. (Exhibit H2). Individual septic systems and water wells will serve each lot. The SHD has found the location of the septic systems to be approvable and recommended approval of the project. Therefore, PDS and the Examiner have relied on the professional determination of the SHD that the septic systems will not create a health problem for adjacent wells. Snohomish County PUD No. 1 will provide electrical service. (Exhibit H4)
8. The subject property is designated R-5 on the GPP Future Land Use Map, and is not located within an Urban Growth Area (UGA). The implementing zone in this designation will continue to be the R-5 zone.
9. The request complies with the Snohomish County Subdivision Code, Chapters 30.41A SCC and 30.41C SCC as well as the State Subdivision Code, RCW 58.17, as conditioned herein. 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.
10. The subject 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 (Exhibit B-1). The applicant submitted a full drainage report, (Exhibit C-1), a critical area study which included a habitat management plan (Exhibit C-2) and soil logs related to the project, (Exhibit H-2). There will be four tracts created within the development. (Exhibit B-1) The open space management plan (Exhibit A-4) stipulates that the Home Owners Association (HOA) will have ownership, control, and maintenance responsibilities for the tracts. Prior to transfer of the tracts to the HOA, the developer will be responsible for control and maintenance of the tracts. The current gravel road to the interior of the wetlands will either be abandoned or maintained as a walking trail for the benefit of all property owners, but will not be used for further vehicular travel. The sight-obscuring buffer is proposed to be a minimum of 55 feet in width and located as a perimeter buffer to the plat.
11. The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 59% (9.1 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the County's environmentally sensitive areas.

The application has been reviewed for compliance with the requirements of SCC 30.41C.200 as follows: critical areas have been identified and designated as Native Growth Protection Areas (NGPA); a sight-obscuring buffer of native vegetation has been provided, in accordance with the provisions of Table 30.41C.210(1), DPW has indicated that the public road and the private road shall be constructed to EDDS standards; all utility lines are to be located underground; there is no unbuildable land as defined by Chapter 30.41C SCC located on site which would be required to be included in NGPAs; no on-going agriculture or forestry uses are proposed within the open

space tracts; the adjacent designated open spaces of the plat of Bailey Lane (07-102747-SD) are adjacent to Tract 999 of this plat; an open space management plan has been provided detailing the required maintenance and management tasks for the proposed open space; at least 75% of the residential lots abut a required buffer or open space tract; the proposed RCS has been designed in accordance with the natural features of the site, maintains rural character; the proposal is not served by public sanitary sewer; clusters of lots are not located on prominent topographic features; and the site is located within a rural fire district.

12. 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.
13. All of the lots, with the exception of the existing residence on Lot 1, will be fully dispersed into the Restricted Open Space of Tract 999. A drainage waiver was approved on September 22, 2008 (Exhibit G.3.), which allowed the use of the 2005 DOE Stormwater Manual for Full Site Dispersion. From each residence on Lots 2-7, stormwater will be directed to dispersion trenches and then allowed to sheet flow over a minimum of 100-feet of native vegetation prior to entering into the wetlands within Tract 999. Conditions are recommended to establish the dispersion flowpath and for the dispersal trenches in order to comply with the 2005 DOE Stormwater Manual for Full Site Dispersion requirements.

Stormwater runoff from Lot 1, the private road, and 115<sup>th</sup> Ave. NE will be controlled with a roadside bio-retention swale, and a bio-detention cell located in the southeastern corner of Tract 997. Soils within the bio-retention swale and the bio-detention cell will be augmented with compost, per the 2005 DOE Stormwater Manual.

PDS (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 410 cubic yards of cut and 410 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

14. A Type 4 stream flows northeasterly across the central and eastern portion of the property connecting two large Category 1 wetlands via a narrow riparian Category 3 wetland corridor. The Category 3 wetland is rated as such because it is less than 50 ft. wide and more than 200 ft. long and thus is rated separately per the 1993 WSDOE Wetlands Rating System Appendix 5. The applicant is not proposing to cross or fill any portion of the wetland and is proposing minor buffer impacts to accommodate two small stormwater spreader trenches by utilizing buffer averaging for one and restoration plantings for the other in a location that is currently degraded. The applicant thus has met the requirements for avoidance and minimization per SCC 30.62.365 by choosing the most degraded portion of the buffer for these impacts. The buffer will be reduced on Lot 4 by 3,240 s.f. and increased by 3,299 s.f. on Lots 6 & 7. The restoration area of the buffer within a degraded scrub-shrub area dominated by blackberry is estimated to be 125 s.f. and is proposed to be planted with 14 willow whips.

All wetland and buffer areas within Tracts 996, 998, 999 and on the western portions of Lots 2-7 are to be dedicated as NGPA/E. (Native Growth Protection Area/Easement)

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application is complete and in

conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in critical areas to safeguard the public health, safety and welfare. Recommended conditions of approval include approval and implementation of the mitigation plan, and for inclusion of NGPA/E language, signage, and restrictions.

15. The Snohomish County Fire Marshall conducted an internal review of the proposed plat and recommended approval.
16. A landscape plan is a required component of the submittal documents for a RCS (SCC 30.41C.040(8)). The notes on Exhibit B.1., Sheets P1 and P2, contain the contingency planting plan should the existing plants within the areas designated as Vegetated Sight Obscuring Buffers fail to meet the requirements of Type A landscaping. The plans comply with the requirements for the landscape plan and are the approved landscape plan for the project.
17. 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 has jurisdiction to hear this case and render this decision.
2. The DPW 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. Adequate public services exist to serve the proposed project.
5. The proposal makes adequate provisions to protect the public health, safety and welfare.
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 7-lot **RURAL CLUSTER SUBDIVISION** on 18.88 acres is hereby **APPROVED SUBJECT TO** the following **CONDITIONS**:

### CONDITIONS

- A. The preliminary plat received by PDS on July 24, 2008 (Exhibit B.1.), 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. A final mitigation plan based on the Critical Area Study and Buffer Averaging Plan for Lost Acres prepared by Wetland Resources, Inc. dated Revision #2 July 22, 2008 (submitted to PDS on 07/24/08) 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 Arlington School District No. 16 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 a single-family residence:  
  
\$3,799.29 per lot for mitigation of impacts on County roads paid to the County.  
  
These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot[s] therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
  - iii. Well protection zones are shown in the Snohomish Health District records for Lots 1-7 of this plat. The well protection zones are not based upon actual constructed wells. The

well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.

- iv. "No gates or physical blockage of the private road may be installed."
- v. All Critical Areas shall be designated NGPAs (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."

- vi. "The dwelling units within this development are subject to park impact fees (River Meadows # 302) in the amount of \$48.82 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- vii. "The Open Space Management Plan (Exhibit A.4.) shall be fully implemented."

D. Prior to recording of the final plat:

- i. A minimum of 100 feet of natural vegetation downhill slope for stormwater dispersion trenches shall be preserved to fully disperse stormwater runoff prior to entry into critical areas.
- ii. NGPAs 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 PDS Land Use Division for review and approval prior to installation. The signs shall be placed as indicated on the site plan, Exhibit B.1.

- iii. The Final Wetland Mitigation Plan shall be completely implemented.



- E. In conformity with applicable standards and timing requirements:
  - i. The preliminary landscape plan for the Sight Obscuring Buffer (Exhibit B.1.) shall be 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 19<sup>th</sup> day of November, 2008.

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James Densley, Hearing Examiner Pro Tem

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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 **DECEMBER 1, 2008**. 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 **DECEMBER 3, 2008** 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

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.