

**DECISION OF THE SNOHOMISH
COUNTY HEARING EXAMINER PRO TEMPORE**

DATE OF DECISION: May 16, 2008
PROJECT NAME: ***THE CREST AT DUTCH HILL***
APPLICANT/OWNER: Raymond Cook
FILE NO: 06-133196-000-00-SD
TYPE OF REQUEST: **RURAL CLUSTER SUBDIVISION**
DECISION: **APPROVE** with conditions

BASIC INFORMATION

GENERAL LOCATION: 8215 131st Avenue SE, Snohomish, within Section 9,
Township 28 North, Range 6 East, W.M.
ACREAGE: 24.60
NUMBER OF LOTS: 7
AVERAGE LOT SIZE: 60,764 square feet
SMALLEST LOT: 43,568 square feet
ZONING: R-5
DENSITY: 0.28 du/ac, gross; 0.30 du/ac, net
COMPREHENSIVE PLAN
General Policy Plan: Rural Residential-5 (1 du/5 ac)
UTILITIES
Water: Snohomish County PUD #1
Sewer: Individual on-site septic
SCHOOL DISTRICT: Snohomish #201

FIRE DISTRICT: #4

PDS RECOMMENDATION: Approve

INTRODUCTION

The applicant filed the Master Application on November 20, 2006 (Exhibit 1). The application was determined to be complete for regulatory purposes as of the date of submittal. Resubmittals were made on April 24, 2007, October 10, 2007, January 3, 2008, and January 30, 2008.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by County Code (Exhibits 22, 23, and 24).

A Determination on Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on March 4, 2008. No appeal was filed.

The Examiner held an open record public hearing on May 1, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered. The decision here is based on the record made.

PUBLIC HEARING

The public hearing commenced on May 1, 2008 at 1:02 p.m.

1. The applicant was represented by Harland McElhany, Professional Engineer.
2. PDS was represented by Ed Caine, Planner.
3. Raymond Cook, applicant, testified briefly. There was no public testimony.

The hearing concluded at 2:07 p.m.

NOTE: For a complete record, an electronic recording of this hearing is available through the Office of the Hearing Examiner.

FINDINGS OF FACT

1. The master list of Exhibits is in the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.

2. The PDS Staff Report has correctly analyzed the nature of the application, and the application's consistency with adopted codes, policies and land use regulations. The Staff Report is hereby adopted by the Examiner as if set forth in full herein.
3. There have been no public comments indicating concern over the subject subdivision.
4. The applicant seeks approval of a seven-lot Rural Cluster Subdivision on a 24.6-acre parcel. Access is proposed via a new private road off of 84th Street SE. The lots will be served with public water (PUD #1) and individual on-site septic systems. The plan includes rural standard frontage improvements and payment of appropriate impact fees will be required. Stormwater detention will be provided, but the applicant also proposes some low impact development measures that will allow reduction in the size of the detention pond.
5. The residential lots will be roughly an acre in size, except for the westerly lot which will contain about four acres. The remainder of the property will be devoted to open space and access. Approximately 53.5% of the site will be set aside as restricted open space.
6. The site is now in pasture, with an existing horse stable (two buildings) in the southwest corner. There is a manufactured home near the western border. The stable will be retained. The manufactured home will be removed. The site has frontage on 131st Avenue SE and 84th Street SE.
7. The northerly portion of the property is a rectangle which is joined by a significant panhandle on the southeast. The property slopes downward from south to north at approximately 9%. The adjacent notch to the south and west contains the Dutch Hill Elementary School at the corner of 84th Street and 131st Avenue.
8. The site and the adjoining area are zoned R-5. Apart from the school, the surrounding area is either in single-family residential development or is undeveloped.
9. An issue regarding sight distance at the entry to the project created delays in getting the project to hearing. The entry is at the crest of a hill on 84th Street SE. The upward slope obscures the line of sight from the west, necessitating that the pavement grade of the street be lowered several inches for a horizontal distance of 50 to 70 feet in the vicinity of the planned entrance. The applicant and staff have agreed that this can be done pursuant to engineering plans approved during the plat development process, with the work to be completed prior to final plat approval. The applicant will provide a construction easement to the County along the 84th Street SE property frontage for future road improvements by the County.

10. The existing home on the west side is accessed from 131st Avenue. The present driveway will be rerouted to provide access to the stable which will be retained on-site. Thereafter, all seven of the residential lots, including the westerly lot, will be accessed via the private road from 84th Street.
11. The major issue presented by the project is the selection of requirements to be imposed for the sight-obscuring landscape buffer. The property is currently wide open pasture land with very few trees. Therefore, any buffer to obscure the houses will have to be planted. The Code establishes buffer widths, but does not contain planting standards that give the density of vegetation required. See SCC 30.41C.200(2), Table 30.41C.210(1).
12. The County initially prescribed buffers with trees planted at 10 feet on center and shrubs planted at three feet on center. The applicant was invited to present evidence that an alternative planting density is adequate and did so.
13. The applicant presented evidence showing that plantings as dense as suggested by the County would be too close together for optimum survival. The interior shrubs in particular would probably die. In the absence of an adopted standard, the applicant analyzed several alternative schemes including the general landscaping standards of the UDC, King County standards, and standards being proposed for amendment to the UDC.
14. There was some discussion of the appropriateness of the screening requirement in the open setting here, in light of its effect on existing rural character. But ultimately, the applicant proposed a carefully considered program of planting that is modeled on the standards under consideration for UDC amendment. After evaluating the evidence, the Examiner is persuaded that the applicant's proposal (Exhibit 40) will carry out the intent of the Code and should be adopted for this development.
15. There are two Category 3 wetlands on site, but they lie in the north in the pasture open space. No development is to occur in the pasture area with the exception of the sight-obscuring buffers for the plat. So the wetlands and their buffers will be preserved. An Open Space Management Plan (Exhibit 17) was submitted. The maintenance and management will be the responsibility of a homeowner's association.
16. Staff analysis concludes the following on traffic mitigation and road design:
 - (a) The development should pay road system capacity impact fees of \$9,531.72.
 - (b) The development is concurrent as of May 14, 2007.
 - (c) Rural standard frontage improvements should be installed.

- (d) The private access road ending in a cul-de-sac is acceptable with the approval of the Department of Public Works of deviations allowing reduced travel width and pervious surface.
- (e) Appropriate right-of-way dedication is called for.
- (f) State highway impacts can be addressed through payment of \$2,067.12.
- (g) Pedestrian facilities for school children will be adequate to allow walking to Dutch Hill Elementary and to access the new school bus stop at the entry to the development on 84th Street SE.

The Examiner concurs in these conclusions.

- 17. The applicant supplied information regarding septic drain fields and reserve areas. The Snohomish Health District recommended approval on November 8, 2006.
- 18. Other agency review comments are reflected as conditions of approval.
- 19. The Staff Report thoroughly discusses the conformity of the proposal with the code requirements for Rural Cluster Subdivisions (Chapter 30.41 SCC). The Examiner concurs that the development complies with all of the criteria for preliminary approval. The requirements for restricted open space, lot yield, and bonus residential density are met. Lots are clustered on the most buildable and least environmentally sensitive portions of the site. Appropriate buffer planting will occur.
- 20. The plat makes “appropriate provisions” for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, potable water supplies, sanitary wastes, recreation, schools, safe walking conditions for students, and other planning features.
- 21. The public use and interest will be served by the platting of the subdivision.
- 22. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

- 1. The Examiner has jurisdiction over this proceeding. SCC 30.72.020(5) (Type 2).
- 2. The requirements of SEPA have been met.
- 3. The proposal is consistent with the GMA-Comprehensive Plan and with applicable development regulations. RCW 58.17.100.195. In particular, the proposal meets the requirements of Chapter 30.41C SCC, Rural Cluster Subdivisions.
- 4. The proposal provides for items of design and infrastructure as required by RCW 58.17.110. Adequate public services are available to serve the proposal.

5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The request for approval of the **RURAL CLUSTER SUBDIVISION** of The Crest at Dutch Hill is **GRANTED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on April 15, 2008 (Exhibit 15) 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 plat 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 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 1 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:

\$1,361.67 per lot for mitigation of impacts on county roads paid to the county,
\$295.30 per lot for mitigation of impacts on State roads paid to the county.

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 short subdivision of the lots therein. Once building

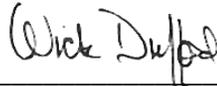
permits have been issued all mitigation payments shall be deemed paid by PDS.

- iii. The final plat shall show a 5-foot right-of-way dedication along the property frontage with 131st Avenue SE to total 35 feet from the right-of-way centerline.
 - iv. The final recorded plat shall show a construction easement along the property frontage with 84th Street SE to the satisfaction of the county.
 - v. The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 (Centennial Park District # 306) 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 has been issued within five (5) 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.
- D. Prior to recording of the final plat:
- i. The construction plans shall include a plan to improve the sight distance to meet the minimum stopping sight distance standards from the private road access point on 84th Avenue SE. The work to achieve minimum stopping sight distance at the private road access point shall have been completed.
 - ii. The private road shall have been constructed per EDDS requirements and per the approved deviation request (Exhibit 20).
 - iii. If the applicant opts to not pave the private road pursuant to EDDS 3-08, a paved approach per EDDS Plate 3-100 shall have been completed.
 - iv. The location of the proposed gate on the private road shall be shown on the construction plans for review so that adequate queuing length between the gate and 84th Street, and an adequate turnaround will be provided.
- E. In conformity with applicable standards and timing requirements:
- i. The conceptual landscape plan (Exhibit 40) shall be implemented. All required detention facility landscaping and sight obscuring buffer plantings shall be installed in accordance with this 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 16th day of May, 2008.



Philip Wickstrand Dufford, Hearing Examiner Pro Tempore

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 **May 26, 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, 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 **MAY 30, 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 this 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.