BEFORE THE

SNOHOMISH COUNTY HEARING EXAMINER

In re the Appeal of the Douglas Preliminary Short Plat Approval for 3-Lot Rural Cluster Subdivision (RCS)	)	File No. 06-137052 SP
	)	**Final Decision and Order on Appeal**
Judy and William McNall, Appellants	)	

DATE OF DECISION: **July 1, 2008**

APPLICANT: Greg Douglas

PROJECT LOCATION: 3911 Rose Road, Stanwood, Washington

PROJECT NAME: Greg Douglas Short Plat

DECISION (SUMMARY): **The appeal is denied.**

INTRODUCTION

This matter came before the Hearing Examiner on appeal of a Type 1 decision of the Department of Planning and Development Services ("PDS"), granting preliminary short plat approval for a 3-lot rural cluster subdivision known as the "Greg Douglas Short Plat." The PDS decision was issued on December 3, 2007 (Exhibit 48) On December 24, 2007, Appellants Judy and William McNall, filed a timely Notice of Appeal through their attorney of record, William Zingarelli. (Exhibit 1) The Appellants claim that PDS erred in approving the Douglas short plat application because they "failed to adequately review the facts and incorrectly applied the standards set forth in the County Code. As a direct result of these errors Appellants, Judy and William McNall, claim that they are faced with undue burdens from increased density, ground water contamination, erosion from surface water runoff, and diminished use and enjoyment of their home." (Exhibit 1).

The open record hearing was held on May 13, 2008 at 1:30 p.m. and concluded at approximately 6:00 p.m., during which time the parties of record were present, witnesses were sworn, testimony was presented, and exhibits were entered.

The McNalls cite to four specific errors in the PDS decision:

(1) PDS failed to acknowledge a Native Growth Protection Area (NGPA) burdening the McNall property at Conclusion #9 of the decision;
(2) By failing to address the NGPA and specific erosion risk issues, PDS failed to adequately consider drainage, pollution and other critical issues prior to issuing preliminary approval;

(3) PDS failed to consider the goals of the rural cluster subdivision ordinance (specifically, Subsections 30.41C.010(2),(3),(4),(6),(7),(8),(9),(10),(11) and (12) SCC) , in approving the short plat; and

(4) PDS failed to consider SCC 30.41C.200 design standards, SCC 30.41C.210 design standards – restricted open space and bulk regulations, and SCC 30.41C.210(2) in approving the short plat.

MOTIONS TO DISMISS CLAIMS

A. Motions to Dismiss new Issues

The McNalls additionally raise other issues in their opening brief that were not raised in their Notice of Appeal. These additional issues include:

(5) The Hearing Examiner lacks subject matter jurisdiction over this plat because the short plat application violates state law (RCW 58.17.215). This short plat amounts to a plat alteration and Greg Douglas failed to obtain signatures from property owners within the Seider subdivision, and the Douglas property is subject to a road maintenance covenant;

(6) The Douglas short plat exceeds rural density allowances under land use policies set forth in the Comprehensive Plan at LU 6.B.9;

(7) The Douglas short plat violates the land use policies set forth in the Comprehensive Plan at LU 6.B.1(1);

(8) The Douglas short plat violates the land use policies set forth in the Comprehensive Plan at LU 6.B.1; and

(9) The Douglas short plat violates GMA because it fails to preserve rural character; and

(10) The approval of the Douglas short plat place nearby Lake Goodwin at risk of contamination from septic seepage.

At the open record hearing, both the Applicant, Greg Douglas, and PDS moved to dismiss issues (5) through (10) listed above as "new issues" that are untimely and barred by the provision of SCC 2.02.125(4), SCC 2.02.125(11) and SCC 30.71.050(6) because they were not raised in the Notice of Appeal.

Decision on Motions:

1. The Hearing Examiner agrees as to issues (6) through (9). These issues were not contained within the specific issues listed in Exhibit 1, the Notice of Appeal, and present new and additional grounds on which the McNalls attempt to challenge the PDS decision. The Snohomish County Code expressly states that no new issues may be raised or submitted after the filing of the original appeal. (See, SCC 2.02.125(4)) **Accordingly, the motions to dismiss issues (6) through (9), listed above, is granted.**

2. **As to issue No. 10 listed above,** the Hearing Examiner finds that this issue is within the general issue listed in the Notice of Appeal related to "drainage and pollution" set forth in issue (2) above. **Accordingly, the motions to dismiss issue (10), listed above, is denied.**

3. **As to issue No. 5 listed above,** the Appellants allege that the Hearing Examiner lacks subject matter jurisdiction over the proceedings herein. Raised as a new "issue" this argument would be untimely. However, the Hearing Examiner believes that motions to dismiss for lack of subject matter jurisdiction may be brought at any time. Accordingly, this issue will be treated as a motion to dismiss for lack of subject matter jurisdiction, although not plead as such. **The motion to dismiss Issue No. 5 listed above is denied.**

B. Appellant's Claim that the Hearing Examiner Lacks Subject Matter Jurisdiction over this Appeal.

The jurisdiction of the Hearing Examiner is established by Chapter 2.02 SCC. The Appellant claims that the short plat application cannot be legally presented to County Hearing Examiner because short plat is illegal and cannot be considered by the County. However, if the Hearing Examiner lacks jurisdiction over this matter, the Examiner would be unable to consider the McNall's appeal. This line of reasoning is nonsensical.

Appellants argue that the original 6.77 acre Douglas lot which is the subject of this appeal was created as part of the Seider subdivision and is restricted by certain Covenants recorded with that plat, as well as a Road Maintenance Agreement for the private road that served the plat. (Exhibit 46 - Appellants Brief at p. 2). The McNalls claim that those Covenants and Road Maintenance Agreement are binding on the Douglas lot. They further claim that Douglas' attempt to subdivide his lot amounts to a plat alteration, governed by RCW 58.17.215, and requires consent and signature from all six property owners in the existing Seider Large Tract subdivision. However, while these arguments may reveal that the short plat should not have been processed, they do not speak to the issue of whether the Hearing Examiner has jurisdiction to hear an appeal of short plat approval.

Douglas replies that it is undisputed that his lot was created as part of the Seider Large Tract subdivision and that his lot is governed by the Covenants recorded as part of that subdivision. However, he disputes that he is burdened by the Road Maintenance Agreement and claims that his property is not listed under its terms. (Exhibit 47 at pp. 2-3). Neither party cites to a regulation, statute or case law that would support the proposition that the Hearing Examiner lacks jurisdiction to hear this case.

RCW 58.17.215 provides, in pertinent part:

> When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, *and the application for alteration would result in the violation of a covenant*, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof. . .

(Emphasis added). Here, Appellant claims that Exhibit 46-B reveals there are Covenants and Maintenance Agreements that burden the Douglas property. This is not in dispute. However, during his testimony, William McNall conceded that the Douglas property is not burdened by the Maintenance Agreement.

Furthermore, no testimony or evidence was provided by the McNalls that would show that the further subdivision of the Douglas lot some how violates a term or condition of the Restrictive Covenants (Exhibit 36-B). Having reviewed the terms and conditions of the Covenants, the Hearing Examiner finds that there is nothing therein that would prohibit the further subdivision of the Douglas lot for residential purposes.

The Hearing Examiner concludes that a further subdivision of a single lot is not an *alteration* of the Seider Large Tract Subdivision because in this instance, the proposed development is consistent with the Seider subdivision Covenants. Accordingly, the Hearing Examiner concludes that RCW 58.17.215 is not applicable to this case.

Further, the Hearing Examiner finds that the Appellants failed to show by a preponderance of the evidence that the Hearing Examiner lacks subject matter jurisdiction over this appeal. Accordingly, the motion to dismiss is denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the testimony of all witnesses and matters presented at the open record hearing and being fully informed in the proceedings, the Hearing Examiner hereby enters the following Findings of Fact and Conclusions of Law as to each issue raised by the Appellants:

I. PDS erred in granting short plat approval when it failed to acknowledge a Native Growth Protection Area (NGPA) burdening the McNall property at Conclusion #9 of the decision.

FINDINGS OF FACT

1.1 The McNall NGPA. Appellants presented testimony that their property is subject to an NGPA and that the NGPA should be continued onto the Douglas property at the northwest corner of the lot. The McNall's characterize this area as "drainage swale" and state that SCC 30.41C.200(1) mandates that when critical areas are present, and when such areas are designated and protected pursuant to the County's critical areas regulations (Ch. 30.62 SCC), and/or other ordinances or policies, the area shall be designated as native growth protection areas.

1.2 PDS staff planner, Stacy Abbott, testified that Finding and Conclusion No. 9 in the Preliminary Plat approval incorrectly states that there are "no critical areas located on or within 100 feet of the subject property." In fact, she acknowledged that there *are* critical areas, and an NGPA located on the McNall property, which is within 100 feet of the subject property, and it was a ministerial error that this issue was missed in the Decision. However, PDS also noted in its staff report that an additional site investigation was performed after issuance of the Decision to verify whether there are any critical areas on the Douglas property that may have been missed. This site investigation confirmed that there are no critical areas on the Douglas property. (Exhibit 48). As such, PDS stands by its approval of the preliminary short plat with the conditions listed in the decision dated December 3, 2007.

CONCLUSIONS OF LAW

1.3 The Hearing Examiner finds that an error was made at Finding No. 9 of the PDS decision, but holds that such error was *de minimis* and not fatal to the approval of the Douglas short plat, for the reasons set forth here and as described at Issue No. 4, below. There are no critical areas on the site, and the Applicant will be required to observe any setback requirements from the property boundaries required by the County's bulk standards, including those boundaries along which critical area NGPAs may be present on the other side. In addition, PDS may impose additional conditions during the building construction phase in issuing building or grading permits to the extent the Department determines that the same is required to protect critical areas pursuant to Ch. 30.62A SCC.

II. PDS erred in approving the Douglas short plat because they "failed to address the NGPA and specific erosion risk issues, and failed to adequately consider drainage, pollution and other critical issues."

FINDINGS OF FACT

2.1 The NGPA and critical area issue was discussed in issue No. (1) above, and at Issue No. (4) herein, and won't be repeated here.

2.2 Erosion and Drainage Issues. The McNalls presented testimony during the open record hearing that their home is at the bottom of a slope, approximately 15 to 20 feet below the area of the Douglas property on which a home site is planned as the result of the short plat. Mr. McNall testified that the house would look down onto their land and ruin their quiet enjoyment of their rural property. Mr. McNall testified that when he constructed his home, the soils were scraped and it was tough clay, and cement-like. He stated that drainage will be difficult as a result. He noted that he had reviewed the drainage plan for the plat and is not sure how the runoff will work for the site. He stated his concern about the roof and sewer runoff from the Douglas short plat and that it would impact his property down-slope of the Douglas short plat. On cross-examination, Mr. McNall admitted that he has no training to evaluate the topographic surveys relative to the drainage issues which concern him. Mrs. McNall also testified and stated that she agreed with her husband's testimony. She also admitted on cross-examination that she is not an engineer and is not trained in drainage or to read topographic surveys.

2.3 The McNall's presented expert Charles Lindsay, PG, PEG, PHG, Principal Hydrogeologist from Associated Sciences. He testified that the ravine and hill above the McNall property is not an unstable slope, although portions of it may meet the definition of an erosion hazard area. He stated that the land is composed of Alderwood soils and so long as no drainage water is directed there, the slope will remain stable. He testified that the Liu report notes that no water will run off there.

2.4 In response to the McNall's claims, PDS presented testimony from Jack Hurley. He testified that Exhibit 33A reveals how soil issues were determined for the site. He stated that PDS did look at the slope as to whether it was a landslide hazard area and that it is not a risk. He also testified that he regularly reviews grading plans for development sites. Mr. Hurley testified that this plat is exempt from detention requirements (SCC 30.63A.210(1)(B)(i), but that dispersal of flows across lawns and then into a drainage swale will be the method of handling surface water flows. On cross-examination, Mr. Hurley stated that if it was shown that site conditions were different than those shown on the plans, such as if steeper slopes are found during site visits, PDS would regulate the drainage design for the plat during the construction phase. In response to questioning, Mr. Hurley also testified that it would *not* be better to tight-line and channel surface water flows off of the site, as suggested by the McNalls attorney.

2.5 Next, the Applicant presented its expert, John Abbenroth, a professional land surveyor. He testified that if steep slopes are a concern within the area of Lot 1, the lot lines can be changed to remove the slope area from it.

2.6 Julian Liu also testified presented expert testimony on behalf of the Applicant. Mr. Liu is a geotechnical engineer and prepared the report as to the northwest corner slope on the Douglas property (Exhibit 44-A). He testified that there is "minimal to no" erosion hazard or, at most, a "slight hazard" associated with the Douglas property. He stated that he performed a site visit and testified as to the details of the test pits which were dug. He concluded that the slope had very stable soils. During his site visit on Feburary 7, 2008, he noted no groundwater. In reaching his conclusion, Mr. Liu testified that he considered the composition of the slope, the vegetation and cover, straightness of the trees, soil type and any signs of standing water or erosion. (Exhibit 44-A)

2.7 Pollution. Appellants make a general claim that the Douglas short plat will cause pollution off-site that threatens either their property or nearby Lake Goodwin. However, apart from a statement in their Reply Brief

that further soil testing is needed to determine whether the soils on site are sufficient to avoid erosion risks and are adequate to "support traditional septic drainfields," Appellants presented no evidence or testimony to support this claim.

2.8 For their part, the Applicant prepared a full drainage report (Exhibit 31), soil survey (Exhibit 33a), construction plans relating to erosion control and stormwater (Exhibit 29b), all showing that the application will meet the County's construction standards relating to drainage and stormwater control. They Applicant also twice received approval letters from the Snohomish Health District stating that the preliminary short subdivision met the minimum requirements of the Health District Sanitary Code. (Exhibit 38).

CONCLUSIONS OF LAW

2.9 The McNalls have failed to show by a preponderance of the evidence that there is an erosion or drainage problem on the site, or that PDS failed to consider and appropriately condition the preliminary short plat relative to those issues. The Hearing Examiner concludes that there is substantial evidence in the record which proves that erosion issues were considered by PDS and the Applicant in the design and approval of the short plat. Drainage issues were considered as well, and there is substantial evidence to show that (1) the plat is designed to direct water away from the steep slope associated with the northwest corner of the plat; (2) the design plan meets the basic requirements of the drainage code (Ch. 30.63A SCC); and (3) PDS retains sufficient authority to change the design or add additional conditions during the construction phase should site conditions reveal the need to do so to protect off-site properties from runoff in amounts greater than what was in existence prior to the Douglas preliminary short plat approval.

2.10 As to the claim relating to pollution, the Appellant carries the burden to prove by a preponderance of the evidence that the matters contained in their appeal are well-founded. Here, only unsupported, vague allegations relating to drainage and pollution are made without supporting evidence or testimony. Accordingly, the Hearing Examiner finds that the Appellant has failed to meet their burden of proof that the Douglas short plat will result in pollution or contamination from the proposed drainage or septic systems on site.

III. PDS erred in approving the short plat because it fails to meet the goals of the purpose and goals of the rural cluster subdivision ordinance, specifically, Subsections 30.41C.010(2),(3),(4),(6),(7),(8),(9),(10),(11) and (12) SCC.

FINDINGS OF FACT:

3.1 The Appellants provided extensive argument that the purposes of the rural cluster subdivision ordinance as set forth in SCC 30.41C.010 have not been met by the development proposal. (Exhibits 46, 50; See also, Testimony of William McNall and Judy McNall). In addition, the McNalls presented a number of photographs showing the surrounding properties and neighborhood in support of its argument that the development would not be consistent with the current rural character of the area.

3.2 In response, PDS planner, Stacy Abbott, testified that the "purpose" section of the code is not controlling as to the approval of the Douglas short plat application and could not have been considered as a separate set of criteria in approving the plat.

3.3 The Applicant agrees with PDS and states that the true criteria governing approval of this short plat are found in Ch. 30.41B (short subdivision) as modified by the criteria provided in Chapter 30.41C SCC. (See Applicant's Response Brief at pp. 12-14).

3.4 The zoning code establishes the underlying uses and densities permitted within the zone. Here, the property is designated RR-5 under the Comprehensive Plan, and carries a zoning designation of R-5, which allows one dwelling unit per five acres in rural areas.

3.5 The County Council enacted Ch. 30.41C SCC, to implement the provisions of the County's GMA Comprehensive Plan Policy, LU 6.B.9, which states that within the Rural Residential designation, and within the RUTA, *subdivisions may exceed the basic density of 1 lot per 5 acres if the rural cluster subdivision technique is used, all of its and requirements for the maintenance and enhancement of the rural character are met, and the maximum lot yield does not exceed 1 lot per 2.3 acres.* (See, Appellant's Brief at Ex. 46-J); (Emphasis Added)

3.6 In their Reply Brief, Appellants state: "The Douglas Plat allows greater density located south and west to "jump the road" and spread further from the lake than appropriate. This is the sprawl that must be stopped." (Reply Brief at p. 2).

3.7 During the open record hearing, William McNall testified that the at the time he purchases his property, he was assured that the land would stay in large tracts and that his neighborhood would stay the way it is, with other lots at least five acres away. Mr. McNall went on to state later in his testimony that his idea of "rural" character is that a person can just barely see his neighbors. He described the property today as quiet, with only the occasional noise from lawn mowers or kids playing in the distance. There are no lights coming into their home from adjacent parcels.

CONCLUSION OF LAW

3.8 Under the vested rights doctrine, a subdivision application, along with any other type of land use application, must be judged by the regulations in effect on the date that a complete application is filed. See, Noble Manor v. Pierce County, 133 Wn.2d 269, 943 P.2d 1378 (1997); and Chelan County v. Nykreim, 146 Wn.2d 904 (2002). It is well-settled law that a municipality may not look beyond the established regulations (whether local ordinances or provisions of state law) to deny a permit. See, Cox v. Lynnwood, 72 Wn. App. 863 P.2d 578 (1993); and Mission Springs v. City of Spokane, 134 Wn.2d 947, 954 P.2d 250 (1998). A municipality cannot deny subdivision approval where the application meets all of the express requirements of the Code on some claim that the "intent" of the Code is not meant. *Id.*

3.9 Furthermore, as seen in the *Cox* and *Mission Springs* cases, those jurisdictions that have attempted to go beyond the approval standards set forth in development regulations have been found to have acted arbitrarily and capriciously, and were held liable for damages under Ch. 64.40 RCW. Appellants urge the County to take an action that they cannot do—that is, to deny a subdivision application that meets all approval criteria on the grounds that the "purposes" of Ch. 30.41C.010 are not met.

3.10 The Hearing Examiner concludes that the Department is correct in arguing that the "purpose" section (SCC 30.41C.010) does not control approval of the Douglas subdivision. Instead, it must be judged against the regulations set forth in Sections 30.41C.100 through .310 (decision criteria, design standards) and Chapter 30.41B SCC (short subdivisions general approval criteria), as well as Chapter 58.17 RCW (state subdivision approval criteria). Section 30.41C.010 is simply a statement of legislative intent and a description of what the ordinance, as written, is intended to accomplish. It is not another set of goals against which the application can be judged, and it was not error for PDS to refuse to perform such additional analysis.

3.11 The Appellants argue that the purposes section of the ordinance should control and cite to the Comprehensive Plan policies that they are intended to meet. It is well-settled law that Comprehensive Plan policies are not development regulations that must be met by applicants. Further, a county's comprehensive plan is generally to be used as a "guide" or "blueprint," and as such, it is not usually appropriate to use it to make specific land use decisions. Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 873-74, 947 P.2d 1208 (1997).

3.12 The Appellants statements are telling in that they sum up the true nature of their claims: a dispute about the amount of density allowed by the rural cluster subdivision ordinance, and the attendant impacts that come from living closer to one's neighbors. Although the McNall's dissatisfaction with the changes that will come from the approval of the Douglas subdivision is understandable, it is not grounds for disapproving the rural cluster subdivision. Their argument is with what is allows to be built under the provisions of Chapter 30.41C SCC. The time to challenge those standards was at the time of the adoption of the enabling ordinance (Ordinance No. 02-064) in 2002 or when it was later amended by Ordinance No. 05-083 in 2005.

3.13 Accordingly, based on the foregoing, the Hearing Examiner finds as a matter of law that the Appellants claims are unsupported by the law and, therefore, the Appellants have failed to meet their burden of proof.

IV. PDS failed to require compliance with SCC 30.41C.200(1), when it granted preliminary plat approval because PDS failed to require the developer to place the northwest corner into a NGPA where it would join an existing NGPA on the McNall property.

FINDINGS OF FACT

4.1 Appellants allege that PDS failed to consider compliance with SCC 30.41C.200(1) when it approved the plat because that section requires:

> When an environmentally sensitive areas such as…critical areas are present, and when such areas are identified and protected pursuant to 30.62 SCC and/or other applicable county ordinances or policies, the area shall be designated as native growth protection areas.

4.2 Appellants argue that the Douglas and McNall properties share a common drainage swale that is marked as a NGPA on the McNall property. They conclude that the same NGPA designation should have been placed on the Douglas portion of the property, as well, but was not placed on the approved plans. Accordingly, they argue that the development proposal fails to meet the conditions of SCC 30.41C.200(1). (Exhibit 46 – Appellant's Brief at p. 11).

4.3 The Applicant responds that the NGPA on the McNall short plat was placed there because the area was once thought to be an erosion hazard area, that the area is not an erosion hazard area, and that the area will be put into a permanent Open Space Tract under the approved plat design so that the same function as placement into an NGPA will be met. (Exhibit 47 – Appellants Response Brief at p. 13-14). The Applicant's Open Space Management Plan is consistent with this statement. (See Exhibit 27)

4.4 As noted above in Issue No. I, the Department testified that it performed a further site survey and determined that there are no critical areas (including erosion hazard areas) on the site. Additionally, the subject property has not been determined to be an erosion hazard area by the U.S. Department of Agriculture Soil Conservation Service within their classification system. (Exhibit 33a)

4.5 Additional findings relevant to whether the area located in the northwest corner of the Douglas property presents an erosion hazard are set forth at Issue No. II, herein above.

CONCLUSIONS OF LAW

4.6 The evidence presented in the record here demonstrates that the northwest corner of the Douglas property is not an erosion hazard area, nor are other critical areas present. Accordingly, it was not error for PDS to fail to require the placement of an NGPA on the northwest corner of the Douglas plat.

V. PDS failed to require compliance with SCC 30.41C.210(1) because scaling from the plat map reveals that only 41.5 percent, rather than 45 percent of the lot has been put into restricted open space.

FINDINGS OF FACT

5.1 Appellants raise this issue in their statement of appeal. They claim that their calculations show that the Applicant failed to meet the express terms of the code by failing to provide 45 percent of the lot in restricted open space. Appellants provided no testimony during the open record hearing and no additional evidence to support this claim, nor did they provide legal argument relevant to it.

5.2 In response to this issue, the Applicant noted in a letter from John Abbenroth, Skagit Surveyors and Engineers, to Stacey Abbott that the open space provided exceeds 45 percent, and refers to the plat map. (Exhibit 40)

CONCLUSIONS OF LAW

5.3 The McNalls abandoned this issue on appeal and failed to show by a preponderance of the evidence that the plat fails to meet the 45 percent restricted open space requirement. Accordingly, the issue is dismissed.

VI. PDS failed to require compliance with SCC 30.41C.210(2).

FINDINGS OF FACT

6.1 Appellants raise this issue in their statement of appeal. They claim that the Applicant erroneously included 4,500 square feet of driveway access in the open space calculations and understated the lot sizes by at least 5,000 square feet.

6.2 Appellants provided no testimony during the open record hearing and no additional evidence to support this claim, nor did they provide legal argument relevant to it.

6.3 In response to this issue, the Applicant noted in a letter from John Abbenroth, Skagit Surveyors and Engineers, to Stacey Abbott that the plat map has been revised to exclude the driveway accesses from the open space calculations. (Exhibit 40)

CONCLUSIONS OF LAW

6.4 The McNalls abandoned this issue on appeal and failed to show by a preponderance of the evidence that the Applicant improperly calculated the open space. Accordingly, the issue is dismissed.

ORDER ON APPEAL

The Appeal of the PDS decision granting preliminary short plat approval of the Douglas Rural Cluster Subdivision **is denied.**

OFFICE OF THE SNOHOMISH COUNTY
HEARING EXAMINER

_____
Millie Judge, *Pro Tem* Hearing Examiner

EXPLANATION OF APPEAL PROCEDURES

The following paragraphs provide only a summary of the reconsideration and appeal processes. For the specific appeal requirements or procedures, please see Chapter 30.71 SCC and RCW 36.70C RCW (the Land Use Petition Act or "LUPA"). Staff from the Office of the Hearing Examiner cannot provide you with legal advice. If you need legal advice, please consult with your attorney.

Reconsideration

Pursuant to SCC 30.71.120(1), any party to the appeal may file a written petition for reconsideration with the hearing examiner **within 10 calendar days** following the date of the hearing examiner's written decision. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties to the appeal on the date of filing. The timely filing of a petition for reconsideration shall stay the hearing examiner's decision until such time as the petition has been disposed of by the hearing examiner.

(2) The grounds for seeking reconsideration are limited to the items set forth in SCC 30.71.120(2).
(3) The petition for reconsideration must:

(a) Contain the name, mailing address, and daytime telephone number of the petitioner or petitioner's representative, together with the signature of the petitioner or of the petitioner's representative;
(b) Identify the specific findings, conclusions, actions, and/or conditions for which reconsideration is requested;
(c) State the specific grounds upon which relief is requested;
(d) Describe the specific relief requested; and
(e) Where applicable, identify the specific nature of any newly discovered evidence or changes proposed.

A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration; provided that a decision which has been revised on reconsideration from any form of denial to any form of approval with preconditions and/or conditions shall be subject to reconsideration.

Appeals

Pursuant to SCC 30.71.130, the hearing examiner's decision on a Type 1 appeal is the final decision of the County, and **may be appealed to Superior Court within 21 days of issuance of the decision** in accordance with chapter 36.70C RCW (LUPA).

The cost of transcribing the record of proceeding, of copying photographs, video tapes and any oversized documents, and of staff time spent in copying and assembling the record and preparing the record for filing with the court shall be borne by the party filing the petition. If more than one party appeals the decision, the costs of preparing the record shall be borne equally among the appellants.

Staff Distribution:

Department of Planning and Development Services: Stacey Abbott

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.