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BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the HEARING EXAMINER PRO TEM

In the Matter of the Application of)
)
Rainbow Ridge III) **FILE NO. 07-104072 SD**
)
5-lot Rural Cluster Subdivision (RCS) on 20.23 acres)

DATE OF DECISION: January 8, 2008
APPLICANT: LRNW II, LLC
PROJECT NAME: ***RAINBOW RIDGE DIVISION III***
DECISION (SUMMARY): **Approved with Conditions**

BASIC INFORMATION

GENERAL LOCATION: The property is located at Dubuque Road, west of East Lake Roesiger Road, Snohomish, WA
ACREAGE: 20.23 acres
NUMBER OF LOTS: 5
AVERAGE LOT SIZE: 41,152 square feet
MINIMUM LOT SIZE: 25,203 square feet
DENSITY: 0.244 d.u. per acre (gross)
ZONING: R-5
COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Rural Residential-5

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: Individual on-site septic

SCHOOL DISTRICT: Snohomish School District 201

FIRE DISTRICT: Fire District No. 6

INTRODUCTION

The applicant filed a Master Permit Application on May 21, 2007. (Exhibit 1) A Revised Master Permit Application was filed on August 3, 2007. (Exhibit 17)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the Snohomish County Code. (Exhibits 23, 24 and 25)

A SEPA “Determination of Nonsignificance” (DNS) was made on September 7, 2007. (Exhibit 22) No appeal was filed.

The Examiner held an open record hearing on December 4, 2007, which was the 122nd day of the 120-day review period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on December 4, 2007 at 10:00 a.m.

1. The Examiner announced that she had read the PDS staff report and reviewed the file, and was familiar with the area in the vicinity of the site and, therefore, was generally apprised of the particular request involved.
2. The applicant, LRNW II, LLC, was represented by George Newman of Triad Associates and Greg O’Kelley of Greg O’Kelley and Associates, LLC. Snohomish County was represented by Stacy Abbott of the Department of Planning and Development Services.
3. The hearing concluded at approximately 10:40 a.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, and record of oral testimony received at the open record hearing, which are a part of the file in this matter, and which exhibits and testimony were considered by the Examiner, are hereby incorporated in this decision, as if set forth in full.

2. Roads and Transportation. The Department of Public Works (DPW) reviewed the Revised Master Permit Application request with regard to traffic mitigation and road design standards. That review considered the requirements of 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:

- a. Road System Capacity. The project is subject to the payment of road impact fees based on the project's generation of 47.85 new average daily trips (ADT) by single family residences within the plat. The road system capacity impact fee that shall be required for this development is \$3,799.00 per lot (based on \$379 per ADT) or \$18,996.45 for all five lots.
- b. Concurrency. Under SCC 30.66B.160(2)(a), the DPW had determined that the development is deemed to be "concurrent" for purposes of its impact on arterial units. This is based on the fact that although the development is within TSA B and it contains a unit in arrears (Unit 238) as of the date of submittal, the development, as proposed, will not add 3 or more peak hour trips to the arterial unit in arrears. In addition, the development as proposed will generate 3.75 a.m. and 5.05 p.m. peak hour trips, which is below the limit of 50 peak hour trips. The development is therefore not required to be reviewed under SC 30.66B.035.
- c. Inadequate Road Conditions. Under SCC 30.66B.210, the DPW has determined that the proposed development does not require the imposition of mitigation for inadequate road conditions.
- d. Frontage Improvements. Frontage improvements are required to be constructed on any open, constructed and maintained public road. The applicant's property does not have any property abutting an open public road and therefore, no frontage improvements are required.
- e. Access and Circulation. Access and circulation requirements are met as described in the PDS Staff Recommendation (Exhibit 34). The access road within the subdivision proposes to connect to the road stub within an adjacent plat (Rainbow Ridge II), which is described as "Public Road A" at the eastern boundary of the plat, extending northwesterly through the site with a temporary road end at the northern project boundary. (See Exhibit 36). Public Road A will be classified as a rural residential road, with a designated speed of 30 mph. Within Rainbow Ridge III, Public Road A will consist of approximately 2,363 feet from the intersection with Dubuque Road. Public Road A will end in a temporary dead-end road with a temporary turnaround, having a 40-foot paved radius. Two EDDS deviations have been granted which authorize the extension of Public Road A beyond the limit of 1,320 feet, and to allow the enclosed drainage and thickened edge on the southwest side of the proposed Public Road A and the south sides of the proposed private local access roads, along with an enclosed drainage system discharging to an infiltration pond located on the Rainbow Ridge II plat site. (Exhibits 37 and 38) Public Road A shall be constructed according to EDDS standards and shall have a right-of-way width of 60 feet.

Two private access roads are proposed in Tracts 987 and 998, which are to be classified as private, low volume access roads with designated speeds of 20 mph and will serve Lots 3, 4, and 5. Lots 1 and 2 will be served by a private access road proposed in Tract 986, which will also be classified as a private, low volume access road with a designated speed of 20 mph.

- f. Dedication of Right-of-Way. The public access road described above as Public Road A requires the dedication of public right-of-way. The applicant has agreed to dedicate 60 feet of right-of-way to Snohomish County for the establishment of Public Road A. Accordingly, the application meets the requirement of EDDS, and is adequately shown on the plat map.

- g. State Highway Impacts. Although the development proposal is subject to potential mitigation for impacts to state highways pursuant to the County's substantive authority under SEPA, the Washington State Department of Transportation (WSDOT) has indicated in comments to PDS dated May 24, 2007, that no mitigation is required as a result of this development.
 - h. City Streets and Other Roads. This requirement is not applicable because there are no cities with interlocal agreements with Snohomish County whose streets or roads will be impacted by the proposed development.
 - i. Transportation Demand Management. This requirement is not applicable because it only applies to development proposals within the Urban Growth Area (UGA). The subject property here is located outside the UGA.
3. Parks. The project is within the Robe Canyon Park Service Area No. 303 and was reviewed pursuant to Ch. 30.66A SCC for its impact to parks within the area. No impact fees are required to be paid for this development application.
 4. Schools. The project has been reviewed for impacts to schools under Chapter 30.66C SCC. The lots within the subdivision are subject to the payment of school impact 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 collected prior to issuance of any building permits, in accordance with SCC 30.66C.010. Credit shall be given for one existing parcel, which is credited to Lot 1.
 5. Drainage and Grading. 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. Stormwater detention and water quality facilities for the development will be provided by facilities constructed in the plat of Rainbow Ridge II, located adjacent to the development to the east. The Rainbow Ridge II development anticipated the necessary amount of drainage capacity needed to adequately serve the plat of Rainbow Ridge III, as presented here. Reciprocal covenants and restrictions will be required as a condition of approval to maintain the drainage facilities constructed in the plat of Rainbow Ridge II for the benefit of the plat of Rainbow Ridge III.
 6. Pedestrian Facilities. Children living within the proposed development will be served by the Snohomish School District as noted in Finding 4, above. By letter dated June 16, 2007, the School District has indicated that all school children from the development will be picked up by school buses at the intersection of Dubuque Road and Public Road A. As such, no additional off-site pedestrian facilities are required under RCW 58.17.110.
 7. Critical Areas. There are several critical areas on the site. Two Category 3 wetlands and two Type 4 streams are present and the applicant has completed a Critical Area Study and Mitigation Plan for their protection. (Exhibit 9) PDS staff have reviewed the Study and Plan, and find the proposal meets the requirements of the Critical Areas Ordinance (Chapter 30.62 SCC).
 8. Water and Sewer. The Snohomish County Health District has no objection to this proposal provided that public water is furnished and sewage disposal meets Health District standards for on-site septic systems. Public water and electrical power are available for this development. (Exhibits 29, 30) Private, on-site septic systems will be provided for sewage disposal.

9. GMA Comprehensive Plan. The subject property is designated Rural Residential-5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
10. Zoning. The project meets the zoning code requirements for lot size, including the RCS provisions, bulk regulations, and other zoning code requirements for a RCS in the R-5 zone. The proposed 5-lot subdivision is consistent with the density provisions of the County's GMA-based zoning regulations set forth in Subtitle 30.2 SCC.
11. Subdivision requirements. The proposal 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.

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on May 31, 2005. The proposed plat, as conditioned, also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community as noted in this report. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.

12. Rural Cluster Subdivision requirements. 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, the latest versions of which were received by PDS on August 3, 2007 (Exhibits 17 and 18), and in an open space management plan (Exhibit 7) that is to be implemented by a homeowners' association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200.
13. 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.
14. 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.
2. The DPW recommends that the request be approved as to traffic use subject to conditions specified below.

3. PDS recommends that the request be approved as to all other conditions subject to the conditions specified below.
4. Adequate public services exist to serve the proposed development.
5. 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.
6. If approved with the recommended conditions, the proposal makes adequate provision for the public health, safety and welfare.
7. 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 Rainbow Ridge III request for a 5-lot **RURAL CLUSTER SUBDIVISION** on 20.23 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on August 3, 2007 (Exhibit 19B) 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.
 - iii. A final mitigation plan based on the Wetland and Stream Critical Area Study and Conceptual Wetland Mitigation Plan prepared by A.C. Kindig & Co. dated May 8, 2007 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 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 one existing parcel. Lot one 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:

\$3,799.29 per lot for mitigation of impacts on county roads paid to the county,

Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) 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. Provide the following note: "Where existing vegetation fails to meet the intended function of the Vegetated Sight Obscuring Buffer, then supplemental planting of native vegetation shall be made, with the ultimate density of trees at 10 feet on center and shrubs at 3 feet on center. A minimum of 75% of the trees shall be conifers."

- v. The final plat shall show a cul-de-sac with 40 foot paved radius within a temporary turnaround easement. A note accompanying the turnaround easement shall read: "Temporary turnaround easement to be relinquished to the underlying property owners upon extension of the public road."

D. Prior to recording of the final plat:

- i. The approved construction plans shall show a cul-de-sac with 40 foot paved radius within a temporary turnaround easement. A note accompanying the turnaround easement shall read: "Temporary turnaround easement to be relinquished to the underlying property owners upon extension of the public road."

- ii. The road dedication and construction of Road A and the private access roads in Tracts 986, 998 and 987 shall have been completed and accepted by the County.

- 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 platator 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.

- iv. The final wetland mitigation plan shall be completely implemented.

- v. Off-site drainage facilities in the plat currently known as Rainbow Ridge II (PFN 06-103510 SD) are to be constructed and functional prior to recording of this plat (Rainbow Ridge III).
 - vi. Adequate access to the boundary of the site must be provided to the satisfaction of Snohomish County.
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 19G) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved 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 8th day of January, 2008.

Millie Judge, Pro Tem 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 **JANUARY 18, 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 **JANUARY 22, 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: Stacy 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.