

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: January 7, 2010

PLAT/PROJECT NAME: **APPLE GROVE**

APPLICANT/  
LANDOWNER: James Short

FILE NO.: 07-102067-000-00 SD

TYPE OF REQUEST: 5-lot short subdivision with dedication of right-of-way

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

**BASIC INFORMATION**

GENERAL LOCATION: 8823 47<sup>th</sup> Drive NE, Marysville, WA 98270 (northeast corner of 88<sup>th</sup> Street NE and 47<sup>th</sup> Drive NE)

Acreage: 1.02                      Avg. Lot Area: 8088 square feet                      Gross Density: 4.91 du/ac

Lots: 5                              Smallest Lot Area: 6580 square feet                      Net Density: 5.39 du/ac

Lot Size Averaging: 8088 square feet per lot

Current Zoning: R-7200    Proposed Zoning: No change

**COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)

**UTILITIES:**

Water: City of Marysville

Sewer: City of Marysville

SCHOOL DISTRICT: Marysville #25

FIRE DISTRICT: #12

PDS STAFF RECOMMENDATION: Approve with conditions

## **INTRODUCTION**

The applicant filed the preliminary plat application on May 9, 2007, which was determined by the Department of Planning and Development Services (PDS) to be complete as of the date of submittal for regulatory purposes on May 30, 2007. (Exhibit A1, Exhibit J at 2).

PDS gave proper public notice of the open record hearing as required by the county code. Exhibit F4 (Affidavit of Mailing); Exhibit F5 (Affidavit of Notification by Publication); Exhibit F6 (Posting Verification).

A SEPA determination was made on May 22, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on December 8, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**NOTE:** The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

## **FINDINGS OF FACT**

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. Summary of Proposal: The applicant is requesting a 5-lot subdivision on a 1.02 acre parcel that is zoned Residential 7200 (R-7200). Access is by a new public road off of 47<sup>th</sup> Drive NE. Water and sewer will be provided by the City of Marysville.
3. Site Description: The site consists of two lots from a previous 6-lot short plat (04-115043-SP). The lots within the current project are developed with a single-family residence and outbuildings on one lot, and the other lot is undeveloped. The land is landscaped as a yard. There are no critical areas on site.
4. Adjacent Zoning/Uses: Adjacent land is developed as single-family residences. Adjacent zoning is R-7200.
5. Public Comment/Issues of Concern.

There are no issues of concern. Two public comments were received (Exhibits I.1 and I.2), but each comment merely requested to be listed as a party of record for the project.

### **Compliance with Codes and Policies.**

6. Parks Mitigation. The proposal is within Park District No. 302 (River Meadows) and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential

unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies.

7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

A. Road System Capacity [SCC 30.66B.310]

The applicant's representative indicated in the presubmittal meeting that there is one existing home on the site, which will remain. The form was filled out showing trip credit for the existing home. After reviewing the underlying development on the same property that was completed recently, PDS learned that the same home was given trip credits for the previous development (PFN 04 115043), so PDS was unable to give trip credit for the same home a second time.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by five new homes, which is 9.57 ADT/new home. This rate comes from the 7<sup>th</sup> Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 47.85 new ADT and has a road system capacity impact fee of \$11,579.70, based on \$242.00/ADT. This impact fee must be paid proportionately prior to the issuance of each building permit.

The ADT has been calculated as follows: 5 lots x 9.57 = 47.85

The PM PHT has been calculated as follows: 5 lots x 1.01 PM PHT/home = 5.05

The AM PHT has been calculated as follows: 5 lots x 0.75 AM PHT/home = 3.75

B. Concurrency [SCC 30.66B.120]

"Level-of-service" (LOS) means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. LOS standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with LOS A representing the best operating condition and LOS F the worst.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works (DPW) has made a determination that the development is concurrent. The expiration date of the concurrency determination is six years from June 28, 2007.

The development has been deemed concurrent on the following basis: Small or Medium-Sized Development in TSA with no arterial unit in arrears, SCC 30.66B.130 (4: The subject development is located in TSA A which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 3.75 a.m. peak-hour trips and 5.05 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

C. Inadequate Road Condition (IRC) [SCC 30.66B.210]

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing IRC

at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject proposal will not impact any IRC locations identified at this time within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC. Exhibit J at 3-4.

D. Frontage Improvements [SCC 30.66B.410]

All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

The subject property frontage is located along 88<sup>th</sup> Street NE. Urban standard frontage improvements are required consisting of 20 feet from centerline of right-of-way, vertical curb, gutter, 5-foot planter strip, and 5-foot sidewalk. The frontage improvements have been completed as a precondition of recording the Short-Davidson Short Plat (PFN 04 115043). 88<sup>th</sup> Street NE is classified as an urban minor arterial by Snohomish County, and is located within the City of Marysville Urban Growth Area (UGA). In comments dated June 11, 2004 (Exhibit H.2), the City has requested a bike lane and planter strip for 88<sup>th</sup> Street NE. Per SCC 30.66B.720, and consistent with the terms of the County/City of Marysville Interlocal Agreement, DPW shall recommend that those requirements be imposed, if not already constructed. Shane Oden, City of Marysville engineer indicated in a telephone conversation that frontage improvements on 88<sup>th</sup> Street NE have already been constructed, and the pavement width is about two feet short of what the city's design standards are for that classification of road. He indicated that the City would most likely accept the existing improvements.

The subject property frontage is also located along 47<sup>th</sup> Avenue NE, which was extended from where it dead ended at the north property line to intersect with 88<sup>th</sup> Street NE. Frontage improvements should already have been constructed in conjunction with the previous development, the Short-Davidson Short Plat.

Construction of frontage improvements is required prior to recording the plat. The Hearing Examiner has included a condition of approval to require the frontage improvements.

E. Access and Circulation [SCC 30.66B.420]

Access to the lots is proposed from 47<sup>th</sup> Drive NE via a proposed public road ending in a stub. Since the road is less than 150 feet in length and there are less than four access points located within the end of the road, the design is acceptable. Direct access to 88<sup>th</sup> Street NE by any lot in the development would not be allowed, nor is it proposed.

The cross section detail on the plans for the public road shows a 28-foot pavement width, vertical curbs, and 1-foot of space behind the back of the curb in a 31-foot wide right-of-way, which is acceptable since it meets the requirements of EDDS 3-050 for a residential non-arterial urban road serving less than 90 ADT.

There is no road grade, vertical or horizontal curve issues of concern on the site. Sight distance at the intersections of the proposed public road with 47<sup>th</sup> Avenue, and 47<sup>th</sup> Avenue with 88<sup>th</sup> Street NE meet the minimum requirements of EDDS 3-08.

The centerline offset between the proposed public road and 88<sup>th</sup> Street NE meets the minimum EDDS 3-11 requirements for spacing between a residential road and an arterial road, which is 165 feet. This right-of-way will be dedicated on the face of the plat. It will become a public street upon recording of the Apple Grove final plat.

F. Dedication of Right-of-Way [SCC 30.66B.510]

88<sup>th</sup> Street NE is designated as a minor arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. 40 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, no additional right-of-way is required, which has been shown on the plans.

47<sup>th</sup> Avenue NE is designated as a non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. 21 feet of right-of-way presently exists on the development's side of the right-of-way; however, a deviation request was approved for the earlier development for which that section of the road was constructed that allowed the developer to eliminate the planter strips in order to match the existing improvements to the north and to meet the City of Marysville's design standards. Therefore, no additional right-of-way is required, other than that which is shown on the plans.

G. State Highway Impacts [SCC 30.66B.710]

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at  $47.85 \text{ ADT} \times \$36.00/\text{ADT} = \$1,722.60$ .

Comments dated June 8, 2007 have been received from WSDOT that agree with that amount. The Examiner has included a condition of approval for payment of the WSDOT fees as a condition of approval for this development.

H. Other Streets and Roads [SCC 30.66B.720]

DPW will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 23.36.030(3) between the county and the other agency.

An interlocal agreement has been executed between both the Cities of Marysville and Arlington and the County for traffic mitigation for impacts on the cities road systems. Traffic mitigation has been requested by both cities for impacts to city streets.

Comments dated June 11, 2007 were received from the City of Marysville (Exhibit H.2) requesting the applicant to complete an offer form to pay the city traffic mitigation for impacts to city streets. The applicant submitted an offer to Marysville for \$12,827.00, based on the standard calculation method for the traffic mitigation fee, which is 5.05 PM peak hour trips x \$3,175.00 x 80% (sub area location CO-MA-5) = \$12,827.00. An e-mail was received from Marysville on January 28, 2009 that included a copy of the offer to Marysville for that amount, and the agreement had been signed as accepted by a city official. The Examiner will include a condition of approval to require payment of that amount to the City of Marysville.

Comments dated June 20, 2007 have been received from the City of Arlington (Exhibit H.1) requesting that the applicant pay the city traffic mitigation for impacts to city streets. A copy of an offer was not found with the application material, however; the applicant subsequently submitted an offer to pay Arlington \$3,355.00 based on the standard calculation method for the traffic mitigation fee, 5.05 new PM peak hour trips x \$3,355.00 x 20% (sub area location COA-ARL-9) = \$3,388.55. The City of Arlington signed the offer as accepted, and sent a copy of the executed offer to the County. The Examiner will include a condition of approval to require payment of that amount to Arlington.

I. Transportation Demand Management (TDM) [SCC 30.66B.630]

TDM is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. SCC 30.66B.610(1) and SCC 30.66B.630(1) succinctly states the basic requirements:

All new developments in the UGA are required to provide sufficient TDM measures to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. (SCC 30.66B.630) This requirement may be met by:

- (a) Earning trip reduction credits for construction of onsite features pursuant to SCC 30.66B.640;
- (b) Construction of offsite TDM measures pursuant to SCC 30.66B.620; or
- (c) A voluntary payment into an account established for the purpose of contributing to the construction or purchase of specific TDM measures pursuant to SCC 30.66B.625.

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500 times the required trip reduction percentage times the development's peak hour trip generation [SCC 30.66B.615].

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 5.05 new PM peak hour trips x \$1,500.00, which equals \$378.75. A written offer for payment of this TDM obligation has

been received by the DPW. A requirement for payment of this amount will be included as a condition of approval by the Examiner.

8. Pedestrian Facilities for Students [RCW 58.17.110]

One of the requirements of the state subdivision code is that the approving authority considers whether the development provides sidewalks and other planning features that assure safe walking conditions for students. (RCW 58.17.110(1)) Comments dated May 18, 2007 have been received from the Marysville School District that indicate the elementary students would walk to Pinewood Elementary School at 5115 84<sup>th</sup> Street NE, and would provide bus service to the middle and high school students at a bus stop located at 46<sup>th</sup> Drive and 88<sup>th</sup> Street NE. DPW has determined that safe walking conditions will exist for all levels of public school students, since sidewalks already exist along the frontage of the new lots on 47<sup>th</sup> Ave. NE and along the property's frontage on 88<sup>th</sup> Street NE. Paved shoulder walkways are in place to the bus stop at 46<sup>th</sup> Drive and 88<sup>th</sup> Street NE, and along the route to the elementary school via 46<sup>th</sup> Drive, 86<sup>th</sup> Place, 47<sup>th</sup> Drive, and 85<sup>th</sup> Place NE to the school entrance on the west side.

9. Mitigation for Impacts to Schools [Chapter 30.66C SCC]

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Marysville School District No. 25, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 1 existing lot. Please note that although there are two tax parcels and two lots within the current application, both lots were created under the 04-115043-SP short plat approvals (lots 5 and 6). No building permit has been issued for the lot 6 of the previous short plat, so school fees have not been paid for that lot. Consequently, credit will be given for only one existing lot. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

10. Drainage and grading.

Drainage. A waiver request (Exhibit G.1) to allow the installation of the infiltration facilities in an easement rather than a tract was approved with conditions that the easement be twenty feet wide and building setbacks be observed. Individual lot drainage will be collected on each lot and discharged to a private on-site infiltration system on each lot.

The proposed infiltration system for the new public road will collect the runoff and discharge it via infiltration adjacent to the road. This design separates this drainage system from the existing drainage systems in the neighborhood.

Drainage impacts are addressed by the required adherence to the county drainage code, SCC 30.63A, and other applicable police power regulations. Those requirements ensure that concerns about drainage impacts are addressed in conformity with county and state standards. SCC 30.63A requires submittal and implementation of a drainage plan for this proposal. PDS has reviewed the targeted drainage plan and report articulating the drainage concept detailed above, from which it concludes that the proposal can conform to drainage code requirements.

Full drainage plan review will be conducted; the specifics of final drainage system design are matters under the administrative authority of PDS. Conformity with SCC 30.63A is the general standard. The appropriate level of review at the preliminary plat stage is whether the conceptual drainage approach, the submitted targeted drainage plan, shows that the development can feasibly conform to the requirements of SCC 30.63A. PDS has concluded that it can.

PDS (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions.

Grading. Grading quantities are anticipated to be approximately 800 cubic yards of cut and 800 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.

11. Critical Areas Regulations (Chapter 30.62 SCC) There are no critical areas on the site.
12. Consistency with the GMA Comprehensive Plan.

On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to UGAs and adopted area-wide rezones within the UGAs of the county respectively.

The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an UGA. It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation "covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones."

The five lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

13. Consistency with Bulk and Performance Standards. [Subtitle 30.2 SCC]

This project meets zoning code requirements for lot size, including lot size averaging (LSA) provisions, bulk regulations and other zoning code requirements.

The proposal has been evaluated for compliance with the LSA provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way (ROW) setbacks of 15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55%.



The LSA calculation for this application is as follows:

Area in Lots (40,441 square feet) + Critical Areas and Buffers (0 square feet) + Open Space (0 square feet) = (40,441 square feet) ÷ (5 of lots proposed) = 8,088.2 square feet

Because the application is for a short plat of a previous short plat (04-115043-SP), and 04-115043-SP used LSA for establishing appropriate lot sizes, analysis of the combined 04-115043-SP and the 07-102067-SP for LSA is as follows:

Area in Lots (66,683 square feet) ÷ 9 lots = 7,409 square feet

The minimum zoning requirement is 7,200 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. PDS concludes that the proposal is consistent with the LSA provisions of SCC 30.23.210.

14. Utilities

- A. Water. Water is available from the City of Marysville. Exhibit H3.
- B. Sewer. Sewer service is available from the City of Marysville. Exhibit H3.
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available. Exhibit H5.
- D. Snohomish Health District Approval- the SHD has no objections to the preliminary subdivision approval but indicates that any existing wells must be decommissioned in accordance with WAC 173-160-381 prior to final plat approval. The Examiner will incorporate this requirement as a condition of approval. Exhibit H4.

15. State Environmental Policy Act Determination (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on May 22, 2009 (Exhibit E2). The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on May 30, 2007. 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. Specifically, the following are met:

- A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. (Finding of Fact 7; see SCC 30.41A.210)
- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (Exhibit B1 & J; See 30.41A.110)
- C. Fire Code/Fire District Requirements. Fire apparatus access as depicted on the preliminary plat has been found by the Fire Marshall's Office to meet the minimum requirements of SCC 30.53A.150. (Exhibit J at 8) Prior to the start of combustible

construction, fire hydrants will need to be installed and operational. Approved addresses are required to be placed on all new buildings and signage or pavement striping denoting fire lanes placed on proposed roads as necessary (to be determined by the county Fire Marshall's Office during the construction plan review stage) to ensure access by emergency vehicles is not impeded.

- D. As indicated earlier in this decision, the applicant has met the requirements of the health district, school district, parks, the county drainage code, code requirements for building area, lot size averaging, and minimum net density.
- E. Density for Sloping Land. The project site is flat, so this provision does not apply.
- F. Safe Walking Conditions to School. The applicant will be providing safe walking conditions to the bus stop as discussed in Finding of Fact 8.

17. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the 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 preliminary subdivision conforms to applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas, the single-family homes will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State Department of Ecology drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Public water and sewer service will be provided by the City of Marysville.

18. Any Finding of Fact in this decision which should be deemed a conclusion is hereby adopted as such.

## CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The legal standard the Examiner must review for a preliminary subdivision under the State Subdivision Code, Chapter 58.17 RCW, is:

whether the proposed subdivision 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 . . . .

RCW 58.17.110.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner concludes that the applicant has met its burden in showing that the preliminary subdivision application should be approved.
4. 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 5-lot **PRELIMINARY PLAT** on 1.0 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

### CONDITIONS:

- A. The preliminary plat received by PDS on December 30, 2008 (Exhibit B1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any 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 and this decision.
  - ii. The applicant shall submit a full drainage plan for construction review and approval.
- C. The following restrictions and/or items shall be indicated on the face of the final plat:

- i. "The dwelling units within this development are subject to park impact fees in the amount of \$48.82 (River Meadows # 302) per newly approved dwelling unit pursuant to Chapter 30.66A SCC. 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."
- ii. "SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit, and twice the amounts for a duplex building permit:

\$2,315.94 per lot for mitigation of impacts on county roads paid to the county,  
\$75.75 per lot for transportation demand management shall be paid to the county for TSA  
\$2,565.40 per lot for mitigation of impacts on Marysville streets paid to the city,  
\$671.00 per lot for mitigation of impacts on Arlington streets paid to the city,  
\$344.52 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 subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS. "

- iii. "The lots within this subdivision will be subject to school impact mitigation fees for the Marysville School District No. 25 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."
- iv. "No lot in this development shall have direct vehicle access to 88<sup>th</sup> Street NE. Access to all the lots shall be to and from the new public road created by the subdivision."
- v. Lot 4 may be developed as a duplex lot.

D. Prior to recording of the final plat:

- i. The new public road shall have been constructed in compliance with the EDDS.
- ii. Urban standard frontage improvements shall have been constructed along the property frontage with 47<sup>th</sup> Drive NE in compliance with the EDDS unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- iii. Existing wells must be decommissioned in accordance with WAC 173-160-381 prior to final plat approval.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this 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 7th day of January, 2010.



Barbara Dykes, 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, 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 **JANUARY 19, 2010**. 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 **JANUARY 21, 2010** 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.

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### 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.
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