



DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

Millie Judge
Hearing Examiner

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

(425) 388-3538
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DATE OF DECISION: January 31, 2011

PLAT/PROJECT NAME: **NYSEETHER RCS**

APPLICANT/
LANDOWNER: LGAJV, LLC
P. O. Box 100
Edmonds, WA 98020

FILE NO.: 06-134099

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

LOCATION: 20410 36th Avenue NW, Stanwood, WA

ACREAGE: 218.5 acres across approximately 19 parcels

NUMBER OF LOTS: 63

AVERAGE LOT SIZE: 35,933 square feet

MINIMUM LOT SIZE: 27,737 square feet

GROSS DENSITY: 0.29 du/ac

GMACP DESIGNATION: Rural Residential-5 (1 du/5 acres, Basic)

ZONING: R-5

UTILITIES:

Water: Snohomish County PUD No. 1

Sewer: On-site individual septic

Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Lakewood School District No. 306

FIRE DISTRICT: Snohomish County Fire District No. 19

PDS STAFF RECOMMENDATION: Approve with conditions

NOTE: For a complete record, an electronic recording of the hearing in this case and the Tape Log is available in the Office of the Hearing Examiner.

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

FINDINGS OF FACT

1. **Regulatory Review and Vesting.** A complete application was submitted to Planning and Development Services (PDS) on March 20, 2007, and was vested as of that date for purposes of regulatory review. The 120-day clock started on April 17, 2007. PDS and the applicant exchanged various plan sets and review comments from May of 2007 through November, 2010. The applicant requested and was granted one extension of time, extending the expiration of its application to November 6, 2010. (Exhibit K) As of the hearing date, 152 days of the 120-day period had elapsed.
2. **Public Hearing.** A public hearing was held on January 6, 2011. Appearing for the applicant was Brian Holtzclaw and Cher Anderson of the McNaughten Group, and expert consultants who worked on the project application and required reports including Edward Koltonowski, Gibson Traffic Consultants, and John Smith and Gray Rand of David Evans and Associates. Appearing for PDS was Ed Caine. Notice was provided as required by SCC 30.70.050. Witnesses testifying at the hearing included Ed Caine, Brian Holtzclaw, John Smith and Gray Rand. Four members of the public testified at the hearing including Steve Rouse, Richard Vining, Dan Shackelford and Richard Birch. At the start of the hearing, Ed Caine made corrections to the PDS Staff Recommendation to correct scrivener's errors as shown on Exhibit K. The record was closed except for the addition of Exhibits L.1 and L.2, which were received on January 25, 2011.
3. **The Record.** All of the Exhibits shown on the master list of exhibits were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. The entire record was considered by the Examiner in reaching this decision.
4. **Public Notice.** The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits F.1, F.2 and F.3)

A. Background Information

5. **Applicant's Proposal:** The applicant is requesting a 63-lot RCS on a 214.5 acre parcel. Access to the lots will be by three new public roads off of 40th Avenue NW, 200th Street NW, and 32nd Avenue NW. Public water will be supplied by PUD #1 and each lot will be served by individual septic systems. The majority of the site is forested and undeveloped. There are three existing residences on the subject property that will be removed. There are 18 wetlands on site. Neighboring zoning is R-5. Adjacent properties are either developed as single-family residences or are undeveloped.
6. **Issues of Concern:**
 - A. **Agency Comments.** No issues of concern were raised during agency reviews.

- B. Citizen Comments. Public comments were received from nine citizens. (Exhibits I.1 to I.9). The concerns relate to groundwater impacts from the proposed development (when it was proposing to use individual wells), increased traffic in the area, stormwater runoff on adjacent parcels, the possible existence of bald eagle nests, and the location of legal lot lines in relation to existing markers or fences. Each of these concerns was carefully addressed by both the applicant and PDS (Exhibit K) as shown in the record and through their testimony at the public hearing.

B. Compliance with Codes and Policies.

7. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within Kayak Point Park Service Area, No. 301, and is subject to Chapter 30.66A SCC, which requires payment of \$811.29 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. The Examiner finds that such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies.
8. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards.
- (a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC). The applicant shall be required to pay a road system capacity impact fee to the County in the amount of \$151,588.80 (\$2,406.17/lot) based on \$264/ADT pursuant to SCC 30.66B.310. The application was deemed to be concurrent pursuant to SCC 30.66B.120 and SCC 30.66B.130(4) as of September 8, 2006. The expiration date of the concurrency determination is six years from this date. IRCs have been considered according to the requirements of SCC 30.66B.210, and as a result, the applicant is not required to make any improvements to IRC locations.
- (b) Frontage Improvements (SCC 30.66B.410) The plans indicate that part of the development fronting the road will be a Native Growth Protection Area Easement (NGPA/E), and no access to the lots in the development will be provided from 36th Avenue NW. In lieu of frontage improvements on 36th Avenue NW for this property, the Department of Public Works (DPW) requires the construction of a 40-foot radius cul-de-sac for a permanent end of the road per EDDS 3-10. In addition, there is a 150-foot section of property frontage on the unopened right-of-way for 212th Street NW, west of Happy Valley Road, which is unopened right-of-way in that location. There will be no lots taking access from that area of the development. There is currently 60 feet of existing right-of-way in that location, and no additional right-of-way or improvements are required for 212th Street NW.
- (c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) The DPW considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. Two deviations were granted by the County Engineer as provided in Exhibits G.1 and G.2. Their analysis is shown on pages 7 through 11 of the PDS Staff Recommendation (Exhibit K), which is incorporated herein by this reference as if set forth in full. The County Engineer and DPW staffs have determined that with the

imposition of the conditions set forth in Exhibit K, the proposed development meets the requirements of SCC 30.66B.420 and Chapter 30.24 SCC.

- (d) In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record.
- (e) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520) There is currently 60 feet of existing right-of-way in that location, and no additional right-of-way is required for 212th Street NW. The development also has approximately 160 feet of frontage on 36th Avenue NW, the very south end of a county maintained dead end road that intersects south off of 220th Street NW. That part of the development fronting the road will be a NGPA/E, and no access to the lots in the development will be provided from 36th Avenue NW. In lieu of frontage improvements on the property frontage with 36th Avenue NW, DPW will require construction of a cul-de-sac as a permanent end to the public road per EDDS 3-10 A. Additional right-of-way is needed for the cul-de-sac, which has been shown on the latest set of plans for the development.
- (f) Impacts to State Highways (SCC 30.66B.710) The applicant is responsible for mitigating impact fees to the State of Washington. The applicant chose to a voluntary negotiated payment in lieu of construction to mitigate their impact to the state highway system, and has opted to pay towards the State's area wide fee, at \$36 per new ADT by payment of \$20,671.20 (\$328.11/SFR) based on the standard rate of \$36/ADT x 60 lots x 9.57 ADT. The County has reviewed the WSDOT requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.
- (g) Impacts to City Streets and Roads (SCC 30.66B.720)

Mitigation requirements for impacts to streets within nearby cities will be established consistent with the terms of an interlocal agreement (ILA) between the County and the other jurisdictions pursuant to the County's SEPA substantive authority. Here, the County has executed a Reciprocal Traffic Mitigation Interlocal Agreement with the Cities of Arlington and Stanwood.

Through its traffic and SEPA reviews, DPW identified significant adverse environmental impacts from the development on the City of Arlington's street system which can be mitigated through the payment of an impact fee, as authorized through the ILA and SCC 30.66B.055(4).

For impacts to the City of Arlington's streets, and pursuant to the ILA and SCC 30.66B.055(4), a written proposal to mitigate the development's impacts is required. The applicant submitted a traffic mitigation offer of \$81,325.20 (\$1,290.88/SRF), which was accepted by the City. (Exhibit H.2) The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.

Snohomish County has an ILA with the City of Stanwood that requires mitigation for impacts to City streets from new developments. However, the proposed development will not impact any City streets and, as such, no mitigation is required. (Exhibits H.1)

(h) Transportation Demand Management (TDM) (SCC 30.66B.630)

This proposal lies outside of the Urban Growth Area (UGA). Therefore, the provisions of SCC 30.66B.630 do not apply.

9. Pedestrian Facilities (RCW 58.17.110)

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision, as well as the adequacy of pedestrian or bicycle facilities. The need for safe pedestrian facilities has been analyzed by the DPW and the Lakewood School District. (Exhibit H.11) The road improvements to be required as part of the recommended conditions of approval for the new and existing roads within the development will provide the needed pedestrian facilities to the bus stops identified by the local school district. Therefore, neither party is requesting additional off-site pedestrian or bicycle facilities, nor does the Examiner find that any such off-site facilities are necessary. The Examiner finds that existing and proposed facilities are consistent with the County Code, EDDS, that no school children will be required to walk to school from the site, and that the facilities will provide for the general public health, safety and welfare.

10. Mitigation for Impacts to Schools (Chapter 30.66C SCC)

Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Lakewood School District No. 306, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibits H.11) Credit is to be given for 21 existing lots on 14 consolidated tax parcels. Payment of school impact fees has been included as a condition of approval of the development.

11. Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A and 30.63B SCC)

Clearing and Grading. The project will create in excess of 5,000 square feet of impervious surface. Approval of a full drainage plan is required. Because the site has slopes in excess of 33%, a geotechnical analysis is required as a part of the construction plan submittal, as is a Stormwater Pollution Prevention Plan (SWPPP). Grading in excess of 100 cubic yards is proposed and a Land Disturbing Activities (LDA) permit and a SWPPP will be required. The applicant will be required to submit for approval the following: a geotechnical report, construction plans (a full drainage plan), a SWPPP, and a LDA permit.

Stormwater. Drainage will be collected along the proposed roads in ditches and culverts, discharging to four open wetponds and one underground vault in two different drainage basins. Water quality treatment and detention requirements will be met in the open ponds. The detention storage volumes will be increased 30% as a safety factor. A water quality treatment biofiltration swale will be located above the proposed underground detention vault. A comment letter was received from a property owner east and adjacent to road "C" which expressed concern that drainage courses would be altered, thereby affecting existing drainage issues on their property (Exhibit I.5). The Applicant provided a sufficient response to the concern raised,

reiterating there is no proposal to alter existing drainage courses or discharge locations leaving the property. With the inclusion of the proposed conditions of approval, the applicant has sufficiently demonstrated that code requirements and standards for storm water detention, water quality treatment and construction storm water pollution prevention can be met with development of this proposed site.

12. Critical Areas Regulations (Chapter 30.62 SCC)

Wetlands. There are 32 wetlands either wholly or partially located on the site, ranging in size between 505 and 784,842 square feet. All categories of wetlands are present on the site. The prescriptive wetland buffers range between 25 and 100 feet as shown in the Critical Areas Study (Exhibit C.4) The applicant proposes to fill Wetland B, a 505 square foot isolated wetland. This is a BMP wetland subject to SCC 30.62.360. No specific mitigation is required.

FWHCAs - Streams. There are three streams on the site: Stream R is a Type 3 stream with a 150-foot buffer; Stream CL is a Type 5 stream with a 25-foot buffer; and Stream AC is a Type 5 stream with a 25-foot buffer. Stream R is a tributary to Puget Sound located in the southern portion of the site within Wetland Z. Based on the physical characteristics and accessibility of Stream R to anadromous fish, it is presumed habitat for bull trout, which is listed as a "threatened" species listed under the Endangered Species Act. Therefore, Stream R is subject to a 150-foot buffer the *Salmonid Habitat Management Plan* (SCC 30.62.110) adopted by PDS in an administrative rule. Applicant proposes to reduce the Stream R buffer from 150 feet to 113 feet along its eastern side from Lot 53 to Lot 60. The proposed mitigation is a combination of fencing the edge of the buffer and including the buffer and stream in a separate protected tract (Tract 911). Buffer averaging and reduction of the buffer area by separating the NGPA/E tract from the lots with a fence are allowed by SCC 30.62.350(1)(c)(i and ii). From historical experience these mitigation measures are known to provide better long-term protection. The impact and mitigation are consistent with the requirements of the critical areas regulations (CAR).

Using buffer averaging, the applicant proposes to encroach 12,000 square feet into the alder tree dominated western buffer of Stream R on the east side of Tract 903 and Lot 37. The proposed mitigation is to add 51,448 square feet of relatively higher value mature evergreen buffer on the opposite side of the stream, in Tract 911. Buffer averaging is allowed provided it complies with the averaging criteria contained in Section 30.62.350(1)(c)(i) SCC.

PDS has reviewed the Critical Areas Study and Mitigation Plan (Exhibit C.4) and determined that the application is in conformance with Chapter 30.62A SCC (CAR) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare.

13. 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 Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county, respectively.

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than five acres. The base density of one dwelling unit per five acres (1 du/5 ac) may be increased consistent with Policy LU 6.B.9. The proposal is

consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

14. Utilities.

- A. Sewer. Sewer will be supplied by individual septic systems. The Snohomish Health District recommended approval of the preliminary plat on October 27, 2008. (Exhibit H.6)
- B. Electricity. The Snohomish County PUD No. 1 notified the County on April 2, 2007, that they can provide electrical service to the development. (Exhibit H.7)
- C. Water. Potable water will be supplied by the Snohomish County PUD No. 1 (PUD). The PUD indicated on August 1, 2008 that adequate water supply is available to serve the development, however an extension of the utility's infrastructure will be required to serve the proposed subdivision. (Exhibit H.13)

15. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements. (Exhibits D.2, D.3, D.4, and K)

16. State Environmental Policy Act Determination (Chapter 30.61 SCC--SEPA)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on November 17, 2010. (Exhibit E.2) Notice was properly given of the SEPA determination. (Exhibits F.1, F.2, F.3) The DNS was not appealed. The requirements of SEPA have been met.

17. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. 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. In addition, the subdivision meets all of the County's transportation and road regulations and design standards. The Examiner finds that all 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. (SCC 30.41A.110) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions included in the PDS Staff Recommendation. (Exhibit K) Accordingly, the Hearing Examiner finds that 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.

18. Rural Cluster Subdivision Code Design Standards (Former Chapter 30.41C SCC).

The subject development application is vested to the *former* provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The Hearing Examiner has reviewed each of the criteria in *former* Chapter 30.41C SCC and finds that the application is consistent with its requirements.

Specifically, as conditioned according to the PDS Staff Recommendation set forth in Exhibit J, the subdivision complies with the provisions of: SCC 30.41C.010 (clustering lots), SCC

30.41A.200(1) (critical areas protection), SCC 30.41C.230 and SCC 30.41C.240 (rural cluster subdivision lot yield calculations) SCC 30.41C.200(2) (vegetated sight-obscuring buffers), SCC 30.41C.200(3) (access roads), SCC 30.41C.200(4) (utilities), SCC 30.41C.200(5) (unbuildable land), SCC 30.41C.200(9) (location of open space tracts near open space tracts on adjacent properties), SCC 30.41C.200(10) (open space management plan), SCC 30.41C.200(11) (physical separation of clusters), SCC 30.41C.200(12) (lots abutting open space or buffer), SCC 30.41C.200(13) (design fits with natural features and maintains rural character), SCC 30.41C.200 (14) (no sanitary sewers absent health order), SCC 30.41C.200(15) (Location of lot clusters) SCC 30.41C.200(16) (location within fire district required), and SCC 30.41.C.200(17) (rural concurrency standards).

19. The Hearing Examiner further finds that based on the facts and circumstances of the proposed development application, the following provisions of the *former* RCS regulations do not apply: SCC 30.41C.200(6) (buffers for resource land), SCC 30.41C.200(7) (designated resource land disclosure statements), and SCC 30.41C.200(8) (mineral resource land disclosure statements).

20. Rural Cluster Subdivision Standards—General

The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat (Exhibit B1), and an Open Space Management Plan (Exhibit A.4). The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed in Findings of Fact 17 and 18. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density. The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining over 50% of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with CAR, thereby minimizing the loss of the county's environmentally sensitive areas.

21. 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. The 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 pedestrian facilities for students.

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland, and buffer areas. The single-family homes within the subdivision will be in character with the rural area. 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 Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying county

requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided by the PUD and sewage disposal will be provided by individual wastewater septic systems.

22. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the proposed RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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. The Examiner concludes the applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the applicant has met its burden in showing that the RCS application should be approved as described in Chapter 30.41C SCC.
4. Adequate public services exist to serve this proposal.
5. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
6. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for preliminary plat approval of a **RURAL CLUSTER SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS

- A. The preliminary plat received by PDS on November 18, 2010 (Exhibit B.1) shall be the approved plat configuration, except as provided below. 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.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. Construction plans (full drainage plans) shall be submitted for review and approval prior to any ground disturbing activities. A Snohomish County grading permit shall be obtained prior to any ground disturbing activities.
 - iv. A Stormwater Pollution Prevention Plan shall be submitted for review and approval prior to any ground disturbing activities.
 - v. Construction plans, including calculations and details for the underground detention vault, shall be submitted and approved.
 - vi. Fire hydrant location shall be reviewed during the construction review and approval phase of development. Fire hydrants shall be installed with a maximum lateral spacing of 660 feet and with no lot in excess of 300 feet from a fire hydrant.
- C. The following additional 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 (Kayak Point #301) in the amount of \$811.29 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. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence:
 - \$2,406.17 per lot for mitigation of impacts on County roads paid to the County;
 - \$328.11 per lot for mitigation of impacts on state highways paid to the County;
 - \$1,290.88 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City."
- "Proof of payment shall be provided. These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein."

- iii. The final plat shall show property to be dedicated for construction of a 40-foot radius cul-de-sac at the end of 36th Avenue NW.
- iv. "The lots within this subdivision will be subject to school impact mitigation fees for the Lakewood School District No. 306 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 21 existing parcels. Lots 1 through 21 shall receive credit."
- v. "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. "
- vi. "The Open Space Management Plan (Exhibit A.5) shall be fully implemented and all specified maintenance shall be performed."
- vii. "The landscape plan (Exhibit B.4) shall be fully implemented and maintained."
- viii. "All utilities shall be placed underground."

D. Prior to recording of the final plat:

- i. All new public roads shall be constructed in accordance with the EDDS, or as determined by DPW.
- ii. The intersection of 188th Street NW and 40th Avenue NW shall be improved as determined by DPW.
- iii. The intersection of 40th Avenue NW and SR 531 shall be improved as determined by DPW.
- iv. 40th Avenue NW, north of 188th Street NW shall be improved to public rural subcollector road standards as determined by DPW.
- v. 32nd Avenue NW shall be improved to public rural local access road standards from the intersection with Happy Valley Road, north to the permanent end of the road as determined by DPW.
- vi. 200th Street shall be improved to public rural subcollector road standards between 40th Avenue and just west of 44th Avenue NW to connect to the 52nd Avenue NW road system for Lake Goodwin RCS Division IV (PFN 06-126104) as determined by DPW.
- vii. A 40-foot paved radius cul-de-sac at the south end of 36th Avenue NW shall be installed.
- viii. All Native Growth Protection Areas shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county.

Where a 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 critical area feature, and at least one Type 1 sign shall be placed in any lot that borders a NGPA, unless otherwise approved by the county. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- E. In conformity with applicable standards and timing requirements:
 - i. Right-of-way vacation shall have been completed.

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 seven (7) 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 31st day of January, 2011.


Millie Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before FEBRUARY 10, 2011.** 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 **within 14 days from the date of this decision**. 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 No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before FEBRUARY 14, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or

- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

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06-134099-LU NYSETHERRCS
HG: 1/6/11

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DEPT OF PUBLIC WORKS
COUNTY ENGINEER
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EVERETT WA 98201

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NO ADDRESS GIVEN

NIELSEN BROTHERS INC
(BENEFICIARY TO LGAJV, LLC)
NO ADDRESS GIVEN

CLS FINANCIAL SERVICES
(BENEFICIARY TO CARLSON)
NO ADDRESS GIVEN

GREENPOINT MORTGAGE FUNDING
BENEFICIARY TO CARLSON)
NO ADDRESS GIVEN

KEYBANK NATIONAL ASSOCIATION
BENEFICIARY TO CARLSON)
NO ADDRESS GIVEN

FIRST HORIZON HOME LOAN
CORPORATION
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NO ADDRESS GIVEN

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