



**FINAL DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Hearing Examiner's Office

Email: Hearing.Examiner@co.snohomish.wa.us

Millie Judge
Hearing Examiner

DECISION DATE: September 6, 2011

PLAT/PROJECT NAME: Bailand Farms, Inc.

APPLICANT/LANDOWNER: Clifford and Rosemary Bailey
13019 Springhetti Road
Snohomish WA 98296

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

(425) 388-3538
FAX (425) 388-3201

FILE NO.: 11-103716 LU

TYPE OF REQUEST(S): Conditional Use Permit (CUP) for Farmland Homestead Parcels

DECISION (SUMMARY): Granted subject to Conditions

LOCATION: 13019 Springhetti Road, Snohomish WA
Section 30, Township 28, Range N 6E

TAX PARCELS: 302806-3-002-0007, 302806-3-002-0008, 302806-3-003-0023, and
302806-3-004-0006

PDS STAFF RECOMMENDATION: *Approve subject to Conditions*

This matter having come before the Hearing Examiner on August 24, 2011, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

FINDINGS OF FACT

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through I.2), as well as the testimony of witnesses received at the Open Record Hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

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

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the Open Record Hearing.

3. Public Hearing. The Hearing Examiner held an open record appeal hearing on August 24, 2011. Witnesses were sworn, testimony was presented, and exhibits were entered into the

record at the hearing. Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5). (Exhibits E.1, E.2 and E.3) Bob Pemberton appeared and testified on behalf of the Snohomish County Planning and Development Services Department (PDS). Attorney Carl F. Knappe, appeared on behalf of the Applicants, along with their son. No other members of the public attended the public hearing.

4. Application Request. The Applicants are the owners of certain real property known as the 100-acre Bailand Farm located along Springhetti Road in Snohomish, Washington (hereinafter, the "subject property"). The applicant seeks to obtain a CUP to facilitate the creation of several homestead parcels around existing farm houses. The applicant has properly filed the necessary Boundary Line Adjustments (BLA) to facilitate the creation of such homestead parcels. A homestead parcel is defined in SCC 30.91H.150 "...as a parcel of land within an agricultural area, having reduced lot area and lot width requirements established for recognition of an existing non-farm residential use." The approval of such a reduced lot size is required through a CUP the underlying Ag-10 zone. The creation of such parcels requires no additional development of the subject property, no land disturbance, will not generate additional traffic from the site or produce other impacts.
5. Site description. The site is a long established 100 acre farm in the Snohomish River Valley. The site contains three residences situated in the western portion of the farm along Springhetti Road. (Exhibit C3)
6. Adjacent uses. The subject property is in the Snohomish River Valley surrounded by low intensity agricultural uses to the west, north and east, zoned Ag-10. To the south lies a residential subdivision adjacent to Kenwanda Golf Course, zoned R-5. (Exhibit C2)
7. State Environmental Policy Act (SEPA) Compliance. A SEPA threshold Determination of Nonsignificance (DNS) was made on July 5, 2011. (Exhibits D.1 and D.2) Notice of the decision was made according to the County's regulations. (Exhibits E.1, E.2 and E.3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
8. Issues of Concern.

No issues of concern were identified by any reviewing agencies or citizens.
9. Approval Criteria. The applicant is required to obtain a CUP to create the homestead parcels on the subject property and must meet all applicable zoning and development regulations.

9.1 Conditional Use Permit. CUP are governed by SCC 30.42C.100. This section provides that the Hearing Examiner may approve, approve with conditions, or deny a CUP only when all the following criteria are met:

- (a) The proposal is consistent with the comprehensive plan;
- (b) The proposal complies with applicable requirements of this title;
- (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

The Examiner considers these criteria in turn.

9.2 The proposal is consistent with the comprehensive plan. Although PDS and the applicant failed to provide information as to this prong of the requirements, the Hearing Examiner may take official notice of the County's GMA Comprehensive Plan (GMACP), last amended in January 10, 2011. Specifically, Goal LU-7 provides that the County shall "[c]onserve agriculture and agricultural land through a variety of planning techniques, regulations, incentive and acquisition methods." There are no GMACP objectives or policies that specifically address the creation of homestead parcels, however, when read together, the entirety of the policies found in Goal LU-7 call for the preservation of farmland, which the creation of these homestead parcels will accomplish. If these parcels were required to achieve the current zoning, an additional 30 acres would be taken out of productive farming for the creation of 10-acre lots large enough to support each pre-existing farm house structure. (Testimony of Bob Pemberton) Accordingly, the Examiner finds that the proposal is consistent with the Comprehensive Plan and will conserve agricultural lands.

9.3 The proposal complies with applicable requirements of Title 30 SCC. Specifically applicable to this proposal, the applicant must meet the performance criteria of SCC 30.28.055. That section provides that lot area and lot width requirements may be reduced; provided that:

(1) *The parcel is designated as agricultural land of primary or secondary significance in the Snohomish County Agricultural Preservation Plan or as agricultural in an adopted subarea comprehensive plan.* Here, the site is designated Agriculture 10-acre in the GMACP.

(2) *The resultant non-homestead parcel shall not be less than the minimum lot area permitted in the zone;* The resultant non-homestead parcel will be 136.86 acres; the minimum lot size is 10 acres. (Exhibit A.2, C.2, C.3, and H)

(3) *A dwelling currently exists on the parcel, and must have existed on the parcel prior to the effective date of this amendment.* Here, the effective date of SCC 0.28.055 was December 9, 2002. The residences on the subject property have been proven to have existed on the site for many years prior to that date. (Exhibits F.1, I.1)

(4) *The homestead parcel shall include no more than two acres of land, unless soil conditions, topography, or other unique circumstances require a greater land area.* The homestead parcels are proposed at 1.3 acres, 0.764 acres and 0.656 acres in size. (Exhibit A.2, H)

(5) *Concurrent with application under this section, the applicant shall submit an application under Chapter 30.41B SCC or Chapter 30.41E SCC, where appropriate.* The applicant has submitted a BLA application. (Exhibit A.2)

(6) *Approval shall be dependent upon a determination by the hearing examiner that the proposed use is for the purpose of consolidation of existing agricultural lands or operations, establishing an existing non-farm residential use, minimizes interference with the usual and normal farm practices on adjacent agricultural lands.* Here, the Examiner finds that the approval of the homestead parcel CUP and BLA will result in

the consolidation of existing agricultural lands and operations into one large contiguous parcel and also establishes lot lines around the non-farm residential uses as intended. The residential uses being consolidated onto smaller lots will minimize interference with the usual and normal farm practices on adjacent agricultural lands. PDS has recommended that the Examiner impose the conditions required by SCC 30.28.055 (6).

Finally, the Applicant must demonstrate that they have met all other applicable development regulations applicable to the proposed use. Here, in addition to reviewing the applicable zoning and performance standards discussed above, PDS has reviewed the application for its conformance with traffic mitigation and road design standards set forth in Titles 13 SCC and Chapter 30.66B SCC, and found that the project meets those standards or that the standards are not applicable. There are no traffic, school or park mitigation impact fees owing as a result of the proposed use. The proposed use and current developed status of the property meets the applicable drainage regulations and the grading regulations do not apply as no new development is proposed. There are no activities proposed that would trigger review under the County's clearing, grading, drainage or critical areas regulations. Based on the foregoing, the Hearing Examiner finds that the application meets the proposed development regulations.

9.4 The proposal will not be materially detrimental to uses or property in the immediate vicinity. Given that there will be no demonstrable change to the subject property or any noticeable impact beyond the creation of new parcel boundaries, the Hearing Examiner finds that the proposal will not be materially detrimental to uses or properties in the immediate area. The remaining agricultural parcel cannot be subdivided for a period of ten (10) years after approval of a homestead parcel, except for farm worker dwellings.

9.5 The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property. The Bailand Farm property exists in an agricultural area. The creation of individual lot boundaries for each existing farm house is compatible with the character, appearance and nature of the surrounding property. The property and uses thereon are presently in existence; the property is landscaped; and it is being used in active farming. The approval here will not change these facts.

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

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the CUP application pursuant to Ch. 2.02 SCC and SCC 30.72.020.
2. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the application has met all of the required approval criteria for a CUP, subject to the proposed conditions of approval set forth in Exhibit H by PDS, which should be adopted.

3. The proposal is consistent with 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.
4. The proposal complies with applicable requirements of Title 30 SCC.
5. The proposal will not be materially detrimental to uses or property in the immediate vicinity.
6. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
7. Adequate public services exist to serve the proposal.
8. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare and will not be detrimental to the immediate vicinity.
9. The Examiner concludes that the CUP should be approved.
10. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

DECISION AND ORDER

The Conditional Use Permit is approved, subject to the following Conditions:

CONDITIONS:

- A. A declaration shall be recorded with the homestead parcel which states that the homestead parcel is located in an agricultural area which experiences activities customarily associated with agricultural practices;
- B. The non-homestead parcel created by subdivision shall not be subdivided further for a period of 10 years following creation of the initial homestead parcel, except as provided for herein; and
- C. No dwelling shall be constructed on the non-homestead parcel created by subdivision for a period of 10 years from approval of the CUP except for farm worker dwellings.

Nothing in this permit 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.

Dated this 6th day of September, 2011.



Millie M. 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 SEPTEMBER 16, 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 at the Public Assistance Counter of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before SEPTEMBER 20, 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.

Where applicable, the Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by PDS. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Bob Pemberton

<p>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.</p>

PARTIES OF RECORD REGISTER
11-103716-LU BAILAND FARMS, INC
8/24/2011
11-103716-LU

SNO CO PLANNING & DEV/LAND USE
PEMBERTON / WHEELER
3000 ROCKEFELLER AVE # 604
EVERETT WA 98201

DEPT OF PUBLIC WORKS
COUNTY ENGINEER
3000 ROCKEFELLER AVE # 607
EVERETT WA 98201

BAILAND FARMS, INC.
CLIFFORD & ROSEMARY BAILEY /
DON BAILEY
13019 SPRINGHETTI RD
SNOHOMISH WA 98290

KNAPPE & KNAPPE, INC.
CARL KNAPPE
90 AVENUE A
SNOHOMISH WA 98290

REBECCA STOUT
Bstout72@comcast.net