

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: March 13, 2012

PLAT/PROJECT NAME: ***EBEY VIEW ESTATES II***

APPLICANT/  
LANDOWNER: Terry Johnson  
23217 138<sup>th</sup> Ave NE  
Arlington WA 98223

FILE NO.: 09-100721 SD

TYPE OF REQUEST: Preliminary Subdivision Approval – Rural Cluster Subdivision (RCS)  
Under *former* Chapter 30.41C SCC

**DECISION (SUMMARY): *APPROVED SUBJECT TO CONDITIONS***

**BASIC INFORMATION**

LOCATION: 23206 135<sup>TH</sup> Avenue NE, Arlington, WA 98223

ACREAGE: 20 acres

NUMBER OF LOTS: 9

AVERAGE LOT SIZE: 43,560 square feet  
MINIMUM LOT SIZE: 43,560 square feet  
GROSS DENSITY: 0.46 du/ac

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

ZONING: R-5

UTILITIES:  
Water: Individual Wells  
Sewer: On-site individual septic  
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Arlington School District No. 16  
FIRE DISTRICT: Snohomish County Fire District No. 21

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 February 5, 2009 and was vested as of that date for purposes of regulatory review. (Exhibits A.1, A.2, A.4, A.5, and H) The 120-day clock started on March 5, 2009. PDS was required to review three separate sets of submittals after providing review comments between April 13, 2009 and January 3, 2012. As of the date of the public hearing, 204 days of the 120-day review period had elapsed. The Applicant gave a verbal waiver of the timeline. (Exhibit H)
2. **Public Hearing.** A public hearing was held on March 7, 2012. Appearing at the hearing on behalf of PDS was Ed Caine. David A. Lervick, P.E. of Lervick Engineering appeared on behalf of the Applicant. No members of the public were in attendance.
3. **The Record.** All of the Exhibits shown on the master list of exhibits (Exhibits A.1 through J.1) 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 Traffic Impact Fee Determinations as required by the County Code. (Exhibits E.1, E.2, F.1, F.2 and F.3)

#### **A. Background Information**

5. **Applicant's Proposal:** The Applicant is requesting a 9-lot RCS on a 19.6 acre parcel located in Arlington. Each lot will be served by an individual septic system and potable water will be provided by individual wells. Access will be taken by a new public road constructed off of 135<sup>th</sup> Avenue. A five-foot pathway (trail) is proposed to be located within the Restricted Open Space of Tract 1.
6. **Existing Conditions.** The parcel is flat and primarily undeveloped pasture, with a single-family residence in the southeastern corner of the site. A Bonneville Power Administration power line easement crosses the property. A small area in the northwest contains shrubs with a few trees, and the southwest corner of the site is forested. The zoning on surrounding properties is R-5. Surrounding properties are developed with single-family residences and trees or with pastures.
7. **Issues of Concern:**
  - A. **Agency Comments.** No issues of concern were raised after technical and agency reviews.
  - B. **Citizen Comments.** No citizen comments were received on the application or SEPA determination.

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

8. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is situated within River Meadows Park Service Area No. 302, and is subject to Chapter 30.66A SCC, which requires payment of park impact fees in the amount of \$48.82 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.
9. 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, EDDS, 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). A development shall mitigate its impact upon the future capacity of the Snohomish County road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area (TSA) as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the latest edition of the ITE Trip Generation report published by the Institute of Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330.

Count Road Impact Fees. PDS has reviewed the proposal and determined that an impact fee in the amount of \$20,211.84 is owed for impacts to county roads within TSA "A", based upon 9.57 ADT per unit (with certain allowed deductions and credits), for a total new ADT of 76.56 trips for the entire proposal. The amount to be paid per single-family residence is \$2,526.48. (Exhibit J.1)

Concurrency. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and was deemed concurrent as of April 16, 2009. The concurrency determination approval expires six years from the date concurrency was given.

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 6.00 a.m. peak-hour trips and 8.08 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. (Exhibit J.1)

Inadequate Road Conditions (IRC) Finally, 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.

- (b) 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.

DPW Rule 4222.020(1) requires full rural frontage improvements along the subject parcel's frontage on 135<sup>th</sup> Ave NE, which consists of asphalt concrete pavement consisting of 18 feet in width from the roadway/right-of-way centerline, with a 7-foot paved shoulder. A recommended condition has been included to require the frontage improvements. (Exhibit J.1)

- (c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) The Public Works Department (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.

Access in and out of the development is from a new public road off of 135<sup>th</sup> Ave NE. The DPW performed a site inspection of the subject property on April 15, 2009. Stopping and intersection sight distances were evaluated at the proposed access point on 135<sup>th</sup> Ave NE and were found to meet the minimum requirements of EDDS 3-08. Access to Lots 1 through 9 will be taken from the new public road that terminates in a 50-foot radius cul-de-sac. The new public road is 28 feet wide within a 50-foot right-of-way that terminates in a 50 foot radius cul-de-sac per the EDDS 3-150. The DPW has determined that the new public road meets the EDDS 3-060 for local access road (rural) with an ADT less than 250. (Exhibit J.1)

The Applicant is showing horizontal curves that conform to a design speed of 25 mph and minimum radii of 165 feet per the EDDS table 3-4. The Applicant is showing vertical curves that conform to the EDDS table 3-5 for maximum grades. Id.

Based on the above, the proposed access is acceptable to the DPW. A condition has been included requiring the Applicant to construct the new public road to EDDS standards.

- (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. (See, Exhibit J.1 at pp. 4-7)

- (e) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520)

A development shall be required to dedicate, establish or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving this development, 135<sup>th</sup> Ave NE, is designated as a Non-Arterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 20 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to dedicate 10-feet of additional right-of-way. This is adequately shown on the preliminary plat. A condition to require the Applicant to dedicate the required right-of-way has been included. According to PDS, the Applicant

is not entitled to credit toward their impact fee because 135th Ave NE is not in the impact fee cost basis (Appendix D of the Transportation Needs Report). (Exhibit H)

(f) Impacts to State Highways (SCC 30.66B.710)

No impacts to state highways have been found as a result of the subject development application. This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) between Snohomish County and the Washington State Department of Transportation (WSDOT) that became effective on December 21, 1997, and as amended through the date of completeness for this application. The Applicant submitted to WSDOT a short version traffic mitigation offer of \$2,772.00 (\$346.50/lot). WSDOT reviewed the Applicant's offer, and concurred with the Applicant's offer (Exhibit G.2). Payment of that amount is a required condition of approval.

(g) Impacts to City Streets and Roads (SCC 30.66B.720)

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of ILAs between the County and the other jurisdictions.

Here, Snohomish County has an ILA with the City of Arlington. The project is located within the mitigation subarea for the City of Arlington, where 90% of the development's trips will pass through the City of Arlington. The Applicant's obligation to the City of Arlington is \$24,156.00 (\$3,019.50/lot). Comments have been received from the City of Arlington (Exhibit G.1) accepting the Applicant's offer. Payment of that amount is a required condition of approval.

(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.

10. 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 PDS and the Arlington School District. Comments from the School District indicate that stating that elementary, middle, and high school students residing in the proposed development will be picked up by bus at the entrance to the development. The School District has requested that a waiting area be provided for school children at 23206 135<sup>th</sup> Ave NE, the entrance to the development. The provision of a school bus waiting area has been included as a condition of approval. The School District is not requesting additional off-site pedestrian or bicycle facilities, nor does the Examiner find that any such off-site facilities are necessary.

The County's current adopted County-wide Bicycle Facility System Map became effect on February 1, 2006. The subject development does not border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path is not required.

The Examiner finds that proposed facilities are consistent with the County Code, EDDS, and the rural character of the surrounding area. The Examiner further finds 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.

11. 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 Arlington School District No. 16 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibits G.7 and H) Credit is to be given for one existing lot on the subject property. Payment of school impact fees has been included as a condition of approval of the development.

12. Drainage and Grading (Chapters 30.63A and 30.63B SCC) This project is vested to the codes in effect at the time of complete permit application, which was February 9, 2009. The new Land Disturbing Activities regulations were not in effect at that time. Therefore, the application is subject to the provisions of *former* Ch. 30.63A SCC (Drainage Code) and Ch. 30.63B (Grading Code).

The amount of proposed new on-site impervious surface is 1.3 acres. Approximately 675 cubic yards of cut and 515 cubic yards of fill will be required for this project. Frontage improvements are required for this development. Less than 5,000 square feet of new impervious surfaces is proposed for frontage improvements in the public right-of-way.

The subject property has excellent soils for infiltration. Accordingly, a drainage waiver was approved to allow the developer to use the 2005 DOE Stormwater Management Manual (Manual) as the drainage manual for this project. (Exhibit I.1) The 2005 Manual provides low impact development BMPs not found in the 1992 DOE Stormwater Management Manual. Stormwater runoff mitigation will be provided by downspout dispersion (BMP T5.10), sheet flow dispersion (BMP T5.12), and roadway dispersion. Water quality mitigation will be provided by the use of filter strips. Any grading for lawn areas will require compost amendments (BMP 5.13). The soil log information from the Snohomish Health District (SHD) supports the use of low impact development BMP's.

The Applicant proposes greater than 5,000 square feet of new impervious surfaces. A full drainage plan is therefore required per SCC 30.63A.120. The full drainage plan shall be in compliance with the 2005 DOE Stormwater Management Manual. Frontage improvements are required and construction plans are necessary to address work in the right-of-way. The Applicant proposes greater than 100 cubic yards of grading. Therefore, a grading permit and Storm Water Pollution Prevention Plan (SWPP) in accordance with Volume 2 of the 2005 DOE Stormwater Manual are required. Recommended conditions have been included to require the drainage and grading components for the subdivision.

Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project will meet the requirements the SCC 30.63A, SCC 30.63B, and the 2005 DOE Stormwater Management Manual.

13. Critical Areas Regulations (former Chapter 30.62 SCC)

PDS has reviewed the Critical Area Reconnaissance Report (Exhibit C.3), and concurs that there are no critical areas on the subject property. Accordingly, the requirements of Chapter 30.62 SCC do not apply to this permit application.

14. 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.

15. Utilities.

- A. Sewer. Sewer will be supplied by individual septic systems. The SHD recommended approval of the preliminary plat on May 18, 2009. (Exhibits G.1 and G.3)
- B. Electricity. The Snohomish County PUD No. 1 notified the County on February 20, 2009 that they can provide electrical service to the development. (Exhibit G.5)
- C. Water. Potable water will be supplied by individual exempt wells. (Exhibits G.1 and G.3) At 350 gallons per day (gpd) of typical usage, this computes to be 3,150 gallons per day for the plat. The computed value is less than the 5,000 gallon per day exemption within RCW 90.44.050. It should be noted that WAC 173-160-345(1) requires that wells must demonstrate a minimum of 400 gpd in order to be approved and PDS has established a value of 350 gpd for average consumption (87.5% of the minimum demonstrated capacity for approval of the wells).

The SHD has requested the following conditions be placed on the face of the plat:

Well protection zones are shown in the Snohomish Health District records for Lots 1-7 of this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.

A 100 foot radius well protection zone covenant is hereby established on Lot 8 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100

foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owner(s).

16. International Fire Code (Chapter 30.53A SCC)

Review comments were requested from Snohomish County Fire District No. 21 on February 10, 2009. The District did not respond to the request. The Office of the Fire Marshal has recommended the project for approval, subject to the following comments and conditions of approval:

- a) Each lot is a minimum of one acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office.
- b) Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided on one side of the road because the road is 28' wide. The signage or striping shall state "NO PARKING – FIRE LANE" to ensure access availability.
- c) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.512 and we have no further requirements.

17. 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.1, D.2, D.3, D.4, A.5 and H)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on January 18, 2012. (Exhibits E.1, E.2, F.1, F.2, F.3) Notice was properly given of the SEPA determination. Id. The DNS was not appealed. The requirements of SEPA have been met.

19. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. 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 other 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 H) 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.

20. 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 PDS staff analysis relating to the RCS requirements set forth in the Staff Recommendation (See, Exhibit H at pages 10-12), is hereby incorporated herein as if set forth in full. 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 I, the subdivision complies with the provisions of:

SCC 30.41C.010 (clustering lots),  
SCC 30.41A.200(1) (critical areas protection)  
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(6) (buffers for resource land),  
SCC 30.41C.200(7) (designated resource land disclosure statements),  
SCC 30.41C.200(8) (mineral resource land disclosure statements),  
SCC 30.41C.200(9) (location of open space tracts near 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),  
SCC 30.41.C.200(17) (rural concurrency standards), and  
SCC 30.41C.230 and SCC 30.41C.240 (rural cluster subdivision lot yield calculations).

21. 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 (Exhibits B.1, B.3, and B.4), 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 8 through 20. 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 critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

22. 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. 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 exempt wells and sewage disposal will be provided by individual wastewater septic systems.

23. 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 meets the requirements of *former* Chapter 30.41C and should be approved.
4. Adequate public and private 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 December 30, 2011 (Exhibit B.1) 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.
  - ii. Construction plans, including a full drainage plan and a Stormwater Pollution Prevention Plan, shall be submitted for review and approval.
  - iii. A right-of-way permit shall be obtained for any work within the public right-of-way.
- 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 in the amount of \$48.82 (River Meadows No. 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. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence or twice the amount shown for a duplex:  
  
\$2,526.48 per lot for mitigation of impacts on County roads paid to the County,  
\$346.50 per lot for mitigation of impacts on state highways paid to the County,  
\$3,019.50 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment of the above amount 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 lot[s] therein."
  - iii. "The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 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 8 shall receive credit."

- iv. “Well protection zones are shown in the Snohomish Health District records for Lots 1-7 of this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.”
- v. “A 100 foot radius well protection zone covenant is hereby established on Lot 8 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owner(s).”
- vi. “Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided on one side of the road because the road is 28’ wide. The signage or striping shall state “NO PARKING – FIRE LANE” to ensure access availability.”
- vii. “The landscape plan (Exhibit B.4) shall be fully implemented and maintained by the Home Owner’s Association.”
- viii. “All utilities shall be placed underground.”
- ix. “The Open Space Management Plan (Exhibit A.4) shall be fully implemented and maintained by the Home Owner’s Association.”
- x. The development is required to dedicate 10-feet of additional right-of-way along the frontage with 135<sup>th</sup> Avenue NE, for an ultimate width of 30 feet from the centerline of the right-of-way.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel’s frontage on 135<sup>th</sup> Ave NE to the satisfaction of the County.
- ii. The internal public road shall be built to EDDS standards.

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 13<sup>th</sup> day of March, 2012.



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, 2<sup>nd</sup> 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, March 23, 2012**. 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, 2<sup>nd</sup> 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 March 27, 2012**, 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.

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**Staff Distribution:**

Department of Planning and Development Services: Ed Caine

<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>
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