

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
L46-1 BOGGS, LLC) **FILE NO. 04 119730**
)
for a rezone of 11.04 acres from R-7,200-DPO to R-7,200)
with preliminary plat for a 65-lot PRD subdivision)

DATE OF DECISION: September 29, 2005

DECISION (SUMMARY): The rezone from R-7,200 Development Phasing Overlay (DPO) to R-7,200 and 65-lot PRD subdivision are both **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: This project is located on the west side of 83rd Avenue SE directly west of the intersection of 83rd Avenue SE and 12th Street SE in Everett.

ACREAGE: 11.04 acres

NUMBER OF LOTS: 65

AVERAGE LOT SIZE: 3,228 square feet

MINIMUM LOT SIZE: 2,471 square feet

DENSITY: 5.89 du/ac (gross)
9.80 du/ac (net)

ZONING: CURRENT: R-7,200-DPO
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (6 du/ac)
Subarea Plan: Snohomish/Lake Stevens
Subarea Plan Designation: Suburban (2-4 du/ac)

UTILITIES:

Water: Snohomish County PUD
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services (PDS): Approval subject to conditions
Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on December 15, 2004. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 28, 29 and 30)

A SEPA determination was made on July 26, 2005. (Exhibit 27) No appeal was filed.

The Examiner held an open record hearing on September 22, 2005, the 138th day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on September 22, 2005 at 2:30 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, L46-1 Boggs, LLC was represented by Lafe Hermanson of Barclays North, Inc. Snohomish County was represented by Erik Olson of the Department of Planning and Development Services and by Mark Westenskow and Mark Brown of the Department of Public Works.

3. No member of the public appeared at the hearing. A pre-hearing letter was submitted by Michelle and Steve Haug dated January 11, 2004. The Haug property adjoins the proposed plat's east side. They assert that one of the applicant's barns is all or partially on the Haug's side of the common property line. The Hearing Examiner has no jurisdiction over an action to quiet title to real property and, absent a compelling showing of cause to do otherwise, the Examiner will proceed to issue a decision on an application at the applicant's peril. The applicant plans to tear down the entire barn. Comments about traffic submitted regarding a vicinity development (04-110993) by Jon Dalberg is addressed by the staff report in this record.
4. The hearing concluded at 2:46 p.m.

Note: The above information summarizes the information submitted to the Examiner at the hearing. However, for a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

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

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. The proposed rezone is for the purpose of lifting the development phasing overlay from the underlying R-7,200 zoning. The staff report thoroughly examines and explains the actions required in order for the lifting of the overlay to be warranted and concludes that all of those requirements are met here. The 65-lot development would generated 582 average daily vehicle trips, of which 46 would be morning peak hour trips and 61 would be afternoon peak hour trips.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$896.00 for each new single-family home.
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
6. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

7. The site has been cleared and is developed with a single-family residence, several barns, outbuildings, a riding arena and has extensive pasture. There are two Category 3 wetlands on the site, labeled Wetlands A & B, and two Type 5 Streams, labeled Streams A & B, on the site. Wetland A is located in the southeast corner of the site adjacent to 83rd Avenue SE. Wetland B is located in the northeast corner of the site. Stream A flows from and through Wetland A northward as an open stream, is then culverted under the existing driveway, then emerges as Steam B to an open stream for approximately 270-feet then is culverted for approximately 370-feet where it emerges into Wetland B. The Category 3 wetlands have a 25-foot buffer and the Type 3 streams have 10-foot buffer. Impacts to Wetland A and Streams A & B will be from the widening of 83rd Avenue SE and the construction of the new internal plat right-of-way. Mitigation and enhancement are proposed around all wetlands and streams.

PDS has reviewed the Critical Areas Study, Exhibit 21, and the Mitigation Plan, Exhibit 24A-D, and determined that the project complies with the critical areas regulations. A final mitigation plan will be required for the construction phase.

8. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service will be available for this development as well as electrical power.
11. The property is designated Urban Low Density Residential (ULDR 6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the ULDR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. One of the implementing zones is the R-7,200 zone, which is the zoning requested here.
12. The application is for a planned residential development (PRD) and so must meet all decisional criteria and other requirements and specifications of SCC 30.42B concerning unit yield and bonus, design criteria for open space and landscaping, transportation and related infrastructure, housing types and official site plan. The Examiner concurs with the staff analysis of those and related issues in the staff report incorporated by reference herein.
13. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) the proposal is consistent with the comprehensive plan;
- (2) the proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

14. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
15. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.
4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan.
5. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The PRD official site plan/preliminary plat received by the Department of Planning and Development Services on May 16, 2005 (Exhibits 23A through 23D) shall be the approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. The 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. A final mitigation plan based the final approved design of the stormwater outfall pipe and release structure into Fox Creek, the *Addendum to the Conceptual Mitigation Plan* prepared by The Jay Group Inc., dated November 5, 2004 (Exhibit 21), and the Conceptual Mitigation Plan (Exhibit 24A through 24D) and on shall be submitted for review and approval during the construction review phase of this project.

- iv. A final landscape plan, based on the landscape plan submitted as Exhibits 9A through 9E, shall be submitted for review and approval during the construction review phase of this project.
- v. Record a Concomitant Agreement, based on the draft copy, submitted as Exhibit 32, that identifies the required development phasing overlay Transportation and Surface Water improvements and/or any agreed to Alternative Technical Solutions, the timing to the completion of the improvements, the financing of those improvements and language that identifies the transfer of the obligation.

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 \$896.00 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five (5) years after the development 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 each single-family residential building permit:

- \$3,016.72 per lot for mitigation of impacts on county roads paid to the County,
- \$86.46 per lot for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-08 – SR 9 at SR 2)

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 of the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by the Department of Planning and Development Services.

- iii. No lots within the plat shall be permitted to take access via 83rd Avenue SE. [SCC 30.66B.420]
- iv. “The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens School District No. 4 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 five existing parcel(s). Lot(s) 1 through 5 shall receive credit.”
- v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees."

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on 83rd Avenue SE to the specifications of the Department of Public Works.
- ii. The features on the approved TDM plan shall be constructed/installed.
- iii. A waiting area(s) shall be constructed at the plat entrance on 83rd Avenue SE to the satisfaction of the Department of Public Works. (RCW 58.17.110)
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

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

E. In conformity with applicable standards and timing requirements:

All required plat and detention facility landscaping shall be installed in accordance with the approved landscape plan.

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

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.30

6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a Rezone from R-7,200 Development Phasing Overlay (DPO) to R-7,200 and 65-lot planned residential development subdivision are both **CONDITIONALLY APPROVED, SUBJECT TO COMPLIANCE** by the applicant, with the **CONDITIONS** set forth in Conclusion 5, above.

Decision issued this 29th day of September, 2005.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **OCTOBER 10, 2005**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **OCTOBER 13, 2005** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

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

Staff Distribution:

Department of Planning and Development Services: Erik Olson
Department of Public Works: M. Westenskow/M. Brown

<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>
