

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
KLEV SCHOENING) **FILE NO. 05 117903 SD**
)
21-lot Rural Cluster Subdivision (RCS) on 48 acres)

DATE OF DECISION: March 29, 2007
PROJECT NAME: *Ridge at Park Creek*
DECISION (SUMMARY): The 21-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located approximately 500 feet east of 249th Avenue SE on the southern side of Old Own Road, Monroe, Washington.

ACREAGE: 48 acres

NUMBER OF LOTS: 21

AVERAGE LOT SIZE: 24,848 square feet

MINIMUM LOT SIZE: 21,649 square feet

DENSITY: .44 du/ac (gross & net)

ZONING: R-5

UTILITIES:

Water: Highland Water District
Sewer: Individual septic

SCHOOL DISTRICT: Monroe No. 103

FIRE DISTRICT: No. 3

INTRODUCTION

The applicant filed the Master Application on December 15, 2005. (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 19 - 21)

A SEPA determination was made on April 27, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on March 21, 2007, the 67th 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 March 21, 2007 at 11:00 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved
2. The applicant, Klev Schoening, was represented by his attorney Jeff Webber and by consultants Alan Aramaki, Scott Brainard, Andy Kindig and Mark McGinnis. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services.
3. Vicinity residents participated by submittal of pre-hearing written comments: an email and memo from Geoff Larsen, president of the Fern Bluff Maintenance Association (Exhibit 25) and a letter from Richard Johnson (Exhibit 26). Testimony was given by vicinity residents George Hudson (also Exhibit 38 and 39) and Kathleen Meyer. Their concerns are considered in the findings of fact below.

The hearing concluded at 12:04 p.m.

NOTE: 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 the evidence of record, the following findings of fact are entered.

1. The applicant, Klev Schoining, filed an application for preliminary approval of a rural cluster subdivision of 21 single-family residential lots averaging approximately 24,000 square feet each. The subject site is addressed 24914 Old Owen Road, Monroe.
2. The subject site is undeveloped and forested. Steep slopes descend from the east-to-west ridge to an Endangered Species Act-designated stream to the north and to a Category 2 wetland to the southwest. The combination of steep slopes, low permeability of the soils, endangered salmon habitat, and downstream neighbors concerned about that habitat and about flood damage are the focus of public concern about the project. The applicant also focused on that set of issues in designing the plat. For example, the drainage system (designed by engineer Alan Aramaki) tightlines aboveground the storm water from the subdivision's detention facilities, swales and basins directly to the stream to prevent damaging surges or pressure on the steep slopes. Outflow will be metered so that post-development discharge does not exceed pre-development (i.e., forested) discharge rates. Construction activity will be primarily on the flatter areas at the top of the ridge. The steep slopes themselves will be designated "Restricted Open Space" and preserved as such. The stream itself, although apparently seasonal on-site, flows year-round at sites nearby, evidently spring-fed. The drainage concept is detailed in the "Targeted Drainage Plan". (Exhibit 10) Species habitat protection is evaluated in the "Critical Area Study, Wetland Mitigation Plan and Habitat Management Plan (Exhibit 9). (See also "Slope Analysis Plans" (Exhibit 7))
3. Through his testimony and Exhibits 38 and 39, vicinity resident George Hudson challenges the proposed subdivision's impact on the environment and its contribution to water volumes to be routed onto his 22 acres shown as Lots 7 and 8 in Eagle Creek Country Estates. His property abuts the subject site on the west. He points out that the project's "Pond B" drains directly onto his property near the southeast corner of his Lot 8, then via 10-inch pipe to a collection and drainage system buried under Lot 3. He expresses concern that his system will be overwhelmed by the runoff from the Pond B tightline.
4. Concerns similar to those of Mr. Hudson are expressed in the written submittal by Geoff Larsen, president of the Fern Bluff Maintenance Association and a resident here for 21 years. Mr. Larsen has a 30-year career in the horticultural and arboricultural industry. He expresses concern that, absent any secondary outlet, and in view of the elevations, any failure of the pipeline would flood his home and property. He feels that a 75-foot vegetative buffer should be provided rather than the 35-foot buffer proposed because his homes and others in Fern Bluff Heights are lower in elevation than the subject subdivision. He expresses concern that children may drown in the proposed subdivision's ponds and that wildlife will be displaced. He points out that beneath the top two feet of soil, "...the soil beneath is the hardest, I mean the hardest I've ever seen". (Exhibit 25)
5. Witness Kathleen Meyer owns a home on the opposite site of Old Owen Road from the proposed subdivision and rents it to a family with children. She expresses concern about any safety risks of the increased traffic or drainage. Her concerns about traffic are shared by Richard Johnson (Exhibit 26) who questions the wisdom of allowing more growth and resulting traffic on Old Owen Road. He feels that Road has inadequate shoulders, a steep curve at the subject vicinity, and speeding. He perceives substantial risk to pedestrians, cyclists and traffic.
6. The Examiner finds as fact that the tightlined drainage concept is well-chosen in view of the low permeability of the subject site's soils, which makes dispersion ill-suited to such steep slopes. The assertion that the system may fail is not persuasive as a reason to deny or further condition the plat. The report by engineer Alan Aramaki (Exhibit 10) and related exhibits convinces the Examiner that the drainage system is not likely to fail. The evidence of record does not demonstrate unusual safety threats to neighbors or project residents. The Examiner concurs with the staff analysis as to compliance of the project with vegetative buffer requirements.

7. 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 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 that review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
8. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$344.52 for each new single-family home.
9. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
10. Critical areas are described above herein. In summary, a Type 3 stream crosses the northern border of the subject site and a Category 2 wetland is in the southwest corner. There are critical slopes (33%) to the north and to the west of the proposed lots. The Critical Areas Study and Mitigation Plan comply with SCC Chapter 30.62: Critical Areas Regulations.
11. 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.
12. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water will be furnished by the Highland Water District. Each lot will be served by an individual septic system. Electrical power will be available for this development.
13. The subject property is designated Rural Residential -5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
14. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.
15. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC as well as the State Subdivision Code, RCW 58.17. The proposed plat 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. The Monroe School District (Exhibit 30) reports that students of all grades will be bussed to and from school via a bus stop at the entrance of the proposed subdivision and requests a paved bus pull-off area be provided. That facility is required as a condition upon this subdivision.

16. The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on May 31, 2005. 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 as noted in this report. 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.
17. The subject rural cluster subdivision (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, the latest versions of which were received by PDS on February 1, 2006 (Exhibit 15), and in an open space management plan (Exhibit 8) that is to be implemented by a homeowners' association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200.
18. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
19. Any master lists 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.
20. Any finding of fact in this decision which should be deemed a conclusion of law is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

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 relationship to 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.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
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 proposal meets all platting requirements and related requirements of RCW 58.17 and SCC 30.63A, B and C and Rural Cluster provisions of SCC 30.41C
5. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

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

The request for a 21-lot rural cluster subdivision on 48 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS

- A. The preliminary plat received by PDS on October 5, 2006 (Exhibit 22) shall be the approved plat configuration. 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 plat 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 on the *Critical Areas Study and Buffer Mitigation Plan* prepared by Wetland Resources, Inc. dated August 18, 2006 (Exhibit 9) shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. "The lots within this subdivision will be subject to school impact mitigation fees for the Monroe School District No. 103 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 3 existing parcels. Lots 1 through 3 shall receive credit."
 - ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit or double the amount for a duplex:
 - \$2,114.97 per lot for mitigation of impacts on county roads paid to the county,
 - \$344.52 per lot for mitigation of impacts on State roads paid to the county.These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
 - iii. 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. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

- iv. The developer shall pay the County \$344.52 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. 20 feet of property from the centerline of the Old Owen Road right-of-way shall be dedicated for right-of-way to the County to total 40 feet.
- ii. Rural standard frontage improvements shall be constructed along the property frontage on Old Owen Road, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- iii. Construction of the paved 12-foot x 60-foot bus pull-off area on Old Owen Road as requested by the Monroe School District, shall have been completed. The pull-off area shall be located within the right-of-way.
- 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 platator 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:

- i. The preliminary landscape plan (Exhibit 8) shall be implemented. All required 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.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Decision issued this 29th day of March, 2007.

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 **APRIL 9, 2007**. 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 **APRIL 12, 2007** 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: Ed Caine / Jack Hurley

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.