

**REPORT and DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: January 8, 2007

PLAT/PROJECT NAME: *KAYAK HAVEN*

APPLICANT/  
LANDOWNER: Sapphire Partners, LLC

FILE NO.: 05 118679 SD

TYPE OF REQUEST: Rural Cluster Subdivision of six lots on 19.53 acres

DECISION (SUMMARY): APPROVED subject to CONDITIONS

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 14331 Kayak Point Road, Stanwood, WA

ACREAGE: 19.53 acres

NUMBER OF LOTS: 6

AVERAGE LOT SIZE: 23,356 square feet

MINIMUM LOT SIZE: 20,015 square feet

DENSITY: .31 du/ac (gross)  
.31 du/ac (net)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential – 5 (1 du/5 ac)

Subarea Plan: Tulalip

Subarea Plan Designation: Primary Forest (1 du/ 80 ac)

UTILITIES:

Water: Kayak Point Water District  
Sewage: Individual Septic

SCHOOL DISTRICT: Stanwood-Camano No. 401

FIRE DISTRICT: No. 14

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 November 23, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on December 12, 2006 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 15, 16 and 17)

A SEPA determination was made on October 24, 2006. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on December 14, 2006, the 73<sup>rd</sup> 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 December 14, 2006 at 9:04 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. The applicant, Sapphire Partners, LLC, was represented by Barbara Jones of Cascade Surveying. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services.

The hearing concluded at 10:14 a.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:**

1. Sapphire Partners, LLC (Applicant) proposes to subdivide a 19.53 acre site at 14331 Kayak Point Road, Stanwood, into six residential lots, utilizing the Rural Cluster Subdivision standards of the Snohomish County Code (SCC). The site is undeveloped and surrounded by undeveloped lots and single-family residences.
2. There are four Category 3 wetlands on the site, and each will be provided with a buffer. Storm water from some lots will flow into the wetlands, and from other lots and roads will flow into a detention system. Specific design of the storm water system will be developed during full drainage review.
3. The site is designated for rural residential land uses in the comprehensive plan and is zoned R-5. It is not in an Urban Growth Area. The Applicant will employ the rural cluster subdivision standards and cluster the lots on the most buildable and least environmentally sensitive portion of the site. Almost 75% of the site will remain in restricted open space. Applying the standards of SCC Chapter 30.41C, the site can accommodate six lots, and six are proposed.
4. Access to the site will be by a private road from Kayak Point Road. The proposal has received a certificate of concurrency, as it will not impact any arterial in arrears, or cause one to fall into arrears.
5. Applicant will pay impact fees for schools, county roads, state roads, and for Stanwood and Arlington city streets. Fees are paid as building permits are issued.
6. School children will be provided with a bus stop at the entrance to the development. Rural standard frontage improvements with an eight foot paved shoulder will provide a safe place for children waiting for the bus.
7. Public water will be supplied by the Kayak Point Water District. Individual septic systems will be used for sewage.
8. A Determination of Nonsignificance (DNS) was issued for the proposal on October 23, 2006. There was no appeal.
9. Any Finding of Fact in this Report and 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 GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards. Compliance with the rural cluster provisions of Chapter 30.41C SCC will assure that the development is consistent with the rural character of the area and minimizes adverse environmental impacts.
4. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**DECISION:**

The request for a RURAL CLUSTER SUBDIVISION of six lots on 19.53 acres is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

**CONDITIONS**

- A. The preliminary plat received by PDS on September 28, 2006, (Exhibit 12) 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 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.
- 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 Stanwood-Camano School District #401 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 1 shall receive credit."
  - ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for a single-family residence:
    - \$2,143.68 per unit for mitigation of impacts on county roads paid to the county.
    - \$344.52 per unit for mitigation of impacts on state roads paid to the county.
    - \$333.25 per lot for mitigation of impacts on Stanwood streets paid to the city,
    - \$419.35 per lot for mitigation of impacts on Arlington streets paid to the city,

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 short subdivision of the lots therein. 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) 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 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

- iv. Lots within the plat do not qualify as duplex lots.
- v. The developer shall pay the County \$811.29 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. Rural standard frontage improvements shall have been constructed along the property frontage with Kayak Point Road unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- ii. The private rural low volume access road per EDDS 3-060/3-080 shall have been constructed.
- iii. An asphalt approach per EDDS 3-100 shall have been constructed for the private road.
- 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.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 5D) 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 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.300.

Decision issued this 8<sup>th</sup> day of January, 2007.

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Gordon Crandall, Hearing Examiner Pro-Tem

## 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **January 18, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **January 22, 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.

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**Staff Distribution:**

Department of Planning and Development Services: Ed Caine

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