

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

In the Matter of the Application of)	
)	FILE NO. 05 119855 SD
JAN-JAM, LLC)	
)	
12 lot Rural Cluster Subdivision (RCS) on 39.78 acres)	
)	
and)	
)	
Appeal from a Determination of Nonsignificance)	

DATE OF DECISION: August 28, 2007

PROJECT NAME: *Jamie Estate*

DECISION (SUMMARY): The SEPA appeal is **DENIED** and the application for a 12-lot rural cluster subdivision is **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: The property is located east of the intersection of 4th Avenue NW and 244th Street NW, Stanwood, Washington.

ACREAGE: 39.78 acres

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 46,025 square feet

MINIMUM LOT SIZE: 43,567 square feet

DENSITY: .30 du/ac (gross)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 (1 du/5 ac)
Subarea Plan: Northwest County
Subarea Plan Designation: Rural (1 du/2.3-5 ac)

UTILITIES:

Water: Individual wells
Sewer: Individual septic

SCHOOL DISTRICT: Arlington No. 16

FIRE DISTRICT: No. 19

INTRODUCTION

The applicant filed the Master Application on May 19, 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 21, 22 and 23)

A SEPA threshold determination of nonsignificance (DNS) was issued on June 19, 2007 (Exhibit 20) from which an appeal (Exhibits 37 and 43) was timely filed on July 10, 2007 by Steve Nelson, owner of property which abuts the subject site. The appellant also timely filed the affidavit required by SCC 30.61.305. Because the appeal is associated with an underlying subdivision application, the appeal and the subdivision application were considered at a consolidated hearing pursuant to SCC 30.61.300.

A pre-hearing conference was held on July 11, 2007, as required by SCC 30.61.307. A settlement conference before a different Examiner was offered (Exhibit 39) but the parties chose not to pursue settlement. The Examiner held a consolidated, open record hearing on July 31, 2007, the 75th 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 July 31, 2007 at 3:07 p.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, Jan-Jam, LLC, was represented by Ry McDuffy. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services. Appellant Steve Nelson represented himself. Pre-hearing written comments expressing concerns or opposition were submitted by appellant Steve Nelson (Exhibit 27) and by Mary Steiner (Exhibit 26), who owns a parcel abutting the subject site on the south. Issues raised at the hearing are considered below herein.

The hearing concluded at 4:22 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 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 applicant, Jan-Jam, LLC, filed an application for a 12-lot rural cluster subdivision named Jamie Estate on approximately 40 acres zoned R-5 located east of the intersection of 4th Avenue NW and 244th Street NW in Stanwood.
3. As noted above, the hearing on the application is consolidated with an appeal timely filed from the SEPA threshold determination issued for the project. Findings of fact and conclusions of law entered herein are applicable to both the application and the SEPA appeal unless expressly otherwise stated.
4. The subject site and vicinity parcels are either undeveloped or in single-family residential use and all are zoned R-5. Mary Steiner owns property abutting the subject site's southern boundary. Her pre-hearing submittal (Exhibit 26) asks how 12 homes can be proposed on approximately 40 acres zoned R-5. As the staff report notes, the proposed density is permitted as a rural cluster subdivision pursuant to the zoning and development standards set out at Snohomish County Code (SCC) Subtitle 30.2 and 30.41C. She expresses concern about what future maximum number of homes will be allowed on the subject site, the impact of development of the subject site on water runoff to her property, the amount of logging to be done and possible damage to her fence.
5. Ms. Steiner's concerns are acknowledged and addressed in the staff report (Exhibit 36) and in the response to the prehearing submittal filed by vicinity resident Steve Nelson (Exhibit 27), as well as in the oral argument on Steve Nelson's SEPA appeal. Mr. Nelson raises concern about drainage across his property and about 12 new septic systems proposed. He expresses concern about whether the grading of 244th Street NW and removal of trees will cause drainage problems on his property. The Examiner finds as fact that issues of grading and tree removal in relation to drainage are relevant concerns for a SEPA appeal but finds that other issues raised in the appeal are either not relevant or have been addressed during project review.
6. Neighbor Jason McGovern testified at hearing that there has been a drainage ditch along the north easement for at least 15 years and that McGovern has maintained that ditch because it prevents flooding of a frog pond onto McGovern's property. McGovern feels the applicant's grading for the access has been an improvement. The Examiner finds as fact that the applicant's grading along 244th Street NW and in the easement did not cause changes that would worsen stormwater damage to either Ms. Steiner or appellant Nelson.
7. 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.
8. There are two Category 3 wetlands and a Type 4 stream on site. The critical areas have been provided with appropriate buffers and designated as NGPA/E.

9. The DPW reviewed the request with regard to traffic mitigation and road design standards. That 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.
10. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$811.29 for each new single-family home.
11. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. A seven-foot paved shoulder walkway would be required if the school bus does not drive into the development and turn around at the cul-de-sac in order to provide safe walking and waiting for students, as described more fully in the staff report (Exhibit 36).
12. The Snohomish County Health District approved water from individual lot wells and individual lot septic systems and drainfields on June 2, 2006 (Exhibit 33).
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.
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.
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 finding of fact in this decision which should be deemed a conclusion 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 begins by considering the SEPA appeal because no decision on the underlying proposal is possible until the SEPA issues are resolved. The issue raised by the SEPA appeal is whether the County should have required an environmental impact statement instead of having issued the threshold determination of nonsignificance dated June 19, 2007. SCC 30.61.310 requires that the Examiner consider that issue under the clearly erroneous standard of review. Under that standard, the Examiner may only overturn the determination of the responsible is, after having reviewed the entire record, the Examiner is left with a definite and firm conviction that a mistake has been made.
2. Having reviewed the record and having considered the issues in the context of this specific 12-lot subdivision proposal, and having especially considered issues of storm drainage because of the potential adverse environmental impact of improperly controlled drainage, the Examiner concludes as a matter of law that the appellant has not met the burden of proving that the Examiner should be left with a definite and firm conviction that it was a mistake to issue the determination of non-significance. Specifically, the evidence of record supports the determinations of the Department of Public Works and the Snohomish Health District that the proposed development poses no risk to the public health, safety or welfare and supports the SEPA threshold determination of no probable, significant, adverse environmental impact requiring preparation of an environmental impact statement.
3. 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.
4. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
5. 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.
6. 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 12-lot rural cluster subdivision on 39.78 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on March 21, 2007, (Exhibit 18) 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 platlor 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 Area Study and IDD Mitigation Plan for Jaime Estates prepared by Wetland Resources (August 14, 2006) 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 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 1 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:
 - \$2,143.68 per lot for mitigation of impacts on county roads paid to the county,
 - \$209.68 per lot for mitigation of impacts on Arlington streets paid to the city,
 - \$306.24 per lot for mitigation of impacts on Stanwood 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 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. A 30-foot wide right-of-way dedication shall be shown on the face of the final plat map at the north property line.

- iv. A “Do Not Protest Conversion to Public” statement shall be shown on the face of the final plat as follows:

“In consideration of the access approval, the owners of the lots of the development, their heirs, successors, and assigns, covenant and agree not to protest the conversion of the sixty (60) foot easement and private road, 244th Street NW, to a public road at any time the county determines a public road is necessary, or a public road is required for further development of any lots that have access to or abut on said road. The owners of the lots, their heirs, successors, and assigns further agree and covenant to provide all necessary authorizations and to execute all necessary conveyance documents, at no cost and expense to the county, to accomplish the dedication and/or conversion of the private road to the county for public road purposes. This covenant touches and concerns the property, runs with the land, and is binding upon all subsequent purchasers, heirs, successors, and assigns. This covenant to provide right-of-way in no way obligates the owners to fund any construction or maintenance of a public road.”

- 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. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County.”

- vi. 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. 244th Street NW shall be constructed to EDDS 3-040 requirements for a rural public local access road between 4th Avenue NW and the northeast corner of the property, which will include a 7-foot paved shoulder walkway on one side.
- ii. The private road and the cul-de-sac shall have been constructed per EDDS 3-090 and EDDS 3-150; and shall include a 7-foot paved shoulder walkway on one side.
- iii. A temporary easement shall be shown over the north 30 feet of Private Road Tract 997 for the hammerhead turnaround at the end of 244th Street NW.
- iv. The clear sight triangle identified in the Sight Distance Plan received by PDS on May 18, 2007 shall have been cleared in order to provide the required amount of intersection sight distance south of 244th Street NW at 4th Avenue NW.

- v. 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.

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

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 5) 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 28th day of August, 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 **SEPTEMBER 7, 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 **SEPTEMBER 11, 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

<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>
