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

In the Matter of the Application of)
)
GRANITE FALLS, LLC) **FILE NO. 06 126186 SD**
)
17 lot Rural Cluster Subdivision (RCS) on 58.55 acres)

DATE OF DECISION: April 20, 2007

PROJECT NAME: *Ryan's Mountain Meadow*

DECISION (SUMMARY): The application for a 17-lot rural cluster subdivision is **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: The property is located northeast of the intersection of SR 92 and 64th Street NE, Granite Falls, Washington.

ACREAGE: 58.55 acres

NUMBER OF LOTS: 17

AVERAGE LOT SIZE: 51,572 square feet

MINIMUM LOT SIZE: 48,081 square feet

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 Acre

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: On-site septic/drainfield

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 17

INTRODUCTION

The applicant filed the Master Application on June 15, 2006. (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, 20 and 21)

A SEPA determination was made on February 22, 2007. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on April 5, 2007, the 116th 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 April 5, 2007 at 1:01 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, Granite Falls, LLC, was represented by Joe Smeby of Omega Engineering and Thomas DeDonato of DW Holdings. Snohomish County was represented by Paul Lichter and Anh-Tuan Dinh of the Department of Planning and Development Services.
3. Vicinity residents submitted pre-hearing letters of interest, concern or opposition: Dianna Gleason (Exhibit 27), James Sherwood (Exhibit 24), Donn and Lapriel Thompson (Exhibit 26), and Rick and Roxanne Thompson (Exhibit 26). Their primary concern is the impact of the subdivision's vehicular traffic on vicinity roads, particularly 64th Street NE near the Lochaven Estates community and specifically at the allegedly high accident intersection of 64th Street NE and State Route 92. Additionally, Donn Thompson testified at the hearing. The community concerns are addressed in the findings of fact herein

The hearing concluded at 1:40 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, Granite Falls LLC, filed an application for approval of a 17-lot rural cluster subdivision on approximately 56 acres east of the intersection of 64th Street NE and State Route 92 near Granite Falls. The average lot size will be more than one acre (51,572 square feet). A private road will provide the only access to 64th Street NE for all 17 proposed lots. No connection will be made with the Holy Cross Parish church use recently approved on the immediate north.
3. The above-listed vicinity residents point out that the intersection of 64th Street NE and State Route 92 and vicinity is dangerous due to high speed and heavy traffic volume. Traffic is increasing on 64th Street NE due to the renovation of the horse ranch east of the Pilchuck River. Rick and Roxanne Thompson assert that there have been 52 collisions in the last five years between 147th Avenue (Schwartzmiller Road) and 75th Avenue, which they believe warrants construction of specified turning lanes in the vicinity. Donn Thomson testified and questioned parties about whether the applicant will be required to maintain public fishing access along the river bank, whether the horse ranch's traffic has been considered, whether future subdivision or rezones could increase the density of the subject site and will the new development be a gated community. His questions were addressed by testimony of witnesses including Joe Smeby, civil engineer for the applicant, and Paul Lichter and Anh-Tuan Dinh of Snohomish County's Department of Planning & Development Services. In capsule, (1) it is unknown whether the community will be gated, (2) the development will not block existing fishing access to the river, (3) horse ranch traffic has not been considered but will be when a permit is sought by the horse ranch, and (4) no more dense proposal is possible unless the subject site is rezoned in the future.
4. The record shows that the 17 homes will add 163 average daily trips, of which 13 will be morning peak-hour trips and 17 will be evening peak-hour trips. The Examiner does not find that increase to be sufficient in relation to background, existing trips to require conditioning or denying the project based on traffic impacts. Further, the County has limited authority on SR-92.
5. 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/eeding 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.
6. There are no park mitigation fees for this proposal.
7. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. The Lake Stevens School district reports that students of all grade levels will be bussed to and from school using a bus stop at the entrance to the development.

8. The site contains three Category 1 Wetlands and a Type 3 stream. The Category 1 wetlands require a 100 ft. standard buffer per SCC 30.62.310, as shown on the Revised Preliminary Plat Map (Exhibit 16).
9. 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.
10. The Snohomish County Health District has no objection to this proposal provided that water and sewer are available. Water is provided by Snohomish County PUD No. 1 and sewerage will be by means of on-site septic and individual drainfields (Exhibit 32).
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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 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. 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 17-lot rural cluster subdivision on 58.55 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on December 22, 2006 (Exhibit 16) 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. 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.
- 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 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 lexisting parcel. Lot 1 shall receive credit."

- ii. 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."

- iii. "In consideration of the subdivision access approval, the owners of the lots of the subdivision, their heirs, successors, and assigns, covenant and agree not to protest the conversion of the private roads and easements as proposed by this subdivision, 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 said road. The owners of the subdivision 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."

- iv. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence.

\$3,799.29 per lot for mitigation of impacts on County roads paid to the County,

\$344.52 per lot for mitigation of impacts on state highways for WSDOT paid to the County,

\$250.00 per lot for mitigation of impacts on city streets for the City of Granite Falls paid to the City.

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 lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- v. "The dwelling units within this development are subject to park mitigation fees in the amount of \$0.00 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 buildings 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 time of building permit issuance."

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall have been constructed along the parcel's frontage on 64th Street NE to County standards.
- ii. Additional right-of-way shall have been dedicated the County to total 30 feet of width on the development's side of centerline.
- iii. Dedication of additional right-of-way that is tangent to the ultimate right-of-way on 151st Avenue NE and 64th Street NE with a minimum 25 foot radius curve is required and shall have been dedicated to the County.

- 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 the preliminary landscape plan submitted April 5, 2007 (Exhibit 8C, as submitted on April 5, 2007) 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 20th day of April, 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 30, 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 **MAY 4, 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: Paul Lichter / Anh-Tuan Dinh

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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