

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the HEARING EXAMINER Pro Tem

In the Matter of the Application of)
)
David and Erika Sigmon) **FILE NO. 06 102523 SD**
)
18-lot Rural Cluster Subdivision (RCS) on 59.903 acres)

DATE OF DECISION: October 21, 2008

PROJECT NAME: *Pilchuck Palisades*

DECISION (SUMMARY): The preliminary plat for an 18-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 6130 Robe Menzel, Granite Falls, WA.

ACREAGE: 59.903 acres

NUMBER OF LOTS: 18

AVERAGE LOT SIZE: 34,089 square feet

MINIMUM LOT SIZE: 32,054 square feet

DENSITY: 0.30 du/ac (gross)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 acres, Basic)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: Individual on-site septic

SCHOOL DISTRICT: Granite Falls No. 332

FIRE DISTRICT: No. 17

INTRODUCTION

The applicant filed the Revised Master Application on April 16, 2007. (Exhibit 1-A)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 6A-C)

A SEPA determination of non-significance was made on August 19, 2008. (Exhibit 5B) It was not appealed.

The Examiner held an open record hearing on October 16, 2008, the 117th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The master list of exhibits and witnesses considered by the Examiner is hereby made a part of this file as if set forth in full herein.

PUBLIC HEARING

The public hearing commenced on October 16, 2008 at 2:06 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 applicants, David and Erika Sigmon, were represented by Merle Ash. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services. Citizen/Neighbor Harry (Tom) Ginter expressed concerns about the width of the access road. He opposes the EDDS deviation. He described failed negotiations with the applicant about selling property for a full width access road. He described that during the development process a Caterpillar tractor made a primitive road through the project property and that there was an excavator on the site digging septic perk holes. He testified that his property is now subject to seasonal flooding that was not there prior to the Caterpillar clearing the road. He expressed concerns about the septic systems and mosquito infestation. He endorsed the comment package submitted by his wife, Exhibit 9.
3. Two public comment letters were received by PDS. One asked for clarification on tax parcel numbers on the proposed development. The other, Exhibit 9, was from Kathy Meyer-Ginter. She expressed concerns about the width of the access road, water quality due to septic use, storm water flooding on her property, mosquito infestation potential, and the description of the neighborhood. Responses to these concerns will be addressed below.

The hearing concluded at 2:48 p.m.

NOTE: For a complete record, an electronic recording of this hearing is available through 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 is requesting an 18 lot rural cluster subdivision on a 59.9 acre parcel. Access will be provided by a new public road (Road A) off of Robe Menzel Road and an internal new public road (Road B) that branches off of Road A. Each lot will be served with water from Snohomish County PUD No. 1, and each lot will have individual septic systems.
2. The site consists of three tax parcels. The easternmost parcel is developed with a single-family residence that is served with a septic system and an individual well. The structures will be removed and both the well and septic system will be decommissioned. The other two parcels are a combination of shrubs and trees. There are steep slopes in the northernmost parcel. There is a Type 3 stream in the southwest portion of the site and a Category 3 wetland on the eastern portion of the site.
3. Adjacent lands are either undeveloped or developed as single-family residences. Adjoining parcels are all zoned R-5, but the parcels along the Pilchuck River and along Skinner Road are smaller lots with single-family residences.
4. The proposed RCS is within Park District No. 303 (Robe Canyon) which currently requires NO payment per each new single-family residential unit. No payment of these mitigation fees is required prior to building permit issuance; provided that the building 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 the time of building permit issuance.
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/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. DPW granted an EDDS deviation request for the access road's width to be reduced from 60 feet to 52 feet for a portion of the road. Mr. Ash explained that the parcel was almost landlocked. The access that was acquired only allowed for the 52 foot width at a small portion of the roadway. He said the pavement portion of the road will be 30 feet wide as required by code and that safe vehicular and pedestrian travel will be provided.
6. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. Comments from the Granite Falls school district dated April 20, 2007 (Exhibit 8C5) indicate that school children will be picked up at the intersection of Road A and Robe-Menzel Road. The internal roadway sections (Exhibit 2F) are shown with a seven foot shoulder to provide safe walking conditions to the intersection of Road A and Robe-Menzel Road.
7. The Snohomish County Health District expressed approval for the preliminary plat on April 22, 2008, Exhibit 8B2. Individual septic systems will serve each lot. The septic issue raised in Kathy Myers-Ginter's letter is a continuing concern of neighbors to most rural cluster subdivision. However, no subsequent potable water problems have been identified for adjacent drinking water wells as a result of the rural cluster developments. Snohomish Health District has found the location of the septic systems to be approvable and recommended approval of the project. The site is not identified as an aquifer recharge

area. Therefore, PDS and the Examiner have relied on the professional determination of the Snohomish Health District that the septic systems will not create a health problem for adjacent wells. Since the proposed development will be served with public water by Snohomish County PUD No. 1, groundwater withdrawal is not being proposed as a part of this development. Snohomish County PUD No. 1 will provide electrical service, Exhibit H3.

8. 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). The implementing zone in this designation will continue to be the R-5 zone.
9. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC and 30.41C SCC as well as the State Subdivision Code, RCW 58.17, as conditioned herein. 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.
10. 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 (Exhibit 2A). The applicant submitted the traffic analysis, (Exhibit 3A), full drainage report, (Exhibit 3B) a geotechnical report, (Exhibit 3C), a critical area study which included a habitat management plan and an innovative development design plan, (Exhibit 3E) and soil logs related to the project, (Exhibit 3G). Five Restricted Open Space Tracts are being created within the plat (Exhibit 2A). The Open Space Management Plan (Exhibit 1E) stipulates that the Home Owners Association (HOA) will have ownership, control, and maintenance responsibilities for the tracts. Prior to transfer of the tracts to the HOA, the developer will be responsible for control and maintenance of the tracts. A low impact (wood chip) pedestrian trail system is proposed within Tracts 998 and 999. The walking trails will be an amenity to the development and allow proper use of the open spaces. The sight obscuring buffer is proposed to be a minimum of 75 feet in width and located as a perimeter buffer to the plat.
11. 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.
12. The application includes a proposal to utilize a variety of Low Impact Development (LID) stormwater management techniques. Those techniques include dispersion and rain garden. These BMPs are acceptable methods to address the storm water runoff from the site. The Full Drainage Report (Exhibit 3B) incorporates the approved Drainage Waiver (Exhibit 7A2) in the design of the LID components.

The Geotechnical Engineering Reconnaissance Report (Exhibit 3C) addresses the risk of landslide hazard and concluded that the site is suitable for this type of development plan. The analysis also concludes that the proposed infiltration of stormwater will not affect the stability of the slopes on the site.

Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A and 30.63C SCC. Grading quantities are anticipated to be approximately 23,393 cubic yards of cut and 20,444 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

Regarding the neighbors' concerns of run-off to their property, the applicant's agent agreed to work with them during the development of the process to reduce and remediate any new problems. He testified that the caterpillar road will be brought up to proper standards during the development of the project and that drainage problems it may have caused should be abated.

13. A Type 3 ESA/bull trout stream identified as Bosworth Lake Creek flows across the southwestern corner of the property, loops around to the south off-site, crosses under Robe-Menzel Road and then flows northerly within 150 ft. of the proposed private road access. A habitat management plan (HMP) (Exhibit 3E) was submitted that demonstrates avoidance of impacts to the fish and wildlife habitat conservation area (FWHCA) with the exception of some minor additional impervious surfaces for the access roadway from Robe-Menzel Road. A rain-garden pond and the removal of impervious surfaces from within the wetland and buffer areas of the Category 3 riparian Wetland A in Tract 996 compensate for the minor addition of the impervious surfaces within 300 ft. of the OHWM of Bosworth Lake Creek.

The private access road crosses three small portions of Wetland A and its associated 50 ft. wetland buffer. These impacts are considered to be unavoidable. The applicant has minimized the impacts as required per SCC 30.62.365 by choosing the most degraded portion of the site along the existing home site. Mitigation for the wetland and buffer impacts is proposed in the form of removal of the existing structures and the gravel driveway, and restoring the area by wetland and buffer enhancement and additional wetland buffer via innovative development as allowed per SCC 30.62.370.

Innovative development is required because the applicant is not proposing to create additional wetland to replace the wetland being filled and thus the application would not meet the standard requirements per SCC 30.62.345(1)(c). The applicant is proposing to enhance 45,325 square feet of existing degraded wetland for road fill impacts of 3,136 square feet, for a replacement ratio > 14.5:1. The applicant is proposing to enhance 39,853 square feet of buffer for Wetland A as mitigation for the 13,284 square feet of buffer impact, which equals a 3:1 replacement ratio.

A small isolated Category 3 wetland near Lot 7 and within the proposed road access is proposed to be filled as a BMP wetland pursuant to SCC 30.62.360(6). Compensation for the impact to Wetland C is in the form of additional buffer adjacent to the FWHCA in Tract 998 for a 1:1 replacement ratio.

Impacts to Wetland B have been avoided. A large portion of the site in the northeastern corner of the subject property contains steep slopes and all of this area from the top of bank plus 25 ft. is to be dedicated as NGPA/E within Tract 999 in lieu of a formal delineation of critical areas downslope from the toe of the steep slope.

The applicant has demonstrated compliance with SCC 30.62.370(2) because the enhancement of the degraded wetland and buffer areas at the location of the existing home site to include the removal of buildings and gravel driveway appears to meet or exceed the benefits from the prescriptive wetland creation.

The application is complete and in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare.

Regarding neighbor concerns of standing water and mosquito growth concerns, testimony at the hearing showed that the wetlands can not be drained according to regulations, rather they are treated as critical areas to be preserved. The applicant's testimony was that the project is designed so that the nature and quality of the wetlands is not disturbed except as described above.

14. The Snohomish County Fire Marshall conducted an internal review of the proposed plat and recommended approval.
15. Regarding the public comments from Kathy Myers-Ginter and Mr. Ginter about the project, the Examiner makes the following findings:
 - a. Road width: As previously found, the County Engineer has approved an EDDS deviation to 52 feet for a portion of the road. However, this portion of the road will still provide the pavement and walkway width required for safe travel of vehicles and pedestrians.
 - b. Drainage: As previously found, the applicant has provided Exhibit 3B which shows that best management practices will be followed to handle the storm water drainage. The applicant indicated a willingness to work with the neighbors to reduce run-off until the storm drainage measures are in place. County code also provides for measures to be taken during the construction phase to limit run-off.
 - c. Standing water: As previously found, the wetlands may not be drained as part of this project.
 - d. Septic system: As previously found, the Health District has approved the septic proposal. The Department's rules extend protection areas around drinking water wells for a 100 foot radius. No such wells will be impacted by this project.
16. 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 has jurisdiction to hear this case and render this decision.
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. Adequate public services exist to serve the proposed project.
5. The proposal makes adequate provisions to protect the public health, safety and welfare.
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 an 18-lot rural cluster subdivision on 59.903 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS

- A. The preliminary plat received by PDS on July 11, 2008 (Exhibit 2A) 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 Area Study, Habitat Management Plan and Innovative Development Design Plan for Pilchuck Palisades prepared by Wetland Resources, Inc. dated Revision #1 June 6, 2008 (submitted to PDS on 07/11/08) 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 Granite Falls School District No. 332 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. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$3,588.22 per lot for mitigation of impacts on county roads paid to the county,
\$326.00 per lot for mitigation of impacts on state highways paid to the County,
\$1,182.81 per lot for mitigation of impacts on City streets for the City of Granite Falls paid to the City. Proof of payment shall be provided.

These payments are due prior to or at the time of building permit issuance for each single family residence. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid."
 - 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 dwelling units within this development are subject to park impact 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 building 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 the time of building permit issuance."

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel's frontage on Robe-Menzel Road to the satisfaction of the County.
- ii. 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.

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

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 2A) for the Sight Obscuring Buffer shall be implemented.

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 21st day of October, 2008.

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 31, 2008**. 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 **NOVEMBER 4, 2008** 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>
