

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the HEARING EXAMINER Pro Tem**

In the Matter of the Application of )  
 )  
**Keith Mueller** ) **FILE NO. 06 125014 SD**  
 )  
6-lot Rural Cluster Subdivision (RCS) on 19.52 acres )

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DATE OF DECISION: October 17, 2008

PROJECT NAME: *Pilchuck Glen*

DECISION (SUMMARY): The preliminary plat for a 6-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 17505 42<sup>nd</sup> Street NE, Snohomish, WA

ACREAGE: 19.52 acres

NUMBER OF LOTS: 6

AVERAGE LOT SIZE: 33,724 square feet

MINIMUM LOT SIZE: 28,127 square feet

DENSITY: 0.31 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 for Lots 1, 2, 4, 5, and 6  
Individual well for Lot 3  
Sewer: Individual on-site septic

SCHOOL DISTRICT: Snohomish No. 210

FIRE DISTRICT: No. 8

### **INTRODUCTION**

The applicant filed the Revised Master Application on June 22, 2006. (Exhibit A-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 F-1-3)

A SEPA determination of non-significance was made on August 29, 2008. (Exhibit E-2) It was not appealed.

The Examiner held an open record hearing on October 15, 2008, the 168th 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 15, 2008 at 9:15 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Keith Mueller, was represented by Angela Jones. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services. Citizen Tim Dewitt expressed concerns about the paved road and water line ending at the south edge of the parcel rather than the southwest corner. He and some neighbors would prefer to have the water line and pavement extend closer to their residences.
3. One public comment letter has been received by PDS asking for clarification on ownership and maintenance of the private road. The current planner, Mr. Caine, was unable to locate a PDS response to the comment.

The hearing concluded at 9:47 a.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 a 6-lot rural cluster subdivision on a 19.5 acre parcel. Access for Lot 3 is off of Pilchuck Tree Farm Road. Access for Lots 1, 2, 4, 5, and 6 is from a private road off of Pilchuck Tree Farm Road. Lots 1, 2, 4, 5, and 6 will be served with public water from Snohomish County PUD No. 1. Lot 3 will be served by an individual well. All lots will be served with individual septic systems.
2. The rectangular site is a forested to the east and shrubs to the west. A single-family residence with outbuildings is in the southwest corner, and will remain as Lot 3. Pilchuck Tree Farm Road passes through the center of the site. There are Category 3 wetlands on either side of Pilchuck Tree Farm Road and in the northwest corner of the site.
3. Adjacent parcels are either undeveloped or developed as single-family residents. Adjacent zoning is R-5. There is another RCS to the north of the subject parcel.
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.
6. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. Comments from the school district signed on July 14, 2006, indicate the nearest school bus stop for this development is located at the intersection of Pilchuck Tree Farm Road and Newberg Road (Exhibit H8). Adequate walkways shall be provided from the proposed development to this bus stop if not already completed by others. PDS is recommending a condition to require the improvements necessary to provide safe walking routes for school children prior to recording of the plat.
7. The Snohomish County Health District expressed approval for the preliminary plat on August 15, 2006, Exhibit H2. Individual septic systems will serve each lot. Snohomish County PUD No. 1 will provide electrical service, Exhibit H3. Snohomish County PUD No. 1 will provide water service to Lots 1, 2, 4, 5, and 6, Exhibit H4. Snohomish County Health District recommended approval of a water well for Lot 3, Exhibit H2.
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 B.1) and in an open space management plan (Exhibit A.4) 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. The applicant has submitted a landscape plan in Exhibit B.1. There will be adequate site obscuring buffers with the existing vegetation.
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. Stormwater runoff will be accommodated by the full dispersion technique. PDS Engineering reviewed and approved the concept proposed by the applicant.
13. Critical area regulations contained in Chapter 30.62 SCC have been met. PDS has reviewed and approved the innovative development plans proposed by the applicant pursuant to SCC 30.62.370. These will protect the four Category 3 wetlands which exist on the subject property.
14. The Snohomish County Fire Marshall conducted an internal review of the proposed pat and recommended approval.
15. Regarding the comment from Mr. Dewitt at the public hearing about extending the water lines to the south-west corner of the subject parcel, the applicant pointed out that the water lines are being extended several hundred feet past the residences which will be served by them. To extend the pipes to the south-west would require laying pipe in the property of another land owner. Likewise, the paved road is being extended to the point where it crosses south out of the subject parcel.
16. In response to questions from the Examiner about road maintenance, the applicant introduced Exhibit K-1 which shows a road maintenance agreement is in effect.
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 6-lot rural cluster subdivision on 19.52 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

#### **CONDITIONS:**

- A. The preliminary plat received by PDS on July 2, 2008 (Exhibit B.1.), 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 and Wetland Mitigation Plan for Pilchuck Glen prepared by Wetland Resources, Inc. dated Revision #2, June 1, 2008 (submitted to PDS on 07/02/08) 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 Snohomish School District No. 201 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 3 shall receive credit."
  - ii. "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,  
  
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 or the lot[s] 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) (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. "A 100 foot radius well protection zone covenant is hereby established on Lot 3 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owner(s)."
- v. "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. 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."

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel's frontage on Newberg Road to the satisfaction of the County.
- ii. Pilchuck Tree Farm Road shall be improved to the satisfaction of the County from subject plat to Newberg Road.
- iii. Pedestrian facilities shall be constructed to the satisfaction of the County from the subject plat on Pilchuck Tree Farm Road to Newberg Road [RCW 58.17.110].
- 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.

- v. The final mitigation plan shall be completely implemented for buffer averaging consistent with the approved preliminary site plan.

- vi. Should the vegetation within the designated Vegetated Sight Obscuring Buffer either be impacted during construction or be found to be inadequate by PDS, then supplemental plantings necessary to establish the densities specified in SCC 30.25.017(1), Type A Landscaping, shall be installed.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this 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 17<sup>th</sup> day of October, 2008.

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James Densley, 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 **OCTOBER 27, 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, 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 **OCTOBER 31, 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.

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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.