

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER  
PRO TEM**

DATE OF ORDER: March 24, 2008

FILE NO.: 07 101590 SD

PLAT/PROJECT NAME: **TROPHY PONDS**

DECISION (SUMMARY): The preliminary plat for a 36-lot **RURAL CLUSTER  
SUBDIVISION** is **CONDITIONALLY APPROVED**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located on the West side of Burn Road at 164<sup>th</sup> Street NE, Arlington, WA.

ACREAGE: 83.49 acres

NUMBER OF LOTS: 36

AVG LOT AREA: 33,945 square feet

SMALLEST LOT AREA: 18,000 square feet

GROSS DENSITY: 0.43 du/ac

NET DENSITY: 0.44 du/ac

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: PUD # 1  
Sewer: Individual on-site septic

SCHOOL DISTRICT: Granite Falls # 332

FIRE DISTRICT: # 21

## **INTRODUCTION**

The applicant is requesting a 36-lot rural cluster subdivision (RCS) on 83.49 acres. Access is by a new private road off of Burn Road. Each lot will be served with public water (PUD #1) and individual septic systems.

The preliminary plat application was originally submitted to Planning and Development Services (PDS) on May 24, 2007, (Exhibit 1). A resubmittal of the application was received on September 6, 2007. A further resubmittal was made on November 28, 2007.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 17, 18, 19)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on January 16, 2008 (Exhibit 16). The DNS was not appealed.

The Examiner held an open record hearing on March 18, 2008, 145th 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.

The Examiner conducted a site visit on March 19, 2008.

## **PUBLIC HEARING**

The public hearing commenced on March 18, 2008 at 9:03 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and therefore was generally apprised of the particular request involved. He said he would conduct a site visit March 19, 2008.
2. The applicant, Mike Oberg, was represented by Laurey Tobiason, Brian Kalab, and Louis Emenheiser. They outlined the proposed project. Mr. Tobiason indicated that one change to the application was to delete the need for fire sprinklers on the six houses on Burn Road. Snohomish County was represented by Ed Caine, Senior Planner for PDS. He presented the staff report. He explained that the county did not object to the elimination of the requirement for the six houses on Burn Road, while retaining the requirement for the other houses to be constructed in the interior of the project. He introduced Exhibit 37, which is a corrected page of the staff report pertaining to fire code requirements.
3. One public comment letter had been received. It related to the intersection at 172<sup>nd</sup> St NE and Burn Road. Mr. Caine's staff report and testimony addressed the concerns raised by this letter.

The hearing concluded at 9:39 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 site is irregularly shaped on 83.49 acres, with Burn Road forming the eastern border and the Seattle City Light easement comprising the western margin of the site.
2. There are nine jurisdictional wetlands and two streams on site. One is a Category 1 wetland with a 3.2 acre open water component on the eastern half of the site and a one acre open water component at the south end of the site. A Type 3 stream originates in the wetland complex, flows to the north, and continues off-site to the north. A second Category 1 wetland is on the southwestern corner of the site, separated from the proposed development activities by steep slopes. There are seven Category 3 wetlands scattered throughout on site, with a Type 5 stream flowing out of one wetland and extending off-site and into the easement for Seattle City Light powerline easement. The areas associated with the Category 1 wetlands are forested. Impacts to the wetlands are restricted to the crossing of a Category 1 wetland for access to the site and the filling of one Category 3 wetland (414 square feet). The remainder of the site is primarily grass.
3. The wetlands and streams are protected by buffers pursuant to SCC 30.62.310(1). Impacts associated with the wetland crossing are unavoidable if access is to be obtained to the upland areas to the west of the wetland. A total of 3,702 square feet of wetland will be filled by the access to the plat and 12,188 square feet of wetland will be designated as required buffer to the wetlands. Mitigation for these impacts will be the creation of 11,497 square feet of wetland for the wetland fill (a 3.1:1 replacement ratio), and 12,188 square feet of wetland creation for the similar area of wetland that is designated as wetland buffer (a 1:1 ratio). Permanent impact to buffers will be 20,487 square feet. Mitigation for the permanent buffer impacts will be the designation of 39,370 square feet of additional, contiguous buffer area (a 1.92:1 ratio). Filling of the 414 square foot Category 3 wetland will be mitigated by designation of an additional 960 square feet of contiguous area as buffer (a 2.31:1 ratio). PDS has reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with the critical areas regulations.
4. Stormwater runoff is proposed to be accommodated using Full Dispersion based upon the 2005 DOE Manual BMP number T5.30. The proposed area of disturbance is 13.94 acres of the 83.49 acre site, with 6.28 acres proposed to be impervious surface. The impervious surfaces constitute 20.17% of the site, which is below the 35% threshold for the use of Full Dispersion techniques. The effective impervious surface is 9.09%, which is beneath the threshold of 10% for the use of Full Dispersion techniques. Stormwater will flow through 100 feet of native vegetation prior to entering any critical area. No point discharge is greater than 0.5 cfs. Therefore, the project complies with the requirements for Full Dispersion for this site. The applicant testified at the public hearing that the stormwater dispersion plan will not adversely affect the hydration the wetlands on the parcel. The Examiner finds that the wetlands will be adequately replenished by the use of the proposed Full Dispersion technique proposed by the applicant.
5. PDS (Engineering) has reviewed the concept offered and recommends approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 60,000 cubic yards of cut and 60,000 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.

6. 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. The site specific review at the public hearing level is more fine-toothed, however, and a vicinity resident's letter pointed out that the intersection of 172<sup>nd</sup> St NE and Burn has poor driver sight distance and will soon carry traffic from 36 homes of the proposed Trophy Pond development. (See Exhibit 23.) However, the Examiner finds that a preponderance of the evidence of record does not support further conditions upon approval based upon traffic impacts. The evidence does warrant inquiry about traffic impacts when any further applications are reviewed in the vicinity.
7. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Granite Falls School District No. 332, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 4 existing lots.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. Comments from the Granite Falls School District # 332 dated June 12, 2007 indicate school children will be picked up school buses at the entrance to the development on Burn Road (Exhibit 28.) No offsite improvements are required.
9. Water will be supplied by the PUD # 1. A Certificate of Water Availability was received on June 22, 2007 (Exhibit 29). The applicant supplied information regarding septic drainfields and reserve areas. The Snohomish Health District recommended approval on October 12, 2007 (Exhibit 32). Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project on June 14, 2007 (Exhibit 26)
10. The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on October 2, 2007. Various conditions shall be placed upon this decision reflecting such approval. Fire suppression sprinklers shall be required with each residence, except those residences immediately adjacent to Burn Road.
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 sub-area plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone. The 36 lots are consistent with the density provisions of Snohomish County's GMA-based zoning regulations consistent with Section 30.70.100 SCC.
12. 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.
13. 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 November 28, 2007 (Exhibit 15A-C), and in an open space management plan (Exhibit 10) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density. The application complies with the provisions of SCC 30.41C.230 and SCC 30.41C.240.

14. The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 61.9% (51.7 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.
15. 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 authority to hear this matter and render a decision thereon.
2. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report (as revised with the addition of Exhibit 37) 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.
3. The DPW recommends that the request be approved as to traffic use subject to conditions specified below herein.
4. The request is consistent with: (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.
5. 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 36-lot **RURAL CLUSTER SUBDIVISION** on 83.49 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

**CONDITIONS:**

- A. The preliminary plat received by PDS on November 28, 2007 (Exhibits 15 A-C) 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 Areas Study and Buffer Mitigation Plan* prepared by Wetland Resources (revised November 13, 2007) (Exhibit 12) 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 4 existing parcels. Lots 1 through 4 shall receive credit."
  
  - ii. All buildings, except those six residences directly adjacent to Burns Road, will be provided with sprinkler systems.
  
  - iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence.  
  
\$2,526.48 per lot for mitigation of impacts on County roads paid to the County,  
\$344.52 per lot for mitigation of impacts on state highways paid to the County,  
\$2,371.99 per lot for mitigation of impacts on City streets for the City of Arlington 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 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.
  
  - iv. 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."

- v. The developer shall pay the County \$48.82 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel's frontage on Burn 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 plattor 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 (Exhibits 15 D and E) 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 24<sup>th</sup> day of March, 2008.

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James A. Densley, Pro-Tem 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, 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 **APRIL 3, 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 **APRIL 7, 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

<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>
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