

**DECISION OF THE SNOHOMISH COUNTY
HEARING EXAMINER PRO TEMPORE**

DATE OF DECISION: September 17, 2008
PROJECT NAME: **BAILEY LANE**
APPLICANT/OWNER: Samantha Hicks
FILE NO: 07-102747-000-00-SD
TYPE OF REQUEST: **RURAL CLUSTER SUBDIVISION**
DECISION: **APPROVE** with conditions

BASIC INFORMATION

GENERAL LOCATION: 11232 115th Avenue NE, Lake Stevens, within SE1/4
NE1/4 SE1/4, Sec. 7, T30N, R6E, W.M.
ACREAGE: 19.680
NUMBER OF LOTS: 5
AVERAGE LOT SIZE: 50,901.8 square feet
SMALLEST LOT: 44,559 square feet
DENSITY: 0.25 du/ac, gross; 0.26 du/ac, net
ZONING: RC
COMPREHENSIVE PLAN
General Policy Plan: Rural Residential (1du/5acres – Basic)
SCHOOL DISTRICT: Arlington #16
FIRE DISTRICT: #22

UTILITIES

Water: Individual wells
Sewer: Individual on-site septic

PDS RECOMMENDATION: Approve

INTRODUCTION

The applicant filed the Master Application on June 27, 2007. The application was determined to be complete for regulatory purposes as of the date of submittal. Resubmittals were made on January 4, 2008 and July 1, 2008. The public hearing was delayed because of the illness of the project planner.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by County Code.

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on July 18, 2008. No appeal was filed.

The Examiner held an open record hearing on August 28, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered. The decision here is based on the record made.

PUBLIC HEARING

The public hearing commenced on August 28, 2008 at 9:08 a.m.

1. The applicant was represented by Merle Ash, Land Technologies.
2. PDS was represented by Ed Caine, Planner.
3. There was no public testimony.

The hearing concluded at 9:18 a.m.

NOTE: For a complete record, an electronic recording of this hearing is available through the Office of the Hearing Examiner

FINDINGS OF FACT

1. The master list of exhibits is in the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.

2. The PDS Staff Report has correctly analyzed the nature of the application and the application's consistency with adopted codes, policies and land use regulations. The Staff Report is hereby adopted by the Examiner as if set forth in full herein.
3. There have been no public comments indicating concern over the subject subdivision.
4. The parcel is rectangular and basically flat. It contains an existing single-family residence on 115th Avenue NE with accessory structures. A network of existing gravel roads meanders across the property. There are extensive wetlands with scrub vegetation and grasses.
5. The adjacent properties are zoned R-5. These properties are either developed as single-family residence or are undeveloped.
6. The applicant seeks approval of a 5-lot Rural Cluster Subdivision on a 19.68 acre parcel. The residential lots will each exceed an acre in size. Access for lots 2-4 will be from individual driveways off of a new private road off of 115th Avenue NE. Access for Lots 1 and 5 will be by private driveways directly off of 115th Avenue NE. Lots will be served by individual or shared wells and individual septic systems. Lot 1 contains an existing residence which will remain.
7. Frontage improvements will not be required since the existing County road meets the minimum standards for the number of average daily trips to be served by the road. No additional right-of-way is needed.
8. 115th Avenue NE is wide enough to allow for safe walking conditions for students to safely walk to the bus stop at 108th Street NE and 115th Avenue NE.
9. Stormwater runoff will be accommodated using the full dispersion method per the 2005 Department of Ecology Stormwater Manual. A Waiver Request to use the 2005 Manual was approved on condition that all full dispersion flow paths from level spreaders be fully contained within a 100-foot Native Growth Protection Area/Easement (NGPA/E). The Staff found that the relatively flat topography, coupled with the extensive wetlands on site and the need to maintain the hydrology of the wetlands justified the waiver.
10. Grading quantities are anticipated to be approximately 320 cubic yards of cut and 320 cubic yards of fill, primarily for road and home site construction. Silt fences and straw bales will be used during construction

to protect water quality. The existing gravel road system will be converted to foot paths.

11. A Type 4 stream flows easterly through the center of the property through a logged over Category 1 wetland and buffer. There is a small Category 3 wetland in the northeastern portion of the site. All of the wetland and buffer areas are in a relatively degraded state due to past logging. The vegetation is young forest with an understory of salmonberry and blackberry.
12. Impacts to the degraded wetland and buffer are proposed to be mitigated through a combination of wetland creation, buffer averaging, buffer addition, and abandonment of logging roads through scarification, re-seeding, and creation wood chip walking paths.
13. Wetland impacts will largely be avoided. Where that is not the case, the impacts will be minimized or compensated for. The existing gravel road will be used for the private road (Tract 996). There will be minor wetland fill and buffer impacts to the Category 3 wetland (Wetland B). A total of 5,472 square feet of wetland creation is proposed to off-set 273 square feet of direct wetland fill and 2,461 square feet of indirect impacts for Wetland B. The wetland creation will occur adjacent to the larger Category 1 wetland. Buffer averaging is proposed in four locations to off-set other relatively minor impacts.
14. Reserve drainfields will be allowed within the critical area because they represent an uncertain future impact that is off-set by the restoration activities in connection with the logging roads. In the event of primary drainfield failure on any of the lots in the future, the drainfield lines shall be hand-dug to minimize impacts and then restored with native vegetation.
15. Staff analysis concluded the following on traffic mitigation and road design:
 - a) The development should pay road system capacity impact fees of \$15,197.16.
 - b) The development is concurrent as of July 29, 2007.
 - c) Mitigation will not be required with respect to inadequate road conditions.
 - d) The new plat road will be constructed to meet the EDDS for a private access low volume road serving less than 90 average daily trips.
 - e) State highway impacts can be addressed through payment of \$1,378,08.

16. The applicant supplied information regarding septic drain fields and reserve areas, as well as individual domestic wells. The Snohomish Health District wrote that they had no objection to the Preliminary Plat on January 14, 2008. Snohomish County Public Utility District provided correspondence, dated July 10, 2007, indicating that they can provide electrical service for the project.
17. The County Fire Marshal reviewed the proposal and recommended approval on August 22, 2007. He concluded that the lots are exempt from fire hydrant and fire flow requirements, and that fire apparatus access will meet County minimums.
18. Four tracts are being created within the plat. As noted, Tract 996 is the private road tract. Tracts 997, 998 and 999 are restricted open space. 68.7% of the property will be retained in restricted open space (13.5 acres). Tracts 997 and 998 provide sight obscuring buffers for the plat and are designated as NGPA/E. Tract 999 is a large tract, containing sight obscuring buffer areas, NGPA/E areas and upland areas. The low impact (wood chip) pedestrian trail is proposed within Tract 999. The sight obscuring buffer will be a minimum of 35 feet wide. It will be a perimeter buffer except where it runs between Lot 2 and the existing residence on Lot 1.
19. An Open Space Management Plan stipulates that the Homeowners Association will have ownership, control and maintenance responsibility for the tracts. A landscape plan has been submitted and there is a condition for compliance with it.
20. The proposed site is not within an Urban Growth Area. The Comprehensive Plan designation is Rural Residential (RR:1 du/5 acre Basic). The basic density is one dwelling unit per five acres in a traditional subdivision. But with RR-5 Basic, rural clusters can be divided to provide density at one living unit per 100,000 square feet. The five lots proposed are consistent with the density provisions of the GMA-based plan and regulations.
21. The Staff Report thoroughly discusses the conformity of the proposal with the code requirements for Rural Cluster Subdivisions (Chapter 30.41C SCC). The Examiner concurs that the development complies with all of the criteria for preliminary approval. The requirements for restricted open space, lot yield, and bonus residential density are met. Lots are clustered on the most buildable and least environmentally sensitive portions of the site. Appropriate buffers are provided. All utilities will be underground. There is an Open Space Management Plan. The design is in accordance with the natural features and maintains rural character.

22. An EDDS Deviation was granted for the plat of Lost Acres (06-129486-SD) immediately to the north. The deviation was for road connectivity in order to eliminate the need for a temporary turn-around on Bailey Lane. The internal roads of the two plats are proposed to be private roadways, necessitating cross access easement between the two plats.
23. The Examiner concurs with the Staff's findings and agrees that the project, as conditioned, will be consistent with the County's adopted Codes and policies.
24. The plat makes "appropriate provisions" for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, potable water supplies, sanitary wastes, recreation, schools, safe walking conditions for students, and other planning features.
25. The public use and interest will be served by the platting of the subdivision.
26. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over this proceeding.
2. The requirements of SEPA have been met.
3. The proposal is consistent with the GMA-Comprehensive Plan and with the applicable development regulations. RCW 58.17.100, RCW 58.17.195. In particular, the proposal, as conditioned, meets the requirements of Chapter 30.41C SCC, Rural Cluster Subdivisions.
4. The proposal provides for items of design and infrastructure as required by RCW 58.17.110. Adequate public services are available to serve the proposal.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The request for approval of the **RURAL CLUSTER SUBDIVISION** of Bailey Lane **GRANTED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on June 30, 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 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 plattor 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 conceptual Critical Area Study and Wetland and Buffer Mitigation Plan for Bailey Lane prepared by Wetland Resources, Inc. dated Revision #1 January 11, 200 (submitted to PDS on 01/14/08) 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 Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 1 existing parcel. Lot 1 shall receive credit."

 - ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence or twice the amount shown for a duplex:

\$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 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) 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 \$48.82 per newly approved dwelling unit pursuant to Chapter 30.66A (River Meadows # 302). 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.”
- v. “Ownership and maintenance for the tracts and maintenance responsibilities for the Vegetated Sight Obscuring buffers shall be as specified Open Space Management Plan (Exhibit 1E).”
- vi. The private road within Tract 996 shall not be blocked in any way and shall remain physically open at all times.

D. Prior to recording of the final plat:

- i. The private road serving the new lots shall have been constructed and approved by the county.
- ii. All full dispersion flow paths from level spreaders be fully contained in 100-foot NGPA/E.
- iii. 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.

- iv. The final wetland mitigation plan shall be completely implemented.
 - v. An access easement shall be recorded over Tract 996, the private entrance road, to the benefit of property to the north, Tax Account Number 300607-004-001-00, and presently under PDS review as the plat of Lost Acres, 06-129486-SD.
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 2A, Sheet 1) shall be implemented. All required landscaping shall be installed in accordance with the approved landscape plan.
 - ii. The sight obscuring buffer will be established to the approved landscape plan (Exhibit 2A, Sheet 1).
- 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 17th day of September, 2008.

Wick Dufford, Hearing Examiner Pro Tempore

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **SEPTEMBER 29, 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 **OCTOBER 1, 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

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.