



**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

M/S 405
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Everett, WA 98201

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DATE OF DECISION: May 17, 2011
PLAT/PROJECT NAME: **TROMBLEY HEIGHTS**
APPLICANT/
LANDOWNER: Luigi Gallo
FILE NO.: 07-111239 SD
TYPE OF REQUEST: Preliminary Subdivision Approval – Rural Cluster Subdivision (RCS)
DECISION (SUMMARY): **APPROVED WITH CONDITIONS**

BASIC INFORMATION

LOCATION: North of the intersection of 199th Avenue SE and 80th Street SE, approximately 1000 feet north of the intersection of Meadow Lake Road and 199th Avenue SE, in Snohomish, WA.
ACREAGE: 67.75 acres
NUMBER OF LOTS: 30
AVERAGE LOT SIZE: 44,163 square feet
MINIMUM LOT SIZE: 43,563 square feet
GROSS DENSITY: 0.46 du/ac
GMACP DESIGNATION: Rural Residential-5 (1 du per 5 acres, Basic)
ZONING: R-5
UTILITIES:
Water: Snohomish County PUD No. 1
Sewer: On-site individual septic
Electricity: Snohomish County PUD No. 1
SCHOOL DISTRICT: Snohomish School District No. 201
FIRE DISTRICT: Snohomish County Fire District No. 4
PDS STAFF RECOMMENDATION: Approve with conditions

NOTE: For a complete record, an electronic recording of the hearing in this case and the Tape Log is available in the Office of the Hearing Examiner.

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

FINDINGS OF FACT

1. Regulatory Review and Vesting. A complete application was submitted to Planning and Development Services (PDS) on September 24, 2007 and was vested as of that date for purposes of regulatory review. (Exhibits A.2, J) The 120-day clock started on October 21, 2007. PDS and the applicant exchanged various plan sets and review comments four times through November 17, 2010. The proponents of the application also changed. As of the original hearing date, 193 days of the 120-day period had elapsed.

2. Public Hearing. A public hearing was originally set for April 12, 2011. However, a legal dispute arose between the original proponents of the plat (Happy and David Mangat) ("Mangat"), and the underlying property owners (Luigi Gallo and Johannes Dankers), (the "Applicant") over the ownership of the application materials and control of the plat application. (Exhibits K.1 through K.19) Mangat filed a motion to stay the public hearing on preliminary plat approval with the Hearing Examiner, which was denied after comment was received from the parties of record. (Exhibit K.9) Mangat sought and obtained a Temporary Restraining Order (TRO) from Snohomish County Superior Court, preventing the holding of the public hearing on April 12, 2011, and the hearing was cancelled by the Hearing Examiner. The Applicant filed a motion to quash the TRO in Superior Court, which was granted on April 12, 2011. Mangat moved for a preliminary injunction in Superior Court, which motion was orally denied by Court of Appeals Judge Jay Leach, serving as a Judge Pro Tem in Snohomish County Superior Court. The final written order is awaiting the Court's signature at this time.

With no remaining legal impediments, the rescheduled public hearing was held on May 11, 2011. Appearing for the Applicant was Ry McDuffy, Land Solutions and Kenneth Davidson, the Applicant's attorney. Appearing for PDS was Ed Caine. Citizens Shan Mangat, Gene Miller, and Eric Wimble appeared and testified. A number of other citizens attended the hearing to watch the proceedings. Several were added to the parties of record list, at their request. At the start of the hearing, Ed Caine added Exhibit M.1 to the record demonstrating that notice of the rescheduled public record had been properly issued as required by SCC 30.70.050. (Exhibit M.1)

3. The Record. All of the Exhibits shown on the master list of exhibits were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. The entire record was considered by the Examiner in reaching this decision.

4. Public Notice. The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibit M.1)

A. Background Information

5. Applicant's Proposal: The Applicant is requesting a 30-lot RCS on a 67.74-acre parcel. Access to the lots will be by private driveways off of a private road. The entire site is forested and undeveloped and several critical areas were identified on the site.
6. Issues of Concern:
 - A. Agency Comments. No issues of concern were raised after technical and agency reviews. However, the Department of Ecology has asked the County to require as a condition that no ground disturbing activities or timber harvest shall be conducted until all federal and state authorizations relating to stream and wetland impacts are received. (Exhibit H.6)
 - B. Citizen Comments. Public comments were received from two parties of record.

The first set of comments is set forth in Exhibit I.1. PDS staff prepared a detailed response to each issue, as shown in Exhibit J. Several of the issues relating to the private access road were also discussed during the public hearing. The Hearing Examiner finds that each of these issues has been adequately addressed by PDS.

The second comment was received from Gene Miller. (Exhibit I.2) Mr. Miller questions the calculation of lot yield for the subject application. PDS presented its calculations in Exhibit J. Additionally, Mr. Caine testified at the hearing that the calculation of 30 lots is correct. The Hearing Examiner finds that this issue has been adequately addressed.

B. Compliance with Codes and Policies.

7. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within the Centennial Park Service Area, No. 306, and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. The Examiner finds that such payment is acceptable mitigation for parks and recreation impacts in accordance with County policies.
8. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC, EDDS, and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record and in the PDS Staff Recommendation (Exhibit J), meets the County's traffic mitigation and road design standards.
 - (a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC). The Applicant shall be required to pay a road system capacity impact fee to the County for impacts within TSA "C," in the amount of \$47,658.60 (\$1,588.62 per new lot) pursuant to SCC 30.66B.310. The application was deemed to be concurrent pursuant to SCC 30.66B.120 and SCC 30.66B.130(4) as of July 20, 2007. The expiration date of the concurrency determination is six years from that date. IRCs have been considered according to the requirements of SCC 30.66B.210. The project was not found to have

an impact on any IRC location. As a result, the Applicant shall not be required to make improvements to cure any IRCs. (Exhibit J)

- (b) Frontage Improvements (SCC 30.66B.410) The subject property has no frontage on a public road. Access will be through a private road only. As such, frontage improvements are not required. (Exhibit J)

- (c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) The Department of Public Works (DPW) considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. A request to deviate from EDDS was approved by the County Engineer. (Exhibits G.12) DPWs analysis is shown on pages 8 through 9 of the PDS Staff Recommendation (Exhibit J), which is incorporated herein by this reference as if set forth in full. The County Engineer and DPW staffs have determined that, with the imposition of the conditions set forth in Exhibit J, the proposed development meets the requirements of SCC 30.66B.420 and Chapter 30.24 SCC.

- (d) In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record.

- (e) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520)

The Applicant will not be required to dedicate additional right-of-way because it has no frontage along a public road. (Exhibit J)

- (f) Impacts to State Highways (SCC 30.66B.710)

No impacts to state highways have been found as a result of the subject development application. Accordingly, the Washington State Department of Transportation (WSDOT) has indicated that no impact fees are required as a result of the application. (Exhibit H.1)

- (g) Impacts to City Streets and Roads (SCC 30.66B.720)

Mitigation requirements for impacts to streets within nearby cities will be established consistent with the terms of an interlocal agreement between the County and the other jurisdictions pursuant to the County's SEPA substantive authority.

Here, the County has executed a Reciprocal Traffic Mitigation Interlocal Agreement with the City of Sultan. As part of its traffic and SEPA reviews, PDS circulated notice of the proposed development to the City. The City of Sultan did not respond and no comments have been received as to any impacts on City streets. (Exhibit J) As such, there is no basis in the record to determine that impact fees are owed to the City of Sultan and, therefore, none will be required.

- (h) Transportation Demand Management (TDM) (SCC 30.66B.630)

This proposal lies outside of the Urban Growth Area (UGA). Therefore, the provisions of SCC 30.66B.630 do not apply.

(i) Latecomer Agreement (SCC 13.95)

The subject development is located inside Assessment Reimbursement Area Number 93-01 (Trombley and Meadow Lake Road) established by County Ordinance No. 95-067. As such, the development is required to make payments of \$16,008.70 (\$55.76 per ADT times 287.10 ADT) to Snohomish County prior to building permit issuance pursuant to Ch. 13.95 SCC and Ordinance No. 95-067. A condition has been included to implement the Latecomer's Agreement.

9. Pedestrian Facilities (RCW 58.17.110)

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision, as well as the adequacy of pedestrian or bicycle facilities. The need for safe pedestrian facilities has been analyzed by the DPW and the Snohomish School District No. 201. (Exhibits H.5 and J) Comments from the School District indicate that elementary, middle, and high school students residing in the proposed development will be picked up by bus at 199th Avenue SE and Meadow Lake Road. The 7-foot paved shoulder walkway throughout the development and along 199th Avenue SE will provide adequate pedestrian facilities for students to walk to the bus stop, and the walkway will provide a hard surfaced area at the Meadow Lake Road intersection for the students to wait for the bus outside of the travel lanes for both roads. The School District is not requesting additional off-site pedestrian or bicycle facilities, nor does the Examiner find that any such off-site facilities are necessary. The Examiner finds that proposed facilities are consistent with the County Code, EDDS, and the rural character of the surrounding area. The Examiner further finds that no school children will be required to walk to school from the site and that the facilities will provide for the general public health, safety and welfare. No off-site bicycle facilities are warranted in this rural area.

10. Mitigation for Impacts to Schools (Chapter 30.66C SCC)

Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Snohomish School District No. 201, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibit H.5) Credit is to be given for two existing lots on the subject property. Payment of school impact fees has been included as a condition of approval of the development.

11. Drainage and Grading (Chapters 30.63A and 30.63B SCC)

This project is vested to the codes in effect at the time of complete permit application, which was September 24, 2007. The new Land Disturbing Activities Regulations were not in effect at that time and, therefore, the application is subject to the provisions of *former* Ch. 30.63A SCC (Drainage Code) and *former* Ch. 30.63B (Grading Code).

A. Grading. Grading quantities are anticipated to be approximately 15,500 cubic yards of cut and 15,500 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality will 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. Based on the fact that grading in

excess of 100 cubic yards will occur, a grading permit and a Stormwater Pollution Prevention Plan (SWPPP) are required.

- B. Stormwater Drainage. Most of the drainage from impervious surfaces and other pollution generating surfaces will be collected and conveyed to one of two open top, vegetated ponds for water quality treatment, infiltration and detention, which will be designed to meet the former Drainage Code. Twelve lots, the dead-end road, cul-de-sac and a portion of 199th Avenue SE will drain to the east detention pond in the southeast quarter of the plat. The remaining 18 lots and most of 199th Avenue SE will drain to the west pond. Approximately one acre of off-site roadway stormwater runoff cannot be detained due to the proximity of a Category 1 wetland. Therefore the west stormwater detention pond will be oversized in terms of its volume, to account for that portion of the roadway stormwater runoff that will bypass detention. Water quality treatment of the bypassed portion of off-site roadway stormwater runoff will occur in a proposed biofiltration swale adjacent to the roadway. Over 5,000 square feet of new impervious surface will be created. A full drainage plan (construction plan) is required. The Surface Water Management Division (SWM) of the DPW had no comments regarding known flooding or other drainage problems within ¼ mile downstream of the development.

Based on the geotechnical site investigation and slope stability report (Exhibit C.4), a building setback from the slope crest is not required provided that all foundations are sited on hard lodgment till, the slope vegetation is protected, and all drainage associated with the project is kept away from the slope.

PDS Engineering staff has reviewed the concept offered and recommended approval of the project, subject to the recommended conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

With the inclusion of the proposed conditions of approval, the Hearing Examiner finds that the Applicant has sufficiently demonstrated that code requirements and standards for storm water drainage, grading, water quality treatment, and construction stormwater pollution prevention can be met with development of this proposed site. Conditions have been included to require the approvals for the drainage plan, grading permit, and SWPPP.

12. Critical Areas Regulations (*former* Chapter 30.62 SCC)

This project is vested to the codes in effect at the time of complete permit application, which was September 24, 2007. Accordingly, the provisions of *former* SCC 30.62 SCC apply to this project. There are numerous critical areas on the subject property. (Exhibits C.5 and C.6)

- A. Wetlands. There are 15 wetlands located fully or partially on the site. The wetlands are palustrine forested, shrub, and/or emergent wetlands that are seasonally and/or permanently flooded. The wetlands are categorized and protected as follows:
- Two Category 1 wetlands requiring protection through a 100-foot buffer;
 - Two Category 2 wetlands requiring protection through a 75-foot buffer, and
 - Eleven Category 3 wetlands requiring protection through a 50-foot buffer.
- B. FWHCAs - Streams. There are four (4) streams located on the subject property. The stream types and required protection is as follows:

- One Type 3 stream, which has a primary association with a species listed under the Endangered Species List (“ESA”), which is protected pursuant to SCC 30.62.110, requiring, in addition to the standard protections, the preparation of a Habitat Management Plan in accordance with the *Salmonid Habitat Management Administrative Rule*. The Rule includes additional protection measures, including a wider (150-foot) buffer and limits on effective impervious surfaces within 300 feet of the stream.
- Two Type 4 streams requiring protection through a 50-foot buffer;
- One Type 5 stream requiring protection through a 25-foot buffer.

No wetland, stream, or buffer impacts will occur on-site. A portion of Tract 996, the detention tract, is within the Riparian Management Zone (RMZ), which is the zone that is between 150 and 300 feet from habitats containing salmonids that are listed under the ESA. The requirement within this zone is that all effective impervious surfaces shall be infiltrated. Because SCC 30.911.010 excludes uncovered retention or detention facilities from the definition of impervious surfaces, PDS concluded that no infiltration is required for the detention facilities within Tract 996. The Hearing Examiner agrees.

Off-site improvements to 199th Avenue SE will require placing fill within two Category 3 wetlands and a Category 1 wetland, as well as buffer impacts to those wetlands. In addition, a culvert that contains a Type 4 stream will be removed and replaced with an arched, bottomless culvert, which is considered an enhancement to the habitat condition of that stream.

The Critical Areas Mitigation Plan was reviewed under SCC 30.62.370, innovative development design, because mitigation is being made on the subject property rather than within the road and utility easement. Innovative development allows modification to the prescriptive mitigation ratios contained in the prescriptive buffer requirements for wetlands and streams if the requirements of SCC 30.62.370(2) are fulfilled, including “a net improvement in the functions and values of the stream or wetlands and their buffers.”

The three main factors that were considered in evaluating the proposal to provide mitigation at a “distant” critical area include the following facts:

- a) The buffer areas being impacted are within the existing road and power line (utility) easement, and maintenance of the utility easement will continuously disturb any plantings that are made, and:
- b) Properties that are outside of the power line easement are not under the ownership and control of the property owners for the subdivision application.
- c) The maximum area of wetland buffer enhancement within the existing road and utility easement area that will not be impacted by future maintenance activities is proposed to be enhanced.

PDS determined that “distant” mitigation was acceptable, and then evaluated the mitigation offered to insure that the proposed mitigation did provide a net improvement to the functions and values of the stream and wetlands.

Approximately 10,842 square feet of wetland will be filled by the road improvements. Mitigation for these impacts will not fit within the road and utility easement areas. Consequently, PDS evaluated the alternative mitigation offer to provide the mitigation on the subject property. In addition to the required critical area buffers, an additional 134,375 square feet of additional

buffer is provided on site, which is a mitigation ratio of 12.4:1 (buffer replacement to wetland fill). PDS determined that the mitigation was acceptable.

Approximately 11,623 square feet of stream buffers will be permanently impacted by the off-site road improvements. Approximately 10,500 square feet of stream buffer enhancement will provide a portion of the mitigation. The stream buffer enhancement area is located at the eastern portion of Tract 994 and is on the ESA stream (the impact is on a non-fish bearing stream). The area of stream buffer enhancement currently is pasture and reeds. PDS determined that the enhancement to a degraded buffer of a stream containing species that are federally listed as threatened or endangered, coupled with the large quantity of additional wetland buffer being provided, was acceptable mitigation for the impacts to the Type 4 stream buffer.

Recommended conditions to require implementation of the mitigation plan and to provide protections to the critical areas have been included by PDS. With the recommended conditions, the Hearing Examiner finds that the project complies with the requirements for the protection of Wetland and Fish & Wildlife Habitat Conservation Areas provisions contained in Chapter 30.62A SCC. (Exhibits C.3) The Hearing Examiner further finds that the application is in conformance with Chapter 30.62 SCC (CAR) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare.

13. Consistency with the GMA Comprehensive Plan.

On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county, respectively.

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than five acres. The base density of one dwelling unit per five acres (1 du/5 ac) may be increased consistent with Policy LU 6.B.9. The proposal is consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

14. Utilities.

- A. Sewer. Sewer will be supplied by individual septic systems. The Snohomish Health District recommended approval of the preliminary plat on September 2, 2010. (Exhibit H.2)
- B. Electricity. The Snohomish County PUD No. 1 notified the County on October 16, 2007, that they can provide electrical service to the development. (Exhibit H.3)
- C. Water. Potable water will be supplied by Snohomish County PUD No. 1. A Certificate of Water Availability was received from the PUD on September 28, 2007. (Exhibit H.7)

15. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements. (Exhibits D.1, D.2, and J)

16. State Environmental Policy Act Determination (Chapter 30.61 SCC--SEPA)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 22, 2011. (Exhibits E.1, E.2, F.1, F.2, F.3 and M.1) Notice was properly given of the SEPA determination. Id. The DNS was not appealed. The requirements of SEPA have been met.

17. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads. In addition, the subdivision meets all of the County's transportation and road regulations and design standards. The Examiner finds that all lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (SCC 30.41A.110) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions included in the PDS Staff Recommendation. (Exhibit J) Accordingly, the Hearing Examiner finds that the proposed plat, as conditioned, also meets the general requirements under Section 30.41A.100 SCC with respect to health, safety and general welfare of the community.

18. Rural Cluster Subdivision Code Design Standards (*Former* Chapter 30.41C SCC).

The subject development application is vested to the *former* provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The Hearing Examiner has reviewed each of the criteria in *former* Chapter 30.41C SCC and finds that the application is consistent with its requirements. Specifically, as conditioned according to the PDS Staff Recommendation set forth in Exhibit J, the subdivision complies with the provisions of:

- SCC 30.41C.010 (clustering lots),
- SCC 30.41A.200(1) (critical areas protection)
- SCC 30.41C.200(2) (vegetated sight-obscuring buffers),
- SCC 30.41C.200(3) (access roads),
- SCC 30.41C.200(4) (utilities),
- SCC 30.41C.200(5) (unbuildable land),
- SCC 30.41C.200(6) (buffers for resource land),
- SCC 30.41C.200(7) (designated resource land disclosure statements),
- SCC 30.41C.200(8) (mineral resource land disclosure statements),
- SCC 30.41C.200(9) (location of open space tracts near tracts on adjacent properties),
- SCC 30.41C.200(10) (open space management plan),
- SCC 30.41C.200(11) (physical separation of clusters),
- SCC 30.41C.200(12) (lots abutting open space or buffer),
- SCC 30.41C.200(13) (design fits with natural features and maintains rural character),
- SCC 30.41C.200 (14) (no sanitary sewers absent health order),
- SCC 30.41C.200(15) (location of lot clusters),
- SCC 30.41C.200(16) (location within fire district required),
- SCC 30.41.C.200(17) (rural concurrency standards), and
- SCC 30.41C.230 and SCC 30.41C.240 (rural cluster subdivision lot yield calculations).

19. Rural Cluster Subdivision Standards—General

The subject 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 an Open Space Management Plan. (Exhibits A.4, A.8) The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed in Findings of Fact 17 and 18. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density. 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 over 50% 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 (CAR), thereby minimizing the loss of the county's environmentally sensitive areas.

20. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the 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 pedestrian facilities for students.

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision. The single-family homes within the subdivision will be in character with the rural area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to *former* Chapter 30.63A SCC and Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided by the PUD and sewage disposal will be provided by individual wastewater septic systems.

21. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.

2. The Examiner must review the proposed RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

The proposed subdivision 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

RCW 58.17.110. The Examiner concludes the Applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the RCS application should be approved as described in Chapter 30.41C SCC.
4. Adequate public services exist to serve this proposal.
5. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
6. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for preliminary plat approval of a **RURAL CLUSTER SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS

- A. The preliminary plat received by PDS on November 15, 2010 (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 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 shall be submitted for review and approval during the construction review phase of this project.
- iv. Provisions for access to 80th Street SE during construction on 199th Avenue SE shall be provided.
- v. Construction plans (a full drainage plan) shall be submitted for review and approval.
- vi. A grading permit, including a Stormwater Pollution Prevention Plan, shall be submitted and approved.
- vii. All necessary state and federal authorizations for stream and wetland impacts shall be obtained prior to beginning any ground disturbing activities or timber harvest.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 (Centennial #306) per newly approved dwelling unit pursuant to Chapter 30.66A SCC. 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."
- ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 \$1,588.62 per lot (\$47,658.60 total) for mitigation of impacts on County roads paid to the County,
 \$533.62 per lot (\$16,008.70 total) for the Latecomers Assessment Reimbursement Agreement Area # 93-01 (Trombley and Meadow Lake Road); 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 payment obligations shall be contained in any deeds involving this subdivision or the lots therein."
- iii. "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 two existing parcels. Lots 1 and 2 shall receive credit."
- iv. "In consideration of the access approval, the owners of the lots in the development, their heirs, successors, and assigns; covenant and agree not to protest the conversion of the thirty (60) foot access easement and private road, 199th Avenue SE, to a public road at any time the county determines a public road is necessary, or a public road is required for further development of any lots that have access to or abut on said road. The owners of the lots, their heirs, successors, and assigns further agree and covenant to provide all necessary authorizations and to execute all necessary conveyance documents, at no cost and expense to the county, to accomplish the dedication and/or conversion of the private road to the county for public road purposes. This covenant touches and concerns the property, runs with the land, and is binding upon all

subsequent purchasers, heirs, successors, and assigns. This covenant to provide right-of-way in no way obligates the owners to fund any construction or maintenance of a public road.”

- v. All critical areas shall be designated Native Growth Protection Areas (NGPA) with the following language indicated on the face of the plat;

"All CRITICAL AREA PROTECTION AREAS or 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."

- vi. "All utilities shall be installed underground."
- vii. "The landscape plan, as depicted on Exhibit B.1, shall be fully implemented and maintained."
- viii. "The Open Space Management Plan shall be fully implemented."

D. Prior to recording of the final plat:

- i. The private roads shall be constructed in accordance with the EDDS, or as determined by the County. [SCC 30.66B.420]
- ii. The cul-de-sac turnaround and temporary easement shall be shown on the construction plans, and on the final plat document at the north end of 199th Avenue SE; as determined by the County. [SCC 30.66B.420]
- iii. 199th Avenue SE shall be improved to the standard specified by EDDS 3-060/3-040 for a rural public subcollector road. The road will be constructed to that standard inside the development boundaries, and improved to that standard offsite between the south boundary line and Meadow Lake Road to the satisfaction of the County.
- iv. The area within the clear sight triangle for intersection sight distance must be graded at the intersection of 199th Avenue SE and 80th Street SE to the satisfaction of the County. The area to be graded shall be shown on the construction plans for this development.
- v. Native Growth Protection Areas (NGPA) boundaries 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 a 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 PDS for review and approval prior to installation.

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

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 seven (7) 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 May, 2011.


Millie Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before MAY 27, 2011**. 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 **within 14 days from the date of this decision**. 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 No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before MAY 31, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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.

PARTY OF RECORD REGISTOR
07-111239-SD TROMBLEY HEIGHTS
(NEW HEARING DATE)HRG: 5/11/11

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DEAN SAKSENA
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EVERETT WA 98206-1107

SNO CO PLANNING & DEV/LAND USE
ED CAINE/WHEELER/CROSSMAN
3000 ROCKEFELLER AVE # 604
EVERETT WA 98201

SNO CO DEPT OF PUBLIC WORKS
COUNTY ENGINEER
3000 ROCKEFELLER AVE # 607
EVERETT WA 98201

WA ST DEPT OF ECOLOGY
PAUL ANDERSON
3190 160TH AVE SE
BELLEVUE WA 98008

SNOHOMISH SCHOOL DISTRICT
KAREN BYLSMA-RIDDLE
NO ADDRESS GIVEN

WA STATE DEPT OF
TRANSPORTATION
GEORGE CHAMBERS
PO BOX 330310
SEATTLE WA 97133-9710

JOHANNES DANKERS
14005 REINER RD
MONROE WA 98272

LUIGI GALLO
800 BEAR GULCH RD
WOODSIDE CA 94062

ALLEN HENTSCHELL
NO ADDRESS GIVEN

KHUSHDEV, HARBHAJAN & SHAN
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BRENT RAASINA
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SNO CO PUD NO 1 – WATER
RESOURCES
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