

THURSTON COUNTY
WASHINGTON
SINCE 1852

COUNTY COMMISSIONERS


Cathy Wolfe
District One
Diane Oberquell
District Two
Robert N. Macleod
District Three

DEVELOPMENT SERVICES DEPARTMENT

Michael Welter
Director

MEMORANDUM

TO: Parties of Record

FROM: Cami Petersen 
Land Use Clerk

DATE: March 30, 2005

SUBJECT: **PLAT/AAPL 020244 Deschutes River Highlands**
SEQUENCE Nos. 05-101675 VE & 05-101680 VE

Attached is a copy of the Decision of the Board of Thurston County Commissioners relating to the above-mentioned case.

Any appeal of this land use decision must be filed in Superior Court pursuant the Land Use Petition Act, RCW Chapter 36.70C, within 24 days of the mailing of this decision.

Please contact me at (360) 754-3355 extension 6348 if you have questions regarding this Decision.

SENT

DATE: _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

In Re the Matter of,

Deschutes River Highlands

NO. PLAT/SSDP/AAPL 020244

DECISION

THIS MATTER came before the Board of County Commissioners (Board) on March 21, 2005 as a result of two separate appeals of the hearing examiner's decision granting approval of a preliminary plat to divide 107.4 acres into 327 single-family residential lots and a shoreline substantial development permit and a shoreline conditional use permit for road and utility work within the portion of the 65th avenue right of way lying within 200 feet of Munn Lake.

One appeal, filed by a number of appellants¹ living in the area, alleges the number of lots should be reduced from 327 to 150, adverse impacts to the surrounding sensitive aquifer, threats to surrounding wells, disruption to wildlife, traffic impacts, inadequate protection to wetlands and shorelines and the shortcomings of using 73rd Avenue as an emergency access.

The second appeal, filed by the city of Tumwater, alleges that one public access via 65th avenue will *not* be adequate for a subdivision of this size and that the applicant should instead be required to construct a public street from the subdivision to 73rd Avenue, and to improve 73rd Avenue out to Henderson Boulevard according to city standards

The Board reviewed the hearing examiner's decision, the evidence presented to the hearing examiner, listened to the audiotapes of the hearing and conducted a site visit. Based on the above record, the Board recognized the tension between preserving undeveloped lands and the mandate of the Growth Management Act to concentrate growth within the Urban Growth Area (UGA). The Board also recognized that the subject property is within the UGA, and that the applicable regulations for the subject property anticipate dense development. The Board further recognized that the proposed development complies with the development regulations and the hearing examiner's decision, with the exception of condition J, should be affirmed for the following reasons:

- The applicants have opted to develop their property into a 300 plus residential subdivision. The proposed density is allowed under the current zoning.
- The design of the subdivision provides for approximately 33% of the land to remain in open space; the code requires 10% of open space.
- The property is in an aquifer sensitive area and sensitive to contamination. The development requires and has been granted city of Tumwater water and sewer service. The provision of city water and sewer services eliminates the health and environmental concerns with on-site septic systems and wells. In addition the proposed storm water system complies with current county standards.

¹ A full list of the appellants with their addresses is attached to this decision and incorporated herein by reference.

Deschutes River Highlands Decision

NO. PLAT/SSDP/AAPL 020244

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- The property is along the shorelines of Munn Lake, and has several wetlands associated with it. The applicant is not proposing to construct any residences within the 200-foot shoreline jurisdiction. In addition, the code requires, and the hearing examiner imposed a condition for a 200 foot undisturbed vegetative buffer upland from all the class II wetlands on site.
- The concerns with the existing wildlife on site are addressed with these required buffers.
- Significant traffic will be generated from this development. The applicant is being required to mitigate these impacts by making a number of improvements including:
 - Safety and capacity improvements to 65th avenue from the project site to Henderson Boulevard,
 - Improvements to the intersection of Henderson Blvd and 65th, including signalization, illumination and storm water management.
 - Paying a fair share of a number of other traffic related improvements on the surrounding roads.
 - All these impacts and mitigations were reviewed and approved by the county roads department and have been made conditions of approval by the examiner.
- The City of Tumwater's request to require the developer to provide two public accesses, one via 65th avenue and a second public access via 73rd Avenue, is not warranted, since the developer is already being required to fully upgrade 65th avenue to handle the increase in traffic, as well as a number of other traffic mitigations.
 - In addition, the fundamental safety argument made by the city is that by making 73rd avenue a public street, the travel distance that emergency vehicles will need to travel to the southern end of the plat will be reduced by 50%. This argument misses the point. An emergency access is being required – thus the travel distance will in fact be reduced by 50% for emergency vehicles.
 - This access will however not be open to general traffic. Precluding public traffic on the 73rd avenue right of way is also in the public interest in light of the environmental considerations. The 73rd Avenue right of way crosses a wetland, and travels between two hydrologically connected lakes.
 - Finally, 73rd avenue would only serve the proposed plat – it would not increase the connectivity of other public streets because the plat is bounded by the Deschutes River. For these reasons, it is not in the public interest to require the applicant to upgrade 73rd avenue right of way to a public street.

The Board further determined that the hearing examiner's Condition J regarding emergency access across a wetland is not consistent with the 200 foot buffer requirement imposed during SEPA and needs to be amended for the following reasons.

- Public access to the site is being proposed via 65th avenue, with an emergency only access being proposed via 73rd avenue.
- The developer initially proposed two different alternative emergency accesses from the site to 73rd.

- The preferred alternative would have avoided the wetland in the 73rd right of way by obtaining an easement through Camp Solomon to connect to their existing driveway. This option was denied by Camp Solomon.
- The second alternative requires a bridge over a wetland located within the existing 73rd avenue right of way. The second alternative as acknowledged by the applicant will impact the wetland buffer and will require 17,000 square feet of buffer loss. Exhibit 1, attachment f.
- In the record, the only discussion of the specifics of the second alternative and the construction of a bridge over the wetland is in a December 2003 correspondence from the applicant's consultant to Robert Smith. The preliminary plat map dated 7/2/03, does not depict any improvements, such as the bridge, within the 73rd avenue right of way. Finding of Fact No. 15.
- In the record, there is no discussion of how long the entire access is, whether it passes through the forested areas, and what kinds of other permits, if any, are necessary. During review of this proposal by county staff the two alternatives for emergency access were acknowledged, but it is unclear if the county analyzed or approved the second alternative:
 - In the staff report to the hearing examiner, the staff acknowledges the two alternatives, but concludes that the applicant prior to road construction will determine the final route. Exhibit 1, p. 2.
 - It is unclear whether Scott Davis, of Development Review reviewed the specifics of the bridge design, and the possible need for additional permits noted in chapter 10 of the Road standards. In his memo, Development Review requires that the applicant provide an emergency access via 73rd street, but does not mention the two alternatives proposed by the applicant, nor the fact that a bridge is being proposed to cross a wetland. See Exhibit 1, attachment h.
 - In the Revised Mitigated Determination of Nonsignificance, the SEPA official acknowledged that a category II wetland is located in the alignment of the proposed emergency access to 73rd Avenue, but does not discuss the two alternatives. The SEPA official does however impose a 200 foot undisturbed vegetative buffer upland from all category II wetlands, including the wetland in the 73rd avenue right of way. It goes on to state that any reduction shall comply with TCC 17.15 and be reviewed by county staff. This condition was not appealed.
- The hearing examiner in his initial decision did not address the second alternative because he was under the mistaken impression that the first alternative was the selected emergency access. The testimony during the hearing did not address the specifics of the second alternative.
- On reconsideration, the hearing examiner corrected certain findings to reflect the applicant was proposing the second alternative. The hearing examiner however, made no findings that the second alternative, which requires a reduction of the wetland buffer, imposed during SEPA, had been reviewed and approved by the county staff.

- The hearing examiner's condition J needs to be amended to reflect that any infringement of the buffer must be reviewed and approved by county staff as required by the RMDS and Condition C of the hearing examiner's decision. Furthermore, Condition J needs to be amended to reflect that any other permits, if needed, for the proposed emergency access and bridge need to be secured prior to final approval of Phase/Division II or the 150th lot whichever comes first.

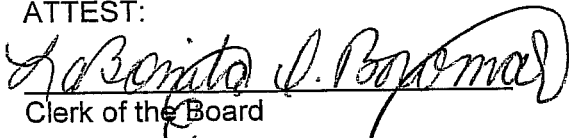
IT IS HEREBY ORDERED AS FOLLOWS:

- (1) The neighbors' and the city of Tumwater's appeals are denied.
- (2) The hearing examiner's findings and conclusions are supported by substantial evidence in the record and the hearing examiner's decision is affirmed with the following amendment to condition J:

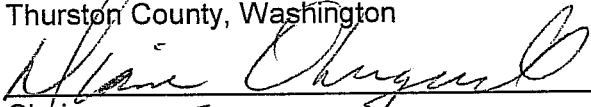
~~Impacts to the Category II wetland buffer for road and bridge construction within the 73rd Avenue SE right-of-way shall be mitigated as depicted on the Temporary Secondary Emergency Vehicle Access Alternatives Plan (Exhibit, Attachment f). The wetland buffer mitigation area shall be delineated and protected in accordance with TCC 17.15. The Applicant must secure an administrative reduction of the 200-foot buffer for the category II wetland in the 73rd Avenue SE right of way for road and bridge construction within the 73rd Avenue SE right of way. In addition, the Applicant must secure any other permits necessary, if any, for the construction of the 20' paved emergency access road, including the bridge, from the subject site south to 73rd Avenue SE. The relief from the 200 foot buffer, and the required permits, if any, need to be approved, and the emergency access constructed prior to the final approval of Phase/Division II or the 150th lot whichever comes first.~~

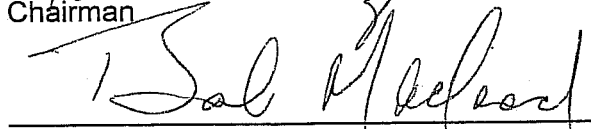
/ / / /
Dated this 28 day of March 2005.

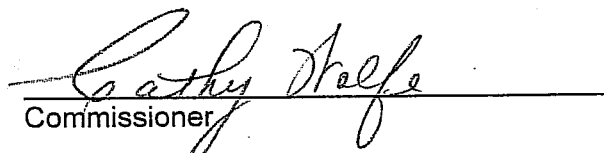
ATTEST:


Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington


Chairman


Commissioner


Commissioner

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