

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND RECOMMENDATION**

**Applicant:** Jerry Hammer  
4040 Mt. Baker Highway  
Everson, WA 98247

**Agent:** David Hough  
17483 W. Big Lake Blvd.  
Mount Vernon, WA 98274

Nova Heaton  
Bayview Surveying  
130 Sharon Avenue  
Burlington, WA 98233

**File No:** PL05-0650

**Request:** Preliminary Plat (Avalon Heights)

**Location:** Adjacent to 7891 F & S Grade Road, within a portion of SE1/4NW1/4NE1/4 and NW1/4SW1/4 Sec 10, T35N, R4E, W.M.

**Land Use Designations:** Rural Reserve/Rural Resource

**Summary of Proposal:** To subdivide 77 acres into 12 lots using the Conservation and Reserve Development (CaRD) process. There will be eleven residential lots of around one acre a piece and one sixty-six-acre open space lot, consisting of 29.9 acres in Open Space-Natural Resource Land, 29.7 acres in Open Space- Recreation/Amenities, and 6.4 acres in a Protected Critical Area.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on July 26, 2006. A draft of proposed Covenants, Conditions and Restrictions, submitted after the hearing as requested by the Examiner, was admitted as an exhibit.

**Recommendation:** The application should be approved, subject to conditions.

## **FINDINGS OF FACT**

1. Jerry Hammer (applicant) seeks approval of a preliminary plat through the CaRd process. The development is called “Avalon Heights.”
2. The property consists of approximately 77 acres located north of F&S Grade Road and west of Delvan Hill Road. It is adjacent to 7891 F&S Grade Road, within a portion of the SE1/4NW1/4NE1/4 and NW1/4SW1/4 Sec. 10, T35N, R4E, W.M. The site is approximately three miles northwest of Sedro Woolley.
3. The property is basically rectangular with a north/south configuration, although the western boundary is irregular. The land slopes down from the north in a south-southwest direction at grades between 6 and 33 percent. The property is currently vacant. The land is primarily logged forest with thick underbrush.
4. The proposed subdivision calls for 11 residential lots toward the eastern side of the property, each around an acre in size. The remaining lot will contain 66.14 acres, devoted to various types of open space.
5. The land use designation for the property is Rural Resource and Rural Reserve, roughly divided between the north and south halves of the property respectively. In the south, eight of the residential lots are wholly within Rural Reserve. In the north, two residential lots are wholly within Rural Resource. One residential lot (Lot 9) is divided between the two zoning designations.
6. Lot 12, the open space lot, will also be divided between the two zoning designations. Of the 66.14 acres in the lot, the Rural Resource lands will contain 29.9 acres of Open Space-Natural Resource Lands (OS-NRL) and another 6.4 acres in a separate Protective Critical Area (PCA). The Rural Reserve land will contain 29.7 acres of Open Space-Recreation/Amenities lands (OS-RA).
7. The PCA will contain a Category 3 wetland and its buffer and a Type 5 stream. Outside the PCA, the OS-NRL area will be protected with a Natural Resource Land Easement (NRLE). The land in the southern half that is designated OS-RA is to provide open space areas to be used for recreational purposes not yet identified. The uses of this area may be limited to the owners of the subdivision or made available to the general public.
8. There will be an internal plat road (Avalon Heights Way) that will climb up the property from the F&S Grade Road. Residential lots in the southern portion of the property will be located on both sides of the road. The plat road will remain private and will be constructed to County private road standards. It will end with a culdesac between

Lots 10 and 11. A 20-foot easement along the northern part of Lot 7 will provide access to Lots 8 and 9. A 20-foot easement will be built across a portion of the southerly open space to provide access to Lot 1.

9. The lots will be served by a community water system located on the adjoining parcel to the east. The revised Group B water system design report was approved by the State Department of Health on June 26, 2006. The approval requires that the system be owned or operated and managed by an approved satellite management agency.

10. Sewage treatment will be by on-site septic systems. Septic soil logs have been approved for each lot. A study of nitrate-nitrogen loading concluded that the effluent from the subdivision is unlikely to produce concentrations of concern. The source of the intended water supply will be unaffected.

11. A Critical Areas Site Assessment Report prepared by John Gold delineates the Category 3 wetland and the Type 5 stream. They are located north of Lot 9 and west of the private road in the northerly portion of the site. On the plat map these features are included within Tract A and will be protected by a Protected Critical Area Easement (PCAE). With this protection, the proposal will comply with the critical areas regulation.

12. The plat will meet the fire flow requirements of the Coordinated Water System Plan (CWSP). The County Fire Marshal has approved plans for an onsite water storage system. The storage will be located between lots 10 and 11 in the northerly portion of the site.

13. The majority of current runoff from the site either infiltrates or flows overland until it reaches a drainage course on the west side. This ditch empties into the roadside ditch on F&S Grade Road and eventually discharges to Thomas Creek.

14. A Drainage Report was prepared by Bayview Engineering. The project is divided into three drainage basins. Outflow from these basins will be routed to the existing wetland and to the existing drainage course in order to follow current flow regimes as closely as possible. Three ponds will be constructed to detain and treat runoff before it is released. Pond 1 will be a small facility near the south edge of the project. Ponds 2 and 3, near lots 2 and 10 respectively, will provide the majority of the detention. Overall the system will store runoff up to the 100-year event and allow releases at rates less than pre-project conditions. Temporary erosion and sedimentation measures will be employed during construction. An operations and maintenance manual will be prepared for the stormwater system. Management of the system will be the responsibility of the homeowners.

15. Potential stormwater pollutants from the site are likely to be petrochemical fluids and sediments from vehicular traffic, parking and car washing. Stormwater treatment for Basins 1 will use a treatment swale upslope of the pond. Basins 2 and 3 will employ wetponds located below the detention ponds.

16. The adjacent property to the north and along the north half of the west side of the site is Rural Resource-Natural Resource Land. Property adjacent to the south half the site is Rural Reserve and Agricultural-Natural Resource Land. The northerly portion of the site has been replanted in accordance with Forest Practices Act requirements. The southerly portion will be replanted after preliminary plat approval has been granted. The configuration of the lots meets the CaRD requirement for clustering. The cluster pods will be screened from adjacent public roads by topography and vegetation.

17. Environmental review was conducted under the State Environmental Policy Act (SEPA). As a result, a Mitigated Determination of Non-Significance (MDNS) was issued on May 16, 2006. The MDNS was not appealed. The MDNS contained the following conditions:

1. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage/Erosion/Sedimentation Control Ordinance. Said measures shall remain in place until completion of the project.
2. The applicant will be required to schedule a preconstruction meeting with Public Works prior to the start of road construction.
3. The applicant shall comply with Northwest Air Pollution Authority requirements.
4. The applicant shall provide a formal mechanism for the collection and distribution of the proposed mitigation for Skagit County Park and Recreation fees prior to final plat approval.
5. Prior to preliminary approval, the applicant will supply an amended hydrogeo report that complies with SCC 14.24.340(3)(a-e) and 14.24.340(4)(m) and addresses the hydraulic continuity impacts between the 3 public group wells, the southern parcel, and issues and concerns for future wells in the area.
6. The water system will be required to meet fire flow requirements of the Coordinated Water System Plan (CSWP). The water system is to be installed prior to final plat approval.

18. Numerous comments on the project were provided by the various County Departments. All of the concerns they raised can be addressed by conditions of approval.

19. The project was properly noticed. Letters were received expressing concerns about erosion, the effect of the water source on other wells, and the effects of water withdrawals on stream flows in Thomas Creek. At the hearing, six residents of nearby properties testified. All of them were primarily concerned with possible adverse effects on their own water supplies from use of the subdivision's well.

20. The proposed water source for the subdivision is an already drilled well located several hundred feet east of the site and completed to a depth that penetrates the lower regional aquifer. The water source is separated from the surface by about 50 feet of low-permeability glaciomarine drift and till. All of the wells located within 1,000 feet of the subdivision's well appear to be completed within the same regional aquifer. A number of analyses were performed by Associated Earth Sciences, Inc. (AESI) to evaluate potential well interference effects.

21. There are two existing wells and three proposed wells within 400 feet of the subdivision's well. Pump tests showed no interference effects between the subdivisions's well and the nearest existing wells. Drawdown effects were estimated for both existing and proposed wells with all of them pumping. The results showed minimal cumulative well interference. The report concluded that all of the wells in the immediate area can supply water as proposed on a long-term basis without having significant well interference effects. Effects on wells located even farther away would likely be even more attenuated. Moreover, long term operation of the subdivision's well and the four nearby single-family domestic wells at volumes that do not exceed their water right allotments will have an insignificant impact on regional ground water availability.

22. The analysis presumed that the subdivision's well would not exceed withdrawals of 5,000 gallons per day. Below that threshold no State water right permit need be obtained. The proposal is to keep withdrawals within the exemption limit. The project's engineer testified that total system demands will be less than 5,000 gallons per day. She noted that water usage at the homes will be metered and charged according to the amount used, so that it will be possible to insure that usage is appropriately limited. The extensive storage provided by the project will also provide a protection against excessive withdrawals.

23. Implicit in the AESI research is a conclusion that the operation of the subdivision's well is unlikely to have any appreciable impact on flow levels in Thomas Creek.

24. The subdivision will be regulated by a set of Covenants, Conditions and Restrictions. As proposed, these will exclude business activities and will exercise control over architecture within the plat through an Architectural Review Committee. A Homeowners Association will be created with responsibilities for road and drainage system maintenance. An Avalon Heights Water Association will be created and all persons acquiring property within the subdivision will be bound by its rules. Among the proposed rules is a ceiling on each lot's water use of 450 gallons per day, keeping the

total overall total below 5,000 gallons per day. Any lot exceeding the limit will be assessed a fee. A provision for rules governing the maintenance of the plat's open space is also included in the proposed CC&Rs.

25. The applicant has provided a formal mechanism for the collection and distribution of a mitigation fee for parks and recreation impacts. A plat note states that \$100 per lot will be assessed at the time of building permit application.

26. The plat is within the Sedro Woolley School District. The District has adopted a Capital Facilities Plan (CFP) that includes calculations relating to the impacts of new housing. The CFP has been adopted as a portion of the County's Comprehensive Plan. Mitigation of school impacts can be made by requiring the lot owners to contribute fees in the amount included in the CFP at the time of building permit issuance.

27. The Staff Report points out that the CaRD land division process allows for building lots that are much smaller than typical of the zone, leaving open space for, among other things, the continuity of ecological functions characteristic of the property.

28. The Staff Report analyzes the application light of the requirements of RCW 58.17.110(2) and determines that as conditioned the project will be consistent with the applicable statutory requirements. The Examiner concurs with the analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

29. Specifically, the Examiner finds that adequate provisions will be made for: (a) public health, safety and general welfare; (b) open spaces; (c) drainage ways; (d) streets or roads; (e) potable water supplies; (f) sanitary wastes; (g) parks and recreation; (h) schools; and (i) the public use and interest.

30. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.050(1)(c)(i).

2. The requirements of SEPA have been met.

3. CaRD's are permitted in Rural Reserve and Rural Resource zones. SCC 14.18.300(2)(c). The proposed subdivision is consistent with the applicable CaRD approval requirements, including the clustering and allowable density provisions. SCC 14.18.310, 330.

4. The project, as conditioned, meets the general preliminary plat requirements of SCC 14.18.100.

5. The project, as conditioned, is consistent with the statutory requirements of RCW 58.17.110(2)(a). The public use and interest will be served by the platting of the subdivision.

6. The Examiner was persuaded by the water supply research and planning information provided that the effects of the system proposed will not be adverse to existing or proposed neighborhood water developments. However, several persons asked for a written guarantee that if use of the Avalon Heights well causes them to have to lower their pumps, the developers will bear the costs. The Examiner has no authority to deal with issues of damages and related monetary claims. His role is limited to determining whether the proposal is consistent with relevant development regulations.

7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### **CONDITIONS**

1. The subdivision shall be developed as described in the application materials and as represented at the hearing, except as the same may be modified by these conditions.

2. The final plat shall comply with the provisions of SCC 14.18.200 and Chapter 58.17 RCW.

3. The applicant shall comply with all conditions set forth in the Mitigated Determination of Non-Significance, issued on May 16, 2006.

4. All standard plat notes and appropriate department signoffs are required on the plat map.

5. Avalon Heights Way is the approved road name and must be shown as such on the final plat map.

6. Prior to final plat approval, the address range shall be shown on the plat map along with the correct plat note.

7. Prior to final plat approval, the lot corners must be set per SCC 14.18.200(4)(d).

8. On the final plat map, access locations (driveways) must be shown along the plat road for each lot, including distance from lot lines.

9. Prior to final plat approval, the applicant shall submit lot closures that correspond with the lot lines as shown on the face of the plat.

10. A plat note for the mitigation of Skagit County Park and Recreation fees shall be placed on the plat map, stating that \$100 per lot will be assessed at the time of building permit application.

11. A plat note shall state that an impact fee for schools as required by the Capital Facilities Plan for the Sedro Woolley School District may be assessed at the time of building permit issuance.

12. A plat note will be required providing for the maintenance of the open space.

13. Prior to final plat approval, a Natural Resource Land Easement (NRLE) shall be approved. The document shall be recorded with the plat and noted on the face of the plat for the Open Space Natural Resource Land area.

14. The internal plat road shall be constructed to current Skagit County Private Road Standards. See Skagit County Road Standards Section 3.07.

15. All roads must have centerline monumentation, per Section 7.05D in the Skagit County Road Standards manual.

16. Maintenance and restoration surety shall be required in accordance with Section 14.02 of the Skagit County Road Standards.

17. Prior to final plat approval, acceptable formatted as-built plans, submitted to the appropriate department, are required for all roads, drainage facilities, on-site septic facilities and water lines.

18. Road name signs shall be installed in accordance with Skagit County Road standards.

19. In accordance with SCC 14.18.200(4)(h), the driveways to Lots 1, 8, and 9 must be constructed prior to final plat approval.

20. If any proposed driveway is longer than 150 feet, it must meet the requirements shown in Figure C-18 of the Skagit County Road Standards.

21. A Grading Permit is required for the construction of the roadway and drainage facilities. A preconstruction meeting must be scheduled with Skagit County Public Works as part of the grading permit process.

22. In accordance with Skagit County Road Standards Section 12.09, prior to starting road construction the applicant must post one or more signs showing the names and business names of both the applicant and the project engineer, as well as contact telephone numbers for each.



23. Road construction and drainage facilities shall be inspected and certified by the Project Engineer for compliance with County standards. See Section 12.00, Skagit County Road Standards.

24. In accordance with SCC 14.32.100(3)(a), the applicant must provide a Maintenance Plan for all stormwater and drainage conveyance systems. The plan shall be noted on the face of the plat and recorded with the final plat.

25. The applicant shall submit a Protected Critical Area Easement (PCAE) agreement for review and approval.

26. Plat notes shall reference the PCAE and the Auditor's recording file number.

27. Permanent buffer edge marks for the protected critical area around Lots 7 and 9 must be installed onsite prior to final plat approval.

28. Property taxes for the current year along with advance taxes for next year and any delinquent taxes shall be paid prior to final plat approval.

29. Prior to final plat approval, the fire flow system shall be installed and approved.

30. Easements for any off lot septic systems and water lines shall be shown on the plat map.

31. All side service lines (septic and water) shall be installed and approved in writing by the land division engineer.

32. Bonding for water service must be approved per SCC 12.48.190.

33. Prior to final plat approval, written confirmation that the grading to slope the land away from the community well must be reviewed and approved by the land division engineer.

34. The proposed measures to insure that system water withdrawals do not exceed 5,000 gallons per day shall be implemented. Applicable Health Department requirements shall be met in the operation of the water system.

35. The applicant shall comply with the provisions of SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.


36. Prior to final plat approval, a copy of the Covenants, Conditions and Restrictions shall be submitted to Planning and Development Services for review.

37. Prior to submittal of the final plat all outstanding review fees shall be paid.

38. The preliminary plat shall be valid for a period of five (5) years from the date of the signed resolution by the Board of County Commissioners.

### **RECOMMENDATION**

The preliminary plat for Avalon Heights should be approved, subject to the conditions set forth above.

  
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Wick Dufford, Hearing Examiner

Date of Action: August 28, 2006

Date Transmitted to Applicant: August 28, 2006