



Pierce County

Office of the Pierce County Hearing Examiner

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STEPHEN K. CAUSSEAU, JR.
Pierce County Hearing Examiner

June 13, 2006

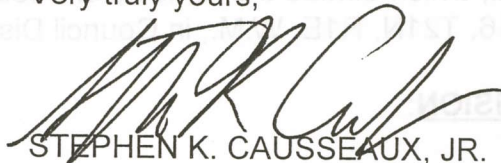
Steven Lynn
4821 – 105th Avenue NW
Gig Harbor, WA 98335

RE: ADMINISTRATIVE APPEAL: CASE NO. AA11-06

Dear Appellant:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,


STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/cka

- cc: Parties of Record
- PIERCE COUNTY PLANNING AND LAND SERVICES
- PIERCE COUNTY CODE ENFORCEMENT
- PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
- PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
- TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
- FIRE PREVENTION BUREAU
- PIERCE COUNTY PARKS AND RECREATION
- PIERCE COUNTY COUNCIL
- PIERCE COUNTY RESOURCE MANAGEMENT





OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

June 13, 2006

CASE NO.: ADMINISTRATIVE APPEAL: CASE NO. AA11-06

APPELLANT: Steven Lynn
4821 – 105th Avenue NW
Gig Harbor, WA 98335

APPELLANT'S ATTORNEY: William Wright
4423 Point Fosdick, Ste. 100-6
Gig Harbor, WA 98335

SUMMARY OF REQUEST:

Appellant is appealing the March 24, 2006, decision of the Planning and Land Services Administrative Official, which denied the removal of trees along 105th Avenue Court NW, in the SE ¼ of Sec. 16, T21N, R1E, W.M., in Council District #7.

SUMMARY OF DECISION:

Appeal granted.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on June 1, 2006, at 1:00 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Planning and Land Services Staff Report and Attachments
- EXHIBIT "2" - Brief submitted by William Wright
- EXHIBIT "3" - Letter from William Lynn

- EXHIBIT "4" - Letter from Donald Elliott
- EXHIBIT "5" - 2nd letter from Donald Elliott to Terry Lee
- EXHIBIT "6" - Letter from Terry Lee to Donald Elliott
- EXHIBIT "7" - Letter from Rob Gronewold
- EXHIBIT "8" - Letter from Joyce Whitley
- EXHIBIT "9" - Petition
- EXHIBIT "10" - Letter from Jerry Gibbs

Following opening remarks by the Examiner TY BOOTH appeared and testified that the final plat contains no notes addressing tree preservation on the private road easements in the subdivision. Staff reverted back to Condition 2F of preliminary plat approval to restrict the tree cutting.

WILLIAM WRIGHT, attorney at law representing the appellant, testified that the Kopachuck Ridge Homeowners Association is presently and has historically been very active and that no one was aware of Condition 2F. The final plat approval determined that the subdivision met all conditions of preliminary plat approval. The County stepped into a private dispute among homeowners and had no jurisdiction to do so as neither the covenants nor the final plat involve the County. No statutory authority allows the County to impose additional conditions on a previously approved final plat.

DON ELLIOTT appeared and requested that the Examiner decide whether or not Title 18A of the Pierce County applies to Kopachuck Ridge Estates and also referred to his previous letters.

DAVID MISTEREK appeared and testified that the final plat did not reference the screening trees. They were looking for information, saw the greenbelt protection on the final plat, but found nothing regarding the screening trees on the road.

GREG KORTE appeared and testified that he resigned from the homeowners association based upon the dispute. He purchased his property four years ago in Division 2 and reviewed all of the covenants and the final plat regarding views and conditions. He noted the greenbelt provision and the common properties. He believes the covenants are in full force and effect and that nothing in the final plat approval impedes the covenants. He also noted that a 30 day window existed for addressing anything excluded from the final plat and no reconsideration request or appeals were filed.

DIANE ELLIOTT appeared and testified that the homeowners association believes the CCRs trump the Forest Practices Act and requested that the association be required to follow Pierce County rules and regulations.

JOYCE WHITLEY appeared and also desires that the County retain jurisdiction over the subdivision.

DAVID GORDON, attorney at law, appeared and testified that an essential part of the law requires notice and an opportunity to respond. Condition 2F is not part of the plat. The County cannot look back to a preliminary plat condition and just put it into the final plat. It is not appropriate to not allow view preservation.

SHERRY TURNER appeared and testified that she is an original lot owner and that the homeowners bulldozed trees in another area and only left a few trees remaining. It was their expectation that this area would remain a greenbelt, and they have the same expectation of the present trees.

JERRY GIBBS appeared and testified that he is a board member and performed a title search. They had a difficult time determining ownership of the common areas. The Design Review Committee interprets the CCRs and the committee has interpreted Section 2.13. It refers to the Building Section and is not applicable to this strip of property as it is not a building lot. Section 3.3 is in the Land Clearing Section and the committee has not been asked to determine the applicability of this section to this issue. This area is not a building site and therefore could be included. The CCRs do not relieve property owners from obtaining County approval. They need the ability to control their common areas and can work with the County.

STEVE WHITTIER, a lot owner since 1988, appeared and testified that the subdivision has a friendly environment and that these issues can be resolved by working with each other. County involvement is not needed. They can resolve disputes through neighbor to neighbor contact as they are all responsible people.

IVAN GORNE appeared and testified that the County exceeded its authority by adding Condition 2F into the mix. They have a plan for clearing and maintaining and also replanting with proper screening plants which would accommodate both the views and screening. This plan can work if the homeowners have authority to implement it. The committee has the responsibility to maintain the common areas.

LORI STANLEY appeared and testified that she lives in front of the trees and their removal would directly affect the property value of her home. The issue is not about views, but about tree protection.

MARCH TREG appeared and testified that he is a past and current member of the Design Review Committee. He echoed Mr. Gorne's comments. A View Maintenance Committee investigated the issues and prepared a very extensive revegetation plan.

MR. WRIGHT reappeared and testified that as the Examiner can see they have an active association and members. The County stepped into a member dispute. The only decision made was that of Pierce County which halted all decisions of the association. It took away

all of the authority of the association per Condition 2F. The County has interpreted Condition 2F far to narrowly even if it is applicable.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded at 2:00 p.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The Administrative Appeal is exempt from review under the State Environmental Policy Act (SEPA).
3. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks prior to the hearing in the official County newspaper.
4. Steve Lynn, appellant, appeals the determination of a Pierce County administrative official prohibiting removal of trees along roadways within the Kopachuck Ridge Estates subdivision. The administrative official based his decision to prohibit tree removal on a condition of preliminary plat approval imposed in the Pierce County Hearing Examiner's decision approving the preliminary plat of "Busch Addition" which later became Kopachuck Ridge Estates. The issue presented by this appeal is whether said condition survived approval of the final plat. For the reasons set forth hereinafter, the condition of preliminary plat approval prohibiting removal of trees did not survive final plat approval, and therefore does not provide a basis for the County to prevent removal of said trees. However, the County does have authority to enforce ordinances addressing tree removal on parcels throughout the County including those subject to covenants, conditions, and restrictions (CCRs).
5. A history of the approval of the Kopachuck Ridge Estates subdivision is as follows:
 - A. The original applicant, the Estate of William Busch, submitted an application to Pierce County to subdivide 85.24 acres into 77 single family residential lots under Case No. SPR 21-80. The preliminary plat application, initially known as "Busch Addition", was subsequently renamed Kopachuck Ridge Estates.

- B. By Report and Decision dated January 9, 1981, Robert J. Backstein, Pierce County Hearing Examiner, approved the Busch Addition preliminary plat and site plan in accordance with the application, authorizing preliminary subdivision of the site into 77 single family residential lots. Said preliminary approval was subject to compliance with six conditions of approval, one of which, Condition 2F, reads:

The applicant shall retain the existing trees along the roadways for screening purposes, and shall also retain the greenbelt area on the steep slopes which abut Puget Sound, in accordance with the representations of the applicant to the Examiner and the PAC [Peninsula Advisory Commission].

Mr. Backstein's findings and conclusions reflect that the PAC recommended that the applicant "retain the natural vegetation along the roads and the steep grades", and that the testimony of Mr. Geoff Moore representing the applicant confirmed that the applicant intended to comply with the PAC recommendation. In Finding No. 8 Mr. Backstein noted that a previous preliminary plat application for the same parcel proposed 105 lots on the 77 acres, but that the applicant had reduced the proposal to 77 lots which met the base density requirements of the applicable Residential Environment of the Gig Harbor Peninsula Comprehensive Plan and Development Regulations. Mr. Backstein then found:

However, there will not need to be provided, nor is there required, because of development of base density, any open space, play areas, fencing along the park lines, no replanting or forestation, no full fire flow, no public road and no placement of the road to provide a right angle intersection, as was required in the last plat.

Mr. Backstein then granted approval subject to six conditions to include 2F as set forth above even though the code did not require open space, replanting, or reforestation.

- C. By Report and Decision dated June 25, 1985, the present Examiner approved the final plat of Kopachuck Ridge Estates Division 1 consisting of 15 lots on 23.05 acres. Division 1 contains the roads and "screening trees" which the administrative official addressed in his March 24, 2006, decision. As part of the final plat hearing, Mr. Robert Patton, Pierce County Planning Department, testified "that all of the conditions [of preliminary plat approval] had been met for the final plat approval for Kopachuck Ridge Estates

Division 1". Based upon Mr. Patton's testimony the Examiner found that "The final plat appears to be in accordance with the conditions and recommendations made on the preliminary plat and, therefore, should be approved". No appeals of the final plat approval were filed.

- D. The following note appears on the final plat mylar of Kopachuck Ridge Estates Division 1:

There shall be no clearing or removal of trees and vegetation within the greenbelt easement (with the exception of installation and maintenance of utilities) except that dead, dying or diseased trees may be removed.

This note implements a portion of Condition 2F of preliminary plat approval which required retention of the greenbelt area on the steep slopes "in accordance with the representations of the applicant to the Examiner and the PAC." However, the final plat mylar contains no note addressing the retention of "the existing trees along the roadways for screening purposes". In addition, the roads shown on the Division 1 mylar and the private road detail for Busch Addition Divisions 1 and 2 show the road specifications and location, but do not show tree retention areas. Furthermore, the deeds to the lots do not restrict tree removal in areas along internal plat roads. Thus, neither the final plat mylar nor deeds to individual lots provide notice of the Condition 2F requirement to "retain the existing trees along the roadways for screening purposes".

6. RCW Chapter 58.17 sets forth the State Subdivision Act and requires that cities, towns, and counties throughout the state administer the division of land in a uniform manner (58.17.010). Said Chapter sets forth a two step procedure for obtaining final subdivision approval which allows the sale, lease, or transfer of subdivided lots, tracts, parcels, or sites. An applicant for a subdivision must first obtain preliminary plat approval which requires a public hearing. Following said hearing, the hearing examiner issues a written decision approving the preliminary plat which includes conditions the applicant must meet prior to obtaining final plat approval. The applicant must also satisfy all applicable county and state laws. RCW 58.17.020(4)(5) defines "preliminary" and "final" plat as follows:

- (4) "Preliminary Plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

- (5) "Final Plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

In the present case, Examiner Backstein's decision approved the preliminary plat for Kopachuck Ridge Estates subject to compliance with six conditions of approval and all applicable county and state laws. This Examiner's decision dated June 25, 1985, approved the final plat of Kopachuck Ridge Estates Division 1.

7. RCW 58.17.170 sets forth the requirements for final plat approval:

When the legislative body of the city, town or county find that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor....

RCW 58.17.150 requires that the health department, water purveyor, sewer purveyor, local planning agency, and city, town, or county engineer recommend approval or disapproval. In the present case, all agencies recommended approval of the final plat of Kopachuck Ridge Division 1. Therefore, in accordance with RCW 58.17.170, approval of the final plat determined that the subdivision "conforms to all terms of the preliminary plat approval" which included Condition 2F.

8. The final plat implements a portion of Condition 2F by a note on the plat mylar prohibiting "clearing or removal of trees and vegetation within the greenbelt easement". The note could have easily included the trees along the roadways but did not. Thus, upon final plat approval control of said screening trees was placed with the homeowners association as were the roads and all other common areas. The County has authority to restrict the clearing and removal of trees within the greenbelt easement based upon the recorded note on the final plat. However, nothing in the final plat documents grants the County continuing jurisdiction over the trees along the internal plat roads.
9. While the CCRs apparently grant the homeowners association the authority to maintain common areas and private road easements within Kopachuck Ridge

Estates, the association must comply with applicable Pierce County ordinances to include those addressing tree removal and critical areas. While the association may have authority over trees in the common areas, tree removal is subject to compliance with applicable ordinances.

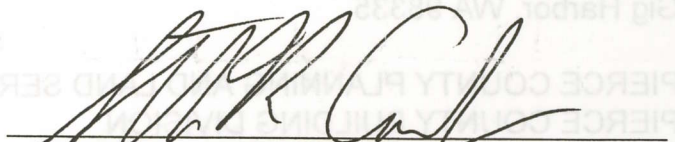
CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. Condition 2F was deemed satisfied at final plat approval, and future determinations regarding trees along subdivision roads was left with the homeowners association subject to compliance with applicable County ordinances.
3. While CCRs may provide more stringent development regulations than do County ordinances (greater setbacks, greater restriction upon uses, larger lot sizes, larger lot widths, lower maximum height), CCRs may not provide lesser standards than County ordinances (smaller lots, smaller setbacks, greater heights) unless approved through a planned development district (PDD) or other appropriate land use action. Likewise, CCRs may not authorize a homeowners association to indiscriminately remove trees from subdivision common areas without complying with applicable County ordinances.

DECISION:

The appeal of Steve Lynn is hereby granted. Condition 2F of the preliminary plat approval of Busch Addition (Kopachuck Ridge Estates) does not provide Pierce County the authority to prohibit removal of "the existing trees along the roadways for screening purposes".

ORDERED this 13th day of June, 2006.


STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 13th day of June, 2006, to the following:

APPELLANT: Steven Lynn
4821 – 105th Avenue NW
Gig Harbor, WA 98335

**APPELLANT'S
ATTORNEY:**

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PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
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PIERCE COUNTY RESOURCE MANAGEMENT

CASE NO: ADMINISTRATIVE APPEAL: CASE NO. AA11-06

NOTICE

1. **RECONSIDERATION:** Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION:** The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.