

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**BURNSTEAD CONSTRUCTION COMPANY, INC.** ) **FILE NO. 04 118542**  
 )  
Preliminary plat for a 108-lot subdivision utilizing lot )  
size averaging and a rezone to lift the development )  
phasing overlay (DPO) zoning )

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DATE OF DECISION: January 20, 2006

PLAT/PROJECT NAME: *Lake Stevens Assembly*

DECISION (SUMMARY): The 108-lot subdivision and rezone to lift the development phasing overlay (DPO) zone are **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: This project is located at 1520 79<sup>th</sup> Avenue SE, Everett, Washington.

ACREAGE: 32.35 acres

NUMBER OF LOTS: 108

AVERAGE LOT SIZE: 6,575square feet

MINIMUM LOT SIZE: 5,000 square feet

DENSITY: 3.33 du/ac (gross)  
6.62 du/ac (net)

ZONING: CURRENT: R-9,600 (DPO) and R-7,200 (DPO)  
PROPOSED: R-9,600 and R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential-Limited (4 du/ac) and  
Urban Low Density Residential-Limited (6 du/ac)  
Subarea Plan: Lake Stevens  
Subarea Plan Designation: Urban Low Density Residential (4 and 6 du/ac)

UTILITIES:

Water: Snohomish County PUD No. 1  
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services (PDS): Approval subject to conditions  
Public Works (DPW): Approval subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on May 4, 2005. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 21, 22 and 23)

A SEPA determination was made on October 31, 2005. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on January 5, 2006, the 144<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on January 5, 2006 at 2:02 p.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Burnstead Construction Company, Inc., was represented by Geoff Tamble of the Blue Line Group. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services. No member of the public testified in support or in opposition.

The hearing concluded at 2:09 p.m.

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

## FINDINGS, CONCLUSIONS AND DECISION

### FINDINGS OF FACT

Based on all the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a rezone of 32.35 acres from R-9,600 (DPO) and R-7,200 (DPO) to R-9,600 and R-7,200, lifting the DPO zoning designation from the property, in order to construct a 108-lot subdivision using lot averaging. Average weekday vehicle trips are 976, with 76 being a.m. peak hour trips and 103 being p.m. peak hour trips.
4. The rezones to lift the DPO are discussed in detail in the staff report at Pages 9 and 10. The only project remaining as an obligation of this applicant is to replace an existing driveway culvert with a larger drainage culvert under the main access road to the proposed plat from 79<sup>th</sup> Avenue SE. PDS recommends making that project a plat requirement rather than a DPO requirement. The Hearing Examiner concurs.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,361.22 for each new single-family home.
6. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. Seven Category 3 wetlands, one Category 4 wetland and four Type 4 streams are located on the property. Most of the critical areas on site will be preserved and placed in Native Growth Protection Area tracts. However, two of the smallest wetlands will be filled pursuant to best management practices and there will be impacts to some of the larger wetlands, to the streams and buffers. PDS has approved a preliminary critical areas mitigation plan (Exhibit 15) that utilizes innovative development design as allowed by SCC 30.62.370. Mitigation will be accomplished by establishing additional buffer areas and by enhancing the wetlands, and buffers of the wetlands and streams, by controlling invasive species and by planting native trees and shrubs.
9. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).

10. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
11. The subject property is designated as Urban Low Density Residential- Limited (4du/ac) and Urban Low Density Residential -Limited (6du/ac) on the Future Land Use map and is located within an Urban Growth Area (UGA). According to the GPP, the Urban Low Density Residential- (4) designation “allows mostly detached housing developments on larger lot sizes in the Lake Stevens UGA. It is applied in a portion of the Sunnyside area, around Lake Stevens and southeast of the City that are confined to the lowest density urban zone because of environmental constraints and difficulties in service provision. Implementing zones include R-9,600 and R-20,000.” The Urban Low Density Residential- (6) designation “allows mostly detached housing developments on larger lot sizes in the Lake Stevens UGA. It is applied to most of the non-constrained ULDR land in the Lake Stevens UGA. Implementing zones include R-7,200 and PRD 7,200.” Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
12. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, policies were adopted to promote urban densities of development. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.
13. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat 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.
14. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:
 

The hearing examiner may approve a rezone only when all the following criteria are met:

  - (1) the proposal is consistent with the comprehensive plan;
  - (2) the proposal bears a substantial relationship to the public health, safety, and welfare; and
  - (3) where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.
15. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
16. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
17. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

## **CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and(4) the applicable design and development standards.
4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no evidence was submitted contrary to the requirements of Chapter 30.42A, the application is presumed to meet these requirements.
5. The conclusions of law immediately above herein are entered with awareness of the public concerns expressed in this record. However, the higher density infill in lieu of sprawl implements the applicable law and policies.
6. The request should be approved subject to compliance by the applicant with the following conditions:

## **CONDITIONS**

- A. The preliminary plat, received by the Department of Planning and Development Services (PDS) on September 12, 2005 (Exhibit 14) shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
  - i. 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.
  - ii. A final mitigation plan based on the conceptual Wetland Mitigation Plan for Burnstead – Lake Stevens Assembly, prepared by Wetland Resources, Inc. dated September 1, 2005 (Exhibit 15) shall be submitted for review and approval during the construction review phase of this project.
  - iii. The applicant shall have filed and recorded with the County Auditor a Concomitant Agreement (after it has been executed by the landowner(s) and executed by the County) that identifies the required DPO Transportation improvements that the applicant has committed to construct (and/or any Alternative Technical Solutions mutually agreed to by the applicant and the county) and which identifies the timing, completion and financing of those improvements.

- iv. The construction plans shall include replacement of the culvert required by the Project FOX 4 DPO project.

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

- i. “The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens School District 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 four existing parcels. Lots 1 through 4 shall receive credit.”

- ii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County.”

- iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$3,045.92 per lot for mitigation of impacts on county roads paid to the County;

\$71.54 per lot for TDM to be paid to the County.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- iv. Fifteen feet of right-of-way shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel’s frontage on west side of 79<sup>th</sup> Avenue SE. [SCC 26B.55.060]
- v. Five to 30 feet of right-of-way shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel’s frontage on east and west sides of 71<sup>st</sup> Avenue SE on the final recorded plat [SCC 26B.55.060].
- vi. Right-of-way or an easement for adequate sight distance shall be provided at the development’s eastern access with 79<sup>th</sup> Avenue SE.
- vii. Lots 1 through 5 must provide adequate driveway area to allow cars to turnaround on the lots to eliminate backing onto 71<sup>st</sup> Avenue SE.

- viii. Your real property is within, adjacent to, or within 1,300 feet of designated farmland; therefore, you may be subject to inconveniences or discomforts arising from agricultural activities, including but not limited to noise, odors, fumes, dust, smoke, the operation of machinery of any kind (including aircraft), the storage and disposal of manure, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural activities.

Snohomish county has adopted Agricultural Lands Regulations (chapter 30.32B SCC) which may affect you and your land. You may obtain a copy of Chapter 30.32B SCC from Snohomish County.

A provision of chapter 30.32B SCC provides that “agricultural activities conducted on designated farmlands in compliance with acceptable agriculture practices and established prior to surrounding non-agricultural activities are presumed to be reasonable and shall not be found to constitute a nuisance unless the activities have a substantial adverse effect on the public health and safety.”

This disclosure applies to the real property which is subject to a development or building permit as of the date of the development or building permit approval or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable thereafter if areas designated farmland are changed from the farmland designation.

Nothing in chapter 30.32B SCC shall affect or impair any right to sue for damages.

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel’s frontage on 71<sup>st</sup> Avenue SE and 79<sup>th</sup> Avenue SE to the specifications of the Department of Public Works. [SCC 30.66B.410] Frontage improvements consist of 23 feet of pavement, curb, gutter, planter and a 5-foot sidewalk along 79<sup>th</sup> Avenue SE and 18 feet of pavement, curb, gutter, planter and a 5-foot sidewalk along 71<sup>st</sup> Avenue SE.
- ii. Pedestrian Facilities shall be constructed to the specifications of the Department of Public Works throughout the development [EDDS].
- iii. A school pedestrian waiting area (a 10-foot by 15-foot asphalt pad) located at the access of the development at 79<sup>th</sup> Avenue SE shall have been constructed to the specifications of Department of Public Works.
- iv. 71<sup>st</sup> Avenue SE shall be constructed with a vertical curve of at least 75 feet at the intersection with SR 204.
- v. Illumination shall be provided at the end of 71<sup>st</sup> Avenue SE where it intersects with SR 204.
- vi. Right-of-way beneath Lots 11, 12, 92, 93, 95, 96 and 97, Tract 993 and Tract 995 shall have been vacated by the County.

- vii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- viii. The final mitigation plan shall be completely implemented.
- ix. A critical area site plan (CASP) is required to be recorded for the off-site easement for the stormwater outlet discharge located to the southwest of Tract 996.
- x. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per single family unit as mitigation for impacts to the Centennial parks service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by May 4, 2010 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- xi. The DPO off site ATS described in ATS 1 on Page nine, shall either be completed or bonded for.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

- 7. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

### **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The requests for a preliminary plat for a 108-lot subdivision utilizing lot size averaging provisions and for a rezone to lift the DPO zoning designation from the property are hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 6 above.

Decision issued this 20<sup>th</sup> day of January, 2006.

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Ed Good, Deputy 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. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JANUARY 30, 2006**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with

the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **FEBRUARY 3, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

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Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin  
Department of Public Works: Andy Smith

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.
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