

# **REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

DATE OF DECISION: April 20, 2006

PLAT/PROJECT NAME: *Angelia Heights*

APPLICANT/  
LANDOWNER: Jan-Jam LLC

FILE NO.: 05 101061

TYPE OF REQUEST: A 29-lot Planned Residential Development (PRD) of 3.98 acres with a concurrent rezone from Residential-7200 DPO (R-7200) to R-7200

DECISION (SUMMARY): Requests APPROVED

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located at 10706 20<sup>th</sup> Street SE in Everett, WA

ACREAGE: 3.98 acres

NUMBER OF LOTS: 29

AVERAGE LOT SIZE: 2,904 square feet

MINIMUM LOT SIZE: 2,583 square feet

DENSITY: 7.3 du/ac (gross)  
10.55 du/ac (net)

OPEN SPACE: 35,074 square feet

ZONING: CURRENT: R-7200 (DPO)  
PROPOSED: R-7200

### **COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential (6 du/ac)  
Subarea Plan: Lake Stevens UGA Plan  
Subarea Plan Designation: Urban Low Density Residential (6 du/ac)

UTILITIES:

Water: Snohomish County PUD  
Sewage: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

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

**INTRODUCTION**

The applicant filed the Master Application on May 18, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on March 30, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 17, 18 and 19)

A SEPA determination was made on March 9, 2006. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on April 6, 2006, the 49<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 April 6, 2006 at 2:00 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Ry McDuffy, representing the applicant appeared, and indicated that they will do their pedestrian facilities listed under Condition D.iv. on page 14, through the project of *Pasadena*.

He stated that there will be 35,074 square feet of open space.

3. Ms. Wendy Ducharme-Reed appeared and stated that she lives just to the southeast of the property and adjacent to it. She was concerned as to the density and their change in lifestyle, and for which she had questions as to grading and drainage and to the impacts that will come from putting all of these units in a row.

She indicated that Mr. Deccio, the developer, had promised to place a fence between her property and the development.

Mr. McDuffy stated that the fence will go along her west line between the properties and that that they will grade only on their property. He stated that they will put a six foot fence along their own backyards. The fence between them and Ms. Ducharme-Reed will be a solid wood fence, but the rest of the fence would be a split rail fence.

Mr. Deccio appeared and stated that he had agreed with Ms. Ducharme-Reed that they would spend up to \$2500.00 on placing the fence along her property.

The hearing concluded at 2:35 p.m.

**NOTE:** The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS:**

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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. The adjacent property owner to the southeast indicated their concerns about the impact of the development and were promised by the developer a six foot fence along her property line costing up to \$2500.00.
4. The request is for preliminary plat approval for a 29-lot subdivision of planned residential development along with a rezone to lift a development phasing overlay zoning designation from the property. All of the lots will be developed with single-family homes with an existing home fronting 20<sup>th</sup> Street to be retained on one of the lots. Access to all the lots, except for the existing house, will be provided by a new public street constructed within the subdivision which will intersect with a new street recently constructed within a neighboring plat of L-16 Pasadera. Associated with the proposal is a storm water management system incorporating a detention pond, right-of-way improvements consisting of curb, gutter, planter strip and sidewalk along the development's road frontages, installation of utilities, perimeter landscaping and open space tracts which incorporate a tot lot, open play field, picnic tables, and a walking trail.
5. The adjacent zoning uses consist of single-family residential with R-7200 (DPO).
6. 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.
7. 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. (See Pages 3-6, Exhibit 35)

8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. A site investigation found no wetlands or other critical areas as defined in Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations on or within 100 feet of the property.
10. Rainwater runoff will be collected and transported via catch basins and pipes to a two-cell wet detention pond located in the southwest corner of the property and released at a controlled rate into the drainage system located within the adjoining plat of L-16 Pasadera. 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).
11. Water service will be provided by Snohomish County PUD No. 1 and sewer service by the Lake Stevens Sewer District.
12. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Any existing on-site septic systems shall be abandoned.
13. The subject property is designated Urban Low Density Residential- Limited (ULDR: 6 du/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- (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.”

The property is currently zoned R-7,200 (DPO) and a rezone is proposed with this application to remove the DPO designation from the property.

14. 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.
15. 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.

16. On December 21, 2005, the County Council adopted the ten-year update to the Comprehensive Plan which became effective February 1, 2006, which repealed the Development Phasing Overlay (DPO) section of SCC 30.33C. However, this application is vested as of June 23, 2005 and therefore subject to the DPO requirements.
17. 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.
18. The proposal is to develop the property pursuant to Planned Residential Development under Chapter 30.42B SCC. The PDS staff analysis in this development provides that this may be done and is set forth in detail on Pages 8-11 of the PDS staff report. (Exhibit 35) Specifically, it also provides that the total open space is met with 35,074 square feet, a little over 20 percent of the gross site area.
19. The aerial photograph (Exhibit 12) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
20. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

#### **CONCLUSIONS:**

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 certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with 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 and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. The development phasing overlay existing on this property may be eliminated based upon the County Council's previous actions in eliminating other development phasing overlays in this area.
6. The request would allow the property to be developed with single-family homes which is consistent with the development of other single-family homes in this area and surrounding this property.
7. The developer has agreed with the adjacent property owners to the southeast, the Ducharme-Reeds, to provide for a fence to protect their property and uses thereof in an amount up to \$2500.00. The developer has also agreed to provide a split rail fence along the balance of the properties. These agreements as confirmed by at the hearing, are re reflected in the Examiner's Conditions.
8. The request should be approved subject to compliance by the applicant with the following Conditions:

## CONDITIONS

- A. The Preliminary Plat (Exhibit 14) received by PDS on March 10, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The Preliminary Plat/PRD Site Plan received by PDS on March 10, 2006 (Exhibit 14), Conceptual Building Elevations received by PDS on November 21, 2005 (Exhibit 6) and Detailed Landscape and Recreation plan approved per condition B. ii., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
- i. A detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 15 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan. Documentation shall be provided to show what existing landscaping is being utilized within Tract 998.
  - ii. A Right-of- Way Use Permit shall be obtained from the City of Everett prior to any construction within the City's 100 foot wide water transmission line easement (AF# 461157).
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
\$3,063.81 per lot for mitigation of impacts on county roads paid to the county,  
\$124.74 per lot for the Washington State Department of Transportation (WSDOT), paid to the County (WSDOT ID # eight),  
  
These payments are due prior to or at the time of building permit issuance for each SFR. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
  - ii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 05-101061 SD.
  - iii. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include any open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, benches, and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."
  - iv. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per newly approved dwelling unit, as mitigation for impacts to the Centennial park 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 18, 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.”

- v. “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 one existing lot. Lot 29 shall receive credit.”

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel’s frontage on 20<sup>th</sup> St SE to the satisfaction of the DPW or a cash payment acceptable to the DPW shall be paid.
- ii. Adequate public road access shall be provided.
- iii. The features on the approved TDM plan shall be constructed/installed.
- iv. Pedestrian facilities shall be constructed to the specifications of the DPW from the subject plat to 103<sup>rd</sup> Ave SE [RCW 58.17.110].
- v. The development’s development phasing overlay obligations shall be constructed to the satisfaction of the DPW.
- vi. The applicant shall submit to PDS covenants, deeds, and homeowners’ association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS.
- vii. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.
- viii. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125(5)(b).

E. Prior to occupancy of any unit in the PRD:

- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

**EXAMINER’S CONDITIONS:**

- F. The applicant shall provide a fence along the southeast corner of the property owned by Wendy Ducharme & John Reed, which fence shall be a solid fence as approved by the Ducharme-Reeds. In this regard the developer shall contribute up to \$2500.00 for the construction of said fence. The details will be determined between the developer and the Ducharme-Reeds.

- G. The applicant shall also provide for a split rail fence along the balance of the eastern edge of the development.

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

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

**DECISION:**

The requests for a 29-lot PRELIMINARY PLAT/Planned Residential Development, along with a concurrent REZONE from R-7200(DPO) to R-7200 are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 8, above.

Decision issued this 20th day of April, 2006.

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Robert J. Backstein, Hearing Examiner

**EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **May 1, 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **May 4, 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is 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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

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 this case.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin  
 Department of Public Works: Mark Brown

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.

