

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

DATE OF DECISION: December 21, 2005

APPLICANT/  
LANDOWNER: EDITH BLAKESLEY

FILE NO.: 05 117846

TYPE OF REQUEST: Major Revision to modify the conditions of the previous Hearing Examiner decision

DECISION (SUMMARY): APPROVED subject to a condition

## **BASIC INFORMATION**

GENERAL LOCATION: The project is located at 19921 Fales Road, Snohomish, WA

ACREAGE: 2.4 acres

ZONING: Rural-5 Acre (R-5)

### **COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Rural Residential (1 du/5 Acre Basic)  
Subarea Plan: Cathcart-Maltby-Clearview  
Subarea Plan Designation: Residential Estate (1-2 du/ac)

### **UTILITIES:**

Water: Cross Valley Water District  
Sewage: On-site septic

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 7

### **SELECTED AGENCY RECOMMENDATIONS:**

Department of:  
Planning and Development Services: Approve  
Public Works: No objection

## **INTRODUCTION**

The applicant filed the Master Application on April 11, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on December 5, 2005 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19,20 and 21)

A SEPA determination was made on August 3, 2005!. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on December 6, 2005, the 126<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 December 6, 2005 at 1:00 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. Kenneth Berger, an attorney representing the applicant, indicated that they want to make any changes required by the condemnation of this property. He stated that the lands are needed to make the 522 interchange work.
3. Mr. Scott Whitcutt, PDS, indicated that proposed changes to the site plan originally approved are minor, but that they need a new legal description and would like the record kept open to respond to any description.
4. Mr. David Harmsen, of Harmsen & Associates indicated that they will be submitting a legal description.
5. No one appeared in opposition to the request.

The hearing concluded at 1:30 p.m.

**NOTE:** Audio tapes of this 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 request is for approval of a major revision to a previous Hearing Examiner decision approving a freeway service (FS) official site plan for the subject property. Specifically, the applicant seeks revision to the restriction “the subject property shall remain under one ownership and not be partitioned, divided or otherwise split into multiple ownerships nor reduced in size for any means; provided that this restriction shall not apply to right-of-way acquired through any means by the State of Washington.”
4. On a review of the PDS staff report the information pertaining to this matter, and the fact that the State of Washington is condemning part of the land, it would appear that the request to remove that restriction is reasonable in order to allow the land to be utilized as it was intended under the original site plan.
5. The DPW had no comment to the request.
6. No opposition was received to the request.
7. Exhibit 12 is an aerial photograph which very clearly shows the property itself and the surrounding area and its compatibility in this area.
8. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

#### **CONCLUSIONS:**

1. The request for a major revision to modify the conditions of the previous Hearing Examiner decision is reasonable and would allow the use and development of the property, while at the same time having no adverse affect upon the area.
2. The restrictive wording placed, when combined with the request for condemnation of the property, does not now fit under the present day conditions and should be removed, with the remaining conditions still being in effect.
3. Prior to proceeding, a legal description of the subject property must first be submitted.
4. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

#### **DECISION:**

The request for a Major Modification of the previous Hearing Examiner decision issued November 9, 1988 is hereby APPROVED SUBJECT TO securing a proper legal description. The condition to remove and/or modify the restriction that “the subject property shall remain under one ownership and not be partitioned, divided or otherwise split into multiple ownerships, nor reduced in size through any means,” is hereby deleted. The original conditions imposed which do not affect this revision, shall remain in full force and effect.

Decision issued this 21st day of December, 2005.

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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 **January 3, 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 **January 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.

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Staff Distribution:

Department of Planning and Development Services: Scott Whitcutt

<p>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.</p>
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