



FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to a precondition and conditions  
Public Works: Approval subject to a precondition and conditions

**INTRODUCTION**

The applicant filed the Master Application on April 22, 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 18, 19 and 20)

A SEPA determination was made on October 17, 2005. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on January 3, 2006, the 171<sup>st</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 3, 2006 at 10:05 a.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. The applicant, Don Hardy appeared and Snohomish County was represented by Darryl Eastin of the Department of Planning & Development Services.
3. No member of the public attended the hearing. A letter (Exh. 24) had been submitted on July 19, 2005 by Alan Daigre, who owns abutting residential property, objecting to the proposed office/commercial use of the subject site based largely on commercial truck and heavy equipment noise and hazards to pedestrians. Because "construction contracting" is not a use permitted in the underlying MR zone, a condition upon approval herein prohibits regular parking or storage of construction vehicles or large trucks on the subject site.

The hearing concluded at 10:33 a.m.

**NOTE:** The above information summarizes the information submitted to the Examiner at the hearing. However, 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 of 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. One letter of concern was received from abutting owner Alan Daigre. His concerns and the County's response are outlined herein under "Public Hearing" above. That text is hereby adopted as a finding of fact.
4. The request is for a rezone from the existing R-9,600 to Multiple Residential (MR) in order to permit as a conditional use the office use of an existing building for a Licensed Practitioner (Starlite Construction) and other licensed businesses and with setback and landscaping variances. The existing two-story, 3,260 square foot building was built to include office and residential space and is now vacant. That building is 20 feet from the south property line adjacent to 164<sup>th</sup> Street SW and five feet from the north property line adjacent to property zoned R-9,600. There is paved parking for nine vehicles. Some of that parking area (at the rear) was made possible by construction of a retaining wall of six foot height.
5. Regarding the requested variances, the applicant seeks to (1) reduce the minimum side yard setback along the northeast property line from 10 feet to five feet; (2) reduce the required street frontage landscaping (Type B) along 164<sup>th</sup> Street SW from 10 feet to five feet and (3) reduce the required perimeter landscaping (Type A) along the north property line from 15 feet to five feet.
6. The surrounding area is zoned MR to the east and developed as an apartment complex and R-8,400 to the west and undeveloped there. To the south and across 164<sup>th</sup> Street SW is City of Lynnwood zoning developed as single family and multifamily and a mobile home park.
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.
8. 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.

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. No new development or expansion of existing development is proposed for this proposal. Therefore, Critical Areas Regulations do not apply.
11. The subject property is designated Urban High Density Residential (UMDR: 12-24 du/ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). The subject property is currently zoned R-9,600. The proposal includes a request to rezone the property from R-9,600 to MR. According to the GPP, the Urban High Density Residential designation “allows high density residential land uses such as townhouses and apartments generally near other high intensity land uses. A CUP may be granted in this type of zone if the requirements for a CUP are met.
12. The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the decision criteria therein for a CUP as set forth in SCC 30.42C.100.

A review of these CUP standards with the request, indicates that the standards are met and no adverse affects will be caused to the area.

13. 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.
14. The request is consistent with the decision criteria applicable to a variance at SCC 30.43B.100 and meets the intent of the landscape requirements at SCC 30.25.020.
15. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

## **CONCLUSIONS OF LAW**

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 by the applicable design and development standards.
4. The request is for a rezone and, therefore, must be consistent with the GMACP and GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) ULDR designation of the property and meets the required regulatory codes as to density, design and development standards. The request for a rezone must also comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no substantial evidence was submitted contrary to the requirements of Chapter 30.42A, the application is presumed to meet these requirements.
5. The requested conditional use meets the requirements set out at SCC 30.42C and will not be materially detrimental to uses or property in the immediate vicinity and is compatible with the existing and intended character, appearance, quality of development and physical characteristics of the site and surrounding property.
6. The requested variances meet the criteria of SCC 30.43B in that the variances are made necessary by the special circumstances of being narrow (84 feet) with a steep slope on the westerly portion and, additionally, has frontage on 164<sup>th</sup> Street SW which required a 20-foot front year setback. The requested package of variances are necessary to preserve the substantial property right enjoyed by other properties zoned MR with frontage on 164<sup>th</sup> Street SW in the vicinity because those others are larger or wider and lack the steep slope constrains of the subject site. Approval of the three variances will not be detrimental to the public welfare or injurious to the properties in the vicinity and zone in which the property is located now, will that approval be injurious to the Comprehensive Plan.
7. The requests should be approved subject to compliance by the applicant with the following precondition and conditions:

**PRECONDITION**

- A. Prior to approval of the conditional use permit a record of developer's 30.66B SCC mitigation obligations shall have been recorded with the County Auditor. [30.66B.070 SCC]

**CONDITIONS**

- A. The site/landscape plan received by the Department of Planning and Development Services on December 9, 2005 (Exhibit 21) shall be the approved site/landscape plan. Changes to the approved Conditional Use Permit are governed by SCC 30.42C.110.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
  - i. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of \$5,815.68. [30.66B.310 SCC]

ii. The applicant shall pay the amount of \$328.50 for TDM. [30.66B.630 SCC]

C. In conformity with applicable standards, decision criteria and timing requirements:

i. The six-foot board fence and supplemental plant material indicated on the site/landscape plan received December 9, 2005 (Exhibit 21) shall be implemented.

ii. No construction vehicles or large trucks shall be regularly parked or stored on the subject property.

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.

8. Any conclusion in this report and 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 rezone, conditional use permit and variances are hereby **CONDITIONALLY APPROVED**, subject to compliance with the precondition and conditions set forth in Conclusion 7, above.

Decision issued this January 18, 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 1, 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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The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

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Staff Distribution:

Department of Planning and Development Services: Erik Olson  
Department of Public Works: Andrew Smith

<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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**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than JANUARY 18, 2007.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

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**ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of

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Certified by:

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(Name)

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(Title)

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