

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

DATE OF DECISION: November 17, 2006

PLAT/PROJECT NAME: *THOMAS LAKE COURT*

APPLICANT/  
LANDOWNER: Strahm Properties, LLC

FILE NO.: 05 119918

TYPE OF REQUEST: REZONE from Residential-9600 (R-9600) to Residential-7200 (R-7200) and a 23 lot PRELIMINARY PLAT for 21 lots, utilizing lot size averaging, on 6.14 acres

DECISION (SUMMARY): APPROVED subject to conditions

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located at 14526 Seattle Hill Road, Snohomish, WA

ACREAGE: 6.14

DENSITY: 3.42 du/ac (gross)  
5.65 du/ac (net)

NUMBER OF LOTS: 21

AVERAGE LOT SIZE: 7,768 square feet

MINIMUM LOT SIZE: 6,033 square feet

ZONING: CURRENT: R-9600  
PROPOSED: R-7200

### **COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)  
Subarea Plan: North Creek  
Subarea Plan Designation: Watershed-Site Sensitive Area & rural (0.4-1 du/ac)

**UTILITIES:**

Water: Silver Lake Water District  
Sewage: Silver Lake Water District

**SCHOOL DISTRICT:** Everett

**FIRE DISTRICT:** No. 7

**SELECTED AGENCY RECOMMENDATIONS:**

Department of:

Planning and Development Services: Approve subject to conditions  
Public Works: Approve subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on May 20, 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 17, 18 and 19)

A SEPA determination of non-significance was made on October 2, 2006. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on October 31, 2006, the 149<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 October 31, 2006 at 11:04 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.

The hearing concluded at 11:08 a.m.

**NOTE:** Audio tapes of this hearing are available in the Office of the Hearing Examiner.

**FINDINGS, CONCLUSIONS AND DECISION**

**FINDINGS:**

1. Strahm Properties, LLC seeks approval of an application to rezone a 6.14 acre site at 14430 and 14526 Seattle Hill Road from R-9600 to R-7200, and to approve a preliminary plat of the site into 21 single-family residential lots utilizing lot size averaging. The PDS staff recommendation which describes and analyzes the proposal is incorporated herein as if fully set forth.

2. The site consists of two rectangular lots on the west side of Seattle Hill Road. Existing structures will be removed. All surrounding sites are zoned R-9600 and improved with single-family residences. The pending *Appletree West* five-lot short plat lies to the north. All five lots will gain access to Seattle Hill Road through the new road in the current proposal.
3. A parks mitigation fee of \$1,244.49 will be paid for each new single-family residential unit.
4. The site will generate 181.83 new average daily vehicle trips, with 14.25 trips in the a.m. peak hour and 19.19 trips in the p.m. peak hour. The proposal was granted a certificate of concurrency on June 20, 2005. A transportation impact fee of \$1,956.84 per unit will be paid, for a total of \$41,093.58. A mitigation fee of \$8,964.00 will be paid to Mill Creek. The transportation demand management requirement will be satisfied by payment of the sum of \$1,439.25.
5. Frontage improvements to Seattle Hill Road will be required, to increase the right-of-way to 40 feet from the centerline. The applicant will be entitled to some compensation for the needed dedication.
6. School children will have safe walking conditions. All will take a school bus, which will pick them up within or adjacent to the project.
7. A Category 1 wetland associated with Thomas Lake extends into the northwest portion of the property, and another small wetland lies adjacent to the north. Buffer averaging and compensatory enhancement will satisfy the Critical Areas Regulations.
8. The subject property is designated Urban Low Density Residential (ULDR: 4-6 du/ac) on the GPP Future Land Use Map, and is located within an Urban Growth Area. R-7200 is one of the implementing zones for this land use category. Twenty-one lots, as proposed, is consistent with the density provisions of the zoning regulations.
9. The proposal satisfies the zoning code's development standards.
10. Any Conclusion of Law in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**CONCLUSIONS of LAW:**

1. An application for a rezone is a Type 2 application which is decided by the Hearing Examiner. Chapter 30.72 SCC. The Hearing Examiner conducts a public hearing after notice is published, posted and mailed in accordance with SCC 30.70.045. The Hearing Examiner's decision on an application for a site specific rezone is final, subject to appeal to the County Council.
2. A preliminary subdivision proposal is processed as a Type 2 application. (Chapter 30.72 SCC) The Hearing Examiner may approve, approve with modifications or deny a subdivision application under the circumstances set forth in Chapter 30.41A SCC.
3. The Hearing Examiner may approve a rezone only when all of 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.

4. RCW 58.17.100-120 and 58.17.195 establish the criteria for approval of a preliminary plat: Conformance to zoning ordinances and comprehensive plans; appropriate provisions for public health, safety and general welfare; open spaces, drainage ways, streets and roads, alleys and other public ways; transit stops; potable water supplies; sanitary wastes; parks and recreation, playgrounds and schoolgrounds; and other planning features including safe walking conditions for students.
5. The PDS staff concludes that the criteria for the rezone and approval of a preliminary plat are satisfied. (PDS staff report, Exhibit 32 pages 9-10) The rezone conforms to the land use designation and the comprehensive plan. The proposed plat conforms to the applicable zoning codes and comprehensive plans. All other criteria are satisfied or can be satisfied. The rezone should be granted and the preliminary plat should be approved.
6. The request should be approved subject to compliance by the applicant with the following Conditions:

**CONDITIONS**

- A. The preliminary plat received by PDS on August 22, 2006 (Exhibit 13) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The platlor 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.
  - iii. A final mitigation plan based on the Critical Areas Study Buffer Averaging and Mitigation Plan prepared by Wetland Resources, Inc. revised July 14, 2006 (Exhibit 15) shall be submitted for review and approval during the construction review phase of this 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 Everett School District No. 2 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 the two (2) existing parcels. Lots 1 and 2 shall receive credit.”
  - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
    - \$1,956.84 per lot for mitigation of impacts on county roads paid to the county,
    - \$68.54 per lot for transportation demand management paid to the county,
    - \$426.86 per lot for mitigation of impacts on the City of Mill Creek streets paid to the city.

These payments are due prior to or at the time of individual building permit issuance for each single family residence. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- iii. 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 ~~UDC 30.91N.010 are allowed when approved by the County~~ MCMC 18-06 are allowed with the written approval of the City of Mill Creek."

- iv. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Seattle Hill Road shall be dedicated to the County along the development's frontage such that 40 feet of right-of-way exists from centerline of the Seattle Hill Road right-of-way.
- v. The internal plat road right-of-ways shall have been widened to 51 feet or a deviation to the design standards shall have been granted.
- vi. The developer shall pay the County \$1,244.49 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. Construction of urban standard frontage improvements on Seattle Hill Road shall have been completed and approved by the county.
- ii. 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 platlor 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.

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<sup>1</sup> Change made at the request of the City of Mill Creek to reference their City Code. (6/4/08)

- iii. The final wetland mitigation plan shall be completely implemented (buffer enhancement and buffer addition).

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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

**DECISION:**

The requests for a REZONE of a 6.14 acre tract from R-9600 to R-7200 and a PRELIMINARY PLAT are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 17<sup>th</sup> day of November, 2006.

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Gordon F. Crandall, Hearing Examiner Pro Tem

**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 **November 27, 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 **December 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.

Staff Distribution:

Department of Planning and Development Services: Darryl Eastin/Norm Stone

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.