

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**MARY BRUBAKER** ) **FILE NO. 05 128096 LU**  
 )  
Major revision of a conditional use permit to allow )  
expansion of an auto towing business )

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DATE OF DECISION: August 29, 2006

PROJECT NAME: *Mary's Towing*

DECISION (SUMMARY): The application for a major revision to a conditional use permit is **CONDITIONALLY APPROVED** subject to preconditions and conditions

**BASIC INFORMATION**

LOCATION: The subject property is located at 13303 Highway 99, Everett, Washington.

ACREAGE: 6.68 acres

ZONING: Multiple Residential (MR)

**COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban High Density Residential (12-24 du/ac)  
Pre-GMA Subarea Plan: Paine Field  
Subarea Plan Designation: General Commercial & Multiple Residential (9-24 du/ac)

**UTILITIES:**

Water/Sewer: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Edmonds No. 15

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to preconditions and conditions

Public Works: Approval subject to preconditions and conditions

**INTRODUCTION**

The applicant filed the Master Application on April 24, 2006. (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 24, 25 and 26)

A SEPA determination was made on July 17, 2006. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on August 8, 2006, the 37<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 August 8, 2006 at 10:10 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, Mary Brubaker, attended the hearing and also was represented by Robert Temples of Temples Design. Snohomish County was represented by Darryl Eastin of the Department of Planning and Development Services (PDS).
3. No member of the public participated in this matter by document submittal or by oral testimony. The City of Mukilteo opposes the expansion of the towing use because of possible annexation into that City, which limits such a use to Industrial zoning districts.

The hearing concluded at 10:10 a.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 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 report is hereby adopted by the Examiner as if set forth in full herein.
3. The applicant, Mary Brubaker, filed an application for a major revision of a 30-year-old conditional use permit (CU 8-76, see also SU 17-75) to relocate Mary's Towing and wrecking from 12822 Highway 99 (west of that highway) in Everett to 13303 Highway 99 (east of that highway) in Everett in order to expand the auto towing element of the auto towing and wrecking use which has been in operation for approximately 40 years at the subject vicinity. The proposal would add two modular office buildings, one of 1,848 square feet (a 28-foot by 66-foot trailer) and another building of 700 square feet plus a 1,920 square foot garage for auto towing use. (The proposed buildings are of one story.) The subject site already contains a 1,583 square foot office building and 3,560 square foot garage for the auto wrecking use. The proposal site is a portion of Fleury Auto & Truck Parts, which will continue to use the remainder of the site. The proposal site is currently used as a storage and wrecking yard for most of the vehicles impounded by Mary's Towing. Mary's Towing's current location has no shop/garage in which to perform minor repairs or maintenance. The relocated towing operation will not be larger than its current size at both locations.
4. The proposed expanded towing use will be located on the larger of two parcels comprising the subject site. The western boundary of the larger parcel abuts 26<sup>th</sup> Place W right-of-way on the west, which provides vehicular access to the site. The complete Mary's Towing operation will generate 120 average weekday vehicular trips, of which 13 are a.m. peak hour trips and 11 are p.m. peak hour trips.
5. On the north the subject site abuts an auto wrecking yard zoned CB and MR, on the south a truck parts business and wrecking yard zoned MR, on the west commercial uses zoned CB and CG and, on the east, undeveloped land zoned MR.
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 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 that review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
7. 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.

8. There are no critical areas within 100-feet of any proposed development and therefore this project is not subject to the requirements of Chapter 30.62 SCC. The project will not generate impacts to the County's park system or the school system.
9. The subject property is designated MR, which allows the proposed use as a conditional use. A CUP may be granted in this type of zone if the requirements for a CUP are met.
10. 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 made to the area as a result of allowing the proposed expanded towing business.

11. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
12. 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 specific 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, the permitted density and the applicable design and development standards.
4. The request should be approved subject to compliance by the applicant with the following preconditions and conditions:

### **PRECONDITIONS**

- A. Prior to approval of the revision to the conditional use permit:
  - i. A record of developer's 30.66B SCC mitigation obligations and the Certificate of Concurrency shall have been recorded with the County Auditor. [30.66B.070 SCC]
  - ii. Ten (10) feet of property shall be deeded for right-of-way along the property frontage with 26<sup>th</sup> Place West prior to approval of the revision to the conditional use permit.

## CONDITIONS

- A. The site/landscape plan received by PDS on August 1, 2006 (Exhibit 27) shall be the approved site/landscape plan. Any future changes to the Conditional Use Permit for the subject property 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 \$27,240.00. [30.66B.310 SCC]
  - ii. The applicant shall make a payment to Snohomish County for TDM in the amount of \$825.00.
- C. In conformity with applicable standards, decision criteria and timing requirements:
- i. The 6-foot to 8-foot site obscuring fences and landscaping indicated on the site/landscape plan received August 1, 2006 (Exhibit 27) shall be implemented.
  - ii. A 6-foot to 8-foot sight obscuring fence shall be constructed along the south property line from the east end the existing sight obscuring fence to the south end of the proposed east fence per SCC 30.25.024 (Outside storage and waste areas).
  - iii. Any portion of existing sight obscuring fencing that surrounds the proposed towing yard that is damaged or missing sight obscuring slats shall be repaired to comply with the requirements of SCC 30.25.024 (Outside storage and waste areas).
  - iv. The proposal shall comply with applicable buffering conditions for approval stated in the conditional use permit for the subject property in order number 11/76 (Exhibit 20).
- D. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

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.

5. 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 request for a major revision to a conditional use permit is hereby **CONDITIONALLY APPROVED**, subject to compliance with the **PRECONDITIONS** and **CONDITIONS** set forth in Conclusion 4, above.

Decision issued this 29<sup>th</sup> day of August, 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 **SEPTEMBER 8, 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 **SEPTEMBER 12, 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: Darryl Eastin  
Department of Public Works: Andrew 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.

**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 AUGUST 29, 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 \_\_\_\_\_, \_\_\_\_\_.

Certified by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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