

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
LEE JOHNSON, BAILEY FARM LLC) **FILE NO. 06 101843**
129-lot planned residential development subdivision of)
20.6 acres with concurrent rezone from MR & F&R)
to LDMR)

DATE OF DECISION: August 23, 2006

DECISION (SUMMARY): The application for a 129-lot planned residential development subdivision and concurrent rezone to LDMR are **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 1225 183rd Street SE, Bothell, Washington.

ACREAGE: 20.6 acres

NUMBER OF LOTS: 129

AVERAGE LOT SIZE: 3,612 square feet

MINIMUM LOT SIZE: 3,197 square feet

DENSITY: 6.3 du/ac (gross)
7.2 du/ac (net)

ZONING: CURRENT: Multiple Residential (MR) and
Forestry & Recreation (F&R)
PROPOSED: Low Density Multiple Residential (LDMR)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban High Density Residential

UTILITIES:

Water/Sewer: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Everett No. 2

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions

Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on February 2, 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 19, 20 and 21)

A SEPA determination was made on June 13, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on August 1, 2006, the 69th 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 1, 2006 at 9:08 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Lee Johnson, Bailey’s Farm LLC, was represented by himself and by George Newman and Thomas Matt of Triad Associates and by Michael Swenson of the Transpo Group. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services and by Andy Smith of the Department of Public Works. Public testimony was given by local resident Penny Castro expressing concern about inexperienced teenage drivers making the left turn eastbound on 183rd Street SE to go northbound on the Bothell Everett Highway (SR 527). That issue and related topics were the subject of testimony of Jeroen Vanturennot, a resident of 43-dwelling Country Woods II plat at 8th Avenue SE and 183rd Street SE. (Vanturennot’s Exhibits 26, 41, 42).

3. The Board of Directors of the Homeowner' Association of Country Woods II submitted an e-mail on April 17, 2006 (Exhibit 27) expressing concern about traffic (especially left turns onto SR 527), street parking, pedestrian access, and preservation of the locale's natural setting. Some paragraphs of that document are duplicative of the earlier (April 3, 2006) e-mail by Jeroen Vanturennot. (Exhibit 26) Some of the same issues (again, focused on traffic) are raised by Sean Poppoff, president of the Copper Creek Homeowners' Association's letter of February 26, 2006 although that Association supports the subject plat application. (Exhibit 25) By e-mail of October 21, 2005 (Exhibit 24), Warren Kunz, who lives at 1605 183rd Street, expresses concerns about traffic and pedestrian safety on that street. Three documents from the Chair, Vice-Chair and staff/volunteer (retired Snohomish County Principal Planner for Cultural Resources) of the Snohomish County Historic Preservation Commission urge preservation of the Bailey farm's historic barn. (Exhibits 22A, B, C)

The hearing concluded at 10:31 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 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 request is for a rezone of 20.6 acres from MR & F&R to LDMR in order to construct a 129-lot planned residential development subdivision. The PDS staff report of July 25, 2006 and supplemental report of August 1, 2006 have 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). Except as may be expressly stated otherwise, that staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The proposed 129 homes will generate 1,173 average weekday vehicle trips, of which 124 are p.m. peak hour trips and 92 are a.m. peak hour trips. Each of those vehicles has no option for leaving or returning but via 183rd Street SE to and from SR 527. (See Finding No. 9 below.) That intersection is not signalized.
4. The concurrency evaluation conducted by The Transpo Group (Exhibit 6) analyzed only p.m. trips. Morning traffic merits further analysis herein, as follows.

Of the 92 a.m. peak hour trips, 75% (69 vehicles) will be outbound to SR 527. Mr. Vanturennot asserts that 73 vehicles are outbound, not 69. (Exhibit 41, p. 4) The Examiner finds the difference of four to be de minimis. Of those approximately 70 vehicles, 40% (28) will turn left across five-lane SR 527 to go northbound: a left turn approximately every two minutes in the morning peak hour. One of the five lanes of SR 572 is a left turn lane, as a consequence of which the 28 vehicles leaving the subject plat to go north on SR 527 during each morning peak hour will have to avoid SR 527 northbound traffic seeking to turn left into 183rd Street SE. The left turn from 183rd Street SE will be at Level of Service F. (Testimony of Jeroen Vanturennot, Michael Swenson and Andrew Smith, Exhibits 6, 36, 41).

5. The weekday morning analysis above is only a partial view. In addition, there are already 225 to 250 homes using the same route from the communities of Copper Creek, Country Woods I, II and III, Foxwoods and individual homes. (Exhibit 41) As a reasonable working figure for this analysis, the Hearing Examiner averages those to 237 homes which, at 9.57 weekday trips each, add another 2,268 trips to 183 Street SE. Of those, 8% (181) are morning peak hour trips. Of those 181 vehicles, 40% (73 vehicles) are turning left at the SR 527 intersection. Adding those 73 existing left turns to the proposed plat's 28 in each weekday morning's peak hour shows 101 left turns out of 183rd Street SE: one every 36 seconds. With only the 78 trips (absent the proposed plat) the westbound approach of the 183rd Street SE/SR 527 intersection currently operates at LOS F in the evening peak hour. (Exhibit 6 at p. 4) The Examiner assumes the same LOS F for the morning peak hour. Witness Vanturenout's detailed analysis (Exhibit 41) calculates an excess of between 26 and 59 vehicles beyond capacity to accommodate left-hand turns from eastbound 183rd Street SE to northbound SR 527 during non-holiday weekday peak a.m. hours on school days.
6. The analysis above tends to focus on the number (the volume) of left turning movements in morning peak hour from eastbound 183rd Street SE onto northbound SR 527. Safety is a related issue. As noted above, those left turns are into the center lane of the five-lane SR 527. Significantly, because the center lane is also used by vehicles northbound on SR 527 to turn left onto 183rd Street SE, those vehicles must cross paths with those turning left out of 183rd Street SE. Further, that crossing of paths must be negotiated without benefit of any traffic light or other signal and must cross two lanes of traffic traveling in each direction at speeds commonly of 40 to 60 miles per hour (posted for 45 mph) compounded by a curve in SR 527 both north and south of the intersection.
7. Two homeowner' associations representing many of those who live in the vicinity (and who use the intersection daily) believe the subject intersection to be highly dangerous, especially for the left turning movements described above. (Exhibit 25, 27, 41) The applicant's traffic consultant, Michael Swensen, testifies that the left turns described above are assisted by the gaps in SR 527 southbound traffic created by the traffic signal light to the north at 180th Street SE. Andrew Smith, Engineer II with Snohomish County's Department of Public Works, testifies as to minor roads such as 183rd Street SE intersecting State routes such as SR 527: "They are all over the place." The applicant, Lee Johnson, concurs in stating:

"As the County says, there are many, many, many roads like that that abut SRs."
8. None of the reasoning above or to follow herein challenges the concurrency determination. John Davis, Transportation Specialist for Snohomish County, by memorandum of March 9, 2006 (attached to Exhibit 36) describes the concurrency determination, in part, as follows:

"...I determined that the analysis provided by the traffic study *for the purposes of making a concurrency determination* met all the basic requirements of county code and rules....we can determine that sufficient arterial capacity does exist (and will likely exist) to accommodate the proposal[emphasis original]

Clearly, concurrency is based on arterial capacity. In contrast, the specific left turning movements at issue herein are not evaluated on arterial capacity alone, but on the traffic volumes, speeds, curves and signalization of the minor road as well. There is substantial evidence in the record related to the left turn issue, the preponderance of which evidence establishes that the intersection in toto puts drivers in harms way even without the proposed subdivision's traffic.

9. The parties explore in this record the likelihood of traffic relief via an extension of 186th Street SE to SR 527 at or near an existing Burgermaster. Applicant Johnson testifies that a sign at Copper Creek now reads: “Future through-road access.” but that opening must await funding by future development east of Copper Creek. His traffic consultant, Swensen, testifies that the extension and signalization of 186th Street SE is the likely long-term solution to relieving the above-described inadequacies of the current 183rd Street SE intersection with SR 527. Citizen Vanturennot testifies that he believes the proposed plat should await the future through-road access via 186th Street SE, including a traffic signal light at SR 527.
10. The hopes of the parties noted immediately above are placed in perspective by the testimony of Engineer Andrew Smith of Snohomish County’s Department of Public Works. He points out that 186th Street SE may not provide the hoped-for relief because future signalization may be instead at 186th Place SE (Place, not Street, just south of 186th Street SE) due to the heavy traffic volume 186th Place carries from east of SR 527 where population growth has been significant. The Examiner notes that 186th Street and 186th Place are offset so that sharing one intersection would be especially costly, perhaps impractical or impossible. Further, Washington State’s Department of Transportation requires a distance between traffic lights on an arterial such as SR 527 surely much greater than the distance between 186th Street and 186th Place.
11. The County’s staff report of July 25, 2006 recommends as a condition upon approval that the applicant pay traffic impact mitigation fees to the City of Mill Creek, to Snohomish County and to the State of Washington of \$2,222.33 for each of the proposed 129 new homes: a total payment exceeding a quarter-million dollars (\$286,681). Standard frontage improvements are required, as are right-of-way dedications along the frontage of 183rd Street SE and at the two accesses. No other traffic mitigation was required until August 1, 2006 - the day prior to the public hearing. On that date, the County submitted a supplemental staff report requiring that the applicant finish improvements of the northwest corner of the intersection of 183rd Street and SR 527 to provide a left turn pocket on the west leg of that intersection for east to northbound traffic – the left turn discussed at length above herein. At hearing, the applicant did not protest that condition upon approval. Specifically, the condition would require the applicant to move a power pole, extend the existing curb, planter and sidewalk eastward and northward and construct a left turn pocket on 183rd Street SE. (See Condition 5.D.vi herein.) That work would complete a proportionate share of improvements partially installed by the commercial project, Wildwood Center, which applicant has already deeded the necessary right-of-way for the left turn pocket and has already constructed a portion of the required pavement.
12. In summary, although the County had known of the need for left turn improvements and had required a portion of that work by a prior applicant, no requirement to participate proportionately in that improvement had been imposed on Bailey Farm until the eve of the public hearing date. Witness Vanturennot points out that the left turn holding lane will merely clear the right turn lane of cars waiting to turn left: it will provide no benefit to those making the left turn.
13. Attention turns to the only other issue of significance: the historic barn. The project could comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 for each new single-family home: a total of \$160,539. The County’s Northcreek Park lies 500 feet west of the western edge of Bailey Farm. It is not likely to cost \$160,000 to move the barn’s dismantled pieces (the applicant offers to dismantle the barn at no cost) a distance of 500 feet. Preservation of the barn is urged in this record because it is the last remaining barn in the south county area (Exhibit 22A) and is “...a unique survivor of the log building tradition that was the first built form used by settlers in the region.” (Exhibit 23) The Historic Preservation Commission’s chairperson (Exhibit 22B) and vice-chairperson (Exhibit 23) urge preservation of the barn as a key landmark in the County’s agricultural

heritage. Louise Lindgren urges retention of the barn and its designation on either or both the Local or National Register of Historic Places. (Exhibit 22A) The barn could make the Park a destination similar to Marymore Park for tourism. (Exhibit 23)

14. Concerning issues reviewed above, it is repeated here that 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. (But see Finding No. 8 above.)
15. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
16. Three wetlands are located on the subject property. A Category 1 riparian wetland is located in the northwest corner of the property and extends off site to the north and west. The wetland is associated with North Creek, which is located off site on the park land. This wetland will be contained within Native Growth Protection Area (NGPA) tracts and protected by buffers through the buffer averaging provisions of the Snohomish County Code (30.62 SCC). The two other wetlands are located near the eastern and southern boundaries respectively. These wetlands will be filled following the best management practices specified in the approved mitigation plan.
17. The Country Woods II Homeowners' Association asserts (Exhibit 27) that there will be no trees blocking the view of the plat's houses from the flat marshland pathways and walkways of Northcreek Park. On the contrary, the Examiner notes that at least 179 trees are shown along the plat's west edge abutting that park in Tracts 909, 910 and 912. (Exhibits 14 E and 14 L)
18. 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).
19. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
20. 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). It is not located within a mapped Growth Phasing Overlay. 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. Land in this category may be developed up to a maximum density of 24 dwelling units per acre and one of the implementing zones is the LDMR zone which is the case here.
21. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, policies were adopted to promote urban densities of development. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.

22. It is uncontested in this record that 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 and with the Planned Residential Development provisions of SCC 30.42B. The proposed subdivision 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.
23. 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, subject to conditions imposed herein.

24. 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.
25. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

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. That staff report is therefore adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. To the extent that any conclusion of law or condition upon approval herein differs from the PDS staff report, the language of this decision controls.
2. The exhibits and testimony of record establish that the on-site historic barn merits preservation. The wisdom of relocating the barn 500 feet from its present location into the adjoining park is unchallenged in this record. However, the applicant has no obligation under law to freeze or even to slow plat construction or to store the barn on-site or off-site awaiting a decision by any level of government as to whether to accept the proffered donation of the barn. Thus, it is concluded that the Hearing Examiner has no authority to impose preservation of the barn at the applicant's expense.
3. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions. However, the Examiner concludes that the preponderance of the substantial evidence of record does not support the determination that the proposal serves the public health, safety and welfare (as required by RCW 58.17.110) due to the dangerous left turns onto SR 527 described above herein and the negative capacity to accommodate those turns also documented in the findings of fact.

4. Specifically, the proposed subdivision will generate 28 left turns from eastbound 183rd Street SE onto northbound SR 527 during peak hour each morning. Those 28 left turns are in addition to the existing background traffic of 73 left turns. Thus, the total is 101 left turns in morning peak hour. With 101 left turns in 60 minutes, a left turn is made every 36 seconds: roughly two per minute. There is no signal light. Those turns are enabled only by gaps in SR 527 traffic caused by the signal light on SR 527 at 180th Street SE, but are complicated by (1) northbound traffic on SR 527, (2) high speeds on SR 527 and (3) curves on SR 527. The subject left turn level of service is already at the worst rated level: Level F. It is not in the public interest to exacerbate that left turn any further. (See Conditions 8.D.vi and vii below.)
5. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.
6. 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. Because no evidence was submitted of noncompliance with the requirements of Chapter 30.42A, the application is presumed to meet those requirements.
7. The request is for a PRD and a plat and the staff report thoroughly examines compliance with applicable codes and recommends approval. The Examiner concurs and finds the proposal exemplary in all respects but burdened by the public safety issue of the left turns described above. The plat should be approved but with occupancy limited to that lesser number of dwellings required to eliminate this proposal's proportionate share of the negative eastbound to northbound left turn capacity at the intersection of 183rd Street SE and SR 527 until alternate infrastructure improvements have addressed that public safety threat.
8. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The preliminary plat/PRD official site plan received by PDS on July 21, 2006 (Exhibits 14B) shall be the approved plat configuration and PRD official site plan. SCC 30.42B.220 governs changes to the planned residential development official site plan; 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 conceptual Critical Area Study, Mitigation Plan and Innovative Development Design Plan for Bailey Farm, prepared by Wetland Resources, Inc., Revision #1, dated April 27, 2006 shall be submitted for review and approval during the construction review phase of this project.

- iv. 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 Exhibits 14 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
- v. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. 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. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- ii. "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 one existing parcel. Lot 1 shall receive credit."
- iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$2,091.05 per lot for mitigation of impacts on county roads paid to the County,
 - \$3.08 per lot for impacts to Washington State Department of Transportation project DOT-19 (SR 524 between 24th Avenue SE and SR 527, Stage 1) paid to the County,
 - \$76.34 per lot for impacts to Washington State Department of Transportation project DOT-20 (SR 524 between 24th Avenue SE and SR 527, Stage 2) paid to the County,
 - \$51.86 per lot for impacts to the City of Mill Creek paid to the City. Proof of payment to the city is required.

These payments are due prior to or at the time of building permit issuance for each single family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid.
- iv. Fifteen feet of right-of-way shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel's frontage on north side of 183rd Street SE along with a 25 foot radius right-of-way at the northeast and northwest corners of intersection of the accesses and 183rd Street SE.

- v. 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 SCC 30.91N.010 are allowed when approved by the County."

- vi. "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 open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, 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."

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on 183rd Street SE to the specifications of the DPW.
- ii. The components of the TDM plan shall have been constructed to the specifications of DPW.
- iii. 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 plat 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.

- iv. The final mitigation plan shall be completely implemented.
- v. 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.
- vi. The applicant shall construct improvements within the northwest corner of the intersection of SR-527 and 183rd Street SE consisting of moving a power pole, widening the pavement to match the existing improvements along the north side of 183rd Street SE, extending the existing curb, planter and sidewalk eastward and northward, and constructing a left turn pocket on 183rd Street SE.

- vii. To ease this proposal's contribution to the left turn hazard at SR 527 at 183rd Street SE, certificates of occupancy shall be limited to that number of dwelling units the traffic of which would not exceed the proposed subdivision's proportional share of negative left turn capacity at that intersection until infrastructure improvements have remedied that negative left turn capacity.

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

Nothing in this recommended 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.

- 9. Any conclusion in this 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 129-lot planned residential development subdivision of 20.6 acres and a rezone from Multiple Residential and Forestry & Recreation (F&R) to Low Density Multiple Residential are hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 8 above.

Decision issued this 23rd day of August, 2006.

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, 2nd 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 5, 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, 2nd 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 6, 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: Paul MacCready
Department of Public Works: Andy 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.