

ORDER UPON RECONSIDERATION

Applicant: Lee Johnson, Bailey Farm LLC

File No.: 06 101843

Date of Initial Decision: August 23, 2006

Name of Petitioners: 1. Jeroen Vanturenout (Exhibits 45-45L)
2. Paul MacCready, PDS (Exhibit 46)
3. Applicant (Exhibits 47-47B)

Date Petitions Filed: September 5, 2006

WHEREAS, by Order issued September 19, 2006 the Examiner re-opened the record for further public hearing in order to allow a complete and fair airing of the issues raised by the petitioners; and

WHEREAS, the hearing upon reconsideration was held on October 19, 2006 from 9:03 a.m. until 12.25 p.m. during which time witnesses were sworn, testimony was taken and exhibits were entered, and

parties were represented as follows: the applicant was represented by attorney Chip Goss of the Tacey Law Group, Michael Swenson of the Transpo Group and George Newman of Triad Associates, opponent/vicinity resident Jeroen Vanturenout represented himself and Snohomish County was represented by Paul MacCready of the Department of Planning & Development Services and by Andrew Smith of the Department of Public Works and,

based thereon, the Examiner enters the following:

Supplementary Findings of Fact

1. The re-opened record accomplished the purpose of more detailed review of the impact of the proposed development's vehicular traffic eastbound on 183rd Street SE to turn left to proceed northbound at SR-527 during weekday morning peak-hour. The Examiner had found as fact in the initial decision that only cursory review had been conducted of that specific and assertedly hazardous turning movement.
2. For the re-opened record, the applicant commissioned the Transpo Group to prepare and present a formal analysis of gaps in SR-527 traffic that would accommodate the specified left turns. That study is summarized graphically at Exhibit 52 and is described in depth by the testimony of Michael Swenson and his report, Exhibit 49. That "gap analysis" was supplied as an offer of proof that there is adequate left turn capacity at the subject intersection to accommodate the added peak hour morning left turns of the proposed subdivision.

3. Michael Swenson of the Transpo Group responded to the Examiner's question about what analysis of the subject left turns had been done in the concurrency determination by saying: "We did not go to this level of detail." The Examiner's initial decision to limit occupancy in proportion to inadequate left turn capacity was because of that lack of detail, particularly as to morning peak-hour trips.
4. The offered proof demonstrates that there are 131 gaps in the morning peak hour of 7.5 seconds each to accommodate 75 of the subject left turns. That ratio of gaps to turning movements is within Level of Service "C" and, thus, acceptable with an 18 second delay in the left turn. Further, the applicant supplied a video of the peak hour (Exhibit 53) and the Examiner watched it post-hearing. On film, the subject left turns appear to be reasonable but with added difficulty when vehicles southbound on SR-527 are stacked in the center lane awaiting a gap to make a left turn across SR-527 to travel eastbound on 183rd Street SE. A fatality accident in or near the subject intersection three days after the initial hearing in this matter appears not to have involved any left turn movements.
5. Witness Jeroen Vanturenout challenges the argument that there is reasonable safety at the subject intersection by his testimony embodied in Exhibit 45 and his Exhibit 41. He points out a document in the Wildwood Center file (No. 05-123651) of October 19, 2005, in which a person who commutes to Wildwood Center (at the subject intersection) writes:

"...if heading South on Hwy 527 entering the turn lane can be very hazardous because north bound traffic uses the same lane to turn westbound onto 183rd. There have been two accidents that I'm aware of **in the turn lane** and several near misses, including myself". (Emphasis supplied.)
6. Although the concurrency process is intended to generally assure traffic safety, the analysis of such project specific impacts based on evidence of record in an open record public hearing may warrant further analysis and conditions upon approval by the Hearing Examiner in order to enter the findings of fact required by RCW 58.17.110. Such was the case here concerning the morning peak-hour left turns.
7. The Examiner finds that the above-mentioned gap analysis augments the limited concurrency review sufficiently to demonstrate consideration of the intersection function and safety in order to permit approval of the proposed development without limitation upon occupancy pending infrastructure improvements. Thus, Examiner's Condition D.vii of the decision of August 23, 2006 is deleted and not replaced by any other condition.

NOW THEREFORE, in view of the Supplemental Findings of Fact entered above, it is hereby:

ORDERED, that the August 23, 2006 decision is amended on reconsideration to strike Conclusions of Law Nos. 3, 4 and 7 and Condition D.vii in their entireties and that a new Conclusion of Law No. 3 is inserted as follows:

3. The Examiner concurs with the recommendation of the Department of Public Works that the request be approved as to traffic use subject to conditions and concurs with the recommendation of the Department of Planning & Development Services that the proposal meets all decision criteria for approval of a preliminary plat/PRD.

ORDER issued October 30, 2006.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF APPEAL PROCEDURES

Reconsideration

Further reconsideration is not available from this reconsidered decision pursuant to SCC 30.72.065(5) because the Examiner's initial decision was not a denial but was an approval subject to conditions and the reconsidered decision is also an approval but subject to amended conditions.

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 **NOVEMBER 13, 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.

Distribution:

Parties of Record

Department of Planning and Development Services: Paul MacCready / 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.