

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

In the Matter of the Application of )  
 ) **FILE NO. 06 102334 LU**  
**JERRY & EDITH GASWINT** )  
 )  
Preliminary plat for a 12-lot subdivision utilizing lot )  
size averaging and a rezone from R-8,400 to R-7,200 )

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DATE OF DECISION: August 25, 2006

PLAT/PROJECT NAME: *Rugg's Lake Estates*

DECISION (SUMMARY): The concurrent applications for a rezone from R-8,400 to R-7,200 and a 12-lot subdivision are **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: This project is located at 12214 25<sup>th</sup> Avenue SE, Everett, Washington.

ACREAGE: 3.08 acres

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 6,398 square feet

MINIMUM LOT SIZE: 6,078 square feet

DENSITY: 3.9 du/ac (gross)  
5.89 du/ac (net)

ZONING: CURRENT: R-8,400  
PROPOSED: R-7,200

**COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential

**UTILITIES:**

Water/Sewer: Silver Lake Water District

**SCHOOL DISTRICT:** Everett No. 2

**FIRE DISTRICT:** No. 1

**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The applicant filed the Master Application on February 14, 2006 (Exhibit 1) which was superseded by Exhibit 10, filed on May 15, 2006.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 20, 21 and 22)

A SEPA determination was made on June 1, 2006. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on August 1, 2006, the 72<sup>nd</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 1, 2006 at 1:03 p.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 applicants Jerry and Edith Gaswint, were represented by Debbie Rothfus of Peak Engineering. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services and by Ann Goetz of the Department of Public Works.
3. Residents of 22 households in the immediate vicinity submitted pre-hearing letters of concern or opposition primarily concerning their perception that opening 122 Place SE to 25<sup>th</sup> Avenue SE/Ruggs Loop Road would be dangerous, especially at SR 525 to the west, and would change the quiet, secluded character of their neighborhood. Testimony was taken from Robert and Gregg Miller (father and son) about that and related issues. Robert and Gloria Miller have lived on 122 Place SE for 40 years and, in fact, owned the second home built in that neighborhood. The County argues that the through street is needed for connectivity. The applicant feels caught in the middle: loosing a lot to create the through street but feeling obligated to follow County regulations.

The hearing concluded at 2:02 p.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 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. The request is for a rezone of 3.08 acres from R-8,400 to R-7,200 in order to construct a 12-lot subdivision using lot size averaging. Average weekday vehicle trips are 100, of which 8 are a.m. peak hour trips and 11 are p.m. peak hour trips.
4. By letters more than 20 households protest opening the dead end 122<sup>nd</sup> Place SE to become a through street connecting the Bothell-Everett Highway (SR 527) and 25<sup>th</sup> Avenue SE ( Rugg's Loop Road). Their concerns and opposition are voiced in testimony by Robert Miller and his son Gregory. The citizens point out that children and disabled persons walk that street, that left turns are dangerous at the intersection of 122<sup>nd</sup> Place SE and the Bothell-Everett Highway, and that the street is narrow, has no centerline nor any sidewalks, and is used as a shortcut at high speeds. Some express concern about wetlands, wildlife, drainage, crime, property lines, fences and potential loss of a huge cedar tree.
5. The County's Ann Goetz of DPW testifies that the County has no jurisdiction to design or control SR 527. County's Ed Caine of PDS testifies: (1) that the State controls SR 527, (2) that the City of Mill Creek controls 122<sup>nd</sup> Place SE and (3) that Snohomish County controls plat access to both 122<sup>nd</sup> Place SE and Ruggs Loop Road.
6. The Examiner visited the site pre-hearing but viewed only the Ruggs Loop Road access point to the east. In view of the evidence of record at the hearing about 122<sup>nd</sup> Place SE to the west, the Examiner visited the site again post-hearing. Both visits helped the Examiner understand the evidence asserting that left turns from 122<sup>nd</sup> Place SE across four lanes of SR 527 to head south on SR 527 are very challenging during morning or p.m. peak hour traffic. The Examiner experienced the drivers' sight distance limitation referred to in the record caused by a low fence along the east side of SR 527 and south of 122<sup>nd</sup> Place SE, but found out that one can edge carefully forward to see past that fence in order to pull out from 122<sup>nd</sup> Place SE to turn right (to the north) on SR 527.

7. The Examiner's visits also confirmed testimony of Stuart Woods of the applicant's group that by making 122<sup>nd</sup> Place SE a through street, the residents along that street will have, for the first time, an alternate way to enter and leave the community; i.e., they would be able to reach Bothell-Everett Highway (SR 527) by driving east instead of west, turning north on 25<sup>th</sup> Avenue SE, then left on 116<sup>th</sup> Street SE to SR 527 where a signalized intersection enables left turns southbound on SR 527. A circuitous route but an option nonetheless.
8. 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.
9. The project would 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.
10. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
11. There is a small Category 3 wetland in the southwest corner of the site. This is a BMP wetland, and the proposal is to fill the wetland. Staff review finds that fill meets critical areas regulations.
12. 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).
13. 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.
14. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
15. 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.
16. 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. The proposed plat 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.

17. 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.

18. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
19. 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.
20. 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. 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 conditions specified below herein. The Examiner concurs. That project will generate eight morning peak hour trips and 11 p.m. peak hour trips. The evidence of record does not establish that 122<sup>nd</sup> Place SE will become a heavily used short cut if opened as a through street.
3. 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.
4. 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 contrary to the requirements of Chapter 30.42A, the application is presumed to meet these requirements.
5. The conclusions of law immediately above herein are entered with awareness of the public concerns expressed in this record. However, the higher density infill in lieu of sprawl implements the applicable law and policies.

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 May 15, 2006 (Exhibit 12) 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, all site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A above.
- 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 1 existing parcel. Lot 1 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:  
  
\$2,225.23 per lot for mitigation of impacts on county roads paid to the County,  
\$315.81 per lot for transportation demand management paid to the County,  
  
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. The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 (Nakeeta Beach Park District No. 307) 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 has been issued within five (5) 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.
- D. Prior to recording of the final plat:
  - i. Urban standard frontage improvements shall be constructed along the property frontage on Rugg’s Loop Road, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
  - ii. A hard surfaced student bus waiting area shall have been constructed, approximately 10’ x 15’ located behind the sidewalk on the south side of 122<sup>nd</sup> Place SE, at open space Tract 999.
  - iii. The Right-of-way vacation process shall have been completed.

- E. In conformity with applicable standards and timing requirements:
  - i. The preliminary landscape plan (Exhibit 3) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- F. 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 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 preliminary plat for a 12-lot subdivision utilizing lot size averaging provisions and for a rezone from Residential-8,400 to Residential-7,200 are hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 6 above.

Decision issued this 25<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 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, 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 8, 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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Staff Distribution:

Department of Planning and Development Services: Ed Caine  
Department of Public Works: Ann Goetz

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.
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