

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

DATE OF DECISION: January 8, 2006<sup>1</sup>  
DATE OF CORRECTION: January 22, 2007

PLAT/PROJECT NAME: *MILLER PROPERTY*

APPLICANT/  
LANDOWNER: Burnstead Construction Company, Inc.

FILE NO.: 04 118541SD

TYPE OF REQUEST: **SUBDIVISION** of 13.9 acres into 41 lots utilizing the lot size averaging provisions of SCC 30.23.210

DECISION (SUMMARY): APPROVED subject to CONDITIONS

**BASIC INFORMATION**

GENERAL LOCATION: The property is located on the east side of SR 204 at 8<sup>th</sup> Street SE, Everett, WA

ACREAGE: 13.9 acres

NUMBER OF LOTS: 41

AVERAGE LOT SIZE: 6,166 square feet

MINIMUM LOT SIZE: 4,517 square feet

DENSITY: 2.95 du/ac (gross)  
5.49 du/ac (net)

ZONING: R-7,200

**COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential – Limited (6 du/ac)  
Subarea Plan: Lake Stevens  
Subarea Plan Designation: Urban Low Density Residential (6 du/ac)

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<sup>1</sup> Scrivener's error  
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UTILITIES:

Water: Snohomish County PUD No. 1  
Sewage: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

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 May 4, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on December 12, 2006 in the morning.

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 October 16, 2006. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on December 14, 2006, the 122<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 December 14, 2006 at 2:04 p.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, Burnstead Construction Company, Inc., was represented by Tiffany Brown. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services.

The hearing concluded at 2:12 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:

1. Burnstead Construction Company, Inc. (Applicant) proposes to subdivide a 13.9 acre tract on the north side of 10<sup>th</sup> Street SE and west of 79<sup>th</sup> Avenue SE into 41 single-family lots, utilizing the lot size averaging provisions of the SCC. The L-shaped site slopes from east to west and descends steeply toward SR 204.
2. Access to the site will be from 10<sup>th</sup> Street SE by a new public road to a turn-around at the north property line. An east-west road will be developed on unopened 8<sup>th</sup> Street SE and stubbed at the east and west property lines, anticipating future development of adjacent properties.
3. The site has two Category 3 wetlands and two Type 4 streams with steep slopes over one-third of the site. Storm water will be captured and routed to an above-ground detention pond. From there it will be released at a controlled rate to a culvert under SR 204 and eventually to Ebey Slough.
4. The site is designated for urban low density residential land uses and is zoned R-7200. Adjacent properties are zoned R-7200 or R-5 and developed with single-family uses. The property is within an Urban Growth Area. The proposal is subject to the development phasing overlay provisions of the SCC (Chapter 30.33C), which applies although repealed in December, 2005. The project was vested prior to the repeal. The Applicant will satisfy the requirements of the DPO by dedicating 20 feet of right-of-way along the parcel's frontage on the north side of 10<sup>th</sup> Street SE and by providing urban standard half-street improvements along the north side of 10<sup>th</sup> Street SE, all the way from the western property line to 79<sup>th</sup> Avenue SE. Construction of capacity improvements at the intersection of 20<sup>th</sup> Street SE and 79<sup>th</sup> Avenue SE, which will include a southbound right turn lane on 79<sup>th</sup> Avenue SE, an eastbound left turn lane on 20<sup>th</sup> Street SE and a traffic signal at the intersection shall have been completed or under construction prior to the issuance of any building permits. Twenty feet of right-of-way must be dedicated along 10<sup>th</sup> Street SE.
5. A Determination of Nonsignificance (DNS) for the proposal was issued on October 16, 2006. There was no appeal.
6. Applicant will pay impact fees for county roads, Transportation Demand Management, state roads, parks and schools.
7. Children will have safe walking conditions to the school bus stop on 10<sup>th</sup> Street SE on sidewalks provided on all streets, including 10<sup>th</sup> Street SE.
8. Any Finding of Fact in this Report and 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 decision criteria for approval of a subdivision are set forth in RCW 58.17.100-120 and require that the proposed plat conform to applicable zoning ordinances and comprehensive plan, and make appropriate provisions for the 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.
3. Staff concludes that the proposed plat satisfies these criteria and the Examiner concurs. The plat should be approved, subject to the following Conditions to assure compliance with the statutory criteria:
4. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

## **DECISION:**

The request for a Subdivision of 41 lots on 13.9 acres is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

## **CONDITIONS:**

- A. The preliminary plat, received by Planning and Development Services (PDS) on September 21, 2006 (Exhibit 15) shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
  - i. 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.
  - ii. A final detention pond landscape plan shall have been submitted to and approved by PDS. The plan shall be in conformance with Exhibit 7.
  - iii. A final mitigation plan based on the conceptual Critical Area Study for Burnstead Miller prepared by Wetland Resources, Inc. dated Revision #3 September 6, 2006 (Exhibit 18) shall be submitted for review and approval during the construction review phase of this project.
  - iv. The applicant shall have filed and recorded with the County Auditor a Concomitant Agreement (after it has been executed by the landowner(s) and executed by the County) that identifies the required DPO Transportation improvements that the applicant has committed to construct (and/or

any Alternative Technical Solutions mutually agreed to by the applicant and the county) and which identifies the timing, completion and financing of those improvements.

v. deleted<sup>2</sup>

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 Lake Stevens School District 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 four existing parcels. Lots 1 through 4 shall receive credit."

ii. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per single family unit as mitigation for impacts to the Centennial parks service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by May 4, 2010 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

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

iv. In accordance with SCC 30.66B.170 (6), and as offered in the applicant's letter of November 1, 2004, construction of capacity improvements at the intersection of 20<sup>th</sup> Street SE and 79<sup>th</sup> Avenue SE in order to remedy a level of service deficiency on arterial unit #385 (79<sup>th</sup> Avenue SE from 20<sup>th</sup> Street SE to 8<sup>th</sup> Street SE), which will include a southbound right turn lane on 79<sup>th</sup> Avenue SE, an eastbound left turn lane on 20<sup>th</sup> Street SE, and a traffic signal at the intersection shall have been completed or under contract prior to the issuance of any building permits and must be complete prior to approval for occupancy or final inspection.

v. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$3,225.09 per lot for mitigation of impacts on county roads paid to the county;

\$75.75 per lot for Transportation Demand Management (TDM) to be paid to the county for TSA A.

\$109.46 per lot for mitigation of impacts on DOT-08 (SR-9 at SR-2) paid to the county,

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

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<sup>2</sup> Scrivener's error – Condition B.v. was eliminated by PDS at the Open Record Hearing

- vi. 20 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 the north side of 10<sup>th</sup> Street SE.
- vii. On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works grants a formal deviation.
- viii. "Your real property is within, adjacent to, or within 1,300 feet of designated farmland; therefore, you may be subject to inconveniences or discomforts arising from agricultural activities, including but not limited to noise, odors, fumes, dust, smoke, the operation of machinery of any kind (including aircraft), the storage and disposal of manure, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural activities.

Snohomish county has adopted Agricultural Lands Regulations (chapter 30.32B SCC) which may affect you and your land. You may obtain a copy of Chapter 30.32B SCC from Snohomish County.

A provision of chapter 30.32B SCC provides that "agricultural activities conducted on designated farmlands in compliance with acceptable agriculture practices and established prior to surrounding non-agricultural activities are presumed to be reasonable and shall not be found to constitute a nuisance unless the activities have a substantial adverse effect on the public health and safety."

This disclosure applies to the real property which is subject to a development or building permit as of the date of the development or building permit approval or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable thereafter if areas designated farmland are changed from the farmland designation.

Nothing in chapter 30.32B SCC shall affect or impair any right to sue for damages."

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall be constructed along the property frontage on 10<sup>th</sup> Street SE, 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. Urban standard offsite half-street improvements along the north side of 10<sup>th</sup> Street SE from the eastern property line eastward to 79<sup>th</sup> Avenue SE required by the DPO ordinance and/or any Alternative Technical Solutions mutually agreed to by the applicant and the county<sup>3</sup> shall either be constructed or bonded for. The improvements will include roadway widening, storm drainage, sidewalk, curb and gutter.
- 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.

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<sup>3</sup> Scrivener's error – Added by PDS at the Open Record Hearing  
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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. The detention pond landscaping shall be installed, inspected and approved.

E. Prior to occupancy of any unit in the development:

- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

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.

Decision issued this 8<sup>th</sup> day of January, 2007.

Corrected decision issued this 22<sup>nd</sup> day of January, 2007

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Gordon Crandall, Hearing Examiner Pro-Tem

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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 **January 18, 2007**. 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 **January 22, 2007** 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: Monica McLaughlin/Ann Goetz

<p>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.</p>
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