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

In the Matter of the Application of )  
 )  
**FES DEVELOPMENT/EHELBARGER** ) **FILE NO. 05 117498 SD**  
 )  
52-lot planned residential subdivision (PRD) of 8.93 )  
acres with concurrent rezone from R-9,600 to R-7,200 )

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DATE OF DECISION: April 13, 2007

PLAT/PROJECT NAME: *Logan Heights*

DECISION (SUMMARY): The proposed 52-lot planned residential development and concurrent rezone from R-9,600 to R-7,200 is **CONDITIONALLY APPROVED**.

**BASIC INFORMATION**

GENERAL LOCATION: This project is located 1107 Logan Road, Lynnwood, Washington.

ACREAGE: 8.93 acres

NUMBER OF LOTS: 52

AVERAGE LOT SIZE: 4,086.86 square feet

MINIMUM LOT SIZE: 2,871 square feet

DENSITY: 5.82 du/ac (gross)  
5.82 du/ac (net)

ZONING: CURRENT: R-9,600  
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6-du/ac)

UTILITIES: Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds School District

FIRE DISTRICT: No. 1

**INTRODUCTION**

The applicant filed a revised Master Application on April 20, 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 22, 23 and 24)

A SEPA determination was made on March 5, 2007. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on April 3, 2007, the 103<sup>rd</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 April 3, 2007 at 10:07 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, FES Development/Echelbarger Development, LLC was represented by Ken Williams of Insight Engineering. Snohomish County was represented by Elbert Esparza of the Department of Planning and Development Services.
3. Vicinity residents' pre-hearing written submittals expressing concern or opposition were made by Fred and Margot Jahns jointly with Jeff and Laura Door (Exhibit 27), by the Wheeler family (Exhibit 28) and by Arthur Moss (Exhibit 29). The Jahns and Doors properties subsequently became part of the subject application. Vicinity residents who testified to concerns at the hearing included David Cononetz, Rollie Martin, Arthur Moss and Ron Volk. (See Findings Nos. 3 - 5 below.) A letter of support (Exhibit 39) for the proposed planed residential development was submitted at the hearing from Mickie Gundersen, President of the Hilltop – Locust Community Group. The letter notes that the landscape plan was to be revised to retain more of the large trees.

The hearing concluded at 11:03 a.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. The local citizens who participated by document or by appearance and testimony expressed their primary concern to be existing vehicular traffic issues and concern about whether the proposed PRD would worsen that traffic. The area of concern is along Damson Road, particularly from its intersection with Logan Road on the north to the intersection of Damson, Hubbard and Logan to the south and westward on Logan Road to and beyond its intersection with Logan Road. The northern segment of that area of concern includes Hilltop Elementary School on the west side of Damson Road.
4. David Cononetz urges signalization at the plat's access on Damson Road at Logan Road. He asserts that Dawson Road is a "race track" in that vicinity, with speeds of 50 to 60 miles per hour common. He notes that Hilltop Elementary School is located there between Logan Road and Hubbard Road. Arthur Moss asserts that it is difficult to make left turns onto Damson Road now from either Logan Road or Hubbard Road. He expresses concern that Logan Road's traffic will back-up if this PRD is built. Ron Volk testifies that the traffic described above is severe at Elberta Road's intersection with Damson Road. Rollie Martin asserts that the safest time to drive there is at night, when headlights give a longer warning of oncoming traffic while one peers through the cyclone fence looking for vehicles approaching at the hill. The Wheelers (Exhibit 28) assert that the a.m. and p.m. backups on Logan road and 212<sup>th</sup> are "unbelievable". The Wheelers argue that the roadway infrastructure should be in place at the pre-development stage of this proposed subdivision. Mr. Martin asked that a center turn lane be required. Mr. Esparza summarized his Department's view that this subdivision will add 15 feet of width to the vicinity roads and that continued development to the west and south will add more street width and, possibly, lights as well.
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. That review covered Title 13 SCC and Chapter 30.66B SCC as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of that review, the DPW has determined that the development is concurrent and has no objection to the request subject to various conditions.
6. Mr. Martin also inquired whether the applicant would be willing to continue lighting the area abutting Mr. Martin's property and whether the applicant would be willing to top Mr. Martin's trees, which will have no wind protection when the applicant's trees are removed. The Examiner responded that the record does not support requiring either the continued lighting or tree topping but that the applicant might choose to do so.

7. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
8. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,244.49 for each new single-family home.
9. The applicant testifies that the original plans showed a sport court over the detention vault behind Lots 1, 2 and 3 but that eliminating that court and allowing an amended landscape plan will allow more vegetative sight screening instead of fencing. The Examiner requested a handwritten draft of the proposed amendment and the applicant submitted that at the hearing. (See Condition E below.)
10. 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.
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
12. Public water and sewer service will be available for this development as well as electrical power.
13. The subject property is designated Urban Low Density Residential (ULDR: 4-6 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 Low Density Residential designation covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, which is the zoning requested herein.
14. 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.
15. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report except as noted at Finding No. 8 above.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
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 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.
5. The request is for a rezone and, therefore, must be consistent with the GMACP; GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) ULDR designation of the property and meets the required regulatory codes as to density, design and development standards.
6. A rezone must also comply with SCC 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no substantial evidence was submitted of non-compliance with the requirements of Chapter 30.42A, the application is presumed to meet those requirements.
7. 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 conclusion of the Examiner that the request meets these requirements generally and should be approved.

8. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

## **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a 52-lot Planned Residential Development Subdivision on 8.93 acres with a concurrent rezone from R-9,600 to R-7,200 are **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

## **CONDITIONS**

- A. The PRD official site plan/preliminary plat received by PDS on June 30, 2006, (Exhibit 7) shall be the PRD official site plan and approved plat configuration. 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. 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 Exhibit 7 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
  - iii. 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 lots within this subdivision will be subject to school impact mitigation fees for the Edmonds School District No. 15 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. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
  
 \$1,889.98 per lot for mitigation of impacts on county roads paid to the county,  
 \$262.48 per lot for mitigation of impacts on State roads 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. 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.
  - iv. "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.”

- v. The developer shall pay the County \$1,244.49 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall be constructed along the property frontage with Damson Road and with Logan 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 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.
- iii. Damson Road is designated as a collector arterial on the County’s Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. 20 feet of right-of-way presently exists on the development’s side of the right-of-way. Therefore, 15 feet of additional right-of-way is required to be deeded/dedicated to the county
- iv. Logan Road is designated as a collector arterial on the County’s Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. 20 feet of right-of-way presently exists on the development’s side of the right-of-way. Therefore, 15 feet of additional right-of-way is required to be deeded/dedicated to the county.

E. In conformity with applicable standards and timing requirements:

A final landscape plan shall be implemented, to be submitted with detailed construction plans. 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.

Decision issued this 13<sup>th</sup> day of April, 2007.

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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 **APRIL 23, 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 **APRIL 27, 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: Elbert Esparza

<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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