

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: June 7, 2007

PLAT/PROJECT NAME: *LAKEVIEW SPRINGS WEST*

APPLICANT/
LANDOWNER: Murray MacPherson

FILE NO.: 06-100068 LU

TYPE OF REQUEST: 9 lot short plat of 4.55 acres utilizing lot size averaging

DECISION (SUMMARY): Granted, subject to conditions

BASIC INFORMATION

Location: The property is located at 112xx 14th St SE, Lake Stevens just SW of intersection of S. Lake Stevens Road and Machias cut-off in Section 19, Township 29 North, Range 6 East, W.M., Snohomish County, Washington.

Acreage: 4.55 acres Avg. Lot Area: 14,555. square feet Lot Size Averaging: 14,555

Lots: 9 Smallest Lot Area: 3,305 square feet Net Density: 4.49 du/ac

Zoning: R-9600

Comprehensive Plan:

General Policy Plan: Urban Low Density Residential

School District: Lake Stevens

Fire District: No. 8

Water Source: Snohomish County PUD #1

Sewer Service: Lake Stevens Sewer District

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services: Approval subject to conditions

INTRODUCTION

Murray MacPherson has applied for a 9 lot short plat of 4.55 acres utilizing lot size averaging. The proposal also will create a new public road to provide access to the new lots. Pursuant to SCC 30.41B.030, short plats which include dedication of a new public road require a Type 2 decision by the Hearing Examiner. A portion of the new county road will be constructed with the adjacent short plat of Lakeview Springs – East (PFN 06-100067). This short plat application also shows 8 future development tracts which are not buildable lots.

The site is located on the south side of the South Lake Stevens Road. The site is undeveloped with second growth trees and underbrush. A large Category 3 wetland is located on the north portion of the site.

Adjacent parcels to the north and south are zoned R-9,600-PRD and contain residential uses. The parcels to the west are zoned R-9,600 and also contain residential uses. The parcel directly east is proposed for short plat development under file number 06-100067 (Lakeview Springs East).

The short plat application was originally submitted to Planning and Development Services (PDS) on January 31, 2006, (Exhibit 1) and was determined on February 28, 2006 to be complete as of the date of submittal for regulatory purposes, but insufficient for further review. A resubmittal of the application was received on July 17, 2006, which was determined on July 31, 2006 to be sufficient for further review. A resubmittal of the application was received on November 9, 2006, which was determined on November 23, 2006 to be sufficient for further review. A revised approved preliminary short plat was received on February 14, 2007 (Exhibit 16)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 13 -15)

A SEPA determination was made on March 12, 2007 by a determination of non-significance. (Exhibit 12) No appeal was filed.

Four public comment letters were received by PDS. Issues of concern are critical areas. The critical areas have been placed in a Native Growth Protection Area; Tract 999 that includes a 25 foot buffer that meets Snohomish County Code.

The Examiner held an open record hearing on May 8, 2008, the 120th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The hearing was held concurrently with the hearing for Lakeview Springs East 06-100067 SP which is a companion project adjacent to the subject project

On May 9, 2007 the Hearing Examiner issued an Order Calling for Additional Information (Exhibit 36). This order required any response to be submitted by May 29, 2007. Pursuant to said request, timely responses were received from both PDS, in conjunction with the Department of Public Works. (Exhibit 37) PDS also filed a revised staff report. (Exhibit 38) Robert Nehring, Sound Design Engineering, Inc. also filed a timely response on May 29, 2007. (Exhibit 39)

PUBLIC HEARING

The public hearing commenced on May 8, 2007 at 1:03 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. The staff report and attached exhibits were admitted into the record
2. Witnesses intending to testify were sworn and administered the oath.
3. Stacey Abbot, planner for Snohomish County Planning and Development Services, appeared and testified under oath. She presented the county staff reports for both projects. She indicated that normally this project would be a Type I administrative matter as a short plat, but since a newly constructed county road was proposed as part of the project, the matter was before the Examiner for a Type II decision. She testified that the reason for the lots labeled “unbuildable” was for lot size averaging and to meet concurrency requirements. She explained that in the future in the event the owner wished to develop that part of the project that another formal subdivision process would have to be conducted. It was not because of critical areas regulations that the lots were unbuildable.
4. Ann Goetz, of the Snohomish County Planning and Development Services Traffic Division, appeared and testified under oath. She anticipates that the school busses will travel along Lake Stevens Road South to pick up the school children. She described that the proposed road that would be constructed would not serve three houses in Lakeview Springs East accessing Lake Stevens Road South directly via private driveways. She said that sidewalks would be constructed along Lakes Stevens Road South where the property fronts it.
5. Robert Nehring, a LPE for Sound Engineering, appeared on behalf of the applicant and testified under oath. He said the school bus stop for the children of the proposed development will be across Lake Stevens Road South. The frontage along Lake Stevens Road South will include sidewalks. He described the future intent is to create further lots in the unbuildable section. He said that the future utilities are being shown. Due to traffic concurrency issues this matter is coming in as two applications, rather than a single one. He disputed the portion of the staff report and asked for a removal of a condition on Exhibit 34, page 3 under traffic design and mitigation and indicates that the new development will be considered under concurrency. He says the comments, which staff requests to be included on the face of the recorded development plat. are based upon a policy adopted after the completeness of this project. He questioned what code authority authorizes the placement of the condition on the face of the plat.

6. John Davis, Snohomish County Public Works, appeared and testified under oath. His comments were directed toward the concurrency comment which the county requested to be included on the face of the plat. He discussed vesting and introduced the rule into the record. He said that the concurrency policy rule applies to the future development tract since its application would be made after the effective date of the rule. He described the basic purpose of the rule to prevent circumvention of concurrency requirements by future development tracts and boundary line adjustments. It applies to any application after January 8, 2007. The effect of the condition is on the future development tract. He explained how the rule was adopted pursuant to SCC 30.82.
7. Robert Nehring reappeared and testified. He said this is an improper retroactive application of the rule. The application was filed prior to the implementation of the policy. He doesn't know of any authority in the code that allows such conditions to be placed on the face of the plat.
8. John Stevens, 11230 14th Place SE, appeared and testified. He is a neighbor to the proposed project. He stated when he bought his house he knew that one day the road would go through. He said the road is narrow and doesn't think it will support many more houses. He thinks many more houses may come in than just the 9 on the application. He feels that cars no longer can park on both sides of the street. He also is concerned where the construction equipment will be staged while the road is being built. He thinks the road will be obstructed by the equipment.
9. Stanley Richardson, 11226 14th Place SE, appeared and testified. He lives next to John Stevens. He is a neighbor to the proposed project. He is concerned by the staged equipment blocking the road. He is also concerned that the road will be damaged by the construction equipment. He is also concerned that the parking on the road will be obstructed during construction.
10. Robert Nehring reappeared and testified. He said the road is 24 foot wide road, which is below the current standards. The road in the development will be 28 feet wide. He agrees that parking will be difficult on both sides of the narrower section and that the county may have to limit parking. He agreed that during construction equipment will be unloaded on the street, but it will be stored on the site during construction. The contractor will be responsible for fixing any damages to the county street. Getting the entrance to the project opened should take about a day. There has been a sign at the end of the road indicating that it will be opened.
11. John Davis reappeared and testified about the future development tract. Its purpose is to alert future owners of the future development tract that the concurrency conditions exist. The rule will apply whether it is on the plat or not, so it is more a courtesy to future owners.
12. Robert Nehring reappeared and testified about the inclusion of the condition and vesting.

The hearing concluded at 1:48 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 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.
3. Four public comment letters were received by PDS. The issues of concern are critical areas. The critical areas have been placed in a Native Growth Protection Area; Tract 999 that includes a 25 foot buffer that meets Snohomish County Code. The comments at the public hearing dealt with the impacts to 114th Place SE. There will be a reduction in street-side parking due to the road being opened. The obstruction of the road due to off-loading construction equipment should be temporary lasting only a day. After the equipment is off loaded the contractor will store the equipment on the site.
4. The request is for a 9 lot short plat of 4.55 acres utilizing lot size averaging
5. The proposal is within the Centennial Park District and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.
6. Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Lake Stevens School District No. 4, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 1 existing lot. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.
7. Adjacent parcels to the north and south are zoned R-9,600-PRD and contain residential uses. The parcels to the west are zoned R-9,600 and also contain residential uses. The parcel directly east is proposed for short plat development under file number 06-100067 (Lakeview Springs East).

8. PDS issued a Determination of Nonsignificance (DNS) for the subject application on March 12, 2007 (Exhibit 10). The DNS was not appealed.
9. PDS Traffic reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

PDS has opted to allow the concept of “Future Development Tracts” at this time, so the concurrency for the review of this project was based on 9 new lots. It has been determined by DPW and PDS that the impacts of the entire development (current proposal and the Future Development Tracts) will be evaluated at the time of application for development of the “Future Development Tracts.”

- A. The impact fee for this proposal is based on the new average daily trips (ADT) generated by single family residences, which is 9.57. This rate comes from the 6th Edition of the ITE Trip Generation Report (code 210). As indicated above the number of new lots that will be created is 9. The development will generate 86.13 new ADT and has a road system capacity impact fee of \$29,025.81 (\$3225.09/lot) based on \$337/ADT.
- B. Since this proposed 9 lot development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with PDS Traffic’s final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development’s concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

No finding is made concerning the concurrency of the lots and tracts described on the plat as “unbuildable” or as “future development.” The interior lines shown in the unbuildable or future development tracts do NOT create new lots under this decision. These **potential parcels** which may be created in the future by separate application are not addressed or created by this decision. No vesting rights for these potential parcels are intended by this decision.

A record of developer obligations documenting the concurrency determination has been prepared by PDS traffic in accordance with the provisions of SCC 30.66B.070. The expiration date of the concurrency determination will be six years from March 14, 2006.

This preliminary concurrency determination is contingent upon the application being deemed complete by PDS.

If the application is deemed NOT complete, then a new concurrency determination will be made if and when the application is deemed complete.

If the application is deemed complete, then the determination shall stand and all the following shall apply:

The subject development is located in TSA B which, as of the date of submittal, had the following arterial units in arrears:

- #238 20th St SE (SR 204 to SR 9)
- #316 20th St SE (SR 9 to S Lk Stevens Rd)
- #385 79th Avenue SE (20th Street SE to 8th Street SE)

Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160 (2)(a) the development is determined concurrent. The development generates 6.75 a.m. peak-hour trips and 9.09 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

C. The subject proposal will not impact any Inadequate Road Condition (IRC) [SCC 30.66B.210] locations identified at this time within TSA B with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B.

D. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located along South Lake Stevens Road. Urban standard frontage improvements are required consisting of 23 feet of pavement, curb and gutter, 5 foot sidewalks and planters. The standard frontage improvements are required along the property's frontage with South Lake Stevens Road. Construction of frontage improvements is required prior to recording the short plat unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

E. Access and Circulation (SCC 30.66.420).

Access is proposed onto 14th Street SE, an interior short plat road to be constructed with this development and to be dedicated as a public road. 14th Street SE will be constructed, as an extension of 14th Place SE, from 113th Ave SE west through the adjacent development of Lakeview Springs East (PFN 06100067), and ending in a road stub at the western edge of the subject property.

The design shown for 14th Street SE is a 28-foot pavement width, curb and gutter, 5-foot planter, and 5-foot sidewalk. A deviation to construct these road improvements within a 50-foot right-of-way was approved by the County Engineer on October 30, 2006. A temporary turnaround is proposed along 14th Street SE in the vicinity of Lots 2 and 3 and Tracts 992 and 993.

112th Place SE (also to be dedicated as a public road), which is a cul-de-sac road proposed on the north side of 14th Street SE in the area of the "Future Development

Tracts”. The road profile shows that the road and the cul-de-sac grade is 12%, which is acceptable. The plan shows a 30-foot radius cul-de-sac for 112th Place and 28 feet of pavement width. The road length is less than 150 feet from the edge of traveled way. Therefore the given cul-de-sac design is acceptable for pavement width; however the grade of the cul-de-sac cannot be more than 6 percent. The pavement width of 112th Street must be 28 feet and a sidewalk is not required, based on reconsideration by DPW.

Current EDDS standard road pavement design section shall be provided for the proposed short plat roads consisting of 3” comp. depth Cl. B asphalt, 3” comp. depth ATB and 6” comp. depth gravel borrow. See EDDS Standard Plan 3-050.

F. Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]

South Lake Stevens Road is designated as a Collector Arterial. This roadway ultimately requires a right-of-way width of 35 feet from centerline of right-of-way. 30 feet of right-of-way presently exists on the development’s side of centerline. Therefore, 5 feet of additional right-of-way is required along the development’s frontage. The plan shows the additional right-of-way required (a 3 foot wide triangular area) to be dedicated at the northwest corner of the parcel’s frontage, which would provide the 35 feet of right-of-way that is required.

14th Street SE will be designated as a Non-Arterial Residential road on the County’s Arterial Circulation Map. This requires a right-of-way width of 51 feet. A deviation was approved by the County Engineer on October 30, 2006 to allow a 50-foot right-of-way along 14th Street SE.

112th St. SE will be designated as a Non-Arterial Residential road on the County’s Arterial Circulation Map. The minimum right-of-way is required to accommodate the proposed residential road and 30 foot radius cul-de-sac, which is adequately shown on these revised plans.

G. State Highway Impacts [SCC 30.66B.710]

This development is subject to the Washington State Department of Transportation (WSDOT)/County Inter-local Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV(4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT. The applicant has chosen Option b) and offered a payment of zero dollars since no state projects will be impacted above the minimum threshold, which has been accepted by WSDOT. PDS received comments from WSDOT on February 6th, 2006.

H. Other Streets and Roads [SCC 30.66B.720]

There are no other City jurisdictions that have an inter-local agreement with the County that will be significantly impacted by the subject development.

I. Transportation Demand Management (TDM) [SCC 30.66B.630]

All new developments in the urban area shall provide transportation demand management measures. Sufficient transportation demand management measures shall be provided to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and 30.66B.625.

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500 times the required trip reduction percentage times the development's peak hour trip generation. [SCC 30.66B.615]

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 9.09 new PM peak hour trips x \$1,500.00 which equals \$681.75. An acceptable offer for payment of this TDM was received by PDS on February 14, 2007.

J. Pedestrian Facilities [RCW 58.17.110]

The examiner is required to make findings regarding safe walking conditions for school children who may reside in the subject development.

Comments were received by PDS from the Lake Stevens School District on February 7th, 2006 stating that the students will attend the following schools and will:

School Type	Elementary	Middle School	High School
School Name	Glenwood	Lake Stevens	Lake Stevens
Walk to School	No	No	No
Walk to School Bus	Yes	Yes	Yes
Bus Stop Locations	Entrance to Development	Entrance to Development	Entrance to Development

The development will construct new sidewalks on both sides of 14th St. SE, which will connect to the existing sidewalks in the adjacent subdivision of Mission Ridge to the northeast. Therefore, a walkway and waiting area to the bus stop would be provided at the entrance to the development on 14th St. SE / 14th Pl. SE. An offsite walkway will not be required.

10. The drainage plan includes this development and Lakeview Springs East (PFN06-100067). Each of the short plats applications are for 9 lots with each having “Future Development Tracts” which are not buildable lots. The drainage facilities proposed for this short plat are infiltration of the lots.

Road drainage will be conveyed to the existing storm drainage and detention system located in the adjacent plat of Mission Ridge Division 3 (PFN 99-114774).

Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 6500 cubic yards of cut and 6500 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

11. One wetland and one stream are located in the northern portion of the property. The wetland is forested with an overstory of red alder and Western red cedar with an understory dominated by salmonberry and yellow skunk cabbage. Under SCC 30.62 this wetland meets the criteria for a Category 3 classification. A small stream flows through the center of the wetland. It is approximately three-feet wide and is not used by fish. This stream meets the Type 4 stream classification.
12. The proposed short plat also meets Chapter 30.41V SCC requirements. A complete application for the proposed plat was received by PDS on January 31, 2006. The proposed plat as conditioned also meets the general requirements under Section 30.41b with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.4B design standards for roads.

As previously noted under the section on concurrency, the Examiner recognizes one future development tract (tract 998); however, as part of the 9-lot short plat application currently under evaluation, the Examiner did not evaluate the impacts of creating buildable lots out of this tract and makes no findings or assurances as to the number of lots, if any, that may be created through a future application. As previously indicated this decision is not intended to grant any vesting rights to any future potential lots which may arise from separate future application.

13. Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Facilities Plan; and the Comprehensive Parks & Recreation Plan. On November 27, 1996, effective December 12, 1996, the Council adopted Amended Ordinances 96-074, and 96-071 which amended the map and text of the Snohomish County GMA Comprehensive Plan, and adopted an area-wide rezone within the Urban Growth Areas of the county respectively. This application was complete on February 26, 2006 after the effective date of Amended Ordinances 96-074 and 96-071. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on December 12, 1996, as revised through the completeness date of the application.

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, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.”

14. This project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

The proposal has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way (ROW) setbacks of 15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55%

The LSA calculation is as follows:

$$\text{Area in Lots (178,925 square feet)} \div \text{(131,002 of lots proposed)} = \text{(14,555) square feet}$$

The minimum zoning requirement is 9,600 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. The proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

15. The plat has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, 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.

The proposed plat conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas, the single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water and sewer are to be provided by Snohomish County PUD #1 and The Lake Stevens Sewer District.

16. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
17. 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.
2. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards. Conformity of a rezone to the comprehensive plan is tantamount to its bearing a substantial relationship to the public welfare.
3. Adequate public services exist to serve the proposal.

4. With the conditions detailed below, the proposal would make adequate provisions for the public health, safety and general welfare. Since the requested zone would be in conformity with the comprehensive plan, it is not counter to the public health, safety, and welfare.
5. The request for a 9 lot short plat of 4.55 acres utilizing lot size averaging is granted subject to the conditions which follow and are detailed in the decision.
6. Specifically, this decision does not adopt the creation of any individual parcels, lot lines, or building sites within the future development tract. Internal lot lines for the future development tracts shall be removed so as to make clear that create only one larger future development tract is recognized by this plat approval. No vesting rights for any potential future lots within the future development tracts or unbuildable lots are intended by this decision.
7. 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 9 lot short plat of 4.55 acres utilizing lot size averaging hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

- A. The preliminary short plat received by PDS on February 14, 2007 (Exhibit 4) shall be the approved short plat configuration, subject to the removal of internal lot lines within the future development tract as described in conclusion 6, above and condition (B) (iv) below. The future development tract shall be shown as a single tract. Changes to the approved short plat are governed by SCC 30.41B.
- 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 plattor 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 and Wetland Mitigation Plan for Lakeview Springs West, Revision #2, August 1, 2006 shall be submitted for review and approval during the construction review phase of this project.

- iv. The plat map must be revised to remove all internal tract lines to create one large future development tract. This tract shall be designated as tract number 998.

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 No. 4 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(s). Lot(s) 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:

\$3,225.09 per lot for mitigation of impacts on county roads paid to the county,
\$75.75 per lot for transportation demand management paid to the county for TSA B,

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. 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. The developer shall pay the County \$1,361.22 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.

- v. Future Development Tract 998 is not a building lot. For this tract no building permits shall be issued or other development shall be approved without first obtaining county approval to legally subdivide the property which may convert this tract into building lots.

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall have been constructed along the property frontage with South Lake Stevens 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. 14th Street SE and 112th Place SE shall have been constructed to EDDS requirements for a public urban residential road, and in accordance with the approved deviation request.
- iii. The 40 foot radius temporary turnaround shall have been constructed to EDDS on 14th St. SE.
- iv. Additional right-of-way shall have been dedicated to the County as shown on these plans, consisting of a 3 foot wide triangular area at the northwest corner of the parcel's frontage, which would provide a total width of 35 feet of right-of-way along S. Lake Stevens Road.
- v. 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 plattor 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.
- vi. 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.
- vii. The final wetland mitigation plan shall be completely implemented.

E. 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 short 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 30.41b

Decision issued this 7th day of June, 2007.

James Densley, Hearing Examiner Pro Tem

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 **June 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, 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 **June 21, 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.

Staff Distribution:

Department of Planning and Development Services: Stacey Abbott
Department of Public Works: John Davis

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.