

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

In the Matter of the Application of )  
SUNDQUIST HOMES, LLC ) **FILE NO. 06 131831 SD**  
37 lot subdivision of approximately 7.71 acres with )  
concurrent rezone from R-8,400 to R-7,200 )

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DATE OF DECISION: June 28, 2007

PLAT/PROJECT NAME: *Travata Heights*

DECISION (SUMMARY): The requested rezone from R-8,400 to R-7,200 and the proposed 37 lot subdivision are **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: This project is located at 4203 Serene Way, Lynnwood, Washington.

ACREAGE: 7.71 acres

NUMBER OF LOTS: 37

DENSITY: 4.80 du/ac (gross)  
6.88 du/ac (net)

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

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential (6-12 du/ac)

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo No. 6

FIRE DISTRICT: No. 1

**INTRODUCTION**

The applicant filed the Master Application on October 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 14, 15 and 16)

A SEPA determination was made on April 24, 2007. (Exhibit 13) No appeal was filed.

The Examiner held an open record hearing on June 13, 2007, the 132<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 June 13, 2007 at 2:02 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, Sundquist Homes, LLC, was represented by Jim Egge of James Egge & Associates. Snohomish County was represented by Erik Olson of the Department of Planning and Development Services.
3. Pre-hearing letters of concern or opposition were filed by residents of 12 vicinity households, including Monica Atkinson and Brian Butts, Ann Bell, Kirk Benson, Marc Y. J. Bhend, Adeline Bredin, Diane Edwards, Mark and Judy Fussell, Dane and Jennifer Johnson, Alan Ostman, James and Mary Alice Sanders, Robert Schwarden, and Terry and Debbie Smith. Some of those persons also participated in the hearing on the adjacent Tresana Estates 30-lot subdivision approved by decision issued June 6, 2007 (File No. 06-128028). Lake Serene Community Association President Glenn Shadduck and Vice President Mark Fussell testified in both proceedings. In both matters, public concerns focus on vehicular traffic, drainage and related flooding and Lake Serene's water quality.

The hearing concluded at 3:00 p.m.

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

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.

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.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

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

1. The applicant, Sundquist Homes, LLC, filed an application for a rezone and concurrent subdivision of 7.7 acres a 300 feet north of Lake Serene addressed 4203 Serene Way, Lynnwood. Specifically, the proposal is to rezone the subject site from the existing R-8,400 to the proposed R-7,200 in order to construct a 37-lot subdivision using lot size averaging. The average lot size will be 7,280 square feet, which is at the lower level of the 7 to 12 unit per acre density range permitted by the Comprehensive Plan.
2. Two facts central to the review of this application are (1) storm drainage is not into Lake Serene, but will bypass that lake tightlined to existing public storm drainage facilities, and (2) vehicular traffic of the subdivision will use Lincoln Way, not Serene Way, but for the one existing single-family dwelling which will retain its existing access to Serene Way.
3. The proposed development will produce 327 average weekday trips, of which 26 will be a.m. peak-hour trips and 35 will be p.m. peak-hour trips. Those trips share the local roads with the 264 daily trips added by the recently approved Tresana Estates subdivision. Access is proposed via Lincoln Way, with a second access through Tresana Estates which abuts on the east.
4. The following findings of fact, numbered 5 and 6 below, are from the Tresana Estates application decision issued June 6, 2007.
5. The record establishes that when the Mukilteo Speedway was built, Lincoln Way was designated the collector arterial and Serene Way was designated a local access roadway. The Gibson traffic analysis in the record (Exhibit 6) reports that the Lincoln Way/Mukilteo Speedway intersection at the east end of Lincoln Way operates at Level of Service "B". However, some citizens report stacked traffic waiting to pass through that intersection. Lincoln Way is classed an "Urban Collector Arterial" with a 30 miles per hour (mph) posted speed and has a 25 to 32 foot pavement width along the frontage of the proposed development. It has sporadic sidewalks along its length from Beverly Park Road to Highway 525. In contrast, Serene Way is an "Urban Non-Arterial" with a lower posted speed of 25 mph and a narrower pavement width of 22 feet along the frontage of the proposed development. Sidewalks are sporadic. Both roads are straight at the subject site but, elsewhere, Serene Way has more curves than Lincoln Way.
6. Public comments of record assert that both Lincoln Way and Serene Way are overburdened now with daily vehicular trips. Witness Dane Johnson testifies that Lincoln Way traffic backs up in peak hours 600 feet east of Beverly Park Road. Witness Sam Archer points out that when Route 525 was built and, in response, Lincoln Way became an arterial, the public was told that Lincoln Way would be upgraded to carry the heavier load but the upgrade has not occurred. He testifies: "We're not totally managing our growth."

7. 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 (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.
8. 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.
9. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions. Mukilteo School District No. 6 reports that its bus stops on Serene Way will serve students of all levels and requests curb, gutter and sidewalk on the Serene Way frontage and, beyond the subject site boundary, at least a seven-foot-wide, white stripe protected, asphalted walking path to the specified three bus stops.
10. There are 2 wetlands on the subject property (B & C) and 1 off site (A) located south of lot 26 and east of proposed road C. One on site wetland (wetland B) is a small isolated 2,807 square feet. Category 3 Wetland and is located in the northwest portion of the site and is proposed to be filled. Mitigation related to filling of a small isolated wetland per SCC 30.62.360(6), Best Management Practice, and compensation for loss of wildlife habitat is being provided with an additional buffer of 2,807 square feet within Tract 999. No additional mitigation is required with the exception of the requirement to resize the detention facility to accommodate for the loss of storage capacity. The other onsite wetland (Wetland C) is an approximately 28,721 square feet. Category 3 Wetland and is located in the southwest section abutting Beverly Park Road (Tract 999). Wetland C will be permanently preserved as an NGPA/Open Space and protected with the appropriate buffer as required by code. (The Examiner does not find the evidence of record persuasive as to any threat to the Tahara Lane condominiums caused by tree removal.)
11. 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). Stormwater runoff will be captured and routed to a detention vault located in Tract 998. The applicable requirements for that drainage are those of the 1992 DOE stormwater drainage manual, to which this project is vested. Citizens such as Mark Fussell who argue that the 2005 manual should be applied are disappointed to be told that the 2005 manual cannot be applied here. On the other hand, testimony by citizens elevates awareness to help assure adequate sizing and engineering of the drainage system to protect the lake and vicinity homes, whatever manual is applied.
12. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished (Exhibit 40). The Alderwood Water District will provide water and sewer (Exhibit 39). Electricity will be supplied by Snohomish PUD No. 1 (Exhibit 36).
13. The property is designated Urban Medium Density Residential (6-12 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the R-7,200 designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. One of the implementing zones is the R-7,200 zone, which is the zoning requested here.

14. The Urban Medium Density Residential designation covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the requested R-7,200.
15. 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 and should be approved.

16. 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.
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 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 is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. 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 requests for a 37-lot subdivision and for a rezone from Residential-8,400 to Residential-7,200 are hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

**CONDITIONS**

- A. The preliminary plat received by PDS on April 2, 2007 (Exhibit 18B) 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:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  
  - ii. 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.
  
  - iii. A final mitigation plan based on the *Critical Areas Study* prepared by Sewall Wetland Consulting Inc. dated 10/24/06 (Exhibit 6) shall be submitted for review and approval during the construction review phase of this project.
  
- 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 Mukilteo School District No. 6 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 3 existing parcel(s). Lot(s) 1, 2 and 16 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:  
  
\$2,427.43 per lot for mitigation of impacts on county roads paid to the county,  
  
This payment is due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot[s] therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
  
  - 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 \$1,244.49 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 have been constructed on Lincoln Way along the length of the property's frontages and on the interior roads within the plat to the specifications of the Department of Public Works.
- ii. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Lincoln Way shall be dedicated to the County along the development's frontage such that 35 feet of right-of-way exists from centerline of the Lincoln Way right-of-way.
- iii. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Beverly Park Road shall be dedicated to the County along the development's frontage such that 40 feet of right-of-way exists from centerline of the Beverly Park Road right-of-way.
- iv. In order to minimize impacts to Serene Lake and the surrounding area, low-impact development frontage improvement requirements across the entirety of the subject development on Serene Way shall be implemented and consist as follows:
  - a) The existing porous concrete walkway shall remain in place and be repaired and replaced as necessary;
  - b) Enhance the area between the vehicular travel way and the pedestrian path with rain garden vegetation that will not exceed 18 inches in height. Amend soils with compost before planting and recommendations for this are in the Puget Sound Action Team LID manual;
  - c) Approaches will be constructed from the edge of the vehicular travel way to the right-of-way line with porous cement concrete pavement to specifications that will support the expected loads.
- v. Bonding of improvements is an acceptable alternative to construction prior to recording where allowed by PDS. Where bonding is allowed, such construction must be completed, inspected and approved by PDS prior to occupancy of the first unit.
- vi. Pedestrian facilities shall be constructed to the specifications of the County from the subject plat on Lincoln Way to 37<sup>th</sup> Ave W, to Wigen Road, and to 4031 Lincoln Way, or another location acceptable to the school district and the DPW. [RCW 58.17.110]
- vii. The features on the approved TDM plan shall be constructed and installed.

- viii. 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 platlor 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.

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.

- ix. 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 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 28<sup>th</sup> day of June, 2007.

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Ed Good, Deputy Hearing Examiner

<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 **JULY 9, 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 **JULY 12, 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: Erik Olson

<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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