

SOR OFFICE USE ONLY:
DB ID: 589716

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: February 5, 2008

PLAT/PROJECT NAME: *Todd Salamonsen Short Plat*

APPLICANT/
LANDOWNER: Todd Salamonsen

FILE NO.: 06-135407 LU

TYPE OF REQUEST: Rezone from Residential-9600 (R-9600) to Residential-7200 (R-7200)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The project site is located at 14115 Seattle Hill Road, Snohomish, WA

ACREAGE: 1.1

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Silver Lake Water District
Sewage: Silver Lake Water District

SCHOOL DISTRICT: Everett School District No. 2

FIRE DISTRICT: Fire District No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve with conditions

INTRODUCTION

The applicant filed the Master Application on June 18, 2007. *See* Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on January 11, 2007 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by SCC 30.72.030(4). *See* Exhibits 14 (mailing), 15 (publication) and 16 (posting).

A SEPA determination was made on October 29, 2007. *See* Exhibit 10. No appeal was filed.

The Examiner held an open record hearing on January 15, 2007, the 111th 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 January 15, 2007 at 1:08 p.m.

1. Ed Caine, Senior Planner, appeared on behalf of PDS and gave an overview of the project and answered questions from the Examiner.
2. Camie Anderson appeared on behalf of the applicant, Todd Salamonsen.
3. No one appeared in opposition to the request.

The hearing concluded at 1:30 p.m.

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

FINDINGS OF FACT

1. All exhibits and witnesses included on the Master Exhibit and Witness List were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. State Environmental Policy Act Compliance. A Determination of Nonsignificance (DNS) was issued October 29, 2007. Exhibit 10. The DNS was not appealed.
3. Rezone Request: The request before the Examiner is for a rezone from R-9600 to R-7200. Exhibit 1. The applicant is requesting approval of an administrative site plan from PDS, which PDS staff has included in the file for the Examiner's reference. The Examiner has no jurisdiction over approval of the site plan. The Examiner does appreciate the information and the visual reference as it is crucial in deciding the issues in the rezone.
4. Site description: The site is developed with a single-family residence with accessory structures. There is little vegetation, except for some trees on the western side of the lot along Seattle Hill Road. There are no critical areas on site. The applicant proposes removal of the existing structures.
5. Adjacent uses: The western border of the site is on Seattle Hill Road. To the west of Seattle Hill Road is the city limits of the City of Mill Creek, and an established subdivision within the City of Mill Creek. The surrounding areas are within the Southwest County UGA and are, for the most part, zoned R-9600. Approximately 1,000 feet south of the proposed development, on the east side of Seattle Hill Road, are a pair of developments that are zoned R-7200. Approximately 1,600 feet north of the proposed development, on the east side of Seattle Hill Road, are additional parcels zoned R-7200 and PRD-7200.
6. Transportation: The development is situated upon Seattle Hill Road. The staff report contains the following information on the development's compliance with county transportation requirements, which the Examiner incorporates herein for a better understanding of the transportation impacts of the higher density development at this site:

PDS Traffic has reviewed the subject development proposal for compliance with Title 30.66B SCC, Title 13 SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

1. Road System Capacity [30.66B.310]

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 38.28 new average daily trips (ADT) and has a road system impact fee of \$10,220.76 (\$2,044.15/unit) based on \$267/ADT, the current fee rate for residential developments inside the urban growth area, for TSA D. These figures do not include

credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Single family residential

ITE Land Use Code: 210

Applicable Measurement Unit (ITE Independent Variable): 4 new lots.

Number of applicable measurement units for this development: 9.57 adt/lot

Select Table 2 and press F9

Trips Calculations

ADT (5 New SFR - 1 Exist.) x (9.57 ADT/SFR) = 38.28

AM PHT(5 New SFR - 1 Exist.) x (0.75 AM PHT/SFR) = 3.00

PM PHT(5 New SFR - 1 Exist.) x (1.01 PM PHT/SFR) = 4.04

2. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing the best operating condition, and level-of-service F the worst.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of August 2, 2007. The expiration date of the concurrency determination is six years from this date. 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.

The development has been deemed concurrent on the following basis: Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA D, which, as of the date of submittal, had the following arterial units in arrears; Seattle Hill Road from 132nd St. SE to 35th Ave SE, 35th Ave from Seattle Hill Road to 132nd Street SE and 164th St SE from the I-5 ramps to the Mill Creek city limits. 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 3.00 a.m. peak-hour trips and 4.04 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.

3. Inadequate Road Condition (IRC) [SCC 30.66B.210]

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject development proposal will not impact any IRC locations identified within TSA D 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 SCC.

4. Frontage Improvements [SCC 30.66B.410]

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

As per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage on Seattle Hill Road and consist of:

Asphalt concrete pavement consisting of 23 feet width from roadway centerline to the face of curb

Cement concrete curb and gutter

Planter strip with a width of 5 feet

Cement concrete sidewalk with a width of 5 feet

The road, Seattle Hill road, on which the development's frontage improvements are required, is in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are applicable.

Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

5. Access and Circulation [SCC 30.66B.420]

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Access is proposed from a private road that meets the minimum standards in the EDDS for a private road within the urban area. The private road standard serving the 5 lots is now shown with:

28 feet of payment between 2-6 inch vertical curbs.

A 5 foot sidewalk on one side of the road and around the cul-de-sac bulb.

Since the road is shortened to less than 150 feet from edge of traveled way and the end of the cul-de-sac and 4 lots take access in the last 50 feet of the road, a cul-de-sac with a constructed 30 foot radius is now proposed

Access onto Seattle Hill Road is now shown as drop curb driveway, not with radius returns as was shown on the preliminary application.

The private road centerline offset now meets the minimum offset standards for centerlines, Section 3-09(D) Table 311 of the EDDS. The private[sic] road has been redesigned such that its centerline directly opposes the centerline of 142nd Street on the west side of Seattle Hill Road.

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

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving this development, Seattle Hill Road, is designated as a Minor Arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to dedicate 10 feet of additional right-of-way.

The road serving this development, 141st St SE, is designated as a Collector non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is not required to dedicate additional right-of-way.

These are adequately shown on the Preliminary Sort Plat.

Seattle Hill Road is in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is applicable.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

*Pursuant to SCC 30.66B.055 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required. The applicant has offered to provide the mitigation measures for impacts on state highways as follows:
Proportionate Share Mitigation (ILA Section 5.2): no impact.*

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT have been received dated June 22, 2007 (Exhibit 22). WSDOT agrees to the mitigation measures proposed by the applicant. The County has reviewed the WSDOT requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development.

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions.

*The proposed development is subject to SEPA and thus is subject to interlocal agreements for impacts on city streets and is effected by the interlocal agreement (ILA) with the following cities:
Mill Creek*

Pursuant to the traffic study submitted with the development, this development will impact the city collection projects with a total of 2 PM peak-hour trips. The interlocal agreement between the County and Mill Creek states that a development must impact city arterials with a total of 3 PM peak-hour trips before mitigation is required to be paid. Comments from the City of Mill Creek were received on July 2, 2007 (Exhibit 23). No mitigation fees were requested. Therefore, no mitigation will be required.

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

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five (5) percent of the 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 SCC 30.66B.625.

Since a TDM plan was not submitted with the initial application a cash payment is required. This is indicated on the presubmittal review conference form signed by the County and the applicant's representative on January 4, 2007. The trip reduction percentage for this development is 5 percent. The TDM obligation for this development is therefore equivalent to 5 %of the 5 new PM peak hour trips x \$1,500.00 which equals \$303.00 (\$60.60/lot). A written offer for payment of this TDM obligation was submitted with the development application.

10. *Pedestrian Facilities [RCW 58.17.110]*

Comments have been received from the Everett School District dated July 25, 2007 stating that the students will attend the following schools and will:

<i>School Type</i>	<i>Elementary</i>	<i>Middle School</i>	<i>High School</i>
<i>School Name</i>	<i>Penny Creek</i>	<i>Gateway</i>	<i>Jackson</i>
<i>Walk to School</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Walk to School Bus</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Will busses pick up children within/adjacent to this project</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Bus Stop Locations</i>	<i>Seattle Hill Road</i>		

Based on the July 25, 2007 school comments and the proposed sidewalk adjacent to the private road, safe walking conditions for the school children are provided. Exhibit 31 at 3-7.

7. Environmental Impacts of Higher Density.

A. Critical Areas.

There are no critical areas on or within 100 feet of the project site.

B. Grading and Drainage.

According to the staff report, grading quantities are anticipated to be approximately 6800 cubic yards of cut and 11,600 cubic yards of fill, primarily for road, drainage facilities, and home site construction. Standard water quality measures will be in place during construction in accordance with a Temporary Erosion and Sedimentation Control Plan. Exhibit 31 at 6; *see also* Exhibit 13. Stormwater runoff will be captured and routed to a detention vault system located beneath the private road. The vault will discharge into the drainage system along Seattle Hill Road. Exhibit 31.

8. Parks and Schools Impacts of Higher Density.

A. Parks.

The staff report contains the following information on the development's compliance with county parks mitigation requirements:

The proposal is within Park District No. 307(Nakeeta Beach) and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid either prior to plat recording or 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.

Exhibit 31 at 3.

B. Schools.

SCC 30.66C.100 requires payment of school impact fees by all developments as a condition of approval. The fee is calculated in accordance with a formula established in SCC 30.66C.045. SCC 30.91D.220 defines “development” as “any residential construction or expansion of a building structure or use of land or any other change of use of a building, structure, or land that creates additional dwelling units.”

The staff report contains the following information on the development’s compliance with county school mitigation requirements:

The 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 Everett School District No. 2, 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.

Exhibit 31 at 7.

8. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Low Density Residential (UMDR: 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 "...allows mostly detached housing developments on larger lot sizes. Implementing zones: R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600, and WFB. Except within the Lake Stevens, UGA, areas containing critical areas that are large in scope, with a high rank order value, and are complex in structure and function, the implementing zone shall be R-9,600.” (page LU-89 of the GPP, effective April 4, 2006).
9. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. *Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); see *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The county's regulations are a direct expression of the criteria expressed by case law.
3. Chapter 30.42A SCC 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.¹
4. In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan. RCW 36.70.040. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447 *A Motion Vacating and Remanding the Hearing Examiner's Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) Back to the Examiner to Supplement the Record at 3* (August 8, 2007), “The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.” The Examiner interprets this language, as well as the law applicable to rezones, to mean that **the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies.**
 5. This rezone is a request to up-zone a property in the Urban Low Density Residential (ULDR) Designation from R-9600 to R-7200 to allow 5 units on this site. Although it is clear that this request fits within the UDLR designation (which allows up to 6 units per acre), as stated above, the analysis of consistency must go well beyond the designation and identify how the project is

¹ This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.

consistent with the policies in the plan. In this particular case, the rezone provides the applicant with one additional lot than he would be entitled to under the present zoning.

6. The Land Use Element of the General Policy Plan (GPP) introduces the way in which Urban Growth Areas are planned for and how densities are to be determined:

The GMA requires that urban growth areas (UGAs) be designated through the county's plan. UGAs are to include areas and densities sufficient to permit the urban growth that is projected to occur in the county over the next twenty years. Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services that are provided by either public or private sources, and third in the remaining portions of the UGAs.

Planning for growth in this way accomplishes two GMA goals: 1) the efficient provision and utilization of public facilities and services, including public transportation; and 2) reduced conversion of undeveloped land into sprawling, low-density development.

General Policy Plan at LU-1.

This rezone application invokes consideration most directly of Goal LU 2 and its policies. The introduction to that Goal states:

To promote efficient utilization of land within unincorporated UGAs, the county will encourage well-designed, more pedestrian-friendly urban development patterns with a greater mix of uses and a more efficient, creative use of land. By improving land use efficiency in UGAs, several GMA objectives can be accomplished:

- reduced dependence on the automobile;
- increased support for public transportation;
- improved air quality;
- increased choice of housing types;
- improved efficiency of infrastructure provision and usage; and
- reduced consumption of rural lands.

To improve the efficiency of urban residential land utilization, planning within UGAs and development regulations will ensure that future residential subdivisions will achieve a minimum net density of 4 to 6 dwelling units per acre except in areas within or near critical areas that are large in scope, with a high rank order value, and are complex in structure and function. In addition, the county will provide for higher density and mixed use housing types around and within centers and along major transportation corridors; encourage infill and intensification of areas at existing residential densities; and also broaden the variety of housing types within both traditional single-family and multi-family neighborhoods while respecting the vitality and

character of established residential neighborhoods. A mix of housing types with a range of densities will be encouraged throughout UGAs, as long as they are carefully sited, well designed, and sensitively integrated into existing communities.

General Policy Plan at LU-15.

Goal LU-2 of the GPP requires that the County “[e]stablish development patterns that use urban land more efficiently”, although Objective LU 2.A qualifies that statement by requiring the County to “[i]ncrease residential densities within UGAs by concentrating and intensifying development in appropriate locations.” GPP at LU-16.

7. Goal and Objective LU-2 focus on establishing development patterns that use urban land more efficiently by concentrating and intensifying development at appropriate locations. (Objective LU-2.A). The Examiner finds the test of what is “appropriate” to rely on three general areas of inquiry, which are found in the policies of LU-2 and in HO 2A.1. They have to do with careful siting of the development to minimize impacts to environmentally sensitive areas and to urban infrastructure; to provide integration of the infill project into the neighborhood and nearby cities that may annex, and ensuring that design of the project itself does minimize impacts on the character of the residential neighborhood area. They are laid out in outline form below:

i. Is the development carefully sited?

- (a) Critical areas/shorelines.
 - (i) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
 - (ii) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (iii) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.²
- (b) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities? **(Policy LU 2.A.5)**
- (c) How will the development made possible by the requested rezone tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation? **(Page LU-15)**

ii. Is the rezone proposal/development sensitively integrated into the existing community? (See LU-15)

- (a) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a variety of housing types in neighborhoods? **(LU-15, Policy HO 2.B.1)**

² Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county’s GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

- (b) Does the rezone/development proposal help to provide a mix or variety of housing types, especially if the area is a medium density area? **(Policy LU 2.A.4, Policy HO 2.B.1)**
- (c) Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any, are in the record regarding the proposed rezone/development? **(See Policy I.C.2)**

iii. If known at the time of submittal of the rezone, is the development well designed? (See Policy HO 2.A.1, LU-15)

- (a) Even if density is at a higher level are efforts made to have the character fit into the existing community? If so, what is the character of the existing community and how will the development maintain it? **(See Policy HO 2.A.1, LU-15)**
- (b) How specifically will the building design integrate into the existing neighborhood? Are structures of a size, height, mass, and separation to be consistent with vicinity homes and the surrounding neighborhood? Describe in detail. Will the development be at the same elevation as the rest of the existing neighborhood? How will the elevation affect the perception of the development? Is there something that can be done to mitigate differences? **(Policy HO 2.A. 1, LU-15)**
- (c) If applicable, what other selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(See Policy HO 2.A.1)**
- (d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using features such as landscaping, fencing, setbacks, or other design features to soften or eliminate those impacts. **(LU-15)**
- (e) Will the development be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation? Has the opinion of both the County Fire Marshall and any local Fire District been placed in the record? **(LU-15)** (See also discussion of public health, safety and welfare criteria, below).
- (f) Is the public health, safety and welfare adequately provided for (examples are safe pedestrian access, safe place for children to wait for school bus, adequate off-street parking so that a fire truck can access development)? **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

8. Applying this test to the Salamonsen project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

- A. The area is already characterized by urban growth such that it has adequate existing public facilities and services to serve the development for the following types of facilities and services, as demonstrated below:

- i. Streets, roads and highways. The Examiner relies on Finding of Fact 6 in part to conclude that the development is adequately served by existing streets, roads and highways. There does not appear to be any major transportation issues or concurrency problems in the area. There appear to be no local circulation issues.
- ii. Sidewalks. The developer will be providing internal sidewalks as a part of the development proposal and along Seattle Hill Road adjacent to the development. School children will use these sidewalks to get to the school bus stop at Seattle Hill Road. **(Policy HO 2.A.4)**
- iii. Street and road lighting system. There are no street lights on Seattle Hill Road.
- iv. Traffic signals. It is unknown to the Examiner whether traffic signaling is adequate in the area.
- v. Water systems. Water will be provided by Sliver Lake Water District and the file contains a preliminary certificate of water availability. Exhibit 26.
- vi. Sanitary Sewer Systems. Sewer will be provided by Silver Lake Water District and the file contains a preliminary certificate of sewer availability. Exhibit 26.
- vii. Park and recreational facilities. As stated in Finding of Fact 8.B., the developer will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. *See* Snohomish County Parks Plan at page 41. This criteria, however, addresses existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the county. The Examiner can determine, based on a map located on the County Parks and Recreation Department website, that there are a number of county parks in the vicinity of the development, including Willis D. Tucker Park, Martha Lake Park, Meadowdale Park, McCollum Park, Centennial Trail, Flowing Lake Park, and others. The Parks Plan was not altogether clear that levels of service had been adopted for every type of park, although Objective CF 7.C of the GPP states, related to parks, “[m]onitor and maintain minimum LOS standards, as defined in the Comprehensive Park and Recreation Plan and the CIP, through adequate CIP funding.”
- viii. Storm and sanitary sewer disposal system: Stormwater disposal systems are provided by Snohomish County right-of-way on Seattle Hill Road, and the State of Washington through right-of-way on I-5.
- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Fire District 1 has made specific comments to the plan review, including requesting appropriate fire hydrants, access, and requirements for addressing of homes. Exhibit 25. The fire hydrant and access features have been provide and are shown on the preliminary plat sheets (Exhibit 11) and the civil plans (Exhibit 12A). Addressing requirements will be a component of building permit review.
- x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit 27.
- xi. Education: The site is served by the Everett School District. Exhibit 28.
- xii. Other services: The Examiner is not aware of any other services that are available that should be discussed in the decision.

B. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A.

The Examiner's conclusion relies on the following analysis:

i. The development is carefully sited.

- (a) There are no critical areas or shorelines on the site or within close proximity to the site. **(Policy LU 2.A.3)**³
- (b) The rezone or development is not proposed in an area that is within walking distance of transit access, but this policy applies more specifically to properties in the urban medium density residential designation. **(Policy LU 2.A.5)**
- (c) The development made possible by the requested rezone probably will not tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation, but this policy applies specifically to properties in the Urban Medium Density Residential designation. **(Policy LU 2.A.5)(Page LU-15)**

ii. The rezone proposal is adequately integrated into the neighborhood. (See LU-15)

- (a) Character of the Existing Neighborhood. The neighborhood is primarily comprised of single-family homes. There is a mix of zoning in the vicinity of the site, including R-7200, PRD-7200, and R-9600. In the immediate vicinity, there are older homes on large lots. The redevelopment of this site at a higher density will encourage a more efficient use of urban land. **(LU-15, Policy HO 2.B.1)**
- (b) Allowing for a Mix of Housing Types. The R-7200 zoning designation will allow for duplexes, mobile homes and single-family homes. **(Policy HO 2.B.1)**
- (c) City Comments. This area is adjacent to the City of Mill Creek. The City of Mill Creek provided comments (Exhibit 23) that requested that the development be designed to be consistent with the City's development standards, including:
 - Provide sidewalk on one side of the private road so that residences are connected to Seattle Hill Road.
 - Construct a sidewalk along the frontage of Seattle Hill Road.
 - The lid of the detention vault should be used as a sport court or other recreational facility. Alternatively, the detention system should be designed to be a more natural appearing pond.

Sidewalks are being provided for both the internal private road and along Seattle Hill Road, so the first two items have been addressed. The third item is likely moot. An early site design called for an open detention pond near the entrance of the development, which likely provoked the City's

³ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

request. Because the detention vault is now located under the private road, this is likely no longer an issue. (See Policy I.C.2)

- iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)
- (a) Density of Surrounding Neighborhood and How the Development Will Help Maintain Existing Character. The proposed density fits well into this neighborhood, which can be fairly characterized as a transitioning neighborhood. While there are a few pockets of rural/suburban type zoning, much has already converted to higher density urban zoning. This rezone is consistent with much of the area that has already converted to more urban zoning. (See Policy HO 2.A.1)
 - (b) Integration of Building Design into the Existing Neighborhood. The Examiner is not aware of the building design or how the design will fit into the neighborhood. As stated above, the character of the neighborhood overall is changing. Most of the new homes in the neighborhood are two-story and it is assumed the homes in this development will likely be the same. The development will be at the same elevation as the rest of the neighborhood, as the existing parcel is extremely flat. The elevation should not affect the perception of the development negatively in any way. (See Policy HO 2.A.1; LU-15)
 - (c) Other Selective and Innovative Land Use Measures Used to Preserve the Character of the Existing Neighborhood. The Examiner is not aware of any “selective and innovative land use measures” that will be used to preserve the character of the stable residential neighborhood. (See Policy HO 2.A.4) In this case, this policy is not applicable because the Examiner would not characterize this neighborhood as a “stable residential neighborhood”.
 - (d) Mitigation of Negative Impacts through Landscaping, Fencing and other Design Features. The developer will be providing some landscaping along the frontage on Seattle Hill Road, which will help mitigate any negative effect of higher density. Exhibit 12C. (Policy HO 2.A.1)
 - (e) Adequate Fire and Medical Emergency Access. The development appears to be designed to provide for adequate fire and medical emergency access. The proposed private road will provide a 28 foot pavement width, will provide a cul-de-sac radius of 30 feet, and provide a fire hydrant adjacent to the entrance road to the short plat. Exhibit 31 at 8. The opinion of the local Fire District appears in the record at Exhibit 25, as stated above, and provides guidance to PDS for requirements for the site plan review. (LU-15)
 - (f) Adequate Provision for Public Health, Safety and Welfare. The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. There appears to be adequate pedestrian access to Seattle Hill Road, a safe place for children to wait for a school bus, and adequate fire and medical emergency access has or will be provided as a condition of the development. (See LU-15) (See also discussion of public health, safety and welfare criteria, below).

The applicant has also provided an analysis of comprehensive plan policies and an adequate justification for supporting the rezone as implementing the comprehensive plan. *See* Exhibit 32. While this particular rezone has fairly minor impacts (the allowance of one additional building unit), the Examiner will always look at the salient factors from the comprehensive plan that support the rezone. As indicated in earlier decisions, the analysis needs to focus on the type of urban infrastructure capabilities, the availability of urban services, and whether, even in this lowest urban density designation, R-7200 zoning is appropriate in this location.

8. The Examiner concludes that the applicant has demonstrated that the rezone will implement the comprehensive plan.
9. The other criteria in SCC 30.42A.100 is whether the proposal bears a substantial relationship to the public health, safety, and welfare. *See* SCC 30.42A.100(2). Returning to Council Motion 07-447, the Council clarified the proper role of the Examiner in reviewing this criteria:

Although consistency with the Comprehensive Plan is a significant factor in determining whether a proposed rezone bears a substantial relationship to the public health, safety and welfare, in some cases, there may be other factors outside the Comprehensive Plan policies that may be relevant to that issue and which may be considered. If there are such factors apparent from the application documents or otherwise known to PDS, they must be identified and discussed both in the written PDS staff report and by the Examiner in his decision. The written PDS staff report and the Examiner's decision should specify if any of these other factors are related to the rezone or should be considered at the project level with the specific development proposal being made. PDS staff is not required to anticipate opposition or to consider factors or issues outside of the Comprehensive Plan or not required by the Snohomish County Code. However, this does not limit the Hearing Examiner's ability to consider testimony at the public hearing concerning whether the proposed rezone bears a substantial relationship to the public health, safety and welfare.

Motion 07-447 at 3.

The Examiner interprets this language to mean that most of the time, analysis of whether the rezone is consistent with the Comprehensive Plan should suffice for review of a rezone proposal because in most cases, analysis of the comprehensive plan policies is analysis of whether the proposal bears a substantial relationship to the public health, safety and welfare. However, the Examiner and PDS may use this second criteria to analyze other issues of concern that may be raised outside of the scope of the Comprehensive Plan.

10. In this case, the Examiner concludes there are no issues of concern that warrant analysis under SCC 30.42B.100(2). No issues of concern were identified in the PDS staff report (*See* Exhibit 30) and no one except the applicant and PDS staff testified at the hearing. The Examiner identified no issues of concern in reviewing the file.

11. Since this request involves rezoning only, any details or conditions which would normally appear as conditions of the development in the Examiner's decision will be issued as a part of the administrative plan approval by PDS.
12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
13. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The request for a Rezone from R-9600 to R-7200 for this property is granted.

Decision issued this 5th day of February, 2008.

Barbara. Dykes, 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, 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 **February 15, 2008**. 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 **FEBRUARY 29, 2008** 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 this case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine, Senior Planner

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.