

# REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: August 15, 2008

PLAT/PROJECT NAME: **MILL CREEK CAMPUS**

APPLICANT/  
LANDOWNER: North Sound Christian Schools

FILE NO.: 07-100911-000-00-SD

TYPE OF REQUEST: 30-lot subdivision with concurrent rezone from R-9,600 to R-7,200

DECISION (SUMMARY): **DENIED WITHOUT PREJUDICE**

## **BASIC INFORMATION**

LOCATION: 17000 – 6<sup>th</sup> Avenue W, Lynnwood (in Section 12, Township 27 North, Range 4 East, W.M., Snohomish County, Washington).

ACREAGE: 6.29                      LOTS: 30

Avg. Lot Area:	6,792.7 square feet	Gross Density:	4.76 du/ac
Smallest Lot Area:	4,656 square feet	Net Density:	5.95 du/ac
Lot Size Averaging:	7,337.5 square feet		

CURRENT ZONING: R-9,600 & R-7,200                      PROPOSED ZONING: R-7200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water:	Alderwood Water & Waste Water District
Sewer:	Alderwood Water & Waste Water District

SCHOOL DISTRICT: Edmonds School District

FIRE DISTRICT: NO. 1

PDS STAFF RECOMMENDATION: Approve rezone and preliminary plat with conditions

## INTRODUCTION

The applicant filed the Master Application on March 19, 2007. (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. Exhibit 102 (Affidavit of Mailing); Exhibit 103 (Affidavit of Notification by Publication); Exhibit 104 (Posting Verification).

A SEPA determination was made on October 29, 2007. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on February 5, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**NOTE:** The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

## 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. **Summary of Proposal:** The applicant requests a rezone of the northwest half (3.57 acres) of a 6.29 acre lot, from Residential-9,600 (R-9,600) to Residential-7,200 (R-7,200), and approval of a 30-lot subdivision utilizing the lot size averaging provisions of SCC 30.23.210. A private school is currently located on the property. All existing buildings are to be removed and the new lots developed with single-family homes. The project requests construction of a new public cul de sac road within the development, as well as construction of a new portion of public road connecting 172<sup>nd</sup> Street SW with 6<sup>th</sup> Avenue W. Also associated with the proposal is a stormwater management system incorporating an underground detention vault with open space provided over the vault. Water and sewer service is to be provided by the Alderwood Water and Wastewater District.
3. **Site Description:** The subject 6.29 acre site is located approximately ½ mile south of Martha Lake/164<sup>th</sup> Street SW and is developed with classroom buildings, a chapel, a covered play area, associated storage buildings and a landscaped parking lot. The site slopes down toward the east. There are no wetlands, streams or other critical areas on the property. Vegetation on the truncated triangular shaped parcel consists primarily of grass, with mature evergreen trees located along the west and north property lines and near the storage buildings. A portion of 170<sup>th</sup> Street SW, a cul de sac road within the adjacent plat of Manor Hideaway abuts the north side of the site. The southwest corner of the site abuts 172<sup>nd</sup> Street SW, currently a dead end road serving the residential plat of Echelbarger Properties Alderwood Mall Estates, built in the early 1990's. Sixth Avenue W abuts the northeast and southeast sides of the site (the road currently dead ends within the newly developed plat of Debra Ann Lane, aka Creekside).

4. Adjacent Zoning/Uses:

Location	Existing Use	Zoning
<b>Subject property</b>	<b>Private school</b>	<b>R-9,600 &amp; R-7,200</b>
<b>South of subject parcel</b>	<b>Single family residential</b>	<b>R-9,600</b>
<b>North of subject parcel</b>	<b>Single family residential</b>	<b>PRD 9,600</b>
<b>East of subject parcel)</b>	<b>Single Family Residential</b>	<b>R-9,600 &amp; R-7,200</b>
<b>West of subject parcel</b>	<b>Single Family Residential</b>	<b>R-9,600 &amp; R-7,200</b>

**B. Public Comment/Issues of Concern.**

Comments were received from a large number of citizens (see Exhibits 24-69), all but three of them objecting to the proposed road connection between 6<sup>th</sup> Avenue W and 172<sup>nd</sup> Street SW. Topics of concern can be summarized as follows:

Transportation/Pedestrian Safety/Quality of Life

- 6<sup>th</sup> Avenue W and 172<sup>nd</sup> Avenue SW are too narrow to handle any additional traffic, and the road connection would create a dangerous situation to residents/children living on those streets.
- The plat/road connection will create more traffic, not less, than the former school due to the fact that more people will use the proposed road connection. The traffic study is in error.
- The downhill grade of 172<sup>nd</sup> Street SW will promote excessive speeds through the neighborhood and lead to accidents.
- The intersection of Larch Way and 172<sup>nd</sup> Street SW is already dangerous for school children trying to cross to and from Martha Lake Elementary School.
- The road connection will create a shortcut from Mill Creek to Alderwood Mall.
- The road connection will create a shortcut from Larch Way to North Road.
- The road connection will create a shortcut to the new Lynnwood High School on North Road.
- The road connection will create a shortcut to the Wal-Mart on 164<sup>th</sup> Street SW and to the I-5/164<sup>th</sup> Street SW interchange.
- The project does not take into consideration impacts from the new Lynnwood High School or the expansion of Alderwood Mall.
- The county wants this road connection to avoid dealing with the traffic situation on 164<sup>th</sup> Street SW (which is “in arrears”).
- Residential neighborhoods should not be expected to absorb traffic intended for 164<sup>th</sup> Street SW.
- What traffic mitigation fees is the developer contributing to address the 164<sup>th</sup> Street traffic issues?
- County resources will be impacted because the county will need to install traffic flow controls, provide traffic enforcement and provide emergency response to accidents.
- The narrow roads are not wide enough for the construction trucks and equipment that will need to access the site. Construction vehicles will create unsafe conditions for neighborhood residents.
- We were told when we purchased our home that 6<sup>th</sup> Avenue West would remain a dead end street. [Note: comments submitted by residents of Creekside, aka Debra Ann Lane, located southeast of the proposed plat].

- The road connection will negatively impact the plat of Wood Trails [Note: Wood Trails is located south of the proposed subdivision, but will not connect to it].
- The road connection will lead to increased crime in the neighborhood (burglaries and vandalism).
- The new road connection will change the small/quiet character of the neighborhood, ruining the quality of life.
- Increased traffic will lead to a drop in my home's value.
- The road connection will increase noise. Our bedroom fronts the street and our sleep will be disturbed.
- The new road will be adjacent to my back yard. I need the developer to install a fence to protect my security.
- The county should start thinking of the people living in established residential areas, rather than the developers. If a new development has no good egress to a main road (e.g. Larch Way, 16<sup>th</sup> Street SW, North Road) maybe it shouldn't receive permits.
- Traffic calming devices should be made a condition of project approval.
- Why can't the proposed lots be accessed by the driveway that the private school used?
- Instead of the proposed road connection, 6<sup>th</sup> Avenue W could be extended westward to serve the proposed plat, but still end in a cul de sac.
- The new cul de sac road within the proposed plat could connect with 172<sup>nd</sup> Street SW and a new lot could be added where the connection with 6<sup>th</sup> Avenue W is currently proposed.
- A stop sign should be installed at the bottom of the hill on 172<sup>nd</sup> Street SW to prevent speeding and make the route less desirable to cut through traffic.
- Make 6<sup>th</sup> Avenue W wider, make it a 4 lane street or revise parking on it.
- In addition to proposed road connection, provide another road at north side of site which connects with 6<sup>th</sup> Avenue W to reduce traffic through Creekside (Debra Ann Lane).

#### SEPA/Public Notice/Zoning

- The SEPA documents are loaded with false information.
- The County should not force the private school to move.
- The postcard notice didn't provide adequate time to comment on the project.
- Local residents were not informed about the project [Note: comments were made by citizens living more than 500 feet away from subject property].

Exhibit 77. The PDS Staff Report responded to the concerns in its Staff Report in this manner:

[T]he Department of Public Works (DPW) supports the establishment of the proposed road connection because it will improve local traffic circulation and improve fire access. Developments to the east and west were required to extend road stubs for 6th Avenue W and 172<sup>nd</sup> Street SW to their respective property boundaries specifically to allow the through connection when the subject property developed. The proposed through connection is designed as a residential street for local access and circulation; with a 25 mph design speed, 28 foot road width between curbs and horizontal curve radii of 165 feet. DPW believes these design features will help to restrict through traffic to local circulation and result in reduced traffic volumes and operating speeds. The current school access to the site must be abandoned because it does not meet county Engineering Design and Development Standards (EDDS standards) with regards to centerline offset from 170<sup>th</sup> Street SW and 170<sup>th</sup> Place SW.

Also, in regards to the proposed road connection, the subject application has similar issues to that of another plat application, Vistante (file number 06-134220 SD), which was recently reviewed by the Snohomish County Council on appeal. On December 12, 2007, the Council unanimously approved Motion 07-739, reversing the Deputy Hearing Examiner's denial of the Vistante application because of DPW's requirement that the plat extend an existing dead end road, which would result in a through-connection between Larch Way and Meadow Road. The Council ruled that the road extension was required by EDDS and that the proposal was consistent with the Growth Management Act Comprehensive Plan, specifically Transportation Policies 1.C.7, 1.C.8 and 1.C.11.

The Council also found that residents of the neighborhood did not provide adequate factual support in the record to prove that the road extension would result in a significant increase in traffic on their road. Similarly, the citizens opposing the road connection required by DPW in the Mill Creek Campus application have not submitted any professional analysis countering either the traffic study prepared by Gibson Traffic Consultants or the memos by county traffic review staff.

Regarding the correspondence received by citizens residing in the new development of Creekside (aka Debra Ann Lane), located southeast of the proposed plat, reporting that they were told when they purchased their homes that there were no plans to extend 6<sup>th</sup> Avenue West in the future, it appears the developer of Creekside erected a 6-foot high wood fence in front of the road end/future road extension sign that would have alerted prospective buyers of the possibility of the road connection.

Correspondence from some of the residents living in the plat of Wood Trails (a portion of which, two lots, abuts the south property line of the proposed plat) appears to indicate that these neighbors are under the mistaken impression that traffic from the new development and/or new road connection will be entering their neighborhood. No access into Wood Trails is proposed. The applicant has agreed to install a fence along the north property line of Lot 24 of Wood Trails as was requested by the property owner.

The information in the entire project file was used in making the SEPA Determination. While it is acknowledged that the proposed development will impact the neighborhood, the impacts were not considered to be "significant or adverse." The county is not making the existing private school move. . . . .

The applicant also submitted a response to citizen comments for the file (see Exhibit 16A). The applicant states that the connection is required, that the "roads proposed for the plat and the existing 172<sup>nd</sup> Street SW and 6<sup>th</sup> Avenue W are designed and constructed to county standards for a non-arterial public road at 25 miles per hour." The applicant states that it cannot use its existing access because the property's current entrance for the school does not meet access separation distance requirements between the north property, 170<sup>th</sup> Street SW and the south property, 6<sup>th</sup> Avenue W (although this statement begs the question of why a new access could not be constructed onto 170<sup>th</sup> Street SW). The applicant also indicates that the proposed development will decrease the number of trips from the site, as opposed to the existing school, and there will not be significant impacts. Finally, the applicant concludes by saying the proposed connection will provide for greater public health safety and welfare by allowing faster police and fire response time.

**C. Findings of Fact Related to the Public Hearing and Evidence Submitted Thereafter Regarding Connectivity and Related Matters.**

The main issue in this case, which is obvious from the findings above, is the issue of connectivity from 6<sup>th</sup> Ave W to 172<sup>nd</sup> SW. In this section of the decision, the Examiner will make findings regarding the evidence submitted at the public hearing and thereafter on the issue of connectivity and related matters.

1. The staff report states:

It should be noted that the proposed through connection is designed as a residential street for local access and circulation; with a 25 mph design speed, 28 foot road width between curbs and horizontal curve radii of 165 feet. These design features will help to restrict through traffic to local circulation and result in reduced traffic volumes and operating speeds. The current school access to the site must be abandoned because it does not meet EDDS standards with regards to centerline offset from 170<sup>th</sup> Street SW and 170<sup>th</sup> Place SW. In the event that traffic calming measures are warranted for speed control, residents should voice their concerns to Dale Valliant, Snohomish County Public Works Traffic Investigator, at (425) 388-311 ext 7138.

2. At the hearing Owen Carter, the County Engineer, testified. He characterized the “requirement” of connectivity as the Council’s requirement, justified by the citation of a number of Transportation policies in the GPP including TR 1.C.4, 1.C.5, 1.C.7 and 1.C.11; the adoption of SCC chapter 30.66B, specifically 30.66B.420 and .430, and Council’s adoption/ratification of the EDDS, which in Mr. Carter’s estimation, requires connections, except when topographical or critical areas issues prevent them. See Exhibit 96 (submitted with testimony).

3. Mr. Mark Hanson, a homeowner in the vicinity, provided a power point presentation. Exhibit 87. A map is attached to his exhibit. He pointed out that:

- 164<sup>th</sup> and 196<sup>th</sup>/Filbert are the only roads that go through from the west to the Bothell-Everett Hwy
- Maple/178<sup>th</sup> is the only road between 164<sup>th</sup> and 196<sup>th</sup> /Filbert that crosses I-5/I-405
- 178<sup>th</sup> ends at Larch Way
- Larch Way and North Road are the only roads that connect 164<sup>th</sup> and Filbert from east of I-5/I-405 to the Bothell/Everett Hwy
- The new Lynnwood High School is currently under construction on North Road between 164<sup>th</sup> and Filbert
- The Mill Creek Campus and planned connection of 172<sup>nd</sup> will add a second connection from Larch Way to North Road between 164<sup>th</sup> and Filbert.
- There are a number of retail, professional, and residential (primarily apartments) traffic source/destinations along 164<sup>th</sup> between I-5 and North Road.
- There are additional destinations on 13<sup>th</sup> and Larch Way including Eldec, 3 churches, an elementary school, and numerous housing developments.
- A large retail center, Martha Lake Town Center, is currently under development at 16502 Larch Way, extending from 167<sup>th</sup> to 164<sup>th</sup>, file #07-100877-CG.
- The new Alderwood Middle School at 172<sup>nd</sup> and Larch Way is scheduled to be open by fall 2013.
- Some cars coming from west of I-5 can be expected to take Maple to Larch to 172<sup>nd</sup> to 6<sup>th</sup> to destinations on 164<sup>th</sup>. Cars taking the reverse path can also be expected.

- Some cars coming from west of I-5 can be expected to take 164<sup>th</sup> to 13<sup>th</sup> or Larch to 172<sup>nd</sup> to 170<sup>th</sup> to North Road. Taking the reverse path can also be expected.

Exhibit 87 at 3-4. Mr. Hanson stated that the road grade from 172<sup>nd</sup> St SW to 6<sup>th</sup> Ave W would be approximately 7.8%. He also stated that a development was going in along Larch Way immediately north of the development on 172<sup>nd</sup> Street SW terminus cul de sac. Mr. Hanson noted that no road stub was required in that development and wondered why there was no consistency in this road stub requirement. He finally requested that if the connection was approved, that traffic calming devices be installed prior to opening of the road.

4. Steven Hoyt, a citizen residing in the Debra Ann development, presented a compromise site plan that would allow two entrances to the plat, but would not allow the through connection. Exhibit 97. He believes the traffic study was tailored to match the results desired. He also mentioned the new town center going in at Larch Way and 164<sup>th</sup> St SW and stated that he believed it should have been included in the study. Cars in the Debra Ann development do park on both sides of the street and Mr. Hoyt requested that parking remain that way. He also requested that traffic calming devices be installed prior to opening of the road.

5. Bob Gregg, who lives at the corner of 172<sup>nd</sup> SW and Larch Way, testified that there is a school zone just south of 172<sup>nd</sup> SW along Larch Way to 178<sup>th</sup> SW for an elementary school. He has also submitted a number of emails to the record, summarized best in Exhibit 88.

6. Jeanne Moore, the principal of Martha Lake Elementary School on Larch Way just south of 172<sup>nd</sup> SW submitted an email objecting to the connection. The email states:

I understand the county is considering connecting 172<sup>nd</sup> Street through to 6<sup>th</sup> Avenue West. This would enable many residents to take a short cut (from the apartments and houses east of the school) through to Alderwood Mall and the Lynnwood area. These folks now have to use 164<sup>th</sup> and possibly other routes to the Mall.

This would greatly increase traffic in front of our school. We are already concerned that many of the high school students and staff will use the route directly in front of the school to take a short cut through Woods Trails to North Road to the new Lynnwood High School next fall.

The corner of 172<sup>nd</sup> and Larch Way is now a 4 way stop and our student safety patrols stand at that intersection to monitor our students as they walk home along Larch Way. At the very least I would hope your committee would plan to put a stop light at that intersection if the connection is approved.

Please consider the safety of the 600 students who attend Martha Lake Elementary when making the decision whether or not to extend 172<sup>nd</sup> Street from a quiet cul de sac to a through road for many vehicles to access. It seems that a development can be built without a through street to Larch Way.

Exhibit 94.

7. Dave Leonard is a neighbor who lives in the Wood Trails development, an existing development to the south along Larch Way where a connection was required previously from Larch Way along 175<sup>th</sup>/176<sup>th</sup> to North Road. He testified that his neighborhood is attempting to acquire traffic calming devices. He testified that the County does not allow traffic calming for speed per Dale Valliant (a county DPW employee). According to Mr. Leonard, Mr. Valliant has said, "Traffic calming is for volumes." Mr. Sage confirmed Mr. Leonard's understanding, indicating that the requirements for "traffic calming" are that to qualify, neighbors must be able to show a certain amount of ADT. In addition, they must show that the 85<sup>th</sup> percentile of speed is 10 miles over the posted speed, and 60% of the residents along the street have to sign a petition. Mr. Leonard testified that the Wood Trails Homeowner's Association has raised \$40,000 to pay for traffic calming devices.

Mr. Leonard pointed out that 172<sup>nd</sup> Street SW is a steep road with a 7.8% grade similar to the Wood Trails development, but grade is not considered in traffic studies. Further, in the Wood Trails development the homeowners have an email system and a crime watch system, and the crime problems in their development are always on the through street. Vandalism to cars and homes, speeding and unsafe walking conditions are always on the through street.

He also noted that the applicant for Mill Creek Campus had designed the development to allow very few of the lots in the development to bear the impact of through road. The existing developments had to bear the brunt of the impact; the Mill Creek Campus development has only five lots directly abutting the new through road, while the Echelberger Alderwood Mall Estates (172<sup>nd</sup> St SW) development has 10 lots, and the Debra Ann development (6<sup>th</sup> Ave W) has 17 lots on the new through road.

8. According to the Gibson Traffic Study dated March 10, 2008:

172<sup>nd</sup> Street SW has 40 foot of pavement (a boulevard section with 20 foot travel lanes) at the terminus with Larch Way and 28 feet of pavement and 5 foot sidewalks both sides (rolled curb) along the majority of the roadway i.e. 2 x 10 foot standard travel lanes exist the entire length.

Exhibit 106B. In the Debra Ann development, 6<sup>th</sup> Avenue W pavement varies from 24 to 36 feet in width depending on the frontage improvements. It apparently opens up to 36 feet in the last few feet after the intersection with 171 St. SW and moving northward to the intersection with 170<sup>th</sup> Place SW. *Id.*; See Exhibit 8 (Vicinity Map).

9. The Examiner requested that the applicant's traffic consultant do an additional study to determine the volume of traffic, specifically new development that would use this street, both in terms of the development itself and as a "cut-through", especially when the new high school opens. The Examiner specifically requested that the consultant examine new pipeline development in the neighborhood, and the effects of new development. See Exhibit 100.

10. The study is Exhibit 106B. They did put in 19 new units as "pipeline units"; however, they failed to include Martha Lake Town Center, a mixed use retail/housing project at Larch Way and 164<sup>th</sup> SW which was specifically identified by the citizens, and even projects developing within two blocks or so of the development. See Map 164<sup>th</sup> St SW Larch Way to North Road, attached to Exhibit 106B. Despite the fact that this connection will end up providing a "straight shot" from Larch Way to North Road down the new connection to 170<sup>th</sup> Place SW, allowing students attending the new Lynnwood High School a very convenient cut-through alternative, the study allocates only 6% of the high school traffic, or about 170 ADT, to the route.

11. Either study (Exhibit 84B or 106B) also does not account for traffic that will use the connection to other destinations, such as WalMart, the Martha Lake Town Center, and other new retail across from the Town Center. See Exhibit 87. In fact, the January 14, 2008 study completely discounts any usage of this road as a possible regional cut-through route. Exhibit 84B. (“Mill Creek Campus does provide for any additional regional connection east-west.”) In addition, a vacant parcel at the corner of 172<sup>nd</sup> and Larch Way, owned by the School District, is slated for a new middle school to be opened by the fall of 2013, but the study would not have to take that into account since it is not yet in the pipeline. It does not appear that the existing elementary school has been factored in as a source of cut-through traffic. The Examiner does not find the Traffic Study credible; it has painted an extremely overly optimistic picture of the potential traffic that does not take into account many of the possible sources of cut-through traffic brought to the attention of the engineers during the public hearing by the citizens. Only once the Examiner requested the consultants to actually consider some of the obvious causes of cut-through traffic did it incorporate them into the study, and even so, it greatly minimized the numbers and omitted other obvious causes.

12. Even without all of reasonable additions that may or should have been part of this transportation study, the March 10, 2008 traffic study determined that average ADT would be 1119. Exhibit 106B. Although the Examiner is convinced this number is artificially extremely low, given the mix of uses going on here, she will take this number as the “holy grail” number on which to examine the requirements for the road.

Under the EDDS, this ADT would put this road in a status called “Collector Non-Arterial”. A Collector Non-Arterial has 1000-3000 ADT and the EDDS requirements for those roads are:

- Two 10 foot travel lanes
- Two 8 foot parking lanes
- Total pavement width of 36 feet

Despite this requirement under the EDDS, the report goes on to state that although this is the requirement, it is really not the requirement and the road is only required to be 28 feet in width with parking allowed on both sides of the street:

The EDDS Section 3-02.B provides that for a residential non-arterial “typical traffic volumes are less than 1000 ADT,” and for a collector non-arterial, “traffic volumes typically range between 1000 and 3000 ADT.” It is important to note that these “typical” traffic volumes are not set as thresholds for defining a road classification. **In fact, as provided in the EDDS Deviation Criteria dated 1/30/2007 for “Road Classification Determination” it states that “NO DEVIATION IS REQUIRED from a project applicant to determine the traffic volume or a road classification. This process is an internal procedure of the Transportation/Drainage Engineering Section of PDS.”** Based on this document, it is reasonable to assume that the thresholds in EDDS Section 3-02 B are guidelines and not a hard threshold. It also should be noted that the Foreword for EDDS states that the standards are for “public and private construction of transportation-related facilities.” Based on this statement, the standards for EDDS seem to be more of a guideline for new roads and this is why it is the director of Public Works who determines, through the IRC process, if the existing roadways are capable of handling the additional traffic.

.....

The Director of Public Works makes the determination of road adequacy, per SCC 30.66B.420. A positive determination that the east-west link between 172<sup>nd</sup> Street SW and 6<sup>th</sup> Avenue W, as currently proposed, has the capacity to carry the additional trips from the proposed development/cut-through traffic and meet Snohomish County road standards was made when Snohomish County Public Works recommended conditioning the development to connect the existing stub roads. **The Public Works Director is also the final approval authority for any EDDS deviations, and has determined that an EDDS deviation is not required for determining road classifications based on daily volumes.**

Exhibit 106B at 6 (emphasis added). This is apparently the basis upon which the Department of Public Works determined that 28 feet of pavement width would be adequate, despite the contrary requirement in the EDDS.

13. Finally the Examiner specifically requested PDS/DPW to address the issue of traffic calming devices and who might pay for those devices, given the \$40,000 figure incurred by the Woods Creek Homeowner's Association for the connection required on 175<sup>th</sup>/176<sup>th</sup>, as testified to by Dave Leonard. The PDS Traffic memorandum received by the Examiner simply went over the traffic analysis; agreed with it, and despite acknowledging that the ADT was over that appropriate for a 28 foot road, found that no additional mitigation was required. See Exhibit 106C.

#### **D. Compliance with Codes, Policies and Regulations Related to Transportation.**

In this case, the Examiner will provide a comprehensive review of policies, development regulations, and administrative regulation related to transportation. Although the Examiner has in the past relied on staff to provide her with adequate evidence of compliance with necessary provisions related to transportation, it appears that a number of provisions within the comprehensive plan, the subdivision code, Title 30.66B, and the EDDS, are being ignored. While this decision relates specifically to connectivity, this same type of analysis must be completed for every type of transportation question in permit review.

##### **1. Prefatory Note: County Engineer's Authority Under State and Local Law**

In this decision, the Examiner asserts authority over decisions in the EDDS by virtue of authority vested in her by the Council in chapter 30.41A SCC, the subdivision code. Heretofore, the Examiner has relied on PDS Traffic, who asserts that the County Engineer has sole authority over the EDDS.

a. While the County Engineer has a number of statutory powers, Snohomish County is a home rule charter county, and as such, all powers of the county are vested in the County Council and it is up to the County Council through local legislation to vest those powers in local officials. The County Council has vested the following authority in the Director of the Department of Public Works and the County Engineer in Title 13 SCC, Roads and Bridges:

13.01.020 Powers of the director and the engineer.

(1) The director has overall authority for all matters relating to county roads and bridges.

- (2) The engineer shall have the power to:
- (a) Administer provisions of this title;
  - (b) Prepare and administer procedures implementing this title;
  - (c) Prepare and publish for public use a procedures manual or manuals covering this title.
  - (d) Close or restrict the usage of county roads and bridges for a definite period of time as provided for in Chapter 47.48 RCW.
  - (e) Administer any provisions delegated to the engineer under Title 30 SCC.

(3) The engineer hereby delegates to the director of planning and development services the authority to act in accordance with the powers of the engineer, as listed under [SCC 13.01.020\(2\)](#), only as they apply to issuance of permits under [chapter 13.60](#) SCC. In delegating such authority the engineer reserves the right of final decision regarding the provisions of [SCC 13.01.020\(2\)](#).

(4) With the concurrence of the director of planning and development services or his delegate, the director or the engineer may delegate any portion of the authority vested in the director, the department, or the engineer under this title or Title 30 SCC relating to development permit processing to the department of planning and development services, if the director or engineer determines, in his or her discretion, that the delegation will improve delivery of services in the development permitting process or serve the public health, safety, and welfare. In delegating such authority, the director of public works or engineer may reserve the right of final decision.

b. Under SCC 13.05.010, “[W]ork and materials installed in the existing or future right-of-way shall conform to the most current edition of the [EDDS].” Under SCC 13.05.020, the code requires that “[t]he [EDDS] shall govern all new construction and upgrading of transportation facilities, storm drainage facilities and utilities within county rights-of-way, whether occurring under permit or franchise, and other transportation related improvements mandated by Snohomish County land use codes.”

c. None of these references indicate that the County Engineer or the Public Works Director is to be the sole authority in ensuring that EDDS standards are met, particularly as they relate to subdivisions. Therefore, there does not appear to be a conflict within the code. The Examiner recognizes that the County Engineer has “all approval authority” under EDDS 1-01, but considers the SCC 30.41A.210 to trump that EDDS provision.

d. EDDS also contains a deviation process. Deviations are governed by Chapter 1-05 EDDS. (That section provides that the deviation request must be in writing, use the specified form, and provide supporting information demonstrating compliance with four criteria.) Chapter 1-05 provides that, “The Engineer is the final authority on all deviation requests.” Chapter 1-05 does not provide criteria for public notice, appeal or reconsideration of the deviation decision.

e. As will be seen later in this decision, the code has several areas where it contemplates specific modification criteria and specifies that modifications can only be done under the criteria specified by the code. One is in the subdivision code, chapter 30.41A. SCC (See [SCC 30.41A.200-215](#)). Where a modification is expressly limited under a code provision, the deviation process will not suffice to support the modification, as it does not meet the requirements of the code. Another is [SCC 30.66B.520](#), which allows the Engineer to adopt modification criteria for right of way width in the EDDS based on the

criteria in the code. There again, a deviation would not suffice to support a modification of that requirement. There may be other such instances, but any time a specific process is outlined in the code limiting modification of EDDS standards, the administrative deviation process will not be effective for allowing changes to the EDDS standards.

f. The authority to adopt the EDDS standards under Title 13 SCC is limited to the subjects addressed in Title 13 SCC. The Examiner believes that in general the document exceeds its authority by attempting to govern circulation, connections, and other matters that go beyond the scope of specifications for roads and bridges. See SCC 13.01.020(2)(c).

## 2. Comprehensive Plan

a. Because both 30.66B and the subdivision code link back to the policies in the comprehensive plan, the Examiner will first list the policies that apply to connectivity.

The GPP policies related to connectivity are the following:

### **1.C.3 Roadway standards shall be adopted that are compatible with other jurisdictions in Snohomish County.**

1.C.4 Local residential streets shall be designed that link neighborhoods and complementary land uses for efficient circulation and discourage high speed vehicular traffic.

1.C.5 Roadway networks shall be designed with direct routing and connections to avoid concentrating the burden of traffic flow on a few roadways.

1.C.7 Permanent cul de sacs, private access ways and private roads shall be approved only where road connectivity within and between adjacent neighborhoods has been established.

**1.C.9 Existing roadways shall be improved to meet adopted design standards in order to enhance the safety and mobility of pedestrians, transit users, bicyclists and motorized traffic as part of construction of frontage improvements** by developments and by the county as funding allows within the county's capital improvement program.

**1.C.10 Developments taking access from existing roadways shall be required to make offsite improvements** to improve them to at least minimum standards for vehicular access based upon such factors as the volume and other characteristics of existing and newly-generated traffic.

1.C.11 Access and circulation provisions shall be pursued that reduce traffic congestion and lessen the need for arterial capacity improvements and shall include, but are not limited to: (a) allowing for more than one travel route to residences and/or businesses to facilitate emergency vehicle access and circulation, (b) allowing non-motorized access to schools, activity centers and neighborhoods along alternative travel routes, and (c) allowing automobile access to schools, activity centers and neighborhoods along alternative travel routes.

1.C.12 The county shall require that development make access and/or circulation provisions for arterials designated by the comprehensive plan **and for needed local roadways** to include, but not be limited to: (a) dedication of right-of-way, (b) reservation of right-of-way, (c) design for potential way of access, (d) recording of easements, (e) location of public or private roads, (f) design and construction of public or private roads (including stub-roads), and/or (g) improvements to existing roads.

Emphasis added.

b. The Examiner reads from these policies that connections are favored and encouraged to create a network of efficient circulation that can offload arterials, but only when it can be done in a manner that meets existing design standards, handles resulting volumes, and ensures the safety of those along these routes. There is also more than one way to accomplish connectivity: some connections are motorized and some are non-motorized. With respect to road standards, they must be uniform so as to be compatible with other jurisdictions. This means that when connections are made, road standards for existing roads must be upgraded to meet the ADT. This is of great importance because of the GMA goal of smooth transition of governance in annexations. The Examiner recognizes that upgrading existing roads to these standards may not always be possible during the development process. That is where the choice of whether or not to make the through connection must be made, an issue that will be discussed later.

c. To create connections, the county must require development to either design new roads adequately or improve existing roads to meet these standards. The Examiner believes this step is sometimes missing in the County's current requirements for connections. In Mr. Carter's comments, he focused on policies TR 1.C.4, 1.C.5, 1.C.7, and 1.C.11. He neglected to mention TR 1.C.9, 1.C.10, or 1.C.12, all of which would require the applicant to provide improvements to the existing roadways accessing the development to allow them to handle the increased amount of traffic that is expected to result from the development. In addition, the DPW failed to adjust requirements even when the ADT clearly required the road standard to be adjusted to a different classification under the EDDS.

### 3. Requirements of Development Regulations

Road standards for development are found in the code in Chapter 30.66B SCC and Chapter 30.41A SCC when dealing specifically with subdivisions. The Examiner will provide the provisions of Chapter 30.66B SCC first.

#### **A. Chapter 30.66B SCC**

##### (1) Road Widths—SCC 30.66B.520

SCC 30.66B.520 governs right-of-way widths. Because its contents are so important to the holding in this case, it is set out in full below:

(1) Right-of-way shall be dedicated, established, or deeded to provide sufficient right-of-way widths to accommodate road improvement needs. The standard right-of-way widths based on road classification as defined in the EDDS are:

##### **Non-Arterials**

Access Streets-Urban Growth Area 50 feet

Access Roads-Rural Area 60 feet

**Sub collector Streets-Urban Growth Area 50 feet**

Sub collector Roads-Rural Area 60 feet  
**Collector Streets-Urban Growth Area 60 feet**  
Collector Roads-Rural Area 60 feet  
**Arterials**  
Collector Arterials-Urban Growth Area 70 feet  
Minor Collector-Rural Area 70 feet  
Minor Arterials-Urban Growth Area 80 feet  
Major Collector-Rural Area 80 feet  
Principal Arterials-Urban Growth Area 100 feet  
Principal or Minor Arterial Rural Area 100 feet

(2) Wider or narrower right-of-way widths than the standard may be required as determined by the county engineer, **based on one or more of the following criteria:**

- (a) Contents of the transportation element of the comprehensive plan, including but not limited to the provision of safe and efficient movement of pedestrians, equestrians and bicyclists with emphasis on transit facilities, schools, and parks and scenic areas;
- (b) The likelihood of maintenance of sidewalks, walkways, trails, bikeways or planters outside of public right-of-way;
- (c) An adopted design report, roadway design or right-of-way plan which calls for a different right-of-way width for the road under investigation;
- (d) Nature of the roadway and road involved, and its impact on neighboring properties including width, slopes, cuts, fills, vertical and horizontal curvature, sight distance at intersections, and the nature of the development and the land upon which it is situated;
- (e) EDDS requirements including but not limited to land alteration, site access, road types and geometrics, road elements and roadside features, drainage and utilities;
- (f) Any other factors affecting the health, safety, property and general welfare of the public, including users of the roads, sidewalks, walkways, trails or bikeways and the development; and
- (g) The provision of adequate public transit facilities.

(3) Right-of-way widths may not be reduced for arterials below the following minimums without express approval from the county council:

- (a) Collector Arterials-Urban Growth Area 60 feet;
- (b) Minor Collector-Rural Area 60 feet;
- (c) Minor Arterials-Urban Growth Area 70 feet;
- (d) Major Collector-Rural Area 70 feet;
- (e) Principal Arterials-Urban Growth Area 80 feet; and
- (f) Principal or Minor Arterial-Rural Area 80 feet.

**(4) The county engineer is authorized to include in the EDDS standard drawings depicting the standard right-of-way widths and modification criteria as contained within this chapter.**

Emphasis added.

a. This section carries out in the code the requirement of GPP Policy TR 1.C. 3 (which is also directed by CPP TR 4(b)). The staff report does not say exactly what right-of-way width is being required of the internal roads in this development, but it appears that the proposed through road is designed as a sub collector non arterial, for which the EDDS indicate that roads with 28 feet of pavement should have 51 to 55 feet of dedicated right-of-way. The preliminary plat map seems to indicate about 51 feet is being provided for the through road. See Exhibit 14.

This would not be inappropriate if the through road fit the definition of a sub collector non arterial. Unfortunately, it does not, as will be further discussed in the section on compliance with EDDS. It fits the definition of a collector, because even under an extremely minimized traffic study, a road with an ADT of 1199 is classified as a collector under the EDDS. EDDS 3-02. Under SCC 30.66B.520, the through road portion would require a 60-foot right of way.

b. While this code provision has given the county engineer limited discretion to modify those widths, modifications must be based on standards contained in the criteria in the code section. In other words, subsection (4) authorizes the County Engineer to include within EDDS some standards for modifying widths, based on subsection (2). It does not provide the county engineer or public works director with *carte blanche* to waive the standard without any criteria at all, as seems to be what the traffic study indicates when it states that even a deviation is not required.

(2) Access and transportation circulation improvements

Reference to the comprehensive plan policies are codified at SCC 30.66B.420. In SCC 30.66B.420(1), the code states:

(1) All developments will be required to:

- (a) **Provide for access and transportation circulation in accordance with the comprehensive plan and this chapter applicable to the particular development,**
- (b) Design and construct such access in accordance with the EDDS, and
- (c) **Improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.**

(2) Access to state highways and city streets shall be in accordance with the applicable state or city standards and requirements.

(3) All developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is not designed and constructed in accordance with the EDDS, will be required to improve such road to bring it into compliance with the EDDS when the director of public works determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements will be established by the director of public works in accordance with SCC 30.66B.430.

a. Both 172<sup>nd</sup> SW and 6<sup>th</sup> Avenue SW through the Debra Ann development provide access to the development. Although staff proposes to require the applicant to do some very limited frontage improvements outside the Debra Ann development on 6<sup>th</sup> Ave SW, DPW has required no offsite improvements to the existing roads that access the developments, despite the fact that the volumes of traffic will go from the tiny amount in the present small cul de sacs (which in the Debra Ann development apparently now only have 24 foot pavement width in places) to at least 1119 ADT (by an extremely low estimate). The Examiner reads the code and the comprehensive plan to require such improvements. As indicated in SCC 30.66B. 420(3), SCC 30.66B.430 specifically governs the extent of improvements:

(1) The extent of frontage improvements, offsite road improvements, or access and transportation circulation improvements necessary to meet the requirements of this chapter and Title 13 SCC will be established by the director of public works. The developer may be responsible for preparing any aspect of engineering design or investigation necessary to establish the extent of improvements if the director of public works does not have the design or investigation programmed or under way consistent with the development's schedule. The traffic study shall contain analysis of the extent of

any improvements determined to be necessary by the director of public works.

(2) Design of improvements shall be in accordance with the EDDS. Where an interim or partial improvement is implemented through SCC 30.66B.440, the improvement design shall be compatible with the adopted standard.

(3) In determining improvements required, the director of public works will consider, with other relevant factors, the following:

- (a) Extent of the development proposed;
- (b) Priority of improvements to involved county roads in the county's six-year transportation improvement plan;
- (c) Condition of existing transportation facilities in comparison to adopted standards;
- (d) Existing and projected land uses and development densities;
- (e) Current and projected levels of service on the affected road system;
- (f) Availability of public transit;
- (g) Any traffic study submitted;
- (h) Availability of a specific improvement program;
- (i) The number of dwelling units currently using the road system that must be improved and projected to use the road system after full occupancy of the development;
- (j) The needs of low-income persons for decent, affordable, low-cost housing;
- (k) Transportation system or demand management measures proposed by the developer;
- (l) The need for pedestrian and bicycle facilities;
- (m) Continuity with existing and proposed improvements;
- (n) Development standards of adjacent cities;
- (o) The need for safety improvements for school children; and
- (p) The types, sizes and performance of vehicles generated by the development, including but not limited to large trucks.

b. Here again, while the director has the final say on the extent of the improvements, he/she does not have unfettered discretion to simply change the standards, just as there is no unfettered discretion to simply change the road widths. In determining whether or not to require offsite improvements to handle the resulting new volumes of traffic on these small cul de sac roads, the DPW director should have considered all of these items. There is nothing in the record indicating he considered any of these items. The staff report simply states that "no offsite improvements are required" with no basis for the finding addressed at all. Exhibit 77. This does not meet the requirements of SCC 30.66B.430. Offsite improvements such as those that might be required here are vital to building and maintaining a workable local transportation infrastructure.

c. The same can be said for appropriate circulation improvements. Those will be addressed in the next section regarding the provisions of the subdivision code.

## **B. The Subdivision Code**

The subdivision code takes a different tack at the issue of roads. It really looks at how well the development fits into the system and relies on the Hearing Examiner to assure that the public health, safety and welfare are assured in approval of the development.

(1) SCC 30.41A.200 states that:

The public use and interest require compliance with the standards set out in this chapter unless a modification is specifically allowed through the preliminary

approval process. Modifications may be granted only where explicitly provided by specific code authority.

(2) SCC 30.41A. 210 is the main governing code provision regarding roads for subdivisions. It states:

30.41A.210 Design standards - roads.

**(1) All subdivisions shall be served by an open, constructed and maintained public road to which the road system within the subdivision must connect, except as provided in SCC 30.41A.210(2), (3), and (15). All subdivisions must meet applicable requirements of chapters 30.24 and 30.66B SCC.**

. . .

**(3) All subdivision roads shall be dedicated public roads designed and constructed in conformance with the EDDS, except that**

(a) Roads within subdivisions where all lots are five acres in size or larger, or 1/128th of a section or larger when described as a fraction of a section, may be public roads or private roads;

(b) Private roads may be permitted as part of a planned residential development approved pursuant to chapter 30.42B SCC; and

(c) Private roads may be permitted as part of a rural cluster subdivision where specifically approved by the county engineer.

**(4) All roads shall be designed and constructed in accordance with the EDDS. Additional right-of-way or easement width shall be provided if necessitated by cut or fill slopes.**

**(5) The overall road network and access needs of lands in the area of the subdivision shall be considered in determining road location within the subdivision.**

(6) Where a public road right-of-way extending to a boundary property line is not needed to provide improved legal access to the abutting lots, then the road to the boundary need not be initially constructed. The right-of-way must be deeded, dedicated, or reserved and be capable of being constructed to the minimum required standards at a future date.

(7) Where deeding or dedication is not required based on the impacts of the proposed development, but when right-of-way is necessary for future expansion of the public road system, the developer may be required to reserve the area needed for such right-of-way expansion. The area reserved may be donated to the county or will be purchased by the county as part of the future road project. Building setbacks and all other zoning code requirements will be established with respect to the reservation line.

(8) Utilities located within the road right-of-way shall be placed in accordance with the specifications of the EDDS unless waiver is granted by the county engineer.

(9) Utility easements meeting the standards of all involved utilities shall be established as part of the final plat. Prior to installation of utilities, the developer shall receive approval from the involved utility district as to the acceptability of such location and minimum standards for installation.

(10) Stop signs constructed to the department of public works' standards shall be installed as required by the department of public works.

(11) Lots shall generally be designed to have a minimum of individual accesses on the public road serving the property.

(12) Sidewalks and/or walkways shall be provided in accordance with the EDDS. Where pedestrian walkways are required, modifications to the EDDS may be considered by the department of public works to allow pedestrian walkways in buffers and/or open

space, adjacent to public or private road rights-of-way, where consistent with the public health, safety, and welfare and subject to the provision of a private maintenance agreement. Applicants are encouraged to propose such modifications as are appropriate for their specific circumstances.

(13) Public road signs shall be as specified by the department of public works.

(14) A developer proposing landscaped areas within county rights-of-way shall submit a landscape design plan to the department for approval. The landscape design plan shall be reviewed by the department to ensure that fire apparatus access and sight distance are not impeded by planned landscaping within county right-of-way. If approved, the final plat for such subdivision shall contain a covenant that such areas shall be maintained by the developer and his successor and may be reduced or eliminated if deemed necessary for or detrimental to county road purposes and/or fire apparatus access.

(15) Access to the boundary of a rural cluster subdivision by a private road may be permitted in accordance with the EDDS and where specifically approved by the county engineer.

(3) Modifications to these standards can only be made under SCC 30.41A.215, which states:

(1) An applicant may seek modification of the road design standards set forth in SCC 30.41A.210 where it appears that there exist extraordinary conditions of topography, access, location, shape, size, drainage, or other physical features of the site or other adjacent development. A modification request and approval shall not be required for private roads in a planned residential development preliminary subdivision.

**Modifications of other requirements may not be applied for or granted unless specifically allowed by this code.**

(2) Any preliminary subdivision that includes a request for one or more modifications of the road design standards shall be accompanied by a statement setting forth in detail the reasons and justification for the request. **The department shall not process any preliminary subdivision application not meeting the road design standard requirements unless a modification has been concurrently requested.**

(3) The hearing examiner shall consider a modification request concurrently with the preliminary subdivision to which it applies. **The hearing examiner shall act on all requested modifications simultaneously with action upon the preliminary subdivision and shall detail his findings with respect to the requested modifications.** At no time shall the hearing examiner action on a modification be final unless accompanied by the action on the preliminary subdivision or vice versa.

(4) No modification shall be granted which would have the effect of granting a special privilege not shared by other property in the same vicinity. **The hearing examiner may only grant a modification if all of the following conditions are met:**

(a) There are exceptional or extraordinary circumstances or conditions which apply to the land referred to in the application which do not apply generally to lands in the vicinity. These include, but are not limited to, size, shape, topography, location, or surroundings;

(b) The granting of the modification is necessary for the preservation and enjoyment of substantial property rights of the applicant; and

(c) The granting of the modification will not, under the circumstances of the particular case, affect adversely the health or safety of persons residing or working in the neighborhood of the property referred to in the application and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood or adversely affect the comprehensive plan.

Emphasis added.

(4) Apparently, PDS has determined that this section of the code is no longer applicable, because the Examiner has yet to see any modification request, although she has seen dozens of deviations attached to subdivision requests. In fact, DPW has gotten to the point where it doesn't even require deviations to change the EDDS requirements. See Exhibit 106B.

### **C. Conformance with the EDDS**

The subdivision code requires the Examiner to assure that all roads in the subdivision are designed and constructed in conformance with the EDDS. SCC 30.41A.210.

#### **(1) Roadway Classifications.**

EDDS 3-02 states:

Non-arterial roads, providing for movement to and from abutting land uses, have historically been classified as collectors, subcollectors and access roads. These classifications have been revised by Snohomish County Tomorrow to facilitate UGA coordination with the cities. Specifically, subcollectors and access roads in urban areas are now known as "residentials".

#### **1) Collector (Rural and Urban)**

**Collectors promote the flow of vehicles, bicycles and pedestrians from arterial roads to lower-order roads. Secondary functions are to serve abutting land uses and accommodate public transit. Traffic volumes typically range between 1000 to 3000 ADT.**

#### **2) Subcollector (Rural) / Residential (Urban)**

Subcollectors and Residentials convey traffic to collectors. Residentials provide primary pedestrian and bicycle circulation within a neighborhood to residential lots and may carry some through traffic. Typical traffic volumes are less than 1000 ADT.

(Emphasis added). The EDDS references Snohomish County Tomorrow and UGA coordination with the cities. In fact, this is an important theme picked up by both the comprehensive plan and the comprehensive planning policies. TR 1.C.3 states that: "Roadway standards shall be adopted that are compatible with other jurisdictions in Snohomish County." The Countywide Planning Policies spells out a clear mandate:

- TR-4 Provide transportation facilities and services that support the land use elements of the county and cities' comprehensive plans, **particularly roadway capacities together with public transportation services appropriate to the designated land use types and intensities.**
- a. **Maintain existing arterials and neighborhood streets in order to promote their safe and efficient use.**
  - b. **Allow for a network of interconnected roadways based on a consistent classification system and sets of design standards.**
  - c. The PSRC, county and cities mutually agree to use land use projections based on local comprehensive plans to identify and plan for adequate roadway, pedestrian, bicycle and transit services to meet travel needs.

- d. The county and cities mutually agree to review land use designations where roadway capacity and/or transit service capacity cannot adequately serve or expect to achieve concurrency for development allowed under the designation.
- e. Adequate access to and circulation for public service and public transportation vehicles will be part of the planning for comprehensive plan land use designations and subsequent development.

Emphasis added. Based on the requirements of the code that all roads be designed in accordance with EDDs, two requirements are evident: 1) roads within the subdivision must be classified according to the amount of capacity they are intended to serve, now and with pipeline development, and 2) must be sized accordingly, giving thought to the purposes for which they will be used. For example, as in this case, the road will become a collector (nonarterial), and the purpose of the road in the roadway network is to promote the flow of vehicles, pedestrians, and bicycles from arterial roads to lower-order roads. A secondary function is to serve abutting land use and public transit. EDDS 3-02. The EDDS standard for such road is 36 feet, with two-10 foot travel lanes, two-eight foot parking lanes and presumably eight feet for curb, gutter, and sidewalk on either side.

(2) Road Layout and Design.

Mr. Carter has testified that a road connection is required by the EDDS, specifically by EDDS 3-01(B)(6). That provision states:

A road connection shall be made to any road stub on an adjacent parcel that has been constructed to the shared boundary. This requirement may be waived by deviation where it can be shown that topography, critical areas or other factors make the connection impractical. However a road connection shall be provided elsewhere to achieve the 800-foot (urban)/1320-foot (rural) road length criteria in Section 3-01.B.2 above.

However, the Section 3-01(B)(4) of the EDDS requires the following:

A road serving more than 250 ADT shall be connected in at least two locations with another road or roads **that meet the applicable standard(s) for the resulting traffic volume.**

In addition, Mr. Carter cited to the general reasons for good road circulation contained in 3-01(A) of the EDDS, which include:

- Operation of the arterial road system is improved by dispersing local traffic onto multiple roads and access points;
- Response time for emergency services is reduced;
- Time and mileage traveled by individuals and service providers, including school bus transportation, mail delivery, utilities, etc. is reduced; and
- Use of transit systems, and pedestrian and bicycle facilities, is promoted.

Other sections of note include Section 3-01(B)(1) which requires:

Road systems internal to developments shall be designed to promote the convenient circulation of traffic without reliance on the arterial system. **Circulation shall be provided in a manner, where possible, that will allow subsequent developments to meet these standards.**

(Emphasis added). In addition, Section 3-01(B)(2) requires:

Road systems shall be designed with intersecting roads so that the maximum distance between intersections (measured from centerline to centerline), or between an intersection and a road end, does not exceed 800 feet in urban areas or 1320 feet in rural areas.

**D. Conclusions of Law Regarding Compliance with Codes and Policies Related to Connectivity**

1. The department “waived” the EDDS road classification standard without apparently going through any type of a waiver process. The “waiver” of standard in that case was ultra vires or without authority, according to SCC 30.41A.200 and .210. SCC 30.41A.200 states that:

The public use and interest require compliance with the standards set out in this chapter unless a modification is specifically allowed through the preliminary approval process. Modifications may be granted only where explicitly provided by specific code authority.

SCC. 30.41A. 210(3) requires that “[a]ll subdivision roads shall be dedicated public roads designed and constructed in conformance with the EDDS”. Modifications for those standards are specifically governed by SCC 30.41A.215 and may be obtained only for “extraordinary conditions of topography, access, location, shape, size, drainage, or other physical features of the site or other adjacent development.” SCC 30.41A.215(1). In addition, the DPW apparently ignored the requirements the EDDS requirement 3-01(B)(4) requiring that a road serving more than 250 ADT be connected in at least two locations with another road or roads that meet the applicable standard for the resulting traffic volume. DPW did not require any offsite improvements to allow the existing roads to meet the requirement, nor did it follow the requirements of SCC 30.66B.420 and .430 in making that determination.

2. The department also apparently waived the right of way width requirement of SCC 30.66B.520 in violation of SCC 30.66B.520(2). There is no evidence in the record suggesting the County Engineer reviewed these criteria or revised the width in accordance with these standards anywhere in the record.

3. The Examiner has been very troubled by the County Engineer’s willingness to simply change the standards to fit the particular desired result, even though it appears to the Examiner that the EDDS require something else. After digging through the comprehensive plan and the county code, it becomes apparent that the issue the Examiner has repeatedly raised with DPW is well founded. The code and the comprehensive plan make clear that there is to be a consistent network of roadways throughout the county, from jurisdiction to jurisdiction, founded on a consistent set of definitions of road classifications. That commitment is important to building a good system of roadway connections. The subdivision code reinforces this by requiring that all roads be built to these uniform standards with modifications limited to extraordinary circumstances having to do with physical features of the site. Similarly, chapter 30.66B SCC requires developments to provide access and transportation circulation in accordance with the comprehensive plan, chapter 30.66B itself, and the EDDS standards. When the code states that the development must be in conformance with the EDDS standards, the Examiner does not believe that the Council intended to grant the County Engineer or the Public Works Director unlimited discretion to simply waive the standard. In fact, under the subdivision code, the county engineer may not waive the road classification without going through the process established in SCC 30.41A.215.

4. PDS and DPW have cited to the “Vistante” case, Motion 07-739, A MOTION REVERSING THE HEARING EXAMINER’S DENIAL AND APPROVING THE APPLICATION FOR PHOENIX DEVELOPMENT INC.’S VISTANTE PLAT SUBDIVISION, WITH CONDITIONS, FILE 06-134220” as

support for the connection in this case. The Examiner has thoroughly reviewed the Council's decision and the Deputy Examiner's decision in that case. In that case, the Deputy Examiner found that with the opening of the connection, and the record did not demonstrate appropriate provision for the public health, safety, and general welfare. Specifically, he found that the applicant had not demonstrated that the existing community of Lakeview Manor had transportation infrastructure capable of handling the anticipated ADT on the through street. See Motion 07-739 at 3.

The difference there, however, was that there was no allegation before the Council that the development did not meet the comprehensive plan, the code or the EDDS. The Deputy Examiner simply relied on the public health, safety and welfare standard of the subdivision statute and did not indicate if there were any other issues under the code. That standard alone was known by a previous examiner as the "motherhood and apple pie" standard and known by this Examiner from law school days as the orthodox quartet (when accompanied by morals) – it is a general police power standard that is at the basis of the power of zoning in general. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). It is difficult to conclude without more specific authority that a subdivision must be denied on that basis alone. The Council concluded that the connection was required by the EDDS and was consistent with the comprehensive plan. The Council also concluded, without further information, that the proposal was consistent with the EDDS.

Here, the record is much different. Although the facts may appear somewhat similar in that the ADT is the same, the Examiner has reviewed the record and determined that the road classifications have been conducted improperly; the right-of-way width does not meet code requirements, and any modification of those standards too do not meet code requirements. Although the connectivity requirement does exist in the EDDS, there are a number of other requirements that exist along side it that have not been met. In addition, the traffic study in this case has specifically been found to be not credible for reasons stated by the Examiner on the record. Therefore, this case is distinguishable from Motion 07-739 in many ways.

5. Roadway A proposed in the subdivision is 28 feet of pavement with cars parked along either side. Under the EDDS this road is a "Residential" or "Subcollector". This designation is inadequate for the proposed ADT, which even by the extremely low estimate, well exceeds the 1000 mark, and will undoubtedly far surpass that in coming years. The Examiner is not against connections but believes if the County Engineer really believes the connection must be put through, there needs to be good planning associated with it, truth in advertising to the neighbors, and adherence to the county policies, codes and regulations. The Examiner understands that the Engineer thinks that a 28-foot road is better, but that is not what the standards require. If the County Engineer wants to present a modification, it needs to be part of the subdivision process through SCC 30.41A.215. Or perhaps the standards for the entire county need to be revisited through Snohomish County Tomorrow. But the County Engineer cannot simply change them because he is the County Engineer.

6. The argument keeps coming up that even with the 28-foot wide road, there will be two-10 foot traveling lanes, so it makes no difference whether the road is 36 feet in width or 28 feet in width. But Mr. Carter's argument is that with the 28-foot wide road and cars parked on either side, only one car can pass, so cut throughs will be discouraged and it will slow people down. Therefore when cars are parked on both sides of the street, as is intended, there are not two-10 foot travel lanes. In addition, the EDDS and the code require this road to be 36 feet in width. As stated in the EDDS, the purpose of this road is "to promote the flow of vehicles, bicycles and pedestrians from arterials to lower class roads." These roads should also be prepared to accommodate public transit. That cannot be done on a 28 foot road with cars parked on either side.

7. It seems the County is at cross purposes here. On one hand, the Engineer wants better circulation, on the other hand, he wants to discourage use of the cut through route. If there is only one

travel lane, the opening of the through road with that amount of ADT seems like a difficult situation. Particularly with cars parked on either side of the street, kids, toys, and dogs are liable to come out between cars and easily cause an accident. If the purpose of these connecting roads is to provide for better circulation, it seems that undersizing them for the ADT and making them harder to maneuver for delivery vehicles, emergency vehicles and public transit in particular will not advance that goal. The long-term goal is to improve circulation, not to hinder it.

8. Mr. Leonard represented a neighborhood who already were experience the effects of a cut-through connection. The Examiner found it compelling that Mr. Leonard, in the situation of trying to raise upwards of \$40,000 to install speed control devices for his neighborhood's cut through road, was testifying to try to convince the County not to make another connection several blocks down affecting his neighbors, even though it might be in his own neighborhood's best interest. That is the depth of the pain these citizens are feeling over these road connections. At the very least, it is inequitable to require homeowners to bear the cost of traffic calming devices. These costs should be paid for by the applicant(s) of the involved developments.

9. In addition, playing result-oriented games with ADT is a frustrating exercise for everyone. The traffic studies submitted in this case are not credible because the original study denied any regional use of the proposed through road. Exhibit 84B. The supplemental study (106B) omits all but extremely localized traffic, claiming there will be no cut-through traffic to Alderwood Mall, no cut-through traffic to other retail shopping such as WalMart and the new Martha Lake Town Center and other associated retail, and apparently no cut-through traffic to the existing elementary school. The consultants cannot hide behind the cloak of being traffic experts and omit the obvious to try to obtain better results for the client. Moreover, the study only allocates six percent of the new Lynnwood High School traffic to this road, and only allows that because the Examiner required them to include it. It seems to the Examiner that most people stuck in Level F traffic traveling eastbound on 164 St SW attempting to get to North Road or other points east would certainly opt to turn off on Larch Way and take 172<sup>nd</sup> rather than waiting on 164<sup>th</sup> SW. That after all, is part of the idea—to relieve the arterial roadways. See EDDS 3-01A; GPP Policy TR 1.C.5.

10. These connections need to be built to accommodate this traffic, including the public transit that should be planned to help ease this congestion, as the EDDS indicates. That is likely why it calls for the 36-foot standard road rather than the 28 foot. The Examiner concludes that Roadway A as presented in this preliminary plat fails to meet the standards required by the EDDS, and that the applicant has failed to request a modification that would justify a reduction of the standard. Furthermore, the applicant has failed to propose dedication of adequate right-of-way width as required by SCC 30.66B.520, which requires 60 feet. Again, while the county engineer has the discretion to narrow the width, it must be based on criteria indicated in SCC 30.66B.520(2). The engineer has not identified any modification criteria in the EDDS that address SCC 30.66B.520(2).

11. The failure to provide for any offsite improvements without providing any analysis as required by the code is also in error under SCC 30.66B.430. Furthermore, it cannot be approved as it is a violation of EDDS. EDDS requires that:

A road serving more than 250 ADT shall be connected in at least two locations with another road or roads **that meet the applicable standard(s) for the resulting traffic volume.**

EDDS 3-01(B)(4)(emphasis added). While the applicant may argue that widening the existing subdivision roads would be very difficult, there may be other alternatives. First, the 172<sup>nd</sup> Street SW extension may have more existing right-of-way, although it is difficult to tell from the Assessor's map. Second, the proposed subdivision could be (and probably should be under the EDDS) redesigned to

eliminate the proposed cul de sac and put a through road to 170<sup>th</sup> Street SW. The entire internal road could be built to EDDS standards and 170<sup>th</sup> Street SW could be improved to be 36 feet wide from where the subdivision street joins until street end. There is apparently a question about whether the intersection with 170<sup>th</sup> Place SW could be workable, but Mr. Sage seemed to think the difficulties could be overcome. Testimony of Tom Sage, February 5, 2008.

The Examiner realizes that offsite improvements may be too expensive in many cases to require under SCC 30.66B.430 a complete upgrade of the existing roads to accommodate the resulting volume of traffic. However, a couple of principles fall into play here: 1) when possible, the applicant could and should be required to accommodate more of the road on the subject parcel, lessening the cost dramatically. In this case, it would eliminate the impact to seventeen lots and presumably the bulk of the offsite improvements; 2) there should always be a recognition, even in cul de sac developments, when a road stub goes in the road should be sized for anticipated through traffic development, not for cul de sac development. In this case, the Debra Ann development was approved quite recently with a road that varied from 24 to 36 feet in size, according to Exhibit 106B. It did anticipate the through road, since a stub was put in the development. But the road was not sized adequately to handle the traffic. While it could be argued that it would have been difficult to know the size of street necessary, the Examiner doesn't think it would take a lot of expertise to realize as one of two east-west connections between Larch Way and North Road south of 164<sup>th</sup> Street SW between I-5 and Mill Creek, at least a 36 foot wide road would be necessary. In addition, it does appear from the language of the comprehensive plan, code, and EDDS, that as a first order of business, the County should require offsite improvements to the extent possible to upgrade roads to provide the local circulation network envisioned by the Comprehensive Plan. It could have gone through the modification process of SCC 30.66B.520 and a wide road would have given clear notice to prospective buyers that a through road was contemplated.

The question becomes when these offsite improvements cannot be not required, should these connections be required? That becomes a question of conflicting policy and engineering judgment. As the Examiner understands it, there are engineering mechanisms that can reduce ADT, such as traffic calming devices. See Exhibit 106B at 7 (speed humps can induce a reduction of ADT of 14 to 30%). In the subdivision process, if the County Engineer still thinks a connection should be required in a situation like this one, where the road width is inadequate to handle the ADT, he/she would have to request a modification from the Hearing Examiner of EDDS 3-01(4). Or conversely, if the County Engineer thinks a connection cannot be accomplished because of the inability of surrounding roads to handle the resulting ADT, the County Engineer must request a modification from the Hearing Examiner based on EDDS 3-01(6). The Examiner will need the considered analysis of the County Engineer and PDS Traffic Analysts to make that judgment under SCC 30.41A.215. Even in an application that is not a subdivision, the County Engineer should provide a considered analysis under the code, as the right of way width analysis must meet the requirements of SCC 30.66B.520.

12. The plat must also be redesigned because from the Examiner's review of the plat map, it appears that the cul de sac street is about 800 feet long, the maximum length for a urban road without a connection. It seems ironic with all this discussion of connections that this development would be allowed this large of a cul de sac. Sections 3-01(B)(1) and 3-01(B)(2) clearly favor a design that would connect the road through to 170<sup>th</sup> Street SW, regardless of whether the connection between 6<sup>th</sup> W and 172<sup>nd</sup> Street SW is ultimately made.

13. As Mr. Leonard pointed out in his testimony, there is also an issue of equity here. The applicant proposes to load virtually all of the through traffic into the existing subdivisions, while its own subdivision is conveniently proposed as a large cul de sac, with Roadway A at the extreme south end with only 5 lots facing it. This cul de sac appears to be extremely long in length, when it could easily connect through to 170<sup>th</sup> Street SW. A connection would provide a much better circulation pattern,

allow better emergency access for the cul de sac residents, and could potentially allow the applicants not to have to do so many offsite improvements.

14. Offsite improvements would not have been necessary if the roads in the Debra Ann development had been adequately sized in the first place. The Debra Ann development is quite a recent development, and given the amount of development and ADT on 164<sup>th</sup> Street SW, the DPW should have foreseen the need for a larger road to connect through to Larch Way and planned accordingly. The factors in SCC 30.66B.430(3) contemplate that the DPW Director contemplate such things as a part of his/her analysis of circulation and access improvements, which would include road stubs and internal roads.

15. This subdivision application should be denied with prejudice to allow the applicant to resubmit with changes in conformance with this decision. The applicant has a number of options, which would have to be evaluated for compliance with the comprehensive plan, development regulations and the EDDS, including but not limited to:

- Resubmit a plan that does not propose through connectivity, but does provide a connection back to 170<sup>th</sup> Street SW (similar to Mr. Hoyt's proposal—Exhibit #97)
- Provide for through connectivity and adequate offsite road improvements, with an evaluation of the connection through to 170<sup>th</sup> Street SW
- Investigate feasibility of making 171<sup>st</sup> St SW the connection instead of 172<sup>nd</sup> St SW off Larch Way

In all of these options, it is important to remember that the road classification and road right-of-way width must be provided in the amount required by the code and EDDs. In addition, any analysis required by the comprehensive plan, code or the EDDS must be completed in writing addressing all the criteria that are provided. If the applicant wishes to modify any criteria in the EDDS, it must be done in accordance with SCC 30.41A.215.

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

### **REZONE**

Given the lack of information on the transportation analysis for circulation, offsite improvements and road standards, the Examiner cannot complete an analysis of the request for a rezone at this time. The Examiner will deny the rezone request without prejudice to be re-processed at such time when the applicant re-submits a new site plan conforming to the requirements of the code and the EDDS.

## CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision and rezone applications pursuant to chapter 30.72 SCC and chapter 2.02 SCC.
2. The legal standard under which the Examiner must review a preliminary subdivision under the state subdivision code, chapter 58.17 RCW, is:

whether the proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students . . . .

RCW 58.17.110.

3. Given the information provided in the record and the findings of fact made above with regard to roads, the Examiner concludes that the applicant has met its burden in showing that the preliminary subdivision application should be approved.
4. The legal standard under which the Examiner must review a rezone is:  
  
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.
5. The applicant has not met its burden in showing that the rezone should be approved because the applicant has not shown that the proposed rezone is consistent with the comprehensive plan, particularly its transportation policies as outlined in this decision.
6. Any conclusion in this 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 30-lot subdivision on 6.29 acres and the concurrent rezone is hereby **DENIED WITHOUT PREJUDICE**.

Decision issued this 15<sup>th</sup> day of August, 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, 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 **August 25, 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, 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 **AUGUST 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 the case.

---

---

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin

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.