

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

DATE OF DECISION: April 30, 2008

PLAT/PROJECT NAME: Mina Short Plat

APPLICANT/
LANDOWNER: Rob Mina
14309 Smokey Point Blvd.
Marysville, WA 98271

FILE NO.: 07-105744-000-00-LU

TYPE OF REQUEST: Rezone from R-9600 to R-7200

DECISION (SUMMARY): APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located at 3829 212th St SE, Bothell, in Section 21, Township 27 North, Range 5 East, W.M., Snohomish County, Washington

Acreage: 1.20

Avg. Lot Area: 7763 square feet

Gross Density: 5 du/ac

Lots: 6

Smallest Lot Area: 4503 square feet

Net Density: 8 du/ac

Current Zoning: R-9600 Proposed Zoning: R-7200

COMPREHENSIVE PLAN DESIGNATION:

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

School District: Northshore School District

Fire District: Fire District No. 7

Water Source: Alderwood Water & Wastewater District

Sewer Service: Alderwood Water & Wastewater District

INTRODUCTION

The applicant filed the Master Application on July 25, 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. (Exhibits 16, 17, and 18) While the published agenda indicated the time of the hearing was 9:00 a.m., the public notice stated 10:00 a.m. At 9:00 a.m. the clerk of the Office of the Hearing Examiner announced at the room where the hearing was scheduled that the hearing would be conducted at 10:00 a.m. No one was present in the meeting room at 9:00 a.m. At 10:00 a.m. the applicant and county staff were in the meeting room. The hearing was conducted at 10:00 a.m.

PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 5, 2008 (Exhibit 15). The DNS was not appealed.

The Examiner, Pro Tem, James Densley, held an open record hearing on April 24, 2008, the 112th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on April 24, 2008 at 10:04 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Rob Mina, was represented by Mr. Ken Williams. Snohomish County was represented by Dorothy Crossman of the Department of Planning and Development Services.
3. Those present who expressed a desire to testify were administered the oath.
4. Appearing and giving testimony were Ken Williams and Dorothy Crossman.

The hearing concluded at 10:16 a.m.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all 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. Nature of Application: The applicant requests a rezone of a 1.2 acre site from R-9600 to R-7200 with a concurrent 6-lot short subdivision. The rezone is processed as a Type 2 application requiring a hearing examiner's decision. The short plat will be processed as a Type 1 administrative decision. All existing structures on the site will be removed. The proposed access is a new private road from 212th St. SE. Water and sewer will be provided by Alderwood Water and Wastewater District.
3. Site Description: The parcel is developed with a single family residence with accessory structures, all of which will be removed. There is a gentle slope towards the southwestern portion of the site. An off-site Type 5 stream runs parallel to the western boundary of the site. The existing vegetation on site consists of trees, shrubs, grass and groundcover.
4. Adjacent Zoning/Uses: The adjacent properties to the north and west are zoned R-7200 with residential uses. On the south, the property fronts 212th Street SE. The property directly south of 212th Street SW is developed under a conditional use permit (PFN 95-105411LU) as the Hindu Temple and Cultural Center. Directly east of the site across 39th Ave SE, the zoning is R-9600. Southeasterly across the intersection of 212th Street SE and 39th Avenue SE is zoned R-7200 with Planned Residential Development. The neighborhood includes many newer homes on developments similar to the one proposed by this application.
5. Matters of Concern: No matters of concern were brought up by the general public.
6. Parks Mitigation: The payment of park impact fees will be imposed as a condition of approval of the administrative short plat.
7. School Impact: Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Northshore School District No. 417, 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 one existing lot.
8. Drainage and Grading: The site contains one drainage basin that drains to the southwest portion of the project site. Located along the southern property boundary, a detention system will be comprised of two arch pipes placed underground within Tracts 997 and 998 and connected with a level pipe. The outflow of the pipe arch will be directed to the existing catch basin located on the southwest corner of the project site. Water quality will be obtained by a stormfilter within Tract 997 located at the western edge of the private road tract.

Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 20,000 cubic yards of cut and 20,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during

construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

9. Critical Areas: There is an off-site Type 5 stream that runs parallel to the western boundary of the site. It is protected by a 10-foot buffer. The easterly portion of the buffer falls within the project property's boundary and will be placed into a Native Growth Protection Area Easement. Further protection of the stream is provided by a 15-foot building setback from the buffer.

PDS has reviewed the site and plans and has determined that the project complies with the critical areas regulations. Such determination is adopted by the Examiner as a finding.

10. GMA Compliance: The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation, "allows mostly detached housing developments on larger lot sizes." Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.

"Within urban residential plan designations, the county will continue to adopt zoning to ensure consistency with future land use map designation. Property owners may individually request rezones to higher urban residential densities consistent with the GPP policies and the GPP Future Land Use Map," (page LU-88, Future Land Use Map chapter of the GPP).

The subject rezone and future development proposal is for a 6 lot short plat and rezone resulting in a density of 8 dwelling units per acre. PDS finds that the requested rezone implements and is consistent with the General Policy Plan's Urban Low Density Residential designation of the property.

In addition to the GPP's direct statement that R-7,200 is an appropriate implementing zone for lands designated ULDR, the following are the relevant Goals and Policies of the GPP that apply to this application.

Land Use

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 urban growth areas. (LU-1)

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| GOAL LU 1 | Establish and maintain compact, clearly defined, well designed UGAs. |
| Objective LU 1.A | Establish UGAs with sufficient capacity to accommodate the majority of the county's projected population and employment growth over the next 20 years. |

The subject property is located in an area that is in essence characterized by urban growth with adequate existing public facilities and service capacities. Public facilities including roads, walkways, water, sewer and storm collection currently exist or are being constructed throughout the general vicinity. Urban frontage improvements were recently constructed by the Department of Public Works as part of the 39th Avenue SE and 212th Street SE intersection improvement project. Services and utilities including water, sewer, electrical power, telephone, and cable television are in place. Fire protection and law enforcement services are available.

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.

- GOAL LU 2 Establish development patterns that use urban land more efficiently.
- Objective LU 2.A Increase residential densities within UGAs by concentrating and intensifying development in appropriate locations.
 - 2.A.7 Rezones and subdivisions in areas designated Other Land Uses shall only be allowed when a detailed UGA plan and, if required by the General Policy Plan, a master plan has been adopted for the area.
- GOAL LU 5 Encourage land use patterns that create connected, identifiable neighborhoods and communities in UGAs through a consolidated system of past and future neighborhood plans.
- Objective LU 5.A Revitalize or create identifiable, pedestrian-oriented neighborhood areas with focal points, mixed-use centers, and employment areas that are linked with each other.

The subject property is surrounded by and connected to new single family developments and established neighborhoods of single family residences on large lots in the near vicinity. Approval of this rezone proposal would allow the integration of higher density and infill into the existing neighborhood. As indicated by the school district, elementary and junior high/middle school students will walk to school and high school students will be provided with bus service from the

bus stop at 35th Ave. SE and 212th St. SE which aids in a reduction from dependence on automobiles. The property is located within the Southwest County UGA. This proposal meets these objectives and goals of the Land Use Element.

Housing

The Housing Element relates closely to many elements of the Comprehensive Plan. The Land Use Element determines the types and locations of various types and densities of residential uses. This is part of the Land Use Element's function of laying out all land uses in suitable amounts, locations and relationships to each other.

The Housing Element is also closely tied to the county's land capacity evaluation program, particularly efforts to use urban land more efficiently (RCW 36.70A.215). Residential land uses are analyzed to assure that there is sufficient land devoted to the more dense housing types where low and moderate cost housing development typically takes place.

The Housing Element and Economic Development Element are closely related. Affordable, well-planned housing located with good accessibility to employment is an essential part of a healthy economy.

The Housing Element is related to Utilities, Capital Facilities and Transportation, as well as education and government services. All these facilities and services are necessary to support households directly, or support their ability to connect to jobs and government support programs.

GOAL HO 1 Ensure that all county residents have the opportunity to obtain safe, sanitary, and affordable housing.

Objective HO 1.D Maintain an adequate supply of appropriately zoned developable land.

HO Policies 1.D.1 The county shall establish a mix of densities in residentially zoned land that is served with adequate infrastructure based on the public's housing preferences, demonstrated need for low and moderate income households, fair-share housing allocations, preservation of critical areas, and coordination with the transportation system.

1.D.2 The supply and mix of residentially zoned developable land that is served with adequate infrastructure shall be sufficient to accommodate the county's fair-share housing allocation and support an efficient and competitive market for non-assisted housing.

1.D.3 The county shall encourage expeditious and efficient infill development in urban growth areas.

GOAL HO 2 Ensure the vitality and character of existing residential neighborhoods.

Objective HO 2.A Promote opportunities for all county residents to reside in safe and decent neighborhoods.

With the current regulations for building setbacks and height restrictions that are consistent with the current zone of R-9600, the rezone to R-7200 of this property would allow for infill and more housing while maintaining the character of the existing neighborhood. The rezone, with the utilization of lot size averaging provisions to reduce lot sizes, allows for a mix of densities and more cost effective housing within the existing neighborhood. This proposal meets the goals and objectives for the Housing Element.

Utilities

The utility systems of water supply, wastewater collection and treatment, and electric power are widely considered as essential infrastructure to support urban development, and will be treated accordingly in this plan. There are some general goals, objectives, policies, and implementation measures that apply to all three utility systems, and these are presented in this and the next section. Utility-specific issues and corresponding goals, objectives, and policies are discussed in sections to follow.

Snohomish County is not a provider of public water, wastewater or electric power infrastructure, but it is well suited to play a leadership role in overall coordination of the provider agencies. The county is also ultimately responsible for water service (water supply) if a water district fails or becomes financially insolvent. The GMA calls upon counties to be regional service providers and inter-jurisdictional infrastructure planning coordination is one such service. The county has assumed this role by managing the preparation of the Coordinated Water System Plan which involved over 25 water system operators in north and east Snohomish County and through its compilation of the countywide sewer and water system inventory.

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| GOAL UT 1 | Enhance the efficiency and quality of service from utility providers through the review of utility, land use, transportation and natural environment planning documents. |
| Objective UT 2.A | All new residential developments should be able to demonstrate the availability of a potable water supply meeting state water quality standards and of sufficient capacity to serve domestic requirements. |
| UT Policy 2.A.1 | The county shall review new residential projects requiring land use or construction permit approval for the availability of an adequate water supply. |
| UT Policy 3.A.1 | The county shall review new residential project within urban growth areas requiring land use or construction permit approval for the availability of an adequate public wastewater and treatment system. |
| Electric Power | All electric power in Snohomish County is provided by Snohomish County Public Utility District #1...(page UT-7). |

As indicated in the correspondence received from the Alderwood Water and Wastewater District (Exhibit 25), water and sewer are available to serve the proposed development resulting from this rezone. Snohomish County PUD No.1 has sufficient electric system capacity to serve the proposed development according to its letter of August 6, 2007 (Exhibit 23). The proposal meets the goals and objectives of the Utilities Element.

Transportation

The transportation element has to be consistent with and supportive of the land use element of the comprehensive plan. The GMA provides detailed guidance on what the transportation element should present, including:

- land use assumptions used in estimating travel, and an inventory of transportation facilities and services;
- level of service standards and actions necessary to allow transportation facilities and services to meet the standards;
- identification of transportation system needs to meet current and future travel demand;
- a multi-year finance strategy that balances needs against available funding,
- strategies for intergovernmental coordination and transportation system impact assessment; and
- strategies for reducing travel demand.

The county provides for different types and levels of transportation services to urban areas versus rural areas. People living in low-density areas traveling to employment dispersed throughout the county tend to use the automobile over other modes of transportation. It is very difficult to serve these types of trips with traditional, fixed route, public transportation (i.e., bus or rail). Ridesharing services such as vanpools and personalized ridematching for carpools may be the most appropriate form of mass transportation for rural areas. Public transportation is most effective in moving people where population and employment are concentrated in denser neighborhoods and Activity Centers. Urban site design needs to accommodate public transportation by allowing efficient access and circulation of transit vehicles.

- TR 1.C.2 Adequate access to and circulation within all developments shall be maintained for emergency service and public transportation vehicles.
- TR 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.
- TR 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.
- TR 1.C.8 Access to a single roadway shall be limited as determined necessary to protect public safety and minimize traffic conflicts and delay.
- TR 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.
- TR 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.
- TR 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.

The subject property is served with existing streets and roads with urban frontage improvements including curb, gutters and sidewalks along 39th Avenue SE and 212th Street SE. These improvements currently provide safety and mobility for pedestrians, transit users, bicyclists and motorized traffic. The internal private road tract will provide a sidewalk along one side for safe pedestrian access and will provide adequate access for emergency vehicles. Public transportation is available approximately one mile from the site at 35th Drive SE and 228th Street SE. This proposal meets the objectives and goals of the Transportation Element.

The proposed rezone is consistent with the General Policy Plan statement for encouraging and broadening the mix of urban housing types, promoting more efficient utilization of land within UGAs and reducing consumption of rural lands.

Specific analysis by PDS of the subject rezone included impacts associated with traffic, storm drainage, parks and recreation, public schools, and zoning code provisions addressing compatibility with surrounding properties. Future approval of construction permits, and final plat consistent with such evaluation and administrative short plat approval will substantiate GMA code compliance prior to permit issuance. Such approvals will sufficiently mitigate for future impacts associated with development patterns, site design and sensitively integrating site development into the immediate community. The analysis of PDS is adopted as a finding by this decision.

The proposed rezone, in consideration of current GMA adopted regulations, will implement such Goals, Objectives, and Policies and this specific development bears a substantial relationship to the public health, safety and welfare.

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

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

The LSA calculation is as follows:

Area in Lots (32,540 square feet) + Critical Areas and Buffers (0 square feet) + Open Space (4,085 square feet) + ROW to be dedicated (9,938 square feet) = (46,563 square feet) ÷ (6 of lots proposed) = (7,760) square feet

The minimum zoning requirement is 7,200 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. Area required for dedication of right-of-way may be included in lot size averaging calculations per Snohomish County Council Motion No. 07-327. The proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

12. Rezone Considerations:

The hearing examiner may approve a rezone only when all the following criteria are met.

- (a) The proposal is consistent with the comprehensive plan.
- (b) The proposal bears a substantial relationship to the public health, safety, and welfare;
- (c) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

REQUIRED FINDINGS:

- (a) Consistent with the Comprehensive Plan

The proposed project seeks a rezone to R-7200. The rezone will allow higher densities than would be allowed under the existing zoning of R-9600. The request is in conformance with the applicable components of the General Policy Plan elements discussed in the preceding GMA Comprehensive Plan section (above).

The Population and Employment section of the GPP requires that growth be directed primarily to the urban areas (Objective PE 1.A, page PE-4) that have existing or planned public facility and service capabilities to accommodate growth (PE Policy 1.A.2., page PE-4). The subsequent short subdivision development has obtained a concurrency determination regarding the road system and will contain conditions for access and frontage improvements. The project will be served by public water and sewer. The project will provide adequate service capabilities, and, therefore, meets the criteria of the Population and Employment section.

The Urban Development Patterns (LU-15) and Goal LU-2 (LU-16) of the Land Use section of the GPP, is intended to improve the efficiency of urban residential land utilization and to require a minimum net density of 4-6 dwelling units per acre. The existing neighborhood contains large lots that do not comply with the current standard of 4-6 dwelling units per acre as well as smaller lots that were approved through recent subdivisions and rezones. Land division is required to meet the 4-6 du/ac standard, or the land cannot be developed. LU Policies 2.A.1 and 2.A.3 (LU-16) require densities of 4-6 du/acre. The project will result in a net density of 8 du/acre, which satisfies the density requirement.

The Housing section of the GPP requires efficient infill development in urban growth areas (HO Policy 1.D.3., page HO-5). The rezone is a necessary component of the development, which is an infill development within an established neighborhood.

The physical attributes of lots within the neighborhood will be changed by the proposed rezone. Smaller lots and higher densities, relative to the existing conditions, will be different from the existing lot dimensions of the neighborhood. The existing zoning for the site is R-9600. The lot yield for the site under existing zoning of R-9600 is 5 lots. The lot yield for the site under the rezone to R-7200 is 7 lots, or an increase of 2 potential lots. The application is for 6 lots, because 6,044 square feet of the site will be encumbered with a private road tract. If the rezone application were not a part of the proposed development, the proposed development would not have the same lot dimensions as the existing neighborhood because the existing density is less than 4 du/acre. All infill developments, which is specifically required by HO Policy 1.D.3., will deviate from the existing lot dimensions of the neighborhood.

Objective HO 2.A (page HO-6) is intended to promote opportunities for all county residents to reside in safe and decent neighborhoods. HO Policy 2.A.1 requires that the character of stable residential neighborhoods should be preserved through selective and innovative land use measures while HO Policy 2.B.1 requires that the county shall encourage a variety of housing types and densities in residential neighborhoods (page HO-6).

The requirement under HO Policy 2.A.1. to "... preserve the character of stable residential neighborhoods through selective and innovative land use measures"(HO-6), is a requirement to preserve the residential aspect of the neighborhood, with adequate provision for essential public services and with adequate provision for the public health, safety, and welfare of the neighborhood. The proposed rezone will maintain a residential neighborhood and will not allow commercial agricultural uses, commercial development, and multifamily development on the site.

(b) Bears a substantial relationship to the public health, safety, and welfare.

Application for the proposed rezone is concurrent with the application for a short subdivision. Review of the land development proposal has been made for compliance with the relevant codes, policies, and standards of Snohomish County. The project, as conditioned, will satisfy those requirements, including a concurrency determination for access routes to and from the development, an evaluation of the road and access routes to comply with the relevant EDDS standards and SCC 30.66B, evaluation of the adequacy of stormwater and drainage system, evaluation of critical areas, adherence to the short subdivision codes, compliance with the fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to insure that adequate provision has been made for the public health, safety, and welfare of the citizens. The proposed project, as conditioned, complies with the relevant provisions.

(c) Minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

The proposed site is located within a residential neighborhood. The proposed rezone is to remain a residential zone within the Urban Low Density Residential designated area. Therefore, the zones specified in SCC 30.31A-F are not applicable to the proposal.

13. Sub Division Code: The proposed short plat also meets Chapter 30.41B SCC requirements. A complete application for the proposed plat was received by PDS on July 25, 2007. The proposed short plat as conditioned also meets the general requirements under Section 30.41B.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the short plat will meet all SCC 30.41B.210 design standards for roads.
14. Plats – Subdivisions – Dedications (Chapter 58.17 RCW): The short plat conforms with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

The proposed short plat conforms with applicable zoning codes and the comprehensive plan. The single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual short plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The short plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water and sewer are to be provided by Alderwood Water and Wastewater District. Electrical power will be provided by Snohomish County Public Utility District No. 1.

15. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC)

1. Road System Capacity [SCC 30.66B.310]

The development will generate 47.85 new ADT and has a road system capacity impact fee of \$11,005.05 (\$1,834.25/lot) based on \$230.00/ADT, the current fee rate for residential developments for TSA F. This impact fee must be paid proportionately prior to the issuance of each building permit.

The payment of these road impact fees will be imposed as a condition of approval within the administrative decision of the short plat.

2. Concurrency [SCC 30.66B.120]

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with Public Works' final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

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

The subject proposal will not impact any IRC locations identified at this time within TSA F 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]

Frontage improvements were recently constructed by the County along the property's frontage with 39th Ave. SE and 212th St. SE. Therefore, frontage improvements are not required except for a private road curb cut.

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.

A private road is proposed from 212th St. SE. for access. The road classification of 212th St. SE is residential with a design speed of 25 mph. 212th St. SE intersects 39th Ave. SE to the east and 35th Ave. SE to the west and is a non-arterial road between these two intersections.

The private road meets the minimum standards in the EDDS for a private road within the urban area consisting of 28 feet of pavement with a 5-foot sidewalk on one side of the private road and around the 30 ft. radius turnaround cul-de-sac.

Access to the property is currently provided by three driveways which will be removed.

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

The applicant will be required to dedicate additional right of way consisting of 32 feet along the property's frontage on 39th Ave. SE to make 52 feet total, 15 feet along the property's frontage on 212th St. SE to make 35 feet total, and the right-of-way as shown at the northwest corner of the intersection of 39th Ave SE and 212th St. SE as a condition of the administrative decision. The right-of-way to be dedicated is adequately shown on the preliminary short plat plan received January 11, 2008.

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

A copy of a voluntary offer was submitted with the application for \$1,722.60. In an email dated August 8, 2007 (Exhibit 24), WSDOT indicated acceptance of that amount, and enclosed a copy of an executed voluntary agreement. Payment of this amount will be a DPW recommended condition of approval of the administrative short plat.

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

An interlocal agreement has been executed between the County and the City of Bothell for traffic mitigation for impacts on the City's road system. A copy of a voluntary offer to pay the city mitigation requirements signed by the applicant was submitted with the application for the amount of \$5,232.50. Comments dated October 18, 2007 (Exhibit 21), have been received from the City of Bothell that indicate agreement with the \$5,232.50 amount offered for traffic mitigation. The payment of these impact fees will be imposed as a condition of approval of the administrative short plat.

There are no other jurisdictions that have an interlocal agreement with the county that will be significantly impacted by the subject development.

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

The TDM obligation for this development is therefore equivalent to 5% of the 5.05 new PM peak hour trips x \$1,500.00, which equals \$378.75 (\$63.13/lot). The applicant has offered in writing to pay this amount. The payment of these fees will be imposed as a condition of approval of the administrative short plat.

10. Pedestrian Facilities [RCW 58.17.110]

In comments from the applicable school district dated July 30, 2007 (Exhibit 22) , the Northshore School District No. 417 indicated that elementary and junior high/middle school students will walk to school to Canyon Creek Elementary and Skyview Junior High. High school students will be provided with bus service to school and that the bus stop will be at 35th Ave. SE and 212th St. SE. Adequate walkways exist for students to walk to school and to the bus stop; therefore, no additional walkways will be required.

16. Uniform Fire Code: The preliminary short plat is in compliance with the access and fire hydrant specifications contained in SCC 30.53A. The proposed private road will provide 28 foot pavement width and a cul-de-sac of sufficient turning radius, and will be capable of supporting a 25-ton vehicle. A fire hydrant is located near the intersection of 39th Avenue SE and 212th Street SE (Exhibit 14A). No comments on the proposed short plat were received from Fire District No. 7.
17. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner has jurisdiction to hear this case and render a decision thereon.
2. This development will provide attractive housing while protecting the environment in compliance with Snohomish County Regulations. The public interest will be served as there will be compliance with health and safety, regulations, including parks, schools, fire department, internal circulation, public roads, utilities, GMA, critical areas and drainage and grading.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.
4. Adequate potable water, sewer, and electrical capacity exist or can be supplied to serve the proposed preliminary subdivision.
5. As conditioned, the proposal would make adequate provisions for the public health, safety and general welfare.
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 rezone from R-9600 to R-7200 is APPROVED. The short subdivision will be processed for administrative approval and, with conditions, must provide for public health, safety, and general welfare.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 30th day of April, 2008.

James Densley, Hearing Examiner Pro Tem

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **MAY 12, 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 **MAY 14, 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: Elbert Esparza

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>
