

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

DATE OF DECISION: July 1, 2008

PLAT/PROJECT NAME: SILVER LAKE SECTOR 7 LIFT STATION

APPLICANT/
LANDOWNER: Silver Lake Water and Sewer District

FILE NO.: 07-113212 LU

TYPE OF REQUEST: **Conditional Use Permit for the approval of water/sewer lift station**

DECISION (SUMMARY): APPROVED subject to Conditions

BASIC INFORMATION

GENERAL LOCATION: The proposed project Silver Lake Sector 7 Lift Station is located at 78th Ave. SE. and 132nd Pl. SE.

ACREAGE: .25 acres

ZONING: PRD-9600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

SCHOOL DISTRICT: Snohomish School District # 201

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on November 2, 2007. See Exhibit 1A.

The Hearing Examiner (Examiner) made a site familiarization visit on June 24, 2008, in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by SCC 30.72.030(4). See Exhibits 6A (mailing), 6B (publication) and 6C (posting).

A SEPA determination was made on October 5, 2007. See Exhibit 5A. No appeal was filed.

The Examiner held an open record hearing on June 26, 2008, the 141st day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on June 26, 2008 at 10:02 a.m.

1. Elbert Esparza, Land Development Specialist, appeared on behalf of PDS and gave an overview of the Conditional Use request and answered questions from the Examiner.
2. Eric Delfel, Patrick Curran and Greg Harem appeared and testified on behalf of the applicant, Silver Lake Water and Sewer District.
3. Ed Caine and Steve Russo appeared and testified with questions and comments regarding the request.

The hearing concluded at 10:43 a.m.

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

FINDINGS OF FACT

1. All exhibits and witnesses included on the Master Exhibit and Witness List were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. State Environmental Policy Act Compliance. A Revised Determination of Nonsignificance (DNS) was issued October 5, 2007. Exhibit 5. The DNS was not appealed.
3. Nature of Request: Silver Lake Water and Sewer District has applied for a Conditional Use Permit to construct a water and sewer lift station in Tract 808 of the Greenleaf subdivision. The existing water and sewer lift station, located elsewhere, is to be demolished. Tract 808 was created as part of the major modification to the plat at Greenleaf at Snohomish Cascade, Sector

7, Division 2, 04-110343 SD. The proposed project Silver Lake Sector 7 Lift Station is located at 78th Ave. SE. and 132nd Pl. SE. The proposal is to construct the Lift Station with a maximum height of 22 feet reinforced concrete retaining wall. Access to the site will be from a driveway from 78th Ave. SE. and one from 132nd Pl. SE. The frontage improvements on 78th Ave. SE. and 132nd Pl. SE have been completed as part of the original plat.

4. Site description: The tract is undeveloped and is vegetated with forest growth and brush, with dense ground cover. It is zoned PRD9600. The project parcel contains approximately 0.25 acres. The site currently forms a bowl with steep slopes around the perimeter of the site that have been graded and hydro seeded as part of the Plat of Greenleaf at Snohomish Cascade, Division 2. A type 4 stream, tributary to Mission Creek, runs northerly through the middle of the site and enters an existing 24" culvert that discharges on the north side of 132nd Pl/SE. toward the Marshland Flood Control District
5. Adjacent uses: The subject parcel is within a residential subdivision developed for 23 single family lots along with open spaces, recreation spaces, and reserve areas. The subdivision is 34 acres in size and is in various stages of development.
6. Environmental Impacts.

A. **Grading and drainage.**

The conditional use application for Silver Lake Sector 7 Lift Station has been reviewed by PDS (Planning and Development Services) Engineering Section for compliance with the UDC Chapter 30.63A, 30.63.B, EDDS 2004 Edition, Rule 3044, and the 1992 DOE Storm water Manual. PDS approved the application.

The site is located over a 24-inch diameter culvert that was installed as part of Snohomish Cascade at Greenleaf Division I. The culvert will be extended approximately 40 feet to the south as part of the construction of the lift station. Since there will be less than a 0.1 cfs increase in flow between pre-developed and developed conditions, detention is not required for this project, per SCC 30.63A.210(1)(b).

Storm water quality will be maintained by a storm filter insert into a vault located on site.

The project proposes approximately 700 cubic yards of cut and 3,500 cubic yards of fill. Based on the preliminary findings made by PDS Engineering Section relating to drainage and grading, this project will meet the requirements of SCC 30.63A and 30.63B.

Based on the preliminary findings made by PDS Engineering Section relating to Erosion Hazards, this project will meet the requirements of SCC 30.62B.320, relating to Landslide Hazards, this project will meet the requirements of SCC 30.62B.340, and relating Seismic Hazards, this project will meet the requirements of SCC 30.62B.350.

B. **Critical Areas Regulations (Chapter 30.62 SCC)**

The site is currently undeveloped in a partially wooded region. The site currently forms a bowl with steep slopes around the perimeter of the site that have been graded and hydro seeded as part of the Plat of Greenleaf at Snohomish Cascade, Division 2. A type 4 stream, tributary to Mission Creek, runs northerly through the middle of the site and

enters an existing 24" culvert that discharges on the north side of 132nd PI/SE. toward the Marshland Flood Control District.

A major revision to the recorded Greenleaf at Snohomish Cascade Sector 7, Division 2 (04-110343-001 SD) was heard by the Deputy Hearing Examiner on December 6, 2007. PDS determined that a major revision was in order since altered critical area conditions occurred through the proposed establishment of a sewer lift station within an area of stream corridor that was previously depicted in a Native Growth Protection Area.

The Deputy Hearing Examiner conditionally approved the major revision on January 22, 2008. All critical area and buffer issues related to the formation of the lift station tract were identified under the major revision to Greenleaf at Snohomish Cascade Sector 7, Division 2. All compensatory impact mitigation for the placement of the lift station within Tract 808 was proposed and accepted (Exhibit #3E). The compensatory mitigation required for placement of the lift station was completed, inspected and approved by Planning and Development Services.

Approval of the conditional use permit is not subject to additional critical area review or special critical area conditions.

7. Growth Management Act Compliance. Amended Ordinances 96-074, and 96-071 which amended the map and text of the Snohomish County GMA Comprehensive Plan, and adopted an area-wide rezone within the Urban Growth Areas of the county respectively. This application was complete after the effective date of Amended Ordinances 96-074 and 96-071.

On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan which became effective on February 1, 2006, through the completeness date of the application.

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 interjurisdictional 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. The county has statutory authority to review and approve sewer and water district comprehensive system plans which providers are required to prepare before undertaking capital projects. Snohomish County will exercise this authority to assure consistency with its own comprehensive plan.

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 1.A Pursue a more coordinated facility planning process among the various utility providers serving Snohomish County.

Objective UT 1.B Achieve and maintain consistency between utility system expansion plans and planned land use patterns.

GOAL UT 2 Work with provider agencies of Snohomish County and assist them in ensuring the availability of a reliable, high quality water supply for all households within the county in a manner that is consistent with the comprehensive plan and protection of the natural environment

Approval of the proposed new facilities will be in compliance with Goal UT 1 and 2, and objectives UT 1.A & B of the Utilities Element of the General Policy Plan.

8. Zoning (Chapter 30.2 SCC) This project as designed, meets zoning code requirements for lot size, bulk regulations i.e. setbacks, height and lot coverage and other zoning code requirements such as parking and landscaping for both zone in which it is located and the Conditional Use Permit which has been requested.
9. Conditional Use Permit (Chapter 30.42 SCC)

Decision criteria - conditional use permit.

(1) *The hearing examiner may approve, approve with conditions, or deny a conditional use permit only when all the following criteria are met:*

(a) *The proposal is consistent with the comprehensive plan;*

Water and sewer lift stations are allowed in urban areas with a conditional use permit. The facility will provide increased clean water, water pressure and sanitary removal of sewage, both in and outside of Urban Growth Areas which are experiencing rapid growth and serves the residents of the area; the proposal is consistent with the adopted GPP.

(b) *The proposal complies with applicable requirements of this title;*

This project meets zoning code requirements for bulk regulations, parking, landscaping, lot coverage, height grading, and other zoning code requirements for the zone in which it is located and the Conditional Use Permit which has been requested.

(c) *The proposal will not be materially detrimental to uses or property in the immediate vicinity; and*

Water and sewer lift stations are essential infrastructure elements with single family development within the UGA; given the level of development that is taking place, and the projected future development, the lift station will be an asset to the area and will not be materially detrimental to uses or property in the immediate vicinity. Water and Sewer Lift stations are necessary parts of infrastructure to ensure the health and safety of the current and future residents and to meet the density goals of the Growth Management Act and the Comprehensive Plan. The backup generator is located within a building equipped with noise attenuating features.

(d) *The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.*

The water and sewer lift is being proposed on a site that borders public right-of-way on the west and partially on the north property lines. The proposed CUP area will have a

20-foot wide landscaped buffer along the south and east sides and a 10 foot landscaped buffer on the north and west sides. The combined buffers will adequately insure compatibility between the lift facility and the surrounding area. The facility will be below grade level with fencing and landscaping to screen it from the neighborhood. The applicants will use cedar wood fencing rather than chain link to blend in with the prevalent fencing materials in the neighborhood. The six foot wooden fence shall be topped with razor and/or barbed wire to deter unauthorized intrusions into the facility which is important to the public safety and health. The building will be painted in colors harmonious with the natural surroundings and approved by the neighbors, if public consensus can be reached.

- (2) *As a condition of approval, the hearing examiner may:*
- (a) *Increase requirements in the standards, criteria, or policies established by this title;*
 - (b) *Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;*
 - (c) *Require structural features or equipment essential to serve the same purpose set forth in 30.42C.100(2)(b);*
 - (d) *Impose conditions similar to those set forth in items 30.42C.100(2)(b) and 30.42C.100(2)(c) as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;*
 - (e) *Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;*
 - (f) *Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;*
 - (g) *Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and*
 - (h) *Impose any requirement that will protect the public health, safety, and welfare.*

The conditions imposed by the Examiner are described below in the decision, said conditions deal with noise attenuation, paint colors and fencing materials. The Silver Lake Water and Sewer District is a public agency and as such is not required to post bonds.

10. Public Comments: Citizens in the area expressed concern over the ability of the lift station to be compatible and blend in with the proposed subdivision and nearby developed neighborhoods. No written letters were received by PDS. Letters and emails were sent to Silver Lake Water and Sewer District. The district which initiated a series of public and one-on-one meetings with concerned citizens (Exhibit #9). Two citizens testified at the public hearing with questions and concerns about the project. The concerns deal with landscaping, fencing, native growth protection areas, security during construction and construction methods. The landscaping and fencing which are proposed will comply with code provisions. The fencing will exceed the code by being wood construction. The applicant described that there will be an on-site inspector during construction to ensure compliance with regulations and rules by the contractor during construction periods. The structure containing the generator will use noise attenuating features.

The applicant will secure input from the neighbors in choice of paint colors which will be harmonious with the natural surroundings

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, and applicable design and development standards.
3. Adequate public services exist to serve the proposal.
4. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
5. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The request for a CONDITIONAL USE is **APPROVED** subject to the following Conditions:

CONDITIONS

- A. The site plan received by PDS on 5/08 (Exhibit #2A) shall be the site plan and configuration.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
- C. In conformity with applicable standards and timing requirements:
 - i. The preliminary landscape plan (Exhibit #2D1) shall be implemented. All required landscaping shall be installed in accordance with the approved landscape plan.
- D. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- E. The following additional conditions are imposed by the Hearing Examiner:
 - i. Fencing around the facility shall be of six-foot high cedar or other comparable wood construction topped with razor and or barbed wire to deter unauthorized intrusion to the important public health and safety feature,
 - ii. There shall be security features, including but not limited to remote monitored alarms, constructed within the facility which will alert the applicant of system failures, fire, power outages and unauthorized intrusions,

- iii. The generator shall be enclosed within a structure equipped with sound attenuating features, and
- iv. The facility shall be painted in colors harmonious with the natural surroundings. The precise choice of colors will be that of the applicant after consultation with the neighbors.

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 1st day of July, 2008.

James A. 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 **JULY 11, 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 **JULY 15, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Elbert Esparza

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.