

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: August 20, 2009

PLAT/PROJECT NAME: **HAYDEN PARK**

APPLICANT/
LANDOWNER: Evelyn Zahradnik Family Limited Partnership II

FILE NO.: 06-128534-000-00-SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

DECISION (SUMMARY): **APPROVAL WITH PRE-CONDITION AND CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: 9218 156th NE, Arlington, WA 98223.

ACREAGE: 63.63 acres

NUMBER OF LOTS: 19

AVENUERAGE LOT SIZE: 47,985 square feet

MINIMUM LOT SIZE: 43,876 square feet

DENSITY: .29 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: Rural Residential - 5 (RR-5)

ZONING: Rural 5 (R-5)

UTILITIES:

Water: City of Arlington

Sewer: On-site septic

SCHOOL DISTRICT: Arlington School District No.16

FIRE DISTRICT: No. 21

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Revised Master Application on August 8, 2007 and was determined on October 17, 2007 to be complete as of the date of submittal for regulatory purposes. (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 F1, F2 and F3)

A SEPA determination was made on June 9, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on August 5, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

NOTE: For a complete record, an electronic recording of the hearing in this case 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.

A. Background Information

2. Applicant's Request: The applicant is requesting a 19-lot rural cluster subdivision (RCS) on a 63.6 acre parcel. The site is undeveloped and forested. Access is proposed from a new public road off of 156th Street NE. Water will be provided by the City of Arlington. Each lot will be served by individual septic systems. All proposed lots are larger than 1.0 acre.
3. Site Description: The site is undeveloped and forested, with slopes less than 15%. There are four (4) Category 3 wetlands and a Category 2 wetland on site, with all five (5) wetlands extending off-site.
4. Adjacent Zoning/Uses: Adjacent zoning is R-5. Adjacent uses are either developed as single-family residential or are undeveloped.
5. Issues of Concern:

Reviewing staff and outside agencies have identified no issues of concern. No public comments were received for the project prior to the open record hearing.

At the open record hearing, a neighbor, Bradley J. Marsh testified that he owned property adjacent to the subject property. He has a pond or lake near the east boundary of the property line, and was concerned that persons from the subdivision would trespass onto his property and perhaps use this body of water. He was worried about potential liability. The Examiner informed him that he would have to consult an attorney if he was concerned about potential liability, but the applicant's representative, Angela Jones, did offer to fence the perimeter of Lots 12 through 19. Fencing would likely ameliorate some of his concerns, but it is up to Mr. Marsh as a property owner to prevent tragedies for which he is responsible from occurring on his property.

The Examiner's review of this file revealed two concerns, both of which were discussed and worked out at the hearing. The first is that the sight-obscuring buffer required pursuant to SCC 30.41C.200(2) did not appear on the face of the preliminary plat map. Ms. Jones agreed that the Examiner should place a pre-condition on the decision to require a new plat map.

The third issue of concern for the Examiner is the way that buffer averaging was used to allow Lot 17. As was explained at the hearing, Lot 17 does fit the criteria of the administrative rule developed by PDS for lot size averaging, and therefore the Examiner will approve the plat as designed. At the hearing, Ms. Jones explained that they attempted to place the lot in another location, but it did not meet septic requirements. It may well be that this is the location that Lot 17 needed to go to minimize harm to the functions and values of wetlands on the property. PDS did not require such an analysis from the applicant.

SCC 30.62.350(1)(c) allows buffer width averaging as an allowed development activity in wetlands. There are substantial requirements that require a scientific analysis to accompany such an allowed activity. Along with basic numeric limitations, a scientific critical areas study must demonstrate that "averaging will not impair or reduce the habitat, water quality purification and enhancement, storm water detention, ground water recharge, shoreline protection and erosion protection, and other functions of stream, wetland, and buffer . . ." In addition, the applicant must prepare a critical areas study which meets the requirements of SCC 30.62.340 and a mitigation plan that meets the requirements of SCC 30.62.345. The mitigation plan must include a base line study that analyzes the existing functional values of the critical area and buffer, functional values that will be lost, and the system's functional values after mitigation. (SCC 30.62.345(2)(a))

The Examiner will be looking for this individualized analysis in the future in buffer averaging. It was not present in this case, and it does not appear to be the practice of PDS to require much in the way of an individualized analysis. However, it does appear that the code requires the applicant to analyze the functions and values lost and compare them to the functions and values gained. The Examiner will expect to see such analyses in future buffer averaging cases.

B. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is within the River Meadows Park Service Area No. 302 and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with County policies.
7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

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

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

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

The development will generate 181.83 new average daily trips (ADT) and has a road system impact fee of \$48,003.12 (\$2,526.48/SFR) based on \$264/ADT, the current fee rate for residential developments outside the Urban Growth Area (UGA), for TSA A. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

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

ITE Land Use Category: Single family detached housing
ITE Land Use Code: 210
Number of applicable measurement units for this development: 19

Trip Generation Calculations (Trip Generation Based on Average Rates):

New average daily trips = $19 \times 9.57 = 181.83$ ADT
New PM peak-hour trips = $19 \times 1.01 = 19.19$ PM PHT
New AM peak-hour trips = $19 \times 0.75 = 14.25$ AM PHT

The Hearing Examiner has included a condition to require the payment of the mitigation fees.

B. Concurrency [SCC 30.66B.120]

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of October 5, 2007. The expiration date of the concurrency determination is six years from this date.

Development generating 50 or fewer peak-hour trips in TSA with no arterial unit in arrears, SCC 30.66B.130(4). The subject development is located in TSA A which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 14.25 a.m. peak-hour trips and 19.19 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

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

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

The subject development proposal will not impact any IRC locations identified within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to IRCs and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

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

The subject development has frontage along State Route 9 (SR 9) and the unopened right-of-way of 156th Street NE. SR 9 is under the jurisdiction of the Washington State Department of Transportation (WSDOT). The WSDOT has not requested any frontage improvements on SR 9.

156th Street NE is currently unopened right-of-way. Construction of 156th Street NE along the property's frontage from SR 9 to 91st Avenue NE has been considered. Since the WSDOT will not permit any new accesses to SR 9 at 156th St NE (Exhibit G14) frontage improvements to 156th St. NE will not be required west of 91st Avenue NE. This conclusion was reached at a meeting with the applicant and the Snohomish County Traffic Engineer, and after considering comments from WSDOT. A BLA (PFN 08 101648) has been approved such that the subject development no longer has frontage on 156th St NE east of 91st Avenue NE. Because of this BLA, improvements to 156th St NE cannot be required.

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

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

Access is proposed via the extension of 91st Avenue NE. The opened portion of 91st Avenue NE currently ends approximately 200 feet north of the subject development and extends north to 172nd Street NE. The existing pavement width for a portion of 91st Avenue NE does not meet current standards. A condition has been included to require 91st Avenue NE be opened and widened to at least 20 feet of pavement northward from the property's north boundary.

The portion of 91st Avenue NE adjacent to the subject development is maintained under a trail permit. The surfacing appears to be oil and gravel or gravel that has been chip sealed. This portion of 91st Avenue NE must be replaced with surfacing to meet current standards. The trail permit access extends outside of the right-of-way at the intersection of the right-of-way sections for 91st Avenue NE and 156th Street NE. A condition has been included to require the removal of the trail permit access for this section of 91st Avenue NE.

There are two crest curves on 91st Avenue NE between 156th Street NE and 160th Street NE which impede sight distance and need to be regraded. A condition to require grading for sight distance improvements to 91st Avenue NE has been included.

91st Avenue NE on which improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee for any improvements to 91st Avenue are not applicable.

Access to the subject development is proposed via the extension of 91st Avenue NE southeast through the site. A 50 foot right-of-way section is proposed. 91st Avenue NE is

posted 35 MPH, therefore a 35 MPH minimum design speed is required. A condition to require proper road design has been included.

91st Avenue NE is proposed to end approximately 422 feet west of the southeast property corner with a 40 foot cul-de-sac turnaround within a 50 foot radius easement. The cul-de-sac is shown ending between Lots 10 through 13. The Traffic memo dated October 5, 2007, indicates that the road end needs to be relocated southerly to the south property line. The subject submittal shows that the road end was relocated to the north. The cul-de-sac is required to extend to the center of Lots 11 and 12. A condition to require moving the cul-de-sac to the center of Lots 11 and 12 has been included.

Access to the existing single-family residence does not meet spacing requirements from the intersection of 91st Avenue NE and 156th Street NE. A condition to relocate the driveway has been included.

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

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

The subject development has frontage along SR 9, and 156th Street NE. SR 9 is under the jurisdiction of the WSDOT. No additional right-of-way has been requested by the WSDOT.

156th Street NE is designated as a non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is not required to dedicate any additional right-of-way.

Dedication of additional right-of-way that is tangent to the ultimate right-of-way on 91st Avenue NE and 156th Street NE with a 35 foot radius curve is required. This is adequately shown on the preliminary plat.

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

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

This development is subject to SEPA and thus is subject to an ILA with the WSDOT/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required and has been received as of the date of this memorandum. The applicant has offered \$6,545.88 based on the standard rate of \$36/ADT (\$344.52/lot).

WSDOT was provided notice of application for this project and an opportunity to comment. In an e-mail dated July 15, 2008, the WSDOT accepted the applicant's offer (Exhibit G5). A condition of approval has been included to require payment of the mitigation fees.

The WSDOT correspondence also requests a drainage report (Exhibit G4). In later correspondence, WSDOT acknowledged that the drainage was away from SR 9 and away from WSDOT properties (Exhibit G5).

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

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

The proposed development is subject to SEPA and thus is subject to ILAs for impacts on city streets and is effected by the ILA with the City of Arlington and the City of Marysville.

For impacts on the City of Arlington, and pursuant to the ILA and SCC 30.66B.055(4), a written proposal from the applicant proposing measures to mitigate impacts on city streets is required and has been received. The applicant has offered to provide the mitigation measures for impacts on city streets in written proposal in the amount of \$45,057.65 (\$2,371.45/lot). The City was provided notice of application for this project and an opportunity to comment. Comments from the City dated September 11, 2007, have been received as of September 13, 2007 (Exhibit G2). The City does agree to the mitigation measures proposed by the applicant. The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development. A condition has been included requiring the offered mitigation payment as a condition of approval.

For impacts on the City of Marysville, and pursuant to the ILA and SCC 30.66B.055(4), a written proposal from the applicant proposing measures to mitigate impacts on city streets is required and has been received. The applicant has offered to provide the mitigation measures for impacts on city streets in a written proposal in the amount of \$29,925.00 (\$1,575.00/lot). The City was provided notice of application for this project and an opportunity to comment. Comments from the City dated September 4, 2007, have been received as of September 7, 2007 (Exhibit G.1). The City agreed to the mitigation measures proposed by the applicant. The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development. A condition has been included to require payment of the mitigation fees.

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

This proposal lies outside of the UGA. Therefore, the provisions of this section do not apply.

8. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision. Comments dated August 23, 2007, have been received from the Arlington School District (Exhibit G12) stating that the students will be picked up at the intersection of 91st Avenue NE and 156th Street NE, the entrance to the subdivision. The Arlington School District has requested that a bus turnaround, pedestrian facilities to the bus stop, and a safe waiting area be provided.

Pedestrian facilities will be provided within the development to the intersection of 91st Avenue NE and 156th Street NE. A condition of approval has been included to require the applicant to provide a safe waiting area at the entry to the development, as well as a bus turnaround, meeting EDDS requirements.

9. Mitigation for Impacts to Schools. [Chapter 30.66C SCC]

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Arlington School District No. 16, 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. The Hearing Examiner has included a condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

10. Drainage and grading.

Drainage. Stormwater runoff from all road improvements will be routed to Tract 997 for water quality treatment and detention in a wet pond. Stormwater runoff from the lots will be captured and routed to individual infiltration systems on each lot.

PDS (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. Grading quantities are anticipated to be approximately 20,164 cubic yards of cut and 20,164 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.

11. Critical Areas Regulations (CAR). (Chapter 30.62 SCC) The PDS staff report provides the following explanation of site conditions and critical areas regulations compliance:

The site boundary of the Hayden Park project contains four Category 3 wetlands and one Category 2 wetland. Wetland boundaries were verified in the field by PDS staff. SCC 30.62.340 requires a critical area study for any activity allowed under SCC 30.62.350, 30.62.370 or 30.62.400. The applicant is proposing buffer averaging under SCC 30.62.350(1)(c)(i); therefore, a Critical Area Study and Buffer Averaging Plan was prepared by Wetland Resources (June 11, 2008) and submitted for review. A mitigation plan is required under SCC 30.62.345 to address the loss of area or functional value of wetlands, streams, and buffers.

The standard buffer for a Category 3 wetland is 50-feet and the standard buffer for a Category 2 wetland is 75-feet per Table 30.62.310(1). Buffer impacts are proposed for Lot 17.

Staff is required to evaluate each proposed development activity within critical areas and buffer under the hierarchy of goals provided under SCC 30.62.365. The Critical Area Study and Buffer Averaging Plan (Wetland Resources, June 11, 2008) did not address this code requirement; therefore, this project was given conditional approval with the condition that the applicant address the avoidance criteria with regards to the reduction of the wetland buffer for proposed Lot 17. Although an avoidance analysis was not provided by the applicant, staff noted that, with the exception of the buffer reduction along Lot 17, the project avoids impacts to the wetlands and the remaining wetland buffers on the site.

The applicant proposes mitigation for the buffer impacts under buffer averaging SCC 30.62.350(1)(c)(i). A discussion of how the project meets code requirements for buffer averaging has been provided on page 6 of the Critical Area Study and Buffer Averaging Plan (Wetland Resources, June 11, 2008) (Exhibit C3). Based on the discussion, a total of 5,177 square feet of buffer along the Category 2 wetland will be reduced for Lot 17 and 5,537 square feet of buffer will be added along the same wetland. According to the mitigation plan, this proposal meets the requirements of SCC 30.62.350(1)(c)(i)(A-C).

An evaluation of the information submitted in the revised application, coupled with an on-site investigation, has resulted in a determination that the application is complete and in conformance with Chapter 30.62 UDC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in critical areas to safeguard the public health, safety and welfare.

Exhibit H at 7. As noted in the Issues of Concern above, the Examiner finds that PDS did not closely scrutinize the functions and values in this case, and in future needs to assure that the applicant provides an individualized analysis of the functions and values lost, compared to those that are provided as mitigation. However, In view of the fact that the applicant is 1) preserving 64% of the plat in open space, 2) providing fencing of the lots along the wetland buffer, and 3) conforming to the PDS standard of practice used in countless cases previously, the Examiner does not believe it fair or equitable to require anything more from this applicant.

12. Consistency with the GMA Comprehensive Plan.

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 UGAs and adopted area-wide rezones within the UGAs of the county respectively. The Examiner expects better analysis from PDS in the future.

The subject property is designated Rural Residential - 5 (RR-5: 1 du/5 ac). This designation identifies all lands which are currently designated as Rural on existing subarea comprehensive plans and have subsequently been zoned to Rural 5. As the result of a joint planning effort between the County and the Tulalip Tribes, the RR-5 designation also applies to certain lands on

the Tulalip reservation that were previously designated Rural Residential. This designation also includes some areas which were previously designated and zoned agriculture. It also includes lands for which the pre-GMA subarea comprehensive plan indicates as higher density but which were zoned R-5 by the County subsequent to the plan adoption date. The implementing zone in this designation will continue to be the R-5 zone.

The 19 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

13. Utilities.

A. Water.

Water will be supplied by the City of Arlington. A Preliminary Certificate of Availability was received on November 19, 2008. (Exhibit G8)

B. On-Site Septic.

The applicant proposes on-site septic systems on each of the 19 lots in the proposed subdivision. The Snohomish Health District has provided a letter recommending approval of the plat dated August 29, 2007. (Exhibit G9)

C. Electricity.

On August 29, 2007, Snohomish County Public Utility District No. 1 provided correspondence indicating that they can provide electricity to the proposal. (Exhibit G7)

14. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements.

15. State Environmental Policy Act Determination (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on June 9, 2009 (Exhibit E2). The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on November 28, 2006. (Exhibit 1) The following general subdivision standards have been met:

A. Roads. The Examiner finds that based on the information provided in the file, PDS staff report and in the public hearing, the design standards for roads are met. Finding of Fact 7 addresses how the applicant is meeting County road requirements. (See SCC 30.41A.210)

B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (See 30.41A.110)

C. Fire Code. The PDS staff report (Exhibit H at 7) provides the following information on compliance with the fire code:

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the preliminary plat on October 3, 2007. The conclusions of the review were that:

- (a) Each lot is a minimum of one acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office.
- (b) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements.

The application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access.

The Examiner concludes that the subdivision meets the requirements of the fire code.

17. Rural Cluster Subdivision Standards—General.

The Hayden Park RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on July 2, 2008. (Exhibit B1), and in an Open Space Management Plan (Exhibit A4) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 64% (40.79 acres) of the property in restricted open space. The proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts. The use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties and reducing the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems. Finally, the project complies with critical areas regulations (CAR), thereby minimizing the loss of the county's environmentally sensitive areas.

18. Rural Cluster Subdivision Code Design Standards (SCC 30.41C.200)

The RCS code at SCC 30.41C.200 requires adherence to design standards beyond the regular subdivision standards. While some of the criteria predate other, more modern development regulations, there are some very specific and unique requirements to be met.

A. SCC 30.41A.200(1)-- Critical Areas Compliance.

- (1) *When environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, areas of unique vegetation or wildlife species, steep slopes, and other critical areas are present, and when such areas are identified and protected pursuant to chapters 30.62 and/or other applicable county ordinances or policies, the areas shall be designated as critical area protection areas;*

Applicant's development concept protects critical areas on site, as explained in Finding of Fact 11 under the heading "Critical Areas Regulations". The applicant has avoided almost all impacts to critical areas in developing this site plan and will infiltrate stormwater, further protecting critical areas and water quality. (Exhibits C2)

B. SCC 30.41C.200(2)-- Sight Obscuring Buffers.

- (2) *The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the EDDS, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of SCC Table 30.41C.210(1). Existing wind resistant vegetation providing such a screen shall be preserved. Between proposed residences and any adjoining natural resource lands, a setback shall be established consistent with the setback shown in SCC Table 30.41C.210(1);*

Although the applicant has agreed to provide a sight-obscuring buffer, it has not yet done so on the preliminary plat map. The Examiner will place a pre-condition in the decision to require a new preliminary plat map showing a sight-obscuring buffer on the perimeter of the property in accordance with the provisions of Table 30.41C.210(1). A landscaping plan (Exhibit B3) has been reviewed and approved. PDS has determined that the vegetated sight-obscuring buffer has been appropriately located, the buffer is of the required size, and the landscaping plan provides adequate requirements for augmenting the existing vegetation, should that become necessary. The Hearing Examiner will impose a condition of approval to implement the supplemental planting requirement.

C. SCC 30.41C.200(3)—Internal Roads.

- (3) *All roads, whether public or private, shall be provided in accordance with the EDDS. Access to the boundary of a rural cluster subdivision by a private road may be permitted pursuant to SCC 30.41A.210 (1) and (8). Location of public or private roads and access points to the existing public roadway system shall be carefully controlled, with no more than two access points allowed per cluster unless specifically requested by the county engineer;*

All roads are proposed to be public roads and to be built to EDDS standards. PDS has determined that the project meets this requirement. The Examiner has detailed the PDS and DPW findings in Finding of Fact 7 of this decision, and finds that these meet the design requirements of the RCS code.

D. SCC 30.41C.200(4)—Utilities.

- (4) *Electric, telephone, and other utility lines shall be designed, located, and screened so as to minimize their visibility from adjacent properties and the site or shall be located underground;*

Applicant must place all utilities underground. The Examiner will place a condition on the plat requiring this design criteria be implemented. (Exhibit G7.)

E. SCC 30.41C.200(5)—Unbuildable land.

- (5) *All unbuildable lands shall be designated as native growth protection areas unless designated as natural resource lands within restricted open space;*

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of chapter 90.58 RCW.” SCC 30.91U.060. The Hearing Examiner has determined that the project complies with this requirement.

F. SCC 30.41C.200(6)—Buffers for Resource Land.

- (6) *When agricultural, forestry or mineral uses are proposed for open space area(s), adequate buffers to minimize conflicts between resource and residential uses shall be provided;*

Not applicable.

G. SCC 30.41C.200(7)—Disclosure Statement Required.

- (7) *When agricultural, forestry, or mineral uses are proposed within an open space tract within a rural cluster subdivision or a short subdivision, a disclosure statement, as described in SCC30.41C.200(8), shall be placed on the final plat or final short plat in a location determined by the department. The disclosure statement shall apply to the real property that is subject to the final subdivision or final short subdivision as of the date of approval and may not be applicable thereafter if the agricultural, forestry, or mineral uses are discontinued.*

Not applicable.

H. SCC 30.41C.200(8)—Mineral Resource Land Disclosure Statement.

The following notice statements shall constitute the notice required for notice of resource uses within required or optional open space:

...

- (b) *Notice for mineral uses within required or optional open space:
Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not limited to noise, vibration, odors, fumes, dust, smoke, the operation of machinery of any kind, heavy truck traffic, hours of operation, and other mineral related activities.*

Not applicable.

I. SCC 30.41C.200(9)—Physical Separation of Clusters.

- (9) *Where practicable, open space tracts within a rural cluster subdivision or short subdivision shall be located contiguous to open space tracts on adjacent properties;*

Not applicable.

J. SCC 30.41C.200(10)—Open Space Management Plan.

- (10) *A management plan which details the required maintenance and management tasks and responsibilities may be required by the department for all restricted open space and other open space areas which require continuing maintenance or management;*

The applicant prepared an Open Space Management Plan which has been accepted by PDS. (Exhibit A4) It will be the responsibility of the Homeowner's Association to manage and maintain restricted open space (ROS). The forested and screening portions of the ROS (within Tracts 997, 998, and 999), designed to provide the sight obscuring function, shall be left in a substantively natural state. Areas of the ROS which are intended to serve the purpose of detention facility (Tract 996) will be maintained as necessary to provide for the function of those areas and to establish a pleasing community. More specifically, this area will be maintained to suppress the overgrowth of vegetation that will interfere with the detention facilities performance to control and treat storm water runoff. The only clearing of the ROS that may be performed is that necessary for fire suppression and/or removal of hazardous trees in accordance with the provisions of the Snohomish County Code. These provisions apply to Tracts 997, 998, and 999. Any area protected by a Native Growth Protection Area (NGPA) must remain in a natural area as required by Chapter 30.62 SCC.

K. SCC 30.41C.200 (11)—Physical Separation of Clusters.

- (11) *Each rural cluster subdivision or short subdivision shall be divided into physically separated clusters with a maximum of 30 residential lots per cluster. The minimum physical separation shall consist of a buffer of wind resistant native vegetation with an average width of 75 feet and a minimum width of 50 feet (see SCC Table 30.41C.210(1));*

This requirement is not applicable, since this is a 19-lot development.

L. SCC 30.41C.200 (12)—Lots abut open space or buffer.

- (12) *At least 75 percent of the residential lots within a rural cluster subdivision or short subdivision shall abut a required buffer or open space tract;*

Nineteen (19) lots are proposed. Every lot abuts a required buffer or open space tract, so the requirement is met. Exhibit B1.

M. SCC 30.41C.200 (13)—Design fits with natural features and maintains rural character.

- (13) *The rural cluster subdivision or short subdivision shall be designed, to the greatest extent possible, to configure the residential lots in accordance with the natural features of the site and minimize topographic alteration, to maintain rural character, and to maximize the visibility of the open space tracts from adjoining collector roads, arterials, or state and federal highways;*

The subject property is constrained by critical areas. As discussed earlier, the applicant has provided a great deal of open space (64%) in this development. The new public roads and proposed lot driveways have been designed so that passing traffic will have very limited views from the roadway and along the new roads and to the proposed residences. The site is flat, with minimal topographic variation. (Exhibit B1) The applicant has done an excellent job of trying to balance these sometimes competing goals to meet its obligations under this ordinance.

N. SCC 30.41C.200 (14)—Sanitary Sewers.

(14) Rural cluster subdivisions or short subdivisions shall not be served by public sanitary sewers unless the Snohomish Health District requires the development to connect to a public sewer system to protect public health;

The applicant proposes on-site septic systems for this development. (Exhibit G10)

O. SCC 30.41C.200 (15)—Location of clusters.

(15) Each cluster of lots within the subdivision or short subdivision shall be located near the interior of the site, if feasible, and also located where the cluster and/or the building sites are within existing forested areas of the site; except individual clusters shall be sited as far as possible from adjacent natural resource lands as permitted in chapters - 30.32C SCC. Individual clusters shall not be located on ridgelines and other prominent topographic features visible to adjacent and vicinity properties when other locations are available;

There are no prominent topographic features on which lots are proposed. Lots are located near the interior of the site because there are critical areas along the exterior boundaries (Exhibit B1). PDS has determined that the lots have been sited in the least environmentally sensitive portions of the subject property and that the proposed lots are provided with a visual sight-obscuring buffer that will minimize the visibility of the development from adjoining roadways and properties. PDS has determined, and the Hearing Examiner concurs, that the project complies with this requirement.

P. SCC 30.41C.200 (16)—Fire District.

(16) Rural cluster subdivisions or short subdivisions shall be located in a rural fire district;

The development is located within the service boundary for Fire District No. 21.

Q. SCC 30.41.C.200 (17)—Rural Concurrency Standards.

(17) *Rural cluster subdivisions or short subdivisions shall meet applicable rural concurrency standards.*

The project meets rural concurrency standards. (See Finding of Fact 7, *infra.*)

19. Rural Cluster Subdivision Lot Yield Calculations.

The application complies with the provisions of SCC 30.41C.230 and SCC 30.41C.240 based on the following analysis:

Basic lot yield: 2,771,735 square feet/200,000 square feet = 13.859 lots

Bonus residential density = 15%

Additional bonus density = 19.13%

Total lot yield = 18.59 lots

Total lot yield-rounded = 19 lots

Total lots proposed = 19 lots

20. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform 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 subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland and buffer areas. The single-family homes will be in character with the existing area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The 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. Adequate water will be provided through a public purveyor and sewage disposal will be provided by individual wastewater septic systems.

21. Any Finding of Fact in this Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.

2. The Examiner must review the Hayden Park RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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, the Examiner concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved.
4. As conditioned, adequate public services will exist to serve this proposal.
5. If approved with the below conditions, the proposal will make adequate conditions 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

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for preliminary subdivision approval and **RURAL CLUSTER SUBDIVISION** approval is hereby **GRANTED** subject to the following pre-condition and conditions:

PRECONDITION:

Applicant must submit a new preliminary plat map depicting the sight-obscuring buffer on the face of the plat map, including a clear label with cross hatching or other identifying marking of the buffer as a site-obscuring buffer.

CONDITIONS:

- A. The preliminary plat received by PDS in fulfillment of the Precondition (Exhibit B1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- 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 and to this decision.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

- iii. A final mitigation plan based on the Critical Area Study and Buffer Averaging Plan for Hayden Park prepared by Wetland Resources dated June 11, 2008 shall be submitted for review and approval during the construction review phase of this project.
- iv. The applicant shall submit full drainage plans for review and approval.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The dwelling units within this development are subject to park impact fees in the amount of \$48.82 (River Meadows # 302) per newly approved dwelling unit pursuant to Chapter 30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

- ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence or twice the amount shown for a duplex:

- \$2,526.48 per lot for mitigation of impacts on County roads paid to the County,
 - \$344.52 per lot for mitigation of impacts on state highways paid to the County.
 - \$2,371.45 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment shall be provided.
 - \$1,575.00 per lot for mitigation of impacts on City streets for the City of Marysville paid to the City. Proof of payment shall be provided.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot[s] therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- iii. "The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."

- iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

- "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

- v. “The Open Space Management Plan (Exhibit A4) shall be fully implemented. The Home Owners’ Association is responsible for all maintenance within the open space tracts. Changes to the Open Space Management Plan may be accomplished through a plat alteration, per SCC 30.41A.700, 30.41A.710, 30.41A.720, 30.41A.730, 30.41A.740, and 30.41A.750.”
- vi. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and the approved open space management plan. The only clearing of the Restricted Open Space that may be performed is that necessary for fire suppression and/or removal of hazardous trees in accordance with applicable provisions of the Snohomish County Code. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.”
- vii. “The landscape buffers qualify as open space to be protected in perpetuity and shall be maintained by the Home Owners’ Association as vegetated buffers. The entire buffer width shall be maintained with sight-obscuring vegetation. “
- viii. “The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.”
- ix. “The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight-obscuring vegetation.”

D. Prior to recording of the final plat:

- i. The driveway to the existing single family residence located immediately east of the proposed new public access road shall be relocated in order to establish adequate spacing from the new public road.
- ii. 91st Avenue NE shall be opened from the existing terminus northward to 156th Street NE.
- iii. 91st Avenue NE northward from the property’s north boundary shall be improved to the satisfaction of DPW, including both sight distance and road dimensional characteristics.
- iv. The trail permit for the portion of 91st Avenue NE adjacent to the subject development shall be removed, including the portion of the trail permit access that extends onto private property.
- v. The cul-de-sac at the southern end of the new public road shall be moved southward to the center of Lots 11 and 12.
- vi. A safe waiting area for school children awaiting school bus pick-up shall be established at the entry of the development meeting the requirements of the Engineering Design and Development Standards.
- vii. A school bus turnaround shall be established at the entrance of the development meeting the requirements of the Engineering Design and Development Standards.

- viii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to PDS for review and approval prior to installation.

- ix. Where existing vegetation within the sight-obscuring buffer fails to meet the intended function, supplemental plantings of native trees at 10-feet on center and native shrubs at 3-feet on center shall be planted. At a minimum, 75% of the planted trees and 75% of the planted shrubs shall be conifers.
- x. The preliminary landscape plan (Exhibit B3) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- xi. Utilities shall be located underground.
- xii. The final wetland mitigation plan shall be completely implemented.
- xiii. The Applicant shall fence the perimeter of Lots 12-19 as shown on the preliminary plat map. (Exhibit B1)

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit B4) shall be implemented. All required landscaping within the site-obscuring buffer and within Tract 998 shall be installed in accordance with the approved landscape plan.
- ii. PDS shall review the site-obscuring buffer for adequacy. Additional plantings shall be required for areas where necessary within the site-obscuring buffer.

F. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:

- i. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
- ii. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan (Exhibit A4).

G. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Decision issued this 20th day of August, 2009.



Barbara Dykes, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **AUGUST 31, 2009**. 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 **SEPTEMBER 3, 2009** 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: Ed Caine

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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than AUGUST 20, 2010.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
