

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: May 21, 2009

PLAT/PROJECT NAME: **LOREN WEST**

APPLICANT/
LANDOWNER: Loren West

FILE NO.: 08-109669-000-00-LU

TYPE OF REQUEST: Conditional Use Permit to construct a 4,800 square foot detached private garage

DECISION (SUMMARY): **APPROVAL SUBJECT TO A PRECONDITION and CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: 7215 187th Drive SE, Snohomish in Section 12, Township 28 North, Range 6 East, W.M., Snohomish County, Washington.

ACREAGE: 5.0 acres

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 DU/5 Acres Basic)

PDS STAFF RECOMMENDATION: Approve with precondition and conditions

INTRODUCTION

The applicant filed the Master Application on October 10, 2008. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. Exhibit E1 (Affidavit of Mailing); Exhibit E2 (Affidavit of Notification by Publication); Exhibit E3 (Posting Verification).

A SEPA determination was made on February 5, 2009. (Exhibit D2) The DNS was not appealed.

The Examiner held an open record hearing on May 12, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

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

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

A. Background

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. Summary of Proposal: The applicant requests approval of a conditional use permit (CUP) to construct a 4,800 square foot detached private garage. An existing single-family dwelling on the approximately 5.0 acre property, zoned R-5, will be retained on site. All existing temporary and miscellaneous structures will be removed and replaced by the proposed detached private garage. The code permits outright a garage structure up to 4,000 square feet, but requires a CUP for anything larger.
3. Site Description: The site consists of approximately 5.0 acres and is rectangular in size. Currently the site is occupied by an existing single-family dwelling, which will remain along with temporary and miscellaneous structures that will be removed and replaced by the proposed detached private garage. One wetland was observed in the east portion of the subject property. The wetland extends off-site to the north and south and has been identified as a Category II wetland with a 75-foot buffer. The portion of the site to the east of the proposed detached private garage and almost half of the site is forested.
4. Adjacent Zoning/Uses. The properties immediately adjacent to the subject property are large in size and are either undeveloped or developed with a single-family dwelling and detached accessory buildings. There are forests of large conifers on the borders of the site, creating visual buffers on the borders of the property.

B. Public Comment/Issues of Concern.

5. There are no issues of concern. No citizen comments were received for the project. The Examiner noted no issues of concern during her review of the project.

C. Compliance with Performance Standards.

6. The following performance standards apply:

Detached accessory or non-accessory storage structures and private garages with building footprints over 2,400 square feet must be a least 15 feet from any external property line, provided that parcels abutting open space tracts shall have a five-foot setback from open space. Storage structures and private garages over 4,000 square feet in size must be setback at least 20 feet from any external

property line, provided that parcels abutting open space tracts shall have a five-foot setback from the open space. SCC 30.23.110(20).

The proposed detached private garage is 4,800 square feet in size and is 40 feet from the property line to the north which is the closest property line to the proposed detached private garage.

Artificial lighting shall be hooded or shaded so that direct outside lighting, if any, will not result in glare when viewed from the surrounding property or rights-of-way. SCC 30.23.110(59)(b).

The proposed detached private garage proposes no artificial lighting (per analysis offered in Exhibit A2). A condition has been imposed so that if any future design includes lighting it conforms to the code.

Proposals for development in existing neighborhoods with a well-defined character should be compatible with or complement the highest quality features, architectural character and sitting pattern of neighboring buildings. Where there is no discernable pattern, the buildings shall complement the neighborhood. Development of detached private garages and storage structures should not interrupt the streetscape or dwarf the scale of existing buildings of existing neighborhoods. Applicants may refer to the Residential Development Handbook for Snohomish County Communities to review techniques recommended to achieve neighborhood compatibility. SCC 30.23.110(59)(c)(i).

The surrounding single family dwellings consist of both "stick built" homes built in the late 1980's, and owned and leased mobile homes. Some of the mobile homes are 15 years old while others are only five. Most of the adjoining properties have both single family dwellings and detached private garages or accessory buildings.

The proposed detached private garage has been sited purposely on the portion of property that affords the most existing natural visual screening. The structural profiles, provided by the applicant in Exhibit A2, show the proposed design, along with side elevation views of the detached private garage. Sitting of the proposed detached private garage in reference to surrounding property's single family dwellings have been detailed in Exhibit B1.

All detached accessory or non-accessory private garages and storage structures proposed with building footprints larger than 2,400 square feet shall provide screening or landscaping from adjacent properties as follows: (i) the permit application site plan shall depict existing and proposed screening, landscaping or other measures that ensure visual compatibility with adjacent properties; (ii) the site plan shall show the amount, type and spacing of proposed planting materials. Plant materials, species and design shall be approved by the department. Landscaping modifications, installation and maintenance requirements are regulated by SCC 30.25.040, SCC 30.25.043 and SCC 30.25.045. The minimum planting standards set forth at SCC 30.25.015(5) and (6) shall apply; (iii) at the director's discretion, existing natural vegetation or other adequate visual screening located on the subject site may be approved in lieu of the requirements of SCC 30.22.130(59)(d). Photographs shall be submitted with the permit application and the existing features shall be shown to scale on the site plan; (iv) approval of other screening measures that ensure visual compatibility shall be determined on a case by case basis at the discretion of the director and; (v) after a site visit, the director may determine that screening or landscaping is not warranted due to existing circumstances on the site or adjacent properties and may waive the screening or landscaping requirements of SCC 30.22.130(d);

The existing natural vegetation located on the subject site is approved in lieu of the requirements of SCC 30.22.130(59)(d). Photographs and site plans (Exhibit B2) show that the natural existing vegetation is adequate.

7. Drainage and Grading.

The applicant proposes a detached private garage which proposes 4,800 square feet of new impervious surface. This does not meet the 5,000 square feet threshold for major development activity which requires review under 30.63A.120 and 30.63A.210. Detention and water quality mitigation are not required. The applicant is proposing splash block to downspout drainage or direct to the existing drainage swale. No grading is proposed.

8. Critical Areas Regulations (Chapter 30.62 SCC)

The applicant proposes to construct a detached private garage on a portion of the site that has been previously cleared. The portion of the site to the east of the proposed detached private garage and encompassing almost half the site is forested. There is a Category II wetland and Type N stream located within this forested area with the proposed detached private garage located approximately 280 feet west of the closest wetland edge. The applicant hired a consultant to do a critical area site plan, wetland rating and map to conform to the requirements of Chapter 30.62A SCC. The consultant determined that a 75-foot buffer was required on this wetland. PDS concurred with this determination. See Exhibit H-1 at 4, Wetland Rating Map at CU-10, Critical Areas Site Plan at CU-11 and 12; Exhibit G at 4.

9. Consistency with the GMA Comprehensive Plan.

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Plan; and the Comprehensive Park & Recreation Plan. The General Policy Plan has been revised since its initial adoption by a number of amendments. 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 was complete after the effective date of the Amended Ordinances. Therefore, the subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan which became effective on February 1, 2006, and as revised through the completeness date of the application.

The subject property is designated Rural Residential (1 DU/5 Acres Basic) on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay.

10. Zoning.

The subject property is in R-5. The land owner currently has a number of small, albeit neat, tarpaulin sheds on the property storing various items that he undoubtedly uses and needs as a part of his work and everyday life. This garage will allow him to get rid of the tarpaulin sheds in favor of one permanent garage. Allowing the building of this slightly oversized garage in this area will not be out of character or incompatible in this zone, where a number of buildings are of this size, as pointed out by the owner's representative at the hearing, as long as the facility is conditioned to ensure compatibility with those uses that are permitted as a matter of right in the zone.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 5, 2009 (Exhibit D2). The DNS was not appealed.

12. Conditional Use Permit Criteria

In considering the application, the Examiner must apply SCC 30.42C.100, which outlines the decision criteria for a conditional use permit as follows:

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;
 - (b) The proposal complies with applicable requirements of this title;
 - (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
 - (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.
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.

13. Findings of Fact Regarding the CUP criteria.

Regarding criteria (1)(a): The Examiner finds that the CUP request is consistent with the GMA comprehensive plan. The Examiner has reviewed the applicable rural area policies and found nothing that either supports or precludes the application. Given the fact that development regulations are intended to implement the GMA comprehensive plan, the Examiner assumes that the request through the grant of a CUP with conditions to assure compatibility with the neighborhood implements and is consistent with the GMA comprehensive plan.

Regarding criteria (1)(b): The Examiner has reviewed the applicable requirements of Title 30 SCC and determined the application to be compliant with those provisions. Further conditions will assure that the proposal will continue to be compliant in the future.

Regarding criteria (1)(c): The applicant's representative made a presentation regarding the garage and the vegetative screening. The Examiner appreciated the thorough job done by the applicant's representative in describing the location of the building and depicting the visual screening. They have pledged to maintain the natural screening. While that is great, the Examiner is concerned that if this property were to pass into other hands, the screening might not be maintained. With conditioning to require the visual screening to remain in place, the garage will not be materially detrimental to the uses or property in the immediate vicinity in perpetuity.

The Examiner shall require the applicant to place 35-foot no-touch buffers around the perimeter of the property to assure that the visual screen remains in place back to meet the wetland buffer. The applicant is not required to do anything to the buffer but to leave it as is. He may cut down or have any tree removed that is a hazardous tree, as defined by this code. The conditional use site plan shall be revised to show the perimeter buffer on the plan.

Regarding criteria (1)(d): This criteria is covered by (1)(c) in this case.

14. 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 conditional use permit applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner finds as a matter of law that the conditional use permit should be granted pursuant to SCC 30.42C.100 pursuant to Finding of Fact 13 above.
3. 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 **CONDITIONAL USE PERMIT** is hereby **APPROVED**, subject to the following precondition and conditions:

PRECONDITION

The conditional use permit site plan received by PDS on December 30, 2008 (Exhibit A2) shall be revised to show the 35-foot perimeter buffers required to implement Finding of Fact 13.

CONDITIONS

- A. The revised conditional use permit site plan pursuant to the Precondition shall be the approved conditional use permit site plan. SCC 30.42C.110 governs the changes to conditional use permits.
- B. Any artificial lighting shall be hooded or shaded so that direct outside lighting will not result in glare when viewed from the surrounding property or rights-of-way.
- C. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. A land use permit binder shall be executed and recorded at the County Auditor's Office. A copy shall be submitted to PDS for the case file.
 - ii. The applicant shall mark with temporary markers in the field the boundary of all critical area protection areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the county.
 - iii. A critical area site plan (CASP) showing the critical area protection area (CAPA) locations on the site are required to be recorded with the county auditor.
- D. A building permit must be obtained from PDS for the construction of the detached private garage. The following shall be placed as conditions on the building permit:
 - i. The detached private garage shall not be used for commercial purposes without obtaining valid commercial certificate of occupancy issued by the Snohomish County Building Official for such use.
 - ii. Any and all changes to the approved site plan will require additional review by PDS and other agencies.
- E. Prior to final inspection of the building permit:
 - i. Critical area protection area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the county, with both CAPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The applicant may use other permanent methods and materials provided they are first approved by the county. Where CAPA 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.

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

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 21st day of May, 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 **JUNE 1, 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 **JUNE 4, 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: Roxanne Pilkenton

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 May 21, 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)
