

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: September 1, 2009

PLAT/PROJECT NAME: *Jefferson Elementary School Modernization*

APPLICANT/
LANDOWNER: Everett School District

FILE NO.: 08-111049-000-00-LU

**TYPE OF REQUEST: Major Revision to a Conditional Use Permit (ZA 9005283) and
Request for Landscape Modification**

DECISION (SUMMARY): APPROVAL SUBJECT TO CONDITIONS

BASIC INFORMATION

GENERAL LOCATION: 2500 Cadet Way, Everett, Washington, 98208

ACREAGE: 20 acres

ZONING: R-9600

COMPREHENSIVE PLAN DESIGNATION: General Policy Plan Designation-Urban
Low Density Residential (ULDR) with Public/Institutional Use Overlay

School District: Everett School District

Fire District: Fire District #1

Water Source: City of Everett

Sewer Service: City of Everett

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Master Application on October 2, 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 F1 (Affidavit of Mailing); Exhibit F2 (Affidavit of Notification by Publication); Exhibit F3 (Posting Verification)).

A Mitigated Determination of Nonsignificance (MDNS) was made by the School District on January 5, 2009. Exhibit E2. The MDNS was not appealed.

The Examiner held an open record hearing on August 4 and 6, 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 Everett School District (District) is proposing improvements to and modernization of the existing Jefferson Elementary School. The school was originally constructed in 1957. Additions were made in 1964, 1987, and 1990. The county's zoning code changed after the 1987 addition, such that a conditional use permit (CUP) was required for the 1990 changes.

The first CUP for this site was approved on September 19, 1990, under file ZA 9005283. The currently proposed expansion and modernization is a major revision to that permit. The construction proposed includes demolition of all six of the one-story classroom buildings, totaling 24,550 square feet, as well as 4541 square feet of the existing 11,804 square foot library and administration building. A new 42,069 square foot administration and classroom building will be constructed. The remodel will not increase the enrollment from its current capacity of 482 students, and the supply of parking will actually decrease from 93 to 91 spaces. (Exhibit C1 at 2) A detailed description of the improvements is found in Exhibit A1.

3. Site Description

The site is relatively flat. There are no critical areas on site. The southern portion of the site contains Jefferson Elementary School. The northern portion of the site is forested. Cadet Way ends in a road stub at the eastern side of the property and El Capitan Way ends in a road stub at the western side of the property. Current access to the school is by a driving surface, presumably a driveway, from Cadet Way. The proposed extension of Cadet Way follows the existing driving route across the property.

4. Adjacent Zoning/Uses.

The majority of adjacent zoning is R-9600. Areas of R-7200 are located south of the property. All adjoining uses are residential.

B. Public Comment/Issues of Concern.

5. A number of citizens voiced concern over the requirement of the public road and the short platting of the property. Essentially, the concerns were that drivers would go too fast through the school property on their way to I-5, especially in the morning, and that the short platting of the property would allow the District to sell the north end of the property to developers. Apparently, the property is now used by the neighborhood as open space.

C. Compliance with Performance Standards.

NOTE: As a major revision to the original CUP application, this decision will supersede the original decision approving the CUP under file number ZA 8611276.

6. Parks Mitigation.

The proposal is not subject to Chapter 30.66A SCC since the proposal will not have any documented impacts upon the capacity of the county parks system.

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

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 redevelopment of the school will not be generating new trips on the county road system. (Exhibit C1) The District's proposal is to demolish all six of the classroom buildings and demolish a portion of the existing Library/Administration building on proposed Lot 1. Replacement of the existing 21 classrooms will be accomplished by the construction of a one-story administration/classroom wing to the south of the existing Library/Administration building and a new two-story classroom wing to the southeast of the existing Library/Administration building.

Since the development is not adding additional classroom area, no traffic impact mitigation fees will be required.

B. Concurrency [SCC 30.66B.120]

"Level-of-service" (LOS) means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. LOS standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with LOS A representing the best operating condition, and LOS F the worst.

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

Since the CUP revision will not be generating any additional trips, concurrency is granted to the application.

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

The subject proposal will not impact any IRC locations identified at this time within TSA E with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to 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 will be 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.

Under SCC 30.66B.410, the Department of Public Works (DPW) Director is to determine the standard to which the frontage improvements will be performed. In this case, apparently since there are no traffic impacts to existing streets, the department recommended no frontage improvement, other than frontage improvements to the new public road, which the Examiner has found cannot be required under law.

However, the District has volunteered to construct the public road and dedicate it to the County, even though there is no constitutionally required nexus. (Exhibit J15) The Examiner will address this issue more thoroughly below. Given that, it has also agreed to provide the frontage improvements depicted on the plans consisting of planters and seven-foot sidewalks on either side of the new public road in front of the school.

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 into the school is provided by two existing driveways, one off Cadet Way and one off El Capitan Way. The official site plan requires the District to convert these driveways into a public road.

As can be seen on Exhibit B1, creating a public road out of these two driveways bisects the school property in two. For “convenience sake”, PDS has offered up the option to the District of short platting its property to allow the road to be constructed quickly.

The Examiner finds no constitutional nexus for this requirement related to the CUP (Exhibit J8, criteria (a)). Schools and other public entities are entitled to the same property rights as any other landowner. It is true that the DPW has broad authority over issues determining the extent of improvements such as when to require public roads. However, pursuant to SCC 30.66B.050(3), the approving authority, in this case the Hearing Examiner, shall consider the director of Public Works’ recommendations and act in conformance with Chapter 30.66B.SCC.

Council Motion 08-663. *In re North Sound Christian Schools* was a case concerning connectivity. In Motion 08-663, the Council stated

11. The Department of Public Works’ interpretation of standards in the Engineering Design and Development Standards (EDDS) are reviewed under a standard of ‘rebuttable presumption of validity’; that is, the interpretations could be overturned only if the reviewed authority found them to be ‘clearly erroneous’; FURTHER, the Department of Public Works’ professional judgment and expertise shall be entitled to substantial weight, and the party challenging the Department’s interpretations shall have the burden of proof.

12. The Department of Public [sic] Work’s interpretations of EDDS standard, particularly, EDDS 3-02, as applied to the proposed rezone and preliminary plat of Mill Creek Campus, are not found to be ‘clearly erroneous’. The County Council accepts the Department of Public [sic] Works’s interpretation that: (a) the connecting road (172nd Street SW and 6th Avenue W) will be constructed to a ‘subcollector’ standard pursuant to EDDS 3-02B.2.; (b) an EDDS deviation request was not required as the proposal did not deviate from the Department of Public Works’ interpretation of ‘typical’ within the meaning of EDDS 3-02 B.2 with respect to Average Daily Traffic (ADT) volume; and (c) a request for modification of the design standards of the subdivision roads under SCC 30.41A.215 was also not required.

Based on this case, it is very clear that the determination of connectivity is an administrative decision under the control of the County Engineer and the DPW. The Examiner may only disturb that decision on a finding that it is clearly erroneous, based on the *North Sound Christian Schools* case.

The Examiner points out that here, the issue is not a connectivity determination, but a determination that there is no nexus to support the imposition of a requirement to impose a costly road upgrade when there will be no impact to county roads. Therefore, the standard of clearly erroneous does not apply and the Examiner exercises her authority under SCC 30.66B.050(3) and acting in conformance with Chapter 30.66B SCC, finds that when a development does not impact a county road, there is no basis upon which to require the applicant to upgrade an existing driveway to a county road. Alternatively, if the Council or a court were to find that this is a question of connectivity, the Examiner finds after reviewing the entire record, that the actions of DPW are clearly erroneous, in that the mitigation required in building a new public road is clearly disproportionate to the impacts of the development.

The requirement of the public road may be characterized as an exaction, or mitigation for impacts of the development to the roadway. Although courts have acknowledged that regulations are a necessary part of an orderly society and that they may limit the use of property, there are limits, especially when governments require property owners to formally dedicate land to some public use. The dedication or easement that is required from the landowner must be “reasonable and proportional---i.e., specifically designed to mitigate adverse impacts of a proposed development. Ultimately, the government must demonstrate that it acted reasonably, and that its actions are proportionate to an identifiable problem.” Rob McKenna, Attorney General, *Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property* (December 2006). See *Luxembourg Group, Inc. v. Snohomish County*, 76 Wn.App. 502, 887 P.2d 446, rev.denied, 127 Wn.2d 1005 (1995) (no essential nexus between easement requirement and any adverse impact); *Burton v. Clark County*, 91 Wn.App. 505, 958 P.2d 343 (1998), rev.denied, 137 Wn.2d 1015 (1999) (dedication of right of way and construction of road, curb, and sidewalks found invalid because exaction must solve or tend to alleviate the identified problem that is caused by the development and it must do so in a roughly proportionate manner).

The District does not dispute this analysis but instead

requests approval of the CUP, construction of the road, its dedication to the County, and the approval of the short plat. The District believes Jefferson Elementary School will function better, and the interests of the District, students, and the public will be better served with a public road in the proposed short plat will help the District avoid a number of operational problems it has faced in the past as a result of private roads on District property. Moreover, since the property on the other side is not needed for this elementary school, the short plat will provide the District flexibility with respect to the northern portion of the site in the future.

. . .

At this time, the District wishes to voluntarily construct the new public road and is submitting the following justification for creation and construction under the Short Plat. It is my understanding that if an applicant is willing to create a public road and construct it to Snohomish County standards and the Department of Public Works agrees that it would be a benefit to the citizens and the road system of Snohomish County, there is nothing that would prohibit its creation and construction.

Exhibit J15. Given the unequivocal voluntary offer by the District to construct the public road and frontage improvements, the Examiner can approve the CUP Official Site Plan as submitted, showing the new public road. The Examiner emphasizes, however, that it is not required as a condition of approval.

The County Engineer has classified the new road as a non-arterial residential road, despite the fact that it will serve 1846 ADT. An urban non-arterial residential road typically serves less than 1000 ADT. The design speed for the road is 25 mph. According to the staff report, the road meets the minimum requirements of EDDS for road grades, horizontal and vertical curves. The director determined that the road should be 28 feet rather than the usual 36 feet because the roads around that area are mostly 20 feet wide are smaller. The District does not want to provide parking for parents on the road, and that was another reason not to provide a wider road.

The Examiner was concerned about safe turning radii for buses. The District provided drawings and testimony from their engineering indicating they had analyzed the turning radius for the driveway and that the buses would not swing out of the lane of travel and accidentally hit a bicyclist or pedestrian. (Exhibit J6) Another factor in the width of the road is that neighboring properties would have great difficulty accessing their garages were the road any wider. (Testimony at open record hearing) Given all these determinations, the Examiner cedes to the Director's professional judgment on the width of the road.

F. Right-of-Way Requirements [SCC 30.66B.510, SCC 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.

DPW required no right-of-way to be deeded to the county (other than the new public road). The District has volunteered to provide right-of-way as depicted on the official site plan.

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 between the County and the Washington State Department of Transportation (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.

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT in the form of an e-mail dated January 6, 2009 (Exhibit H1), indicates that this development will not have a significant adverse traffic impact upon state highways. Therefore, WSDOT does not request any traffic review mitigation for state highways from the applicant.

Since no new trips will be created, no mitigation is required.

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 (ILA) between the County and the other jurisdictions.

There are no city jurisdictions that have an ILA with the County that will be impacted by new trips from the subject development.

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

TDM is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five (5) percent of the development's p.m. peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and SCC 30.66B.625.

Since this development will not be increasing p.m. peak hour trips, no TDM measures will be required.

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

The project is not subject to fees associated with Chapter 30.66C SCC.

10. Drainage and grading.

A. Drainage

Drainage for the new public road will be treated for water quality and detained within an easement on Lot 2. Drainage for Lot 1, Jefferson Elementary School, was reviewed and approved during review of the CUP for the school (08-111049-LU). The drainage report (Exhibit C2) is included in order to document that the drainage calculations for the elementary school also included water quality treatment and detention associated with stormwater runoff for the new public road.

Drainage for the area subject to the CUP revision is split between two basins known as Basin 2 and 3. Basin 2 will have flow control provide by means of a detention facility located west of the proposed school and parking areas, next to the western property line and just south of El Capitan Way. Water quality treatment is not required for this facility since no pollutant generating surfaces are draining to it. Similar to the existing conditions, detained stormwater from this facility will be released through a control structure and conveyed to the conveyance pipe system on El Capitan Way.

Basin 3 will also have flow control provided for by means of the existing detention facility, which will be redesigned for the redeveloped conditions. Water quality treatment will be provided for by bio-swales. Detained stormwater from the facility will be released through a new control structure and conveyed to the existing conveyance system that releases stormwater into the existing undeveloped forested area to the north. The targeted drainage plan is Exhibit C2 in the record.

B. Grading.

A limited scope "Phase 1" grading permit was requested by the school district in advance of the "Phase 2" final grading permit currently pending in PDS. Earthwork began approximately July 13, 2009.

A grading permit will be required for the quantities of cut and fill proposed. Water quality will be controlled during construction by use of such methods as 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 (Chapter 30.62 SCC)

There are no critical areas on or within 200 feet of the site. The project complies with the Critical Areas Regulations.

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 Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively.

The property where the school is located is designated Public/Institutional Use on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Public / Institutional Use designation is "...appropriate for existing or planned government owned and/or operated properties, including schools, parks, government buildings, utility plants, and other government operations or properties as requested. There are no specific implementing zones for this designation since zoning will vary from site to site."

13. Zoning.

This project meets zoning code requirements for lot size, setbacks, required parking stalls, landscaping, bulk regulations and other zoning code requirements.

14. Utilities

- A. Water. Water is available from City of Everett. (Exhibit H6)
- B. Sewer. Sewage disposal will be available from the City of Everett. (Exhibit H7)
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available. (Exhibit H3)
- D. Snohomish Health District Approval- the SHD has no objections to the proposed revision of the conditional use permit. (Exhibit H4)
- E. Fire Code: The Fire Marshall has reviewed the project for compliance and has no objection to the approval of the conditional use and short plat for this project. (Exhibit I)

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

The District issued a Mitigated Determination of Nonsignificance (MDNS) for the subject application on April 9, 2009 (Exhibit E2). The MDNS was not appealed.

The mitigating conditions, as modified by the Addendum, placed on the MDNS are:

Water:

1. The District will not use any fertilizers in the landscaped surfaces in the vicinity of the northwest detention pond. As a result, water quality treatment is not required for Basin 2.

Transportation:

1. Snohomish County will require full frontage improvements on the south side of Cadet Way; this will include vertical curb and gutter, five-foot planting strips, and seven-foot sidewalks. The County has requested a roadway section width of 28 feet of pavement (curb to curb). The District will voluntarily constructing a vertical curb and gutter, five-foot planting strip, and seven-foot sidewalk along the north side of Cadet Way where the new road abuts the District property. Improvements will be consistent with county requirements and approval.
2. An EDDS Deviation was submitted and conditionally approved by Snohomish County. The deviation would have waived the required urban standard frontage improvements along 27th Avenue SE and Monte Cristo Drive. There is no current or proposed vehicular access to the site along this frontage as well as no new

vehicle trips generated by the proposal. Implementation of the deviation request would be based on final approval by Snohomish County.

(Exhibit J1)

16. Landscape Modification. A minimum 20-foot Type A perimeter landscaping is required for any development that is permitted as a conditional use (SCC 30.25.020(2)). SCC 30.25.040 allows landscape modifications. The District applied for a landscape modification (Exhibit A4) on January 8, 2009, as a part of the application for the major revision to the CUP.

SCC 30.25.040(2) stipulates that the decision maker (either the department or the hearing examiner) may approve a request for modification when:

- a) The proposed landscaping represents an equal or better result than would be achieved by strictly following the requirements of the code; or
- b) The proposed landscaping fulfills its intended purpose as described in this chapter or, when applicable, Chapter 30.42B SCC.

20-foot Type A Perimeter Landscaping. Type A landscaping requires planting of a mixture of evergreen and deciduous trees at 25 feet on center in a triangular pattern, evergreen and deciduous shrubs at 3 feet on center in a triangular pattern, and evergreen groundcover at 12 inches on center in a triangular or offset pattern (SCC 30.25.017(1)). The intent of this section is to "... significantly separate residential uses and zones from nonresidential uses and zones, and to buffer single family development from multifamily development."

The existing landscaping at the school includes numerous large conifers. The trees have been retained as intended to this day. The original CUP allowed the District to rely on these conifers as a modification but without a condition. When the Examiner indicated that a condition would be necessary as part of a modification request, the District opted to go with a regular 20-foot Type A perimeter landscaping buffer.

The District has requested to relax the landscaping requirements along the south property lines by relying on the baseball field, which leaves a grassy area of approximately 250 feet between the residences and the south property line and the nearest school building.

17. Conditional Use Permit Criteria

In considering the application, the Examiner must apply SCC 30.42C.100, which outlines the decision criteria for a CUP 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.

Exhibit A4, supplied by the applicant's representative, is relevant to various criteria for the CUP. The following information is taken from that exhibit.

Regarding criteria (1)(a):

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

The proposal is for modernization of an elementary school. There are no specific policies in the comprehensive plan that address this subject, but the objective of the CUP is certainly not inconsistent with the comprehensive plan.

The District and the county claim that the provision of the public road and the sidewalks advance various transportation policies in the comprehensive plan. However, to be very clear, the road is not part of the CUP, nor is it required as a part of approval of the CUP. It is being voluntarily constructed by the applicant. Therefore, it cannot be used as justification to support approval of the permit.

Regarding Criteria (1)(b) of the Conditional Use Permit Criteria.

- (b) *The proposal complies with the applicable requirements of Title 30 SCC:*

The proposal complies with the applicable requirements such as setbacks and height restrictions. The landscape modification has already been discussed, above.

Regarding Criteria (1)(c) of the Conditional Use Permit Criteria.

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

The proposed elementary school renovations themselves will not adversely affect the existing or potential uses in the general area. The only issue may be whether the opening of the public road will create a great deal of new traffic issues for the neighborhood. The Examiner will condition the development to require the District to pay for traffic calming devices should 60% of the neighbors along Cadet Way and El Capitan Way between 19th Ave SE and 27th Ave SE petition the DPW for such devices, despite what the average speed may show.

Regarding Criteria (1)(d) of the Conditional Use Permit Criteria.

- (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 proposal will not be materially detrimental to uses or property in the immediate vicinity and would be compatible with the character, appearance, quality of development and physical characteristics of the site and surrounding area. Jefferson Elementary School is an established school in the neighborhood and was originally built through a CUP approval process. The approved site plan for the proposal would replace the previous official site plan.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over CUP applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. In considering the major revision, application of many of the decision criteria require the exercise of discretion.
3. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, and the applicable design and development standards.
4. Wastewater from the school is handled using an on-site septic holding tank. The revision to the CUP will allow the school to convert to public sewer. Adequate public services exist to serve the proposal.
5. If approved with the conditions, the proposal will make adequate provisions for the public health, safety and general welfare.
6. The proposed major revision of the CUP with conditions of approval will be consistent with the comprehensive plan and comply with the applicable requirements of Title 30 SCC.
7. The major revision of the CUP, with conditions of approval, will not be materially detrimental to uses or properties in the immediate vicinity.
8. The major revision of the CUP, with conditions of approval, will respond to as well as maintain compatibility with surrounding uses and incorporate specific features, conditions, or revisions that ensure it responds appropriately to the character, appearance, quality of development, and physical characteristics of the site and surrounding properties.
9. 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 **MAJOR MODIFICATION TO A CONDITIONAL USE PERMIT** and **LANDSCAPE MODIFICATION** are hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS

- A. This conditional use permit supersedes and replaces the conditional use permit approved under county planning file number ZA 9005283.
- B. The CUP site and landscape plan received by the Examiner on August 6, 2009 (Exhibit J11) shall be the approved site configuration. Changes to the approved site plan are governed by SCC 30.42C.110.
- C. The landscape modification as requested for the southern boundary is granted. The applicant may retain trees that provide the equivalent of at least Type A landscaping as determined by PDS, unless it is the District's desire to cut all the trees down along the southeastern property line. If that is the case, the District must install a regular Type A landscaping buffer there and everywhere else required on the site plan.
- D. The District shall pay for any traffic calming devices for the new public road, Cadet Way, should 60% of the neighbors along Cadet Way and El Capitan Way between 19th Ave SE and 27th Ave SE petition the Department of Public Works for such devices. The Department of Public Works shall accept such a petition without the need of the neighbors to show that the average speed is higher than it should be, because of the presence of school children in the area.
- E. 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 provided by PDS shall have been completed, signed, and recorded with the county Auditor's Office.
 - ii. A final grading permit, to include a Storm Water Pollution Prevention Plan (SWPPP), issued pursuant to the SCC Chapter 30.63B shall have been obtained for any on-site grading.
 - iii. A full drainage plan shall have been submitted and approved pursuant to the SCC Chapter 30.63A.
 - iv. All site development work shall comply with the requirements of the plans, landscape modification, and permits approved pursuant to Condition B, above.
- F. Prior to approval for occupancy or final inspection:
 - i. The new public road shall be blocked to the satisfaction of the County until or unless this new road has been dedicated to the public.
 - ii. The landscape plan (Exhibit B1) shall be implemented.
- G. In conformance with applicable standards and timing requirements:
 - i. Storm water drainage measures shall be implemented.
 - ii. Interior circulation area improvements and any general site landscaping shall be implemented consistent with the official site plan and exhibits.

- iii. The District will not use any fertilizers in the landscaped surface in the vicinity of the northwest detention pond.

THIS APPROVAL SUPERSEDES ALL PREVIOUS APPROVALS AND CONDITIONS GRANTED ON THIS PROPERTY, SPECIFICALLY HEARING EXAMINER DECISION ZA 9005283.

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.

Decision issued this 1st day of September, 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 **SEPTEMBER 11, 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 15, 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: Tom Barnett, 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.