

**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.: 09-102385-00-00-SP

TYPE OF REQUEST: Short Plat Approval

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 short plat application on April 24, 2009. (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 was made by the School District on April 9, 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 through a major revision to its conditional use permit (CUP). It has concurrently filed an application to short plat its property. The public hearing for the CUP was scheduled concurrently with the public hearing for the short subdivision. Chapter 30.41B.030 (1) requires a Type 2 decision for a short plat with dedication of right-of-way for a new public road.

The District is requesting a two-lot short subdivision of school property and the creation of a new public road (Cadet Way) because the short platting process is more expedient than the Road Establishment process (RCW 36.81 and Chapter 13.90 SCC) for creating a new public road. The proposed lot located south of Cadet Way is occupied by the existing Jefferson Elementary School. The proposed lot located north of Cadet Way is currently undeveloped, and will remain so for the immediate future except for a stormwater water quality and detention system located within an easement in the southeast corner of the lot. Jefferson Elementary School has water service from the City of Everett, and a septic system that is maintained by the City of Everett. NOTE: The applicant indicated that the City of Everett will provide sewer service in the future. The District has noted that a major reason for short platting the property is that the undeveloped area is not needed by the elementary school and that the short plat will provide more options for the District as far as future use of the property. (Exhibit J15)

The short subdivision will result in creation of two (2) lots, both of which are owned by the District, and both of which will be designated as Urban Low Density Residential (ULDR). Only the school site will possess the Public/Institutional Use (P/IU) Overlay on the Future Land Use Map. Thus, approval of the short plat will create a large 10-acre lot in the R-9600 zone (Lot 2). The Examiner will discuss later the issue of whether the creation of this lot violates the minimum net density requirements.

There is no constitutional nexus to support the requirement for creating this public road. The District is not putting any new trips on the road that would create any adverse impact that would require such mitigation. Rather, the District is agreeing to construct this public road through the center of their property on a strictly voluntary basis.

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.

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 (TSA) 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 applicant'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 now provided by two existing driveways, one off Cadet Way and one off El Capitan Way. As can be seen on Exhibit B1, creating a public road out of these two driveways bisects the school property in two.

The Examiner finds no constitutional nexus for a requirement to turn this driveway into a public road related to either the CUP or the short plat. 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.2d343 (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 and short plat 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 or 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 engineer 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 voluntary 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 Conditional Use Permit 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.

B. Grading.

A limited scope "Phase 1" grading permit was requested by the 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 approximately 200 cubic yards of cut and 200 cubic yards of fill, primarily for road, drainage facility, and road construction. 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 and Zoning Code.

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 subject property is partially designated Public/institutional Use on the GPP Future Land Use map, (south half below proposed public road) 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." The other half is Urban Low Density Residential.

Minimum Net Density Issue

The proposal is for a short plat of the property into two lots of approximately 10 acres each. This does raise an issue of whether the short plat meets the minimum net density policy of the comprehensive plan and the implementing zoning code. Policy LU 2.A.1 in the GPP states that:

Within UGAs, development regulations shall be adopted and maintained which will require that new residential subdivisions achieve a minimum net density of 4-6 dwelling units per acre in all unincorporated UGAs, except . . . [exceptions inapplicable].

The introductory language and the goal and objective language identify the purpose of this language: to establish development patterns that use urban land more efficiently (Goal LU 2) and to increase residential densities within UGAs by concentrating and intensifying development in appropriate locations (Objective LU 2.A).

However, development permitting is controlled by the words of the code, unless the code clearly authorizes otherwise. *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The controlling code sections are as follows:

General Development Standards-Bulk Regulations

SCC30.23.020(1)(a): A minimum net density of four dwelling units per acre shall be required in all UGAs for . . . new subdivisions, short subdivisions, PRDs, and mobile home parks.

Short Subdivision Code

SCC 30.41B.120: All residential short subdivisions located in an urban growth area as designated on the comprehensive plan

shall maintain a minimum net density of four dwelling units per net acre

The District expressly placed ½ of the property in Public/Institutional Use and the other ½ of the property, by the applicant's representative's own admission, was purposefully kept out of the Public Institutional Use overlay. That left merely the R-9600 zoning. The District argues that the Examiner should not consider the above minimum net density provisions of the code because the District has no current plans for Lot 2 (the northern lot). The District states that "The Short Plat has been filed specifically to allow dedication of right-of-way on Cadet Way." Further, "[t]he proposed creation of Lot 2 is **not** intended to create residential development." They go on to argue that the proposed plan will adequately maintain development potential for four dwelling units per acre, but the District should not be compelled to subdivide property for which it has not specific or immediate plans. (Exhibit J9)

The Examiner, and hopefully PDS and other land use officials, have never treated property differently depending on who applied for a permit and the subjective intent of the applicant at the time of subdivision. Any person (as that term is defined in the code) may apply for a subdivision under the rules and regulations found under the code. In this case, the minimum net density provisions of the code, implemented under the two sections above, require that any subdivision in the UGA in a residential zone maintain a net density of four dwelling units per acre. The code does not require one to examine who the property owner is or what his intention may be. Though the sections may be somewhat inartfully worded in that they speak to "dwelling units" and "residential subdivisions" that has always been the way it has been interpreted by PDS. In this case, the applicant expressly declined to put this property in an overlay designation that would have prevented it from being residentially subdivided.

The Examiner realizes the practicalities of the necessity to get the new public road approved quickly, and for that reason, and that reason alone, will condition this property to provide that the subdivision of this lot may only occur if no residential use of this lot is made. The Examiner believes that PDS has steered this applicant into a solution that is illegal, although by mistake, since the planner assigned to this case assumed he Public/Institutional Use Overlay applied to the entire parcel. Given that unfortunate circumstance, the Examiner will condition this application to allow it to legally obtain the result requested by the applicant.

13. Zoning.

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

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)

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. Subdivision Code (Chapter 30.41B SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on September 6, 2006. The proposed plat, as conditioned, also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. Specifically, the following are met:

- A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. (Finding of Fact 7; see SCC 30.41A.210) These standards are only met because the District, is volunteering to construct the public road and frontage improvements.
- B. Fire Code/Fire District Requirements. The Fire Marshall has reviewed the project for compliance and has no objection to the approval of the conditional use permit and short plat for this project. (Exhibit J)
- C. As indicated earlier in this decision, the District has met the requirements of the Health District, and the county drainage code.
- D. Density for Sloping Land. (SCC 30.41B.210). This section is not at issue in this case.
- E. Safe Walking Conditions to School. The District will be providing safe walking conditions along the public road by providing public sidewalks in front of the school as discussed in Finding of Fact 7.

17. 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. Such 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 preliminary short subdivision conforms with applicable zoning codes and the comprehensive plan. Provisions for adequate drainage have been made in the conceptual short plat design which indicates that the final design can conform to Chapter 30.63A SCC and State Department of Ecology drainage standards. A public water supply and public sewer service will be provided by the Snohomish County PUD No. 1 and the City of Everett, respectively.

18. 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 short subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The legal standard for which the Examiner must review a preliminary short subdivision under the state subdivision code, Chapter 58.17 RCW, is:

whether 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 District has met its burden in showing that the preliminary short subdivision application should be approved.
4. 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 2-lot **SHORT SUBDIVISION** on 20 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary short plat received by PDS on April 24, 2009, (Exhibit B1) shall be the approved short plat configuration. Changes to the approved short plat are governed by SCC 30.41B.310.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. No residential development is permitted on Lot 2.
- D. Prior to recording of the final plat:
 - i. The proposed new public road shall be approved by the County.
 - ii. The new public roadway shall be blocked to the satisfaction of the County such that there is no through traffic until the final short plat is recorded.
- E. 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 30.41B.300.

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

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