

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: December 15, 2009

PLAT/PROJECT NAME: ***Kelly Heath Rezone***

APPLICANT/
LANDOWNER: Kelly Heath

FILE NO.: 09-104128 LU

TYPE OF REQUEST: Rezone from Residential- 8400 (R-8400) to Residential-7200 (R-7200)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 18905 24th Avenue West, Brier, 98035; and
2319 189th Street SW, Lynnwood, WA 98036

ACREAGE: 1.4 acres

ZONING: CURRENT: R-8400
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/acre)

UTILITIES:

Water: Alderwood Water & Wastewater District
Sewage: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Edmonds School District #15

FIRE DISTRICT: Fire District No. 1

INTRODUCTION

The Applicant filed the rezone application on June 30, 2009. No other development application has been filed. (See Exhibit A1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing on October 14, 2009 as required by SCC 30.72.030(4). See Exhibits F1 (mailing), F2 (publication) and F3 (posting).

A SEPA threshold determination of nonsignificance was made on October 12, 2009. (See Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on the rezone application on November 18, 2009.

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

FINDINGS OF FACT

1. All exhibits and witnesses included on the Master Exhibit and Witness List were admitted and considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. State Environmental Policy Act Compliance. A Determination of Nonsignificance (DNS) was issued October 12, 2009. (Exhibit E2) The DNS was not appealed.
3. Rezone Request: The Applicant is requesting a rezone from R-8400 to R-7200 with no concurrent development application. The rezone is processed as a Type 2 application requiring a Hearing Examiner's decision. Upon development of the parcel, water and sewer will be provided by the Alderwood Water & Wastewater District.
4. Site description: The site consists of two parcels, each of which is developed and each of which has landscaped yards. One parcel contains a duplex and one parcel contains a single-family residence.
5. Adjacent uses: Adjacent zoning is LDMR to the west, PRD-8400 to the south and north, R-7200 to the east, and R-8400 to the southeast. Adjacent uses are residential, but it is also quite close to Interstate 5, which is directly to the west of the property.
6. Transportation: The property is located in a residential area. Because there is no development proposal, PDS traffic has not yet reviewed the application for impacts from traffic. If and when the applicant comes in with a proposal to further develop the parcel, PDS will review that application for impacts to transportation and roads.
7. Environmental Impacts of Higher Density.
 - A. **Critical Areas, Drainage, and Grading.**

(i) Critical Areas:

The following information is taken from the PDS staff report (Exhibit H at p. 3):

There are no critical areas on site or within 100 feet of the site (see Exhibit C.1). The two parcels are currently developed and no new development is proposed as a part of the rezone application. Critical area evaluation will be required as a part of the review process associated with any future new development.

(ii) Drainage and Grading:

The following information is taken from the PDS staff report (Exhibit H at p. 3):

No drainage improvements are required. The two parcels are currently developed and no new development is proposed as a part of the rezone application. Drainage review will be required as a part of the review process associated with any new development.

B. Parks and schools impacts.

- i. Parks.** The PDS staff report (Exhibit H) contains the following information on the development's compliance with County parks mitigation requirements which the Examiner incorporates herein for a better understanding of the parks' impacts of the higher density development at this site:

No new lots are being created. Park mitigation fees only will be established if a development application, as defined in Chapter 30.91D.200 SCC, is submitted to PDS.

(Exhibit H at 2)

- ii. Schools.** The PDS staff report states the following regarding mitigation of impacts to schools that are a result of the development.

No new lots are being created by the rezone application. School Impact Mitigation fees are applied to newly created lots. School mitigation fees will be required as a part of the approval process for development as defined in Chapter 30.91D.220 SCC.

(Exhibit H at 3)

8. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) 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 ULDR designation "allows mostly detached housing developments on larger lot sizes. Implementing zones: R-7,200, PRD-7,200, R-8,400, PRD-8,400, R-9,600, PRD-9,600 and WFB." GPP at LU-89.

9. Health and Safety Issues.

- A. **Compliance with Fire Code and Safety Issues.** PDS included the following comments at p.8 of their staff report (Exhibit H):

PDS sent a request for review document to Fire District # 1 on September 29, 2009. PDS did not receive a response from Fire District # 1.

The rezone application will not create any new lots. Neither access nor frontage improvements are required. Each of the existing lots takes access off of an open and constructed public road. The rezone application meets the access requirements for emergency vehicles. (Exhibit K at 14-15)

- B. **Pedestrian Facilities.** Since the Applicant is not presently developing the property, this provision does not apply. When the property is developed, the Applicant will be required to provide safe pedestrian facilities to serve the development.

10. **Utilities.**

- A. **Sanitary Sewer.** Sanitary sewer will be provided by Alderwood Water & Wastewater District Water District. (Exhibit G4).

- B. **Water.** Water will be provided by the Alderwood Water & Wastewater District Water District. (Exhibit G3).

11. 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 the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. (*Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); see *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997)). The County's regulations are a direct expression of the criteria expressed by case law.
3. Chapter 30.42A SCC covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) The proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.¹

- 4. In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan. (RCW 36.70.040) But, in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447 *A Motion Vacating and Remanding the Hearing Examiner’s Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) Back to the Examiner to Supplement the Record at 3* (August 8, 2007), “The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.” The Examiner interprets this language, as well as the law applicable to rezones, to mean that the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies.
- 5. This rezone is a request to up-zone these properties in the ULDR designation from R-8400 to R-7200 to allow a total of eight units on a 1.4 acre site (a lot yield increase of one lot from R-8400). Although it is clear that this request fits within the ULDR designation (which allows up to six units per acre), as stated above, the analysis of consistency must go beyond the designation and identify how the project is consistent with the policies in the Plan.
- 6. The Land Use Element of the GPP introduces the way in which UGAs are planned for and how densities are to be determined:

The GMA requires that urban growth areas (UGAs) be designated through the county’s plan. UGAs are to include areas and densities sufficient to permit the urban growth that is projected to occur in the county over the next twenty years. Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas.

Planning for growth in this way accomplishes two GMA goals: 1) the efficient provision and utilization of public facilities and services, including public transportation; and 2) reduced conversion of undeveloped land into sprawling, low-density development.

(General Policy Plan at LU-1)

This rezone application invokes consideration most directly of Goal LU 2 and its policies. The introduction to that Goal states:

To promote efficient utilization of land within unincorporated UGAs, the county will encourage well-designed, more pedestrian-friendly urban

¹ This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.

development patterns with a greater mix of uses and a more efficient, creative use of land. By improving land use efficiency in UGAs, several GMA objectives can be accomplished:

- reduced dependence on the automobile;
- increased support for public transportation;
- improved air quality;
- increased choice of housing types;
- improved efficiency of infrastructure provision and usage; and
- reduced consumption of rural lands.

To improve the efficiency of urban residential land utilization, planning within UGAs and development regulations will ensure that future residential subdivisions will achieve a minimum net density of 4 to 6 dwelling units per acre except in areas within or near critical areas that are large in scope, with a high rank order value, and are complex in structure and function. In addition, the county will provide for higher density and mixed use housing types around and within centers and along major transportation corridors; encourage infill and intensification of areas at existing residential densities; and also broaden the variety of housing types within both traditional single family and multi-family neighborhoods while respecting the vitality and character of established residential neighborhoods. A mix of housing types with a range of densities will be encouraged throughout UGAs, as long as they are carefully sited, well designed, and sensitively integrated into existing communities.

(General Policy Plan at LU-15)

Goal LU 2 of the GPP requires that the County “[e]stablish development patterns that use urban land more efficiently”, although Objective LU 2.A qualifies that statement by requiring the County to “[i]ncrease residential densities within UGAs by concentrating and intensifying development in appropriate locations.” (GPP at LU-16 (emphasis added)) The urban low density residential designation allows mostly detached housing developments on larger lot sizes. (GPP at LU-89)

Specific policies under Goal LU 2 that are relevant to this development are:

2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.

7. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the Council in the adoption of the proposed plan and provide the Examiner a reasonable foundation on which to analyze urban rezone proposals to determine whether they meet Goal LU 2 and Objective 2, providing efficient development urban development patterns in appropriate locations and other related GPP policies. **Note: This test has been revised in light of the Council’s Motion 08-217.**

- A. **Is the area proposed for rezoning already characterized by urban growth? Explain. (Goal LU 2; Objective LU 2)**

B. Does the area proposed for rezoning already have adequate existing facility and service capacities to serve more intense development for the following types of public facilities and services? Please demonstrate. (See Goal LU 2; Objective LU 2)

- i. Streets, roads and highways (including but not limited local access and circulation, arterial systems and road systems capacity, concurrency, state highway impacts);
- ii. Sidewalks;
- iii. Street and road lighting systems;
- iv. Traffic signals;
- v. Domestic water systems;
- vi. Sanitary sewer systems;
- vii. Public parks and recreational facilities, or useable open space, common areas, or other recreational facilities within the development ;
- viii. Storm and sanitary sewer disposal system;
- ix. Fire and police protection suppression;
- x. Law enforcement;
- xi. Public health;
- xii. Education; and
- xiii. Other services.²

C. Will the rezone help to establish development patterns that use urban land more efficiently? How? (See Goal LU-2)

D. Does the development concentrate and intensify development at an appropriate location? Why? (Objective LU-2.A)

- (1) Critical areas/shorelines.
 - (a) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
 - (b) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (c) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.³
- (2) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities? **(Policy LU 2.A.5)**
- (3) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas? **(Policy 2.A.4)**

² Taken from the GMA definitions of public facilities and services. RCW 36.70A.030(12) &(13).

³ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

- E. **Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? (Policy LU 2.A.4)(H.O.2.B.1)**
- F. **Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? (Policy I.C.2)**
- G. **If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? (Policy HO 2.A.4)**
- H. **Does the development encourage the integration of a variety of dwelling types and intensities in residential neighborhoods? (Policy H.O. 2.B.4)**

8. Applying this test to the Kelly Heath Rezone, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

- A. The Examiner considers the consistency of the rezone with the comprehensive plan, and in the very unusual case, whether there is an issue of whether the rezone is consistent with the public health, safety and welfare.
- B. **Does the area proposed for rezoning already have adequate existing facility and service capacities to serve more intense development for the following types of public facilities and services? Please demonstrate. (See Goal LU 2; Objective LU 2).**

The area proposed for rezoning already has adequate existing public facilities and services to serve the development for the following types of facilities and services, as demonstrated below:

- i. Streets, roads and highways. The Examiner concludes that the development is adequately served by existing streets, roads and highways.
- ii. Sidewalks. The Applicant will be providing adequate pedestrian facilities as a part of any future development proposal. (Finding 9B)
- iii. Street and road lighting system. It is unknown whether there is a street and road lighting system in this area.
- iv. Traffic signals. It is unknown whether there are traffic signals in this area or whether they are necessary.
- v. Water systems. Water will be provided by the Alderwood Water & Wastewater District Water District and the file contains a preliminary certificate of water availability. (Exhibit G3)
- vi. Sanitary Sewer Systems. Sewer will be provided by the Alderwood Water & Wastewater District Water District and the file contains a conditional preliminary certificate of sewer availability as discussed in Finding of Fact 10A. (Exhibit G4)

- vii. Park and recreational facilities. As stated in Finding of Fact 7.B.1, the Applicant will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. (See Snohomish County Parks Plan at page 41) These criteria, however, address existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the County. The Examiner can determine, based on a map located on the County Parks and Recreation Department website, that there are a number of County parks in the vicinity of the development. Regional parks in the area include McCollum Park, Picnic Point Park, Meadowdale Park, Willis Tucker Park, Martha Lake Park, Lord Hill Park, Silver Creek Park, Rhody Ridge Arboretum, and Forsgren Park. In the future, the Examiner would like to hear from Parks' planners whether the Parks' level of service is met for citizens in each particular proposed development and how that may be determined at the planning level. The Parks Plan was not altogether clear that levels of service had been adopted for every type of park, although Objective CF 7.C of the GPP states, related to parks, "[m]onitor and maintain minimum LOS standards, as defined in the Comprehensive Park and Recreation Plan and the CIP, through adequate CIP funding."
- viii. Storm and sanitary sewer disposal system: A stormwater disposal system is provided in the area through the sewer system and streets.
- ix. Police and Fire suppression system: Fire protection is provided by Snohomish County Fire District No. 1. The Fire Marshall's Office in PDS approved the proposal. Police protection is provided by the Snohomish County Sheriff's Department.
- x. Public health: Public health issues are addressed by the Snohomish Health District. (See Exhibit G2)
- xi. Education: The site is served by the Edmonds School District.
- xii. Other services: Not applicable.

C. **How will the rezone help to establish development patterns that use urban land more efficiently? (See Goal LU-2)** The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location (if sewer service can be brought into the neighborhood), in furtherance of Objective LU2-A. The current predominant zoning of the area is R-8400. However, there is also a mix of PRD-8400 and LDMR, zoning classifications that bring higher density development into the neighborhood. The rezone to R-7200 of this small parcel is not incompatible with the changes occurring elsewhere in the neighborhood and will provide tools for more efficient infill in the future.

D. **Does the development concentrate and intensify development at an appropriate location? Why? (Objective LU-2.A)**
 The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A.

- i. There are no critical areas or shorelines on the site, nor are there any other sensitive areas that would warrant larger zoning classification.
- ii. The rezone or development is proposed in an area that is within walking distance of transit access. The subject property is within a half-mile of bus service and in close proximity to the Lynnwood Transit Center. Proximity to parks has already been discussed in B (vii). **(Policy LU 2.A.5)**
- iii. The Examiner characterizes the neighborhood as single-family but one in which infill is occurring and density is increasing. Exhibit D2 is a vicinity map which shows the property itself and the surrounding area. Given the mix of zoning densities already existing in the area, and the ability of the road system to handle it, this level of density appears appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in these areas. **(Policy 2.A.4)**

E. Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? (Policy LU 2.A.4)(H.O.2.B.1)

This is a low density area, not a medium density area. **(Policy LU 2.A.4)(H.O.2.B.1)**

F. Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? (Policy I.C.2)

This development is close to the City of Lynnwood. The City did not comment on the record regarding the rezone. **(See Policy I.C.2)**

G. If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? (Policy HO 2.A.4)

The Examiner is not aware of any "selective and innovative land use measures" that will be used to preserve the character of the stable residential neighborhood. **(See Policy HO 2.A.4).**

H. Does the development encourage the integration of a variety of dwelling types and intensities in residential neighborhoods? (Policy H.O. 2.B.4)

This provision is not applicable, since no development is currently proposed.

I. Under Objective TR 1.C it is incumbent upon the Examiner to ensure that all rezones adequately provide for maintenance of the arterial roadway system.

Objective TR1.C states: Establish access and on-site circulation standards to maintain the safety and integrity of the arterial roadway system. This will be done at the time of development of the parcel.

J. Are there access and on-site circulation issues addressed by the policies under Objective TR 1.C or TR 1.D that should be addressed in the rezoning process?

None were brought to the attention of the Examiner during the hearing process.

9. The other criteria in SCC 30. 42A.100 is whether the proposal bears a substantial relationship the public health, safety, and welfare. (See SCC 30.42A.100 (2)) Returning to Council Motion 07-447, the Council clarified the proper role of the Examiner in reviewing these criteria:

Although consistency with the Comprehensive Plan is a significant factor in determining whether a proposed rezone bears a substantial relationship to the public health, safety and welfare, in some cases, there may be other factors outside the Comprehensive Plan policies that may be relevant to that issue and which may be considered. If there are such factors apparent from the application documents or otherwise known to PDS, they must be identified and discussed both in the written PDS staff report and by the Examiner in his decision? The written PDS staff report and the Examiner's decision should specify if any of these other factors are related to the rezone or should be considered at the project level with the specific development proposal being made. PDS staff is not required to anticipate opposition or to consider factors or issues outside of the Comprehensive Plan or not required by the Snohomish County Code. However, this does not limit the Hearing Examiner's ability to consider testimony at the public hearing concerning whether the proposed rezone bears a substantial relationship to the public health, safety and welfare.

Motion 07-447 at 3.

The Examiner interprets this language to mean that most of the time, analysis of whether the rezone is consistent with the Comprehensive Plan should suffice for review of a rezone proposal because in most cases, analysis of the comprehensive plan policies is analysis of whether the proposal bears a substantial relationship to the public health, safety and welfare. However, the Examiner and PDS may use this second criteria to analyze other issues of concern that may be raised outside of the scope of the Comprehensive Plan.

10. In this case, the Examiner concludes there are no issues of concern that warrant analysis under SCC 30.42B.100 (2). While a number of issues of concern were brought to the attention of the Examiner by the neighbors, the Examiner concludes that those issues are more properly addressed through the short subdivision preliminary approval process, and not through the auspices of public health, safety and welfare under the rezoning process.
11. Since this request involves rezoning only, any details or conditions which would normally appear as conditions of the development in the Examiner's decision will be issued as a part of the administrative plan approval by PDS.
12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
13. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The request for a **REZONE** from R-8400 to R-7200 for this property is **APPROVED**.

Decision issued this 15th day of December, 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 **December 28, 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 **December 29, 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 this case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

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