

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: April 8, 2010

PLAT/PROJECT NAME: **MELTON PARKER SHORT PLAT**

APPLICANT/
LANDOWNER: Patrick Melton and Robert Parker

FILE NO.: 08-101650-000-00 LU

TYPE OF REQUEST: Rezone from R-8,400 to R-7,200 and an 8-lot short plat with dedication of a new public road

DECISION (SUMMARY): **REZONE APPROVED; SHORT SUBDIVISION APPROVED WITH CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: 2115 204th Street SW, Lynnwood, WA 98036

Acreage: 1.57 Avg. Lot Area: 7011 square feet Gross Density: 5.1 du/ac

Lots: 8 Smallest Lot Area: 4634 square feet Net Density: 6.1 du/ac

Lot Size Averaging: 7011 square feet per lot

Current Zoning: R-8,400 Proposed Zoning: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water and Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds No. 15

FIRE DISTRICT: No. 1

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed a rezone and short subdivision application on February 20, 2008, which was determined by PDS to be complete as of the date of submittal for regulatory purposes on March 19, 2008. (Exhibit A1, Exhibit K at 2).

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 SEPA determination was made on January 21, 2010. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on March 31, 2010. 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.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. Summary of Proposal: The applicant is requesting a rezone from R-8,400 to R-7,200, and an 8-lot short subdivision. Stormwater will be routed to an underground vault within Tract 999, prior to release. Water and sewer will be provided by Alderwood Water and Wastewater District. Access to the development is by a new public road, 21st Place W. Chapter 30.41B.030(1) SCC requires a Type 2 decision for dedication of right-of-way for a new public road.
3. Site Description: The site is developed with a single-family residence and landscaped yard.
4. Adjacent Zoning/Uses: Neighboring properties are zoned R-8,400. Within 500 feet of the property are areas zoned R-7,200, MR, and LDMR.
5. Public Comment/Issues of Concern.

A. Comments from the City of Lynnwood

The City of Lynnwood provided comments and identified nine (9) areas of concern. (Exhibit H2) It should be noted that the City's comments were made in response to the information provided with the Notice of Application, which included Exhibit B2 (the Superseded Site Plan). In response to the City's

concerns, the applicant has revised its plans. All PDS response comments noted below are contained in Exhibit K in the record at pp. 3-4.

1) *Move the proposed cul-de-sac north to the intersection of 202nd Street SW and 21st Place W.*

PDS RESPONSE: Please refer to Exhibit B1 (revised site plan). The cul-de-sac has been relocated to the desired location.

2) *Curb, gutter, and sidewalk need to be required for 21st Place W.*

PDS RESPONSE: 21st Place W will be required to meet EDDS development standards, which includes curb, gutter, and sidewalk (See Exhibits B1 and B3)

3) *21st Place W should have a 50-foot wide right-of-way (not 33-feet).*

RESPONSE: An EDDS Deviation was approved on July 23, 2008 (Exhibit G2) to allow a 33-foot right-of-way width, with two 10-foot travel lanes and curbs. A sidewalk with planter strip would be located only on the eastern side of the road. See discussion below under comments from the public (B.1).

4) *The intersection with, and frontage on 204th Street SW needs to be constructed to current roadway standards. This includes street lighting, curb, gutter, and sidewalk.*

PDS RESPONSE: The development is required to dedicate an additional 10 feet of right-of-way along the 204th Street SW frontage, and is required to install curb, gutter, and sidewalk along the frontage with 204th Street SW. There is no requirement for street lighting.

5) *All buildings shall be accessible to fire department apparatus by way of paved access of at least 20 feet unobstructed width.*

PDS RESPONSE: 21st Place W is designed to have 20-feet of paved, unobstructed width.

6) *The access roadway shall be extended to within 150 feet of all portions of the exterior walls of the first story of any building.*

PDS RESPONSE: All proposed structures are within 150 feet of 21st Place W (Exhibit B1)

7) *Fire hydrant installation shall meet the requirements of IFC Appendix B and C, including fire flow.*

PDS RESPONSE: The Office of the Fire Marshall has recommended approval of the rezone and the short subdivision, with conditions. The administrative preliminary approval will have conditions requiring fire hydrants and fire flow requirements.

8) *The lead from the service main to the hydrant shall be no less than 6" in diameter, and leads in excess of 50 feet in length shall be no less than 8" diameter.*

PDS RESPONSE: The design standards are controlled by adopted county regulations, and will be implemented during the construction review and approval process of the short subdivision.

9) *The provision for neighborhood parks is inadequate.*

PDS RESPONSE: Provision of park mitigation fees, as required under Chapter 30.66A SCC, will be a condition of approval for the short subdivision.

B. Comments from the Public

PDS received four public comments letters in response to the Notice of Application. Those letters were from Mr. Edwin Baier, who commented on the width of the road and on fencing (Exhibit I-1); Mr. Jeffrey Baier, who commented on the width of the road, drainage, fencing, number of homes allowed (Exhibit I-2,); Ms. Sandra Robinson who commented on concerns with the road improvement, the road maintenance agreement, utilities, lot sizes, drainage, and access for emergency vehicles (Exhibit I-3); Michael Spohnholtz, who commented on the existing road maintenance agreement and the design of the new subdivision (Exhibit I-4). None of the people who commented attended the public hearing. A discussion of the issue is provided below.

1) Access and Traffic. Both access and road standards has been reviewed in detail by PDS and reviewed in detail in this decision. While the applicants did obtain a deviation to the standard width of 50 feet, the rationale is that they are redeveloping one side of the road. There is a likelihood that the other side of the road will also be redeveloped, allowing improvements to be made to the other side of the road. The difficulty in providing all the right of way on their side of the road is that the lot width would be so compromised as to make it difficult to develop reasonable lots on their side of the road. Viewed under those circumstances, the deviation makes good sense to the Hearing Examiner. The access location for the new public road onto 204th Street SW meets all sight distance requirements.

2) Existing Maintenance Agreements. Since the road will become a public road upon approval of the final plat, the maintenance will become the responsibility of the County Department of Public Works.

3) Fencing of Adjoining Properties. There is no code authority and the Examiner will not be requiring the applicant to build a fence to screen adjoining properties from the subdivision.

4) Drainage Problem. PDS did an investigation and discovered that a drainage problem was reported to Surface Water Management (SWM) in 2002. SWM investigated the problem and determined the ponding of water was a result of a failed French Drain system located on 2111 204th Street SW (Exhibit L1). Since the drainage proposal is to capture stormwater runoff from the development, provide water quality treatment, detain the water, and then route stormwater to the existing drainage ditch on 204th Street SW, stormwater runoff from the proposed development will not enter on to the adjacent property. Exhibit K at 4.

5) Number of Lots Allowed. Several letters complained of the number of lots allowed. The Growth Management Act (GMA) contemplated that Urban Growth Areas (UGA) receive urban growth which in this designation (urban low residential) should be at 4-6 units per acre. Prior to this rezone, the property was already zoned at R-8,400. Even without this approval, the applicant would be able to subdivide the property into seven lots. The GMA intends properties such as this one to divide into smaller lots than the size of the present 1.57 acre site lot. When the County Council added this area into the UGA, it sealed the fate of this and all the other property in this area to become urban in density. From the standpoint of the county and the state, this is what is supposed to happen on this property. The county, if it has done its job correctly under the GMA, has regulations to adequately mitigate any impacts of higher density and protect quality of life of the residents in the neighborhood. But if

surrounding property owners want to maintain a rural lifestyle, they may wish to consider moving outside the UGA.

Four public comments were received in response to the Notice of Open Record Hearing. One comment was added to Exhibit I-1, and is almost verbatim from the April 14, 2008, document (Exhibit I-1). Exhibit I-5 requested information regarding the rezone and the short subdivision. One comment (Exhibit I-7) requests to be listed as a party of record.

Diane Urquhart identified a number of concerns, including traffic, noise, delivery, visitor parking, children's play areas, water retention, water runoff, sewer drainage, and fire hazards associated with fireworks on the 4th of July. (Exhibit I-6) The only new comment she discussed in detail was concern about fireworks, and houses being too close together for safely allowing fireworks on the 4th of July. As PDS responded in its staff report, land use codes and policies do not address fireworks. Ms. Urquhart should speak to the Sheriff's Office or her County Councilmember concerning her issues regarding fireworks.

C. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is within Nakeeta Beach Park Service Area, No. 307, and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies. The Examiner has included a condition to require mitigation payments as a part of the decision.
7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) F.

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 short subdivision will generate 66.99 new average daily trips (ADT) and has a road system impact fee of \$15,407.70 (\$2,201.10/lot) based on \$230/ADT, the current fee rate for residential developments inside the urban growth area, for TSA F. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. The Examiner has included has required mitigation payments to be paid as a condition of approval.

B. Concurrency [SCC 30.66B.120]

Concurrency, as defined by the Washington Growth Management Act, is the requirement that adequate transportation capacity be available to support development. A proposed development may not proceed if it would lower the Level of Service (LOS) of a transportation facility below the adopted standard or impact an arterial unit that is already below standard (in arrears). Transportation improvements that would bring the LOS back to the adopted standard must be reasonably funded and scheduled for completion within six years.

Concurrency helps balance the timing and sequencing of development in relation to transportation improvements, such as new streets and traffic signals. The two main parts of a concurrency program are an ordinance, which defines how concurrency is administered, and the Comprehensive Plan, which establishes transportation LOS standards.

"Level-of-service" 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 level-of-service A representing the best operating condition and level-of-service F the worst.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works has made a determination that the development is concurrent. The expiration date of the concurrency determination is six years from February 20, 2008.

Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA F which, as of the date of submittal, had the following arterial units in arrears: Unit 337 (York Road from SR 524 to Grannis Road). Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 5.25 a.m. peak-hour trips and 7.07 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

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

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or

development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject proposal will not impact any IRC locations identified at this time within TSA A 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 inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC. Exhibit K at 5.

D. Frontage Improvements [SCC 30.66B.410]

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

As per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage on 204th Street SW and consist of:

- Asphalt concrete pavement consisting of 18 feet width from right-of-way centerline to the face of curb
- Cement concrete curb and gutter
- Planter strip with a width of 5 feet
- Cement concrete sidewalk with a width of 5 feet

The Hearing Examiner has included a condition to require the construction of frontage improvements.

In the applicant's deviation request for a reduced centerline off-set, which was approved, included an offer for a left turn lane. DPW decided that the turn lane would not be permitted for the subject development.

204th Street SW, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

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.

The centerline offset distance of the proposed public access road and 22nd Avenue W is 93 feet. The centerline offset distance of the proposed public access road and 21st Place W is 125 feet. EDDS Table 3-11 requires a minimum centerline offset of 165 feet for residential streets intersecting an arterial inside the UGA. A deviation request was approved on July 23, 2008, for the proposed offset.

The proposed public access road (21st Place W) shall be built to EDDS standards, consistent with EDDS Plates 3-050 and 3-065, as modified by the approved EDDS deviation. (Exhibit G2) The cul-de-sac must be located at the end of the public road (the west end of parcel number 27042300205800). A 90 degree intersection elbow consistent with EDDS Plate 3-105 may be used for the 90 degree bend in the road. A cul-de-sac is shown on the preliminary short plat.

Two EDDS deviations were granted for this project. (Exhibits G1 and G2) Chapter 30.41B.200(9) SCC provides, in part, “ ... Minimum access to all lots within a short subdivision ... shall be provided by an open, constructed, and maintained public road or a private road designed and constructed in accordance with EDDS....” Chapter 30.41B.205(1) SCC instructs that a modification of design standards is required if any of the design standards established in Chapter 30.41B.200(3) – 30.41B.200(13) cannot be met. A deviation was allowed for reducing the size of the road from 50 feet to 33 feet, due to the fact that the property is long and narrow in shape, and requiring full width would result in an inability to develop the property and require the existing residence to be removed. The design will instead allow for eventual redevelopment of the other side of the road if properties on the other side redevelop.

It is the position of PDS that Chapter 30.41B.200(9) SCC allows access to a short subdivision either by any public road that is open, constructed, and maintained, or by a private road that meets EDDS design standards. Consequently, Chapter 30.41B.200(9) SCC is satisfied and a modification to the road design standards is not required. In the absence of a requirement for a modification, EDDS deviations are appropriate for public roads. In the second deviation, PDS recognizes that the existing road that accesses 204th Street SW from the proposed project, 21st Place W., does not meet EDDS requirements relating to distance between intersections with another existing road, 22nd Ave. W. While the intersections off 204th Ave should be separated by at least 165 feet, they are only separated by 93 feet. However, there is no way to physically alter them at this point, given the fact they are existing roads. PDS recognized this fact and granted the deviation.

All sight distance requirements are met at the intersection of the proposed public road and 204th Street SW.

The Examiner included conditions of approval in the decision to require the construction of 21st Place W.

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

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

The road serving this development, 204th Street SW, is designated as a collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to dedicate five feet of additional right-of-way.

The preliminary short plat shows a right-of-way dedication to the County of 10 feet. This is acceptable, but exceeds the five foot right-of-way dedication requested. Also a 25 foot radius needs to be shown between the right-of-way on 204th St SW and the new public road. The Examiner will require the applicant to deed the right-of-way to the County as a condition of approval.

204th Street SW is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable.

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 WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended. Pursuant to SCC 30.66B.055 a written traffic mitigation offer of \$0.00 has been submitted by the applicant. In comments dated March 18, 2008, WSDOT has agreed that no traffic mitigation is required of the applicant (Exhibit H3).

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions. The proposed development is subject to SEPA and thus is subject to interlocal agreements for impacts on city streets and is effected by the interlocal agreement (ILA) with the City of Bothell.

For impacts on the City of Bothell, and pursuant to the ILA and SCC 30.66B.055(4) a written traffic mitigation offer in the amount of \$3,098.07 (\$442.58/lot) has been submitted by the applicant. The City of Bothell has responded in an e-mail dated April 15, 2009, accepting this offer. (Exhibit H1) The Examiner has included a condition of approval to require payment of the mitigation fees.

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

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. SCC 30.66B.610(1). SCC 30.66B.630(1) succinctly states the basic requirements:

All new developments in the urban growth area are required to provide sufficient TDM measures to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. (SCC 30.66B.630) This requirement may be met by:

- (a) Earning trip reduction credits for construction of onsite features pursuant to SCC 30.66B.640;
- (b) Construction of offsite TDM measures pursuant to SCC 30.66B.620; or
- (c) A voluntary payment into an account established for the purpose of contributing to the construction or purchase of specific TDM measures pursuant to SCC 30.66B.625.

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500 times the required trip reduction percentage times the development's peak hour trip generation [SCC 30.66B.615].

The trip reduction percentage for this development is 5 percent. The TDM obligation for this development is therefore equivalent to 5 percent of the 7.07 new PM peak hour trips x \$6,500.00 which equals \$2,297.75 (\$328.25/SFR). The applicant has submitted a TDM offer dated September 3, 2008, of \$2,297.75. A requirement for payment of this amount will be included as a condition of approval by the Examiner.

8. Pedestrian Facilities for Students [RCW 58.17.110]

One of the requirements of the state subdivision code is that the approving authority considers whether the development provides sidewalks and other planning features that assure safe walking conditions for students. RCW 58.17.110(1). Comments dated March 17, 2008 have been received from the Edmonds School District that indicate children will be picked up by the school bus at the intersection on 204th Street SW and 21st Place W, middle school students will walk to Alderwood Middle School, and high school students will be picked up by the school bus at the intersection of Cypress Way and 201st Place SW. (Exhibit H9) Adequate pedestrian facilities exist to all of these locations. Based on this information, no offsite pedestrian facilities are required. The Examiner will require the applicant to provide children waiting for the bus at the corner of 204th Street SW and 21st Place W a safe waiting area built to EDDS standards as a condition of approval.

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

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Edmonds School District No. 15, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot. The Examiner has included in the decision a condition of approval to require school mitigation payments.

10. Drainage and grading.

Drainage. The existing site hydrology consists of one drainage basin that flows south. After development, stormwater will flow to a bio-swale and then to an underground detention facility. The detention vault is proposed to meet the detention requirements conforming to the Snohomish County standards, which has been sized to include a 30 percent factor of safety. After detention, drainage then flows to 204th Street S.W. to an existing pipe the flows west for approximately ¼ mile to Golde Creek.

Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

Grading. Grading quantities are anticipated to be approximately 1200 cubic yards of cut and 1200 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in

accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

The Examiner has included a condition to require submission of construction plans for review and approval prior to initiation of site work.

11. Critical Areas Regulations (Chapter 30.62 SCC) There are no critical areas on or within 100 feet of the site.

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 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 Urban Low Density Residential designation “covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7,200, PRD-7,200, R-8,400, PRD-8,400, R-9,600, PRD-9,600 and WFB zones.”

The 8 lots proposed are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2.

13. Consistency with Bulk and Performance Standards. [Subtitle 30.2 SCC]

The proposed short subdivision will meet zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements, when the rezone is approved.

The short subdivision has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement as modified by Chapter 30.23.230(3)(b). In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way (ROW) setbacks of 15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55 percent.

The LSA calculation is as follows:

Area in Lots (55,210 square feet) + Critical Areas and Buffers (0 square feet) + Open Space (3,880 square feet) = (56,090 square feet) ÷ (8 of lots proposed) = (7,011) square feet

Chapter 30.23.230(3)(b) SCC allows up to a 10 percent reduction in lot size when, for a short plat, road dedication for county road purposes. In this case, 11,268 square feet of the site will be dedicated for county road surfaces and that dedication would result in the loss of one or more lots. In addition, each lot within the subdivision has frontage on roads where area was dedicated to the County for county road purposes. Therefore, minimum lot size for the short subdivision is reduced to 6,480 square feet (90% of 7,200 square feet).

The minimum zoning requirement is 7,200 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. PDS concludes that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

14. Utilities

- A. Water. Water is available from the Alderwood Water and Wastewater District. (Exhibit H7)
- B. Sewer. Sewer service is available from the Alderwood Water and Wastewater District. (Exhibit H7)
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available. (Exhibit H5)
- D. Snohomish Health District Approval. The SHD has no objections to the preliminary subdivision approval but indicates that any existing onsite septic systems must be abandoned in accordance with WAC 246-272A-0300 prior to final plat approval. The Examiner will incorporate this requirement as a condition of approval. (Exhibit H4)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on January 21, 2010. (Exhibit E2) The DNS was not appealed.

16. Short Subdivision Code (Chapter 30.41B SCC)

The proposed plat also meets Chapter 30.41B SCC requirements. A complete application for the proposed plat was received by PDS on February 20, 2008. The proposed plat as conditioned also meets the general requirements under Section 30.41B.100.100 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 30.41B.200.
- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (Exhibit B1 & K)
- C. Fire Code/Fire District Requirements. The staff report had the following information related to response from Fire District No. 1 and the Fire Marshall to the proposed project (Exhibit K at 14-15):

Fire District No. 1 did not respond to the request for review sent by PDS on February 20, 2008.

The Office of the Fire Marshall reviewed the project and recommended approval of the short subdivision, with recommended conditions. Those conditions are:

- a) Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A. 520. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant.
- b) The minimum required fire flow for this project has been determined to be 1,000 GPM at 20 psi for a two-hour duration. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems.
- c) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.512; and
- d) We have no further requirements.

The Examiner will include (a)-(c) as conditions of approval of this decision.

- D. As indicated earlier in this decision, applicant has met the requirements of the health district, school district, parks, the county drainage code, code requirements for building area, lot size averaging, and minimum net density.
- E. Density for Sloping Land. The project site is flat, so this provision does not apply.
- F. Safe Walking Conditions to School. The Applicant will be providing safe walking conditions to the bus stop and school as discussed in Finding of Fact 8.

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 subdivision conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas, the single-family homes will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. A public water supply will be provided by and public sewer service will be provided by Alderwood Water and Wastewater District.

18. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

A. Conclusions of Law Regarding the Rezone

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 GMA, 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 Urban Low Density Residential (ULDR) Designation from R-8,400 to R-7,200 to allow a potential total of eight units on a 1.57 acre site. 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 General Policy Plan (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

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

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 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

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

- 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)**
 - 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 Melton Parker Short Plat Rezone, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

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.

- A. **The area is already characterized by urban growth.** The area is already characterized by urban growth in various zoning categories that comprise the Urban Low Density Residential Designation and higher densities, such as Multiple Residential (MR). Although the lots in the very immediate area may still be of a large lot size, the area is in the UGA and there are urban developments occurring all around this parcel. Exhibit D2.
- B. **The area proposed for rezoning has adequate existing facility and service capacities to serve more intensive development:**
- i. Streets, roads and highways. The Examiner has already found that the new development will be adequately served by the new roads to be installed. Finding of Fact 7.
 - ii. Sidewalks. The applicant will be providing adequate pedestrian facilities as a part of the development proposal. Finding of Fact 8.
 - iii. Street and road lighting system. Lighting is not currently required by the county code or administrative rules for approval of this project.
 - iv. Traffic signals. Unknown.
 - v. Water systems. Water will be provided by the Alderwood Sewer and Water District. (Exhibit H7).
 - vi. Sanitary Sewer Systems. Sewer service will be provided by the Alderwood Sewer and Water District. (Exhibit H8)
 - vii. Park and recreational facilities. 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, addresses existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the county. In close vicinity to the subject property is Logan Park. Forsgren Park is also nearby. 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, including North Creek Park Silver Creek Park, Martha Lake Park and Meadowdale Park. Regional parks in the area are Willis Tucker Park, McCollum Park, Lord Hill Park, Silver Creek Park , Rhody Ridge Arboretum, and Picnic Point 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 detention system is required of a part of the proposed development proposal pursuant to Chapter 30.63B SCC. Finding of Fact 10.
- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Police protection is provided by the Snohomish County Sheriff’s Department.
- x. Public health: Public health issues are addressed by the Snohomish Health District.
- xi. Education: The site is served by the Edmonds School District.
- xii. Other services: Electrical service is provided by the Snohomish County PUD No. 1.

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, in furtherance of Objective LU2-A. There is no current predominant pattern in the area. The rezone to R-7200 of these parcels 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. (Policy LU 2.A.3)⁴

⁴ 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.

- ii. There is a transit stop within 600 feet of the intersection of 21st Place W and 204 St SW, which may be walking distance for some. The subject property is near two major transit corridors, I-5 and I-405, which has major park and ride facilities various locations nearby. There are numerous shopping opportunities in the area with Alderwood Mall and other shopping centers nearby. The nearest medical facilities are in Edmonds. As stated above in Conclusion 8, there are multiple parks in the vicinity. **(Policy LU 2.A.5)**
- iii. The development made possible by the requested rezone may tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation because it is within walking or biking distance of urban services and facilities that will serve the proposal, which will promote those forms of transportation in place of automobiles. The proximity of the property to park and ride lots and transit will encourage commuting by buses or carpools instead of using single-occupancy vehicles. **(Page LU-15)**

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, which did provide comments. See Finding of Fact 5. **(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. The Examiner views this neighborhood more as a redeveloping 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) Yes.

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. DPW and PDS have confirmed, using their professional engineering judgment, that the development as proposed (which will realize the rezone potential of the site) provides for the maintenance of the arterial roadway system. Given the circumstances, the Examiner is satisfied this criteria has been met. 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? No.

These issues have been addressed as a part of the development proposal. See Finding of Fact 7.

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 criterion 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). No issues of concern were identified in the PDS staff report (See Exhibit I) and no one except the applicant and PDS staff testified at the hearing. The Examiner identified no issues of concern in reviewing the file.
11. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
12. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

B. Conclusions of Law Regarding the Short Subdivision Application

1. The Examiner has original jurisdiction over preliminary short subdivision applications with dedications of a public road pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The legal standard the Examiner must review a preliminary 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 applicant has met its burden in showing that the preliminary subdivision application should be approved.
4. Adequate public services exist to this proposal.
5. If approved with the proposed conditions the proposal will make adequate provision for the public health, safety and general welfare.
6. Any conclusion in this decision, which should be deemed a finding of fact, is hereby adopted as such.

DECISION

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 rezone from R-8,400 to R-7,200 is **APPROVED**; and the request for a 8-lot subdivision on 1.57 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on September 8, 2009 (Exhibit B1) shall be the approved plat configuration. Changes to the approved 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 and this decision.
- ii. The applicant shall submit a full drainage plan for construction review and approval.
- iii. Construction plans shall be submitted for review and approval.
- iv. A Snohomish County grading permit shall be obtained.

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

- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Edmonds School District No. 15 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."
- ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence:

\$2,201.10 per lot for mitigation of impacts on County roads paid to the County. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code. Any reduction of the per lot amount shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM.

\$328.25 per lot for Transportation Demand Management paid to the County.

\$442.58 per lot for mitigation of impacts on City streets for the City of Bothell paid to the City. Proof of payment of the above amount shall be provided.

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

- iii. The developer shall pay the County \$1,244.49 (Nakeeta Beach # 307) per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- iv. Right-of-way dedication on 204th St SW shall be made to the satisfaction of DPW.

D. Prior to recording of the final plat:

- i. Frontage improvements on 204th Street SW shall be made to the satisfaction of DPW.
- ii. 21st Place West, a public road, shall be constructed to the satisfaction of DPW.
- iii. Existing onsite septic must be abandoned and removed from the site in accordance with WAC 246-272A-0300 prior to final plat approval.
- iv. The applicant must construct a safe waiting area at the bus stop for school children at the corner of 204th Street SW and 21st Place W in accordance with the EDDS.
- v. The applicant must demonstrate to PDS and the Fire Marshall that it meets the following requirements:
 - a) Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A. 520. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant.
 - b) The minimum required fire flow for this project has been determined to be 1,000 GPM at 20 psi for a 2-hour duration. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems.
 - c) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.512.

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 30.41A.300.

Decision issued this 8th day of April 2010.



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 **APRIL 19, 2010**. 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 **APRIL 22, 2010** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A

copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.