

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: February 8, 2010

PLAT/PROJECT NAME: **DAVE FORMAN**

APPLICANT/
LANDOWNER: Dave Forman

FILE NO.: 08-105664-000-00-LU

TYPE OF REQUEST: Conditional Use Permit to construct a 10,800 square foot detached private garage and landscape modification

DECISION (SUMMARY): **APPROVAL SUBJECT TO PRE-CONDITION AND CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: 30 Marine Drive NE, Marysville, WA 98271

ACREAGE: 6.8 acres

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

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

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the revised Conditional Use Permit (CUP) application on July 15, 2009. (Exhibit A1)

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 September 28, 2009. (Exhibit D2) The DNS was not appealed.

The Examiner held an open record hearing on January 27, 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.

A. Background

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. Summary of Proposal: The applicant requests approval of a CUP to construct a 10,800 square foot detached private garage and a landscape modification supplementing existing established vegetative screening of the proposed structure. An existing single-family dwelling will be retained on site. The code permits outright a garage structure up to 4000 square feet, but requires a CUP for anything larger.
3. Site Description: The site is a 6.8 acre property zoned R-5. The site is currently developed with a single-family residence and associated out-buildings. Ebey Slough is located on the south end of the property just east of Priest Point. The majority of the property is level, landscaped to lawn and gardens. The site slopes down gently to the west toward an existing slope located along the west and south sides of the property. Five seasonal streams and associated wetlands are found on or adjacent to the property. Three slope wetlands are found on the upper slopes of the property and adjacent lot.
4. Adjacent Zoning/Uses. The subject parcel is surrounded by large sized lots, all zoned R-5. The adjacent parcels either support a single-family residence and various out-buildings, or are large parcels of undeveloped land. Properties in the area include the Priest Point Store and smaller parcels supporting single family dwellings.

B. Public Comment/Issues of Concern.

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

C. Compliance with Performance Standards.

6. Park and Recreation Impact Mitigation (Chapter 30.66A SCC), Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC), and School Impact Mitigation (Chapter 30.66C SCC)

The proposal is not subject to mitigation payments as contained in Chapter 30.66A SCC. The proposal is not subject to Traffic Mitigation and Road Design Standards as contained in Title 13 SCC and Chapter 30.66B SCC. The proposal is not subject to school impact mitigation as contained in chapter 30.66C SCC.

7. Drainage and Grading.

A. Drainage. The file contains a full drainage plan. (Exhibit C1) The report addresses the design of an infiltration facility for roof downspouts from the new 60' x 180' garage proposed for the 6.8 acre lot. The new impervious surfaces will consist of 10,800 square feet for the garage and 2200 square feet for the gravel access road. The soils are Everett soils with high infiltration capacities. The new roof will be fully infiltrated at least 50' back from the bank and the 2200 square feet of new gravel driving surface will be dispersed to the existing grass areas at least 100' back from the edge of the bank. (Exhibit C2)

Based on the reviewed documents relating to drainage and grading, the PDS engineering section staff concludes that for this project the proposed designs will meet the requirements of SCC 30.63A and SCC 30.63B. PDS approves of the infiltration proposal based on geotechnical and drainage reports (Exhibit C2). No downstream drainage flooding was reported by Surface Water Management or the downstream drainage report.

B. Grading. Proposed grading is not in excess of 100 cubic yards and does not trigger the need for a grading permit and SWPP Plan per SCC 30.63B and Rule 3044.

8. Critical Areas Regulations (Chapter 30.62 SCC)

The applicant is proposing to build a 10,800 square foot structure outside of the designated critical areas and buffers on an existing residential lot. All critical areas and buffers will be dedicated as Critical Area Protection Areas (CAPA) (Exhibit G2), and the appropriate conditions are included in this Decision to require placement of the markers for the buffers. Existing lawn and non-native landscaping within the CAPA boundary may be maintained under the critical areas regulation.

The applicant has avoided impacts to critical areas and buffers on this project. An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination by PDS that the application is complete and in conformance with Chapter 30.62A SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the chapter.

9. Consistency with the GMA Comprehensive Plan.

The subject property is designated Rural Residential 5 (RR-5: 1 dwelling per 5 or more acres). This designation includes lands that were designated Rural on pre-GMA subarea comprehensive plans and zoned R-5. As the result of a joint planning effort between the County and the Tulalip Tribes, the RR-5 designation applies to certain lands on the Tulalip Reservation that were previously designated Rural Residential. (GPP LU-89)

10. Zoning.

The proposed detached private accessory garage is allowed in the R-5 zone with the approval of a CUP. The following bulleted items are development standards that apply to the garage and the italicized print (prepared by PDS in the staff report (Exhibit I at 4-5)) indicates how the project meets the requirement:

- The cumulative square footage of the proposed detached private accessory garage and the other storage structures on site shall not exceed 6,000 square feet on any lot less than 5 acres, except this provision shall not apply in the LDMR, MR, T, NB, GC, PCP, CB, FS, BP, IP, LI, HI, RB, RFS, CRC and RI zones per SCC 30.21.130(60).

The subject property is 6.8 acres in size and is zoned R-5.

- Per SCC 30.22.130(41) special setback requirements for this use are contained in SCC 30.23.110(20). Detached accessory or non-accessory storage structures and private garages with building footprints over 2,400 square feet must be at least 15 feet from any external property line, provided that parcels abutting open space tracts shall have a five-foot setback from the open space. Storage structures and private garages over 4,000 square feet in size must be setback at least 20 feet from any external property line, provided that parcels abutting open space tracts shall have a five-foot setback from the open space.

The proposed detached private accessory garage is 10,800 square feet in size. It is setback in accordance with SCC 30.23.110(20) which requires the building to be 20 feet from all property lines. The proposed structure is located 130 feet from the north property line, 750 feet from the south property line, 51 feet from the east property line and 290 feet from the west property line as shown on the site plan. (Exhibit B1)

The Hearing Examiner will impose a condition of approval that requires that any change to the site plan must ensure compliance with SCC 30.23.110(20).

- Artificial lighting shall be hooded or shaded so that direct outside lighting, if any, will not result in glare when viewed from the surrounding property or rights-of-way per SCC 30.22.130(59)(b).

Artificial lighting is proposed as shown on the elevation drawings, page 2 of the elevation plans (Exhibit B4). All lights will have hoods or be shaded so that no glare will be viewed from any surrounding property.

The Examiner will impose a condition that requires all lights to be hooded or shade to prevent glare to surrounding properties.

- Proposals for development in existing neighborhoods with a well-defined character should be compatible with or complement the highest quality features, architectural character and sitting pattern of neighboring buildings. Where there is no discernable pattern, the buildings shall complement the neighborhood. Development of detached private garages and storage structures shall not interrupt the streetscape or dwarf the scale of existing buildings of existing neighborhoods.

The surrounding properties are large in size and to a large extent undeveloped. The parcels that are developed are developed with larger single-family dwellings and associated detached accessory structures. To the north, across Marine Drive NE is Priest Point Store, a small-scale market which serves the immediate neighborhood. The properties that border Priest Point Store are medium sized and developed with single-family dwellings.

The proposed detached private accessory garage is 10,800 square feet in size and is located between the existing single-family dwelling on site and Marine Drive NE (Exhibit B1). Building materials and colors will be compatible and consistent with the existing residence. The existing single-family residence is constructed of red brick with painted accents in blue. The proposed private detached garage siding and roofing materials will be metal and colors to match the residence are brick red metal for the sides and sky blue for the roof.

Color scheme, landscaping/screening and protection of critical areas have all been incorporated into the plan to ensure compatibility with the adjacent properties and the existing neighborhood. Preservation of the shoreline, associated estuarine wetlands and 150 feet of buffer to be designated as Fish and Wildlife Conservation Area (FWHCA) and CAPA or "Critical Area Protected Area" are proposed (Exhibit G2).

- All detached accessory or non-accessory private garages and storage structures proposed with building footprints larger than 2,400 square feet shall provide screening or landscaping from adjacent properties as follows: (i) the permit application site plan shall depict existing and proposed screening, landscaping or other measures that ensure visual compatibility with adjacent properties; (ii) the site plan shall show the amount, type and spacing of proposed materials. Plant materials, species and design shall be approved by the department. Landscaping modifications, installation and maintenance requirements are regulated by SCC 30.25.040, SCC 30.25.043 and SCC 30.25.045. The minimum planting standards set for other adequate visual screening located on the

subject site may be approved in lieu of the requirements of SCC 30.22.130(59)(d). Photographs shall be submitted with the permit application and the existing features shall be shown to scale on the site plan; (iv) approval of other screening measures that ensure visual compatibility shall be determined on a case-by-case basis at the discretion of the director and; (v) after a site visit, the director may determine that screening or landscaping is not warranted due to existing circumstances on the site or adjacent properties and may waive the screening or landscaping requirements of SCC 30.22.130(d).

The proposed detached private accessory garage is proposed 130 feet from the trees/screening along the north property line. Located between the Forman parcel and the county road is a detention pond which contains a variety of deciduous trees and shrubs. Three offset rows of Douglas fir trees that are 20 feet in height or more run parallel along the north property line of the subject parcel for 160 feet. A stretch of laurel hedges, which start on the Forman property and extend in a diagonal fashion to the left and right of the Douglas fir stand, serve as the detention pond screening. The laurels are currently four feet plus in height and are planted atop a mound of dirt 12 inches in height increasing its overall effective height to over five feet. These plantings provide additional screening from the road and from the commercial property (Priest Point Store) across the street. From the building site you can see the top of Priest Point store roof. The middle section of the proposed detached private accessory garage at its highest point is 25 feet, six inches tall and 36 feet in width and will be centered in front of the 20 plus foot Douglas Fir plantings. The remainder of the proposed private detached garage roof height is proposed at 19 feet, six inches. Within two growing seasons the combination of screening across the front will obscure the view of the proposed private detached garage almost entirely.

Additional plantings are proposed along the northwest and northeast corners of the property. The north property line borders a county owned detention pond which is part of the road infrastructure. PDS has determined that Type B along the north line is appropriate and the existing landscaping is sufficient since it, coupled with the landscaping within the detention pond area exceed the 10-foot width required for Type B landscaping.

Additional plantings are proposed along the east side of the building to further screen it from the Forman's vacant lot to the east. Photos are provided (Exhibit G1) of views from their vacant lot to the east (lawn area) taken every 20 feet to demonstrate the proposed building is not visible from this adjacent property.

The proposed detached private accessory garage will not be detrimental to uses or property in the immediate vicinity. The proposal does not change the use and does not impact any neighboring uses. The use is private and will not increase in traffic from that of normal residential related trips. Proper measures are being taken to increase

landscaping on site to further screen the building in three areas where a peek-a-boo view of the proposed detached private accessory garage may exist.

The proposed detached private accessory garage will be situated behind an existing orchard which will provide filtered screening when viewed from the existing residence. The color scheme proposed for the private detached garage will blend with those of the existing residence. A significant amount of landscaping exists which screens the building from all property lines. Additional landscaping is proposed to ensure compatibility with property to the north and east.

The Hearing Examiner will require as a condition of approval an access and landscape easement to be recorded in the form recommended by PDS (Exhibit A6), to ensure compatibility with neighboring properties by providing screening of the proposed private detached garage.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on September 28, 2009 (Exhibit E2). The DNS was not appealed.

12. Conditional Use Permit Criteria

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

1. The hearing examiner may approve, approve with conditions, or deny a conditional use permit only when all the following criteria are met:
 - (a) The proposal is consistent with the comprehensive plan;
 - (b) The proposal complies with applicable requirements of this title;
 - (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
 - (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
2. As a condition of approval, the hearing examiner may:
 - (a) Increase requirements in the standards, criteria, or policies established by this title;
 - (b) Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
 - (c) Require structural features or equipment essential to serve the same purpose set forth in 30.42C.100 (2)(b);
 - (d) Impose conditions similar to those set forth in items 30.42C.100 (2)(b) and 30.42C.100 (2)(c) as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in

matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;

- (e) Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
- (f) Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
- (g) Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
- (h) Impose any requirement that will protect the public health, safety, and welfare.

13. Findings of Fact Regarding the CUP criteria.

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

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

Regarding criteria (1)(c): The applicant's representative made a presentation regarding the garage and the vegetative screening. The Examiner has thoroughly reviewed the materials, and noticed that the landscape buffers are not adequately depicted on Exhibit B2. As a pre-condition, the Examiner will require a new Official Site Development Plan with the landscape buffers marked on the plan. With a requirement for the visual screening to remain permanently in place, the garage will not be materially detrimental to the uses or property in the immediate vicinity in perpetuity.

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

14. **Landscape Modification.** The applicant is requesting a landscape modification to the required 20-foot perimeter Type A landscape buffer and 10-foot Type B road frontage landscape buffer. The applicant is requesting that the existing vegetation with the proposed additional plantings

will represent an equal or better result than would be achieved by strictly following the requirements of the code.

The proposed detached private accessory garage is proposed 130 feet from the trees/screening along the north property line. Located between the Forman parcel and the county road is a detention pond which contains a variety of deciduous trees and shrubs. Three offset rows of Douglas fir trees that are 20 feet in height or more run parallel along the north property line of the subject parcel for 160 feet. A stretch of laurel hedges, which start on the Forman property and extend in a diagonal fashion to the left and right of the Douglas fir stand, serve as the detention pond screening. The laurels are currently four feet plus in height and are planted atop a mound of dirt 12 inches in height increasing its overall effective height to over five feet. These plantings provide additional screening from the road and from the commercial property (Priest Point Store) across the street. From the building site you can see the top of Priest Point store roof. The middle section of the proposed detached private accessory garage at its highest point is 25 feet, six inches tall and 36 feet in width and will be centered in front of the 20 plus foot Douglas Fir plantings. The remainder of the proposed private detached garage roof height is proposed at 19 feet, six inches. Within two growing seasons the combination of screening across the front will obscure the view of the proposed private detached garage almost entirely.

Additional plantings are proposed along the northwest and northeast corners of the property. The north property line borders a county owned detention pond which is part of the road infrastructure. PDS has determined that Type B along the north line is appropriate and the existing landscaping is sufficient since it, coupled with the landscaping within the detention pond area exceed the 10-foot width required for Type B landscaping. A significant amount of landscaping exists which screens the building from all property lines. Additional landscaping is proposed to ensure compatibility with property to the north and east. Additional plantings are proposed along the east side of the building to further screen it from the Forman's vacant lot to the east.

The proposed detached private accessory garage will be situated behind an existing orchard which will provide filtered screening when viewed from the existing residence. The color scheme proposed for the private detached garage will blend with those of the existing residence.

The Hearing Examiner will require as a condition of approval an access and landscape easement to be recorded in the form recommended by PDS (Exhibit A6), to ensure compatibility with neighboring properties by providing screening of the proposed private detached garage.

The existing landscaping with the additional plantings proposed by the applicant meet/exceed the requirements for the required, Type A, perimeter, landscaping for a conditional use permit (SCC 30.25.020), the required parking lot landscaping (SCC 30.25.022), and the 10 feet of Type B road frontage landscaping (SCC 30.25.020), as shown in Exhibit B3.

The Examiner will grant the landscape modification, but will require the applicant to submit a new Official Site Plan placing perimeter landscaping in a landscape buffer as a pre-condition to approval.

15. Any Finding of Fact in this decision which should be deemed a Conclusion of Law is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over CUP applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. In considering the CUP, application of many of the decision criteria require the exercise of discretion by the Hearing Examiner.
3. The Hearing Examiner concludes the proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, and the applicable design and development standards.
4. If approved with the conditions determined by the Examiner to be necessary in the Findings of Fact, and outlined below in the Decision, the proposal will make adequate provisions for the public health, safety and general welfare.
5. The Examiner concludes that the CUP, with the conditions of approval as outlined in the Decision below, will not be materially detrimental to uses or properties in the immediate vicinity.
6. The CUP, with the listed precondition and conditions of approval, will respond to as well as maintain compatibility with surrounding uses and incorporate specific features, conditions, or revisions that ensure it responds appropriately to the character, appearance, quality of development, and physical characteristics of the site and surrounding properties.
7. The Examiner concludes as a matter of law that the CUP should be granted pursuant to SCC 30.42C.100 and Finding of Fact 13, above.
8. The Examiner concludes as a matter of law that the landscape modification should be granted.
9. Any Conclusion of Law in this decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Based on the Findings of Fact and Conclusions of Law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a **CONDITIONAL USE PERMIT** is hereby **APPROVED** and the **LANDSCAPE MODIFICATION** is hereby **APPROVED**, subject to the following **PRECONDITION** and **CONDITIONS**:

PRECONDITION

The applicant shall submit to the Department of Planning and Development Services a revised Exhibit B1 depicting permanent perimeter landscaping buffers as approved by this decision in the landscape modification approval.

CONDITIONS

- A. The revised conditional use permit site plan, pursuant to the Precondition, shall be the approved conditional use permit official site plan. SCC 30.42C.110 governs changes to conditional use permits.
- B. Any artificial lighting shall be hooded prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county.
- C. The proposed detached private accessory garage shall provide the screening and landscaping from adjacent properties. The existing natural vegetation as depicted, described in Exhibit B3 shall be maintained.
- D. The Access and Landscape Easement (Exhibit A6) shall be recorded.
- E. The proposed garage shall meet the setback requirements outlined in SCC 30.23.110(20).
- F. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
 - i. A land use permit binder shall be executed and recorded at the County Auditor's Office. A copy shall be submitted to PDS for the case file. (Forms are available from PDS)
 - ii. The applicant shall mark with temporary markers in the field the boundary of all critical area protection areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the county.
 - iii. A critical area site plan (CASP) showing the critical area protection area (CAPA) locations on the site are required to be recorded with the county auditor.

- G. The building permit must be obtained from PDS for the construction of the detached private accessory garage. The following shall be placed as conditions on the building permit:
 - i. The detached private accessory garage shall not be used for commercial purposes without obtaining a valid commercial certificate of occupancy issued by the Snohomish County Building Official for such use.
 - ii. Any and all changes to the approved site plan will require additional review by PDS and other agencies.
- H. Prior to final inspection of the building permit:
 - i. Critical area protection area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the county, with both CAPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The applicant may use other permanent methods and materials provided they are first approved by the county. Where CAPA boundary crosses another boundary (e.g. lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include on Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the county biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS for review and approval prior to installation.
 - ii. The proposed landscaping is completed and installed per the landscape plan in Exhibit B3.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 8th day of February, 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 **February 18, 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 **February 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: Roxanne Pilkenton

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

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than FEBRUARY 8, 2011.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of _____, _____.

Certified by:

(Name)

(Title)

