

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: February 1, 2010

PLAT/PROJECT NAME: ***THREE LAKES WATER DISTRICT***

APPLICANT/  
LANDOWNER: Three Lakes Water District

FILE NO.: 08-107302-000-00-LU

TYPE OF REQUEST: **Major Revision to a Conditional Use Permit (ZA 87-07327 LU) to install a 100" tall water standpipe (tank), driveway, and 2100 sq. ft. shop/garage on a total of 1.8 acres**

DECISION (SUMMARY): **APPROVAL SUBJECT TO PRECONDITIONS AND CONDITIONS**

**BASIC INFORMATION**

GENERAL LOCATION: Northeast corner of the intersection of 58<sup>th</sup> Street SE / 176<sup>th</sup> Ave SE  
Snohomish, Washington Section 2, Township 28 North, Range 6 East,  
W.M.

ACREAGE: 1.8 acres

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION: Rural Residential-5

School District: Snohomish School District #201

Fire District: Fire District #4

Water Source: Three Lakes Water District      Sewer Service: On-site septic system

PDS STAFF RECOMMENDATION: Approve with Preconditions and Conditions

## **INTRODUCTION**

The applicant filed the request for a major revision to its existing Conditional Use Permit (CUP) on July 28, 2008, which was determined on August 25, 2008 to be complete as of the date of submittal. (Exhibit H)

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 Determination of Nonsignificance (DNS) was made by PDS on December 3, 2009. (Exhibit E2) 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 Three Lakes Water Association is requesting a major revision to an existing CUP (file ZA 8707327) to construct a 100-foot tall, 20-foot diameter water standpipe, and a 2,100 square foot combined shop and garage. The proposed standpipe will provide additional storage capacity for the water association as well as provide an opportunity to decommission and dismantle one or both of the existing tanks on site. The additional storage provided by the proposed standpipe will provide an increase to capacity and to fire safety for existing and future users. The proposed garage/shop will provide storage space as well as space for vehicle and equipment maintenance necessary for day-to-day operations of the water association. Approximately 50% of the building will be garage and storage space while the remaining space will consist of a single office, a meeting room, and a single unisex bathroom.

At the time that this application was submitted, a 20-foot wide Type A landscape buffer was required around the perimeter of CUP sites in all zones. As of April 21, 2009, such a perimeter buffer ceased to be a requirement for CUPs in the R-5 zone. However, as this project is vested to the code as of July 28, 2008, the perimeter buffer requirement remains.

The landscaping for the project as proposed (Exhibit B, Sheet 5 of 6) shows a 20-foot wide Type 2 buffer on the north, east, and most of the west side. The portion of the west side that does not have the full 20 feet is the area where the existing standpipes were constructed; no work is proposed in this area. Although the landscaping shown on the frontage at 58<sup>th</sup> Street SE is labeled as a 10-foot wide Type B buffer (the current requirement in the zoning code), the existing heavily wooded vegetation meets the criteria for a 20 foot wide Type A buffer, as defined at SCC 30.24.017. In addition, the tree retention standards at SCC 30.25.16 strongly encourage the retention of existing native vegetation. The density of the existing vegetation is seen in the aerial photo at Exhibit A8.

3. Site Description

The subject property is a roughly rectangular parcel 1.8 acres in area, located by necessity at one of the higher properties in the area due to the need for gravity flow. The site is densely wooded with a typical second-growth coniferous forest. Two water standpipes exist on the site.

4. Adjacent Zoning/Uses.

The vicinity of the site is developed with rural scale single-family residences generally on large parcels, intermingled among some agricultural uses. Zoning for most of the area is R-5.

**B. Public Comment/Issues of Concern.**

5. There are no public comments in the record, nor was there any citizen testimony at the hearing. PDS identifies no particular issues of concern.

**C. Compliance with Performance Standards.**

NOTE: As a major revision to the original CUP permit application, this decision will supersede the original decision approving the CUP under file number 87-07327 LU.

6. Parks Mitigation.

This proposal does not meet the definition of “development” as per SCC 30.91D.200 and consequently, is not subject to parks mitigation fees in accordance with SCC 30.66A.010 (3).

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

*General Information*

- The plan used for this review was received by PDS on December 2, 2008.
- Three Lakes Water Association is proposing to upgrade an existing small water utility facility located at 17511-58<sup>th</sup> St. SE, Snohomish. A 20 ft. diameter by 100 ft. tall water tank and a 2,100 sq. ft. garage-shop building are proposed. The building will be used for equipment or vehicle storage and maintenance of the facility.
- The property has frontage on 58<sup>th</sup> St. SE in Transportation Service Area (TSA) “B”, outside the Urban Growth Area (UGA).
- The property currently has an access from 58<sup>th</sup> St. SE.
- There are two existing water tanks on the property.

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 TSA as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

It has been determined that the proposed development will not generate any significant new trips because of the proposed private use and building size. The small garage-shop building will be used for equipment or vehicle storage and periodic maintenance of the facility. Employees are not proposed to work daily at the facility. Occasional visits are proposed to the facility.

Mitigation for traffic impact to County roads is not required, since the development will not generate any significant new trips.

B. Concurrency [SCC 30.66B.120]

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

The development has been deemed concurrent on the following basis:

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of September 25, 2008. The expiration date of the concurrency determination is six years from this date. Consistent with DPW Rule 4225.070, the point in time for which the concurrency analysis is based (the concurrency vesting date) is July 28, 2008.

The development has been deemed concurrent on the following basis:

The development is located in TSA B which, as of the date of submittal, had the following arterial units in arrears: AU#238. The development will not have any significant traffic impacts and therefore will 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.

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

Regardless of the existing LOS, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing 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.

Mitigation for traffic impact to an IRC is not required, since the development will not generate any significant new trips.

D. Frontage Improvements [SCC 30.66B.410]

- (1) All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.
- (2) The improvement standard will be established by the director of public works in accordance with SCC 30.66B.430 and as outlined in the department of public work's administrative rules on frontage improvements.

Frontage requirements are not being required by PDS Traffic because this CUP Revision causes no impact to the roadways.

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 property currently has an access from 58<sup>th</sup> St. SE. The access is proposed to be relocated approximately 10 feet to the east.

An Interim EDDS Administrative Interpretation has been approved to provide a 25 ft. min/35 ft. max width for access, since it has been determined that this will not compromise public health, safety or welfare because of: the proposed private use, occasional trips expected, and buses/oversized vehicles are not expected. The plan shows that a 25 foot wide access will be provided.

EDDS 2-01 B. requires that access points shall be designed and constructed so that backing maneuvers from or onto a public right-of-way do not occur. The access has been redesigned so that this requirement is met.

A commercial asphalt approach per EDDS Standard Drawing 2-040 is required to be constructed for access. An access to be constructed to this standard is specified on the plan.

F. Right-of-Way Requirements [SCC 30.66B.510, SCC 30.66B.520]

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

The road serving this development, 58<sup>th</sup> St. SE, is designated as a Non-Arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. The right-of-way researched from the plat deed of Flowing Lake Estates Division No. 2 shows that there is not any dedicated or deeded right-of-way on the development side of the right-of-way centerline in front of Parcel 1-024. Therefore, this right-of-way will be required to be deeded. The right-of-way will be clearly marked on the site plan (Exhibit B1) and deeding the right-of-way to the County will be required as a condition of approval.

G. State Highway Impacts [SCC 30.66B.710]

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy (SCC 30.61.230(9)), through which the County designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to an Interlocal Agreement (ILA) with the WSDOT/County effective December 21, 1997, and as amended through the date of completeness for this application.

Since the subject development creates less than three new directional peak hour trips, mitigation for the State is not required.

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of ILAs between the County and the other jurisdictions.

There are no other city jurisdictions that have an ILA with the County that will be significantly impacted by the subject development.

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

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

SCC 30.66B.630 requires development inside the UGA to provide TDM measures. Since this development is outside of the UGA, TDM measures are not required.

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

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

### 10. Drainage and grading.

A. Drainage. The developed site will maintain the natural discharge locations and existing basins. Runoff from the new gravel areas will disperse to vegetated areas. Runoff from the new building will be routed to a dispersion trench. A formal stormwater detention pond is not necessary because the proposed project generates less than a 0.1 cubic foot per second increase in peak flow for the 100-year 24-hour storm. Details of the proposed drainage improvements are seen in the Targeted Drainage Report (Exhibit C1).

PDS (Engineering) has reviewed the concept offered and is recommending approval of the project. As the project collects and concentrates drainage from less than 5000 square feet, a full drainage plan is not required. SCC 30.63A.110(1)(b).

- B. Grading. Grading quantities are anticipated to be approximately 100 cubic yards of cut and 600 cubic yards of fill, primarily for parking lot and construction of the garage/shop building. 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.

11. Critical Areas Regulations (Chapter 30.62 SCC)

There are no critical areas on 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 UGAs and adopted area-wide rezones within the UGAs of the County respectively.

The subject property is designated Rural Residential (1 DU/5 Acres Basic). This designation includes lands which were designated as Rural or Residential Estates on pre-GMA subarea comprehensive plans. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than five acres.

Under the 2006 GPP, the following Land Use goal, objectives and policy are applicable to this application (however, the policy direction provided for this type of rural development is not extensive):

- GOAL LU 6                      Protect and enhance the character, quality, and identity of rural areas.
- 6.A.2                              Establish rural infrastructure standards that are consistent with appropriate rural development patterns and densities.
- CF Policies 11.A.3              The county shall work with rural water system owners and fire protection agencies to define fire flow and water system improvements needed for rural areas based on desired level of service protection and financial capability.

13. Zoning.

Utility facilities are allowed as a conditional use in the R-5 zone. The proposal meets zoning code requirements relating to access (30.24), building setbacks, height and lot coverage (30.23), landscaping (30.25) and parking (30.26).

14. Utilities

- A. Water. Water is available from an on-site well. The applicant is the local purveyor of water. (See Exhibit H at 6)
- B. Sewer. Sewage disposal will occur through on-site septic. The Snohomish Health District (District) has recommended approval of the major revision to the CUP (Exhibit

G3). Detailed review by the District of the proposed septic system will occur prior to the issuance of any building permits. (See Exhibit H)

C. Electricity. The Snohomish County PUD has no objection to the proposal. (Exhibit G5).

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

PDS issued a DNS for the subject application on December 3, 2009 (Exhibit E2). PDS did not receive any comments during the comment period and the DNS was not appealed.

16. CUP 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.

**Consistency with the Comprehensive Plan ((1) (a)):**

With the help of PDS staff, the Examiner cited the GPP policies up above in the capital facilities element pertaining to water system improvements. From the testimony of the applicant at the hearing, it is clear that replacement of the existing tanks is a critical improvement for the infrastructure of the water district. It is generally the policy of County government to support infrastructure improvements of local districts within the County, particularly when there are no negative impacts associated with those improvements.

**Consistency with the Applicable Requirements of this Title ((1) (b)):**

The Examiner finds that the application for a major revision of the CUP complies with the applicable requirements of Title 30 SCC, as demonstrated in the Findings of Fact in this decision. Further evidence is submitted below.

This project meets zoning code requirements for building height and setbacks, parking, landscaping and other zoning code requirements.

i. Building height and setbacks:

The maximum building height in the R-5 zone is 45 feet. Water tanks are exempt from height restrictions pursuant to SCC 30.23.050(2)(a). The height of the proposed one-story shop/garage will be approximately 20 feet, well below the 45 foot maximum.

The minimum building setback in the R-5 zone when the subject property adjoins a rural zone is 5 feet, and 20 feet from the edge of the right-of-way of 58<sup>th</sup> Street SE. The proposed shop is to be 52 feet from the west property line, and 57 feet from the property line at the right-of-way. The standpipe is proposed to be 32 feet from the west property line, and 34 feet from the property line at the ROW.

ii. Parking:

Section 30.26.030(1) requires three stalls per 1,000 square feet of building area for governmental buildings. The 2,100 square foot building would therefore

require six stalls. The site plan shows adequate graveled areas to accommodate this requirement.

iii. Landscaping:

The hearing file includes exhibits that pertain to a landscape modification request (Exhibits A4 and A5). A landscaping modification is not necessary for this proposal. At the time that this application was submitted, a 20-foot wide Type A landscape buffer was required around the perimeter of CUP sites in all zones. As of April 21, 2009, such a perimeter buffer ceased to be a requirement for CUPs in the R-5 zone. As mentioned above, however, this project is vested to the 20-foot buffer, as it vested in July 2008.

The landscaping for the project as proposed (Exhibit B, Sheet 5 of 6) shows a 20 foot wide Type 2 buffer on the north, east, and most of the west side. The portion of the west side that does not have the full 20 feet is the area where the existing standpipes were constructed; no work is proposed in this area. Although the landscaping shown on the frontage at 58<sup>th</sup> Street SE is labeled as a 10-foot wide Type B buffer (the current requirement in the zoning code), the existing heavily wooded vegetation meets the criteria for a 20 foot wide Type A, as defined at SCC 30.24.017. The Examiner therefore needs the site plan to be amended to reflect a 20-foot buffer as required by the former code. In addition, the tree retention standards at SCC 30.25.16 strongly encourage the retention of existing native vegetation. The density of the existing vegetation is seen in the aerial photo at Exhibit A8.

PDS staff also recommends that a condition be placed on the development that the existing vegetation be retained to the greatest extent possible. (Exhibit H at 9) The Examiner will include the recommended condition.

**The Proposal will not be Materially Detrimental to the Uses or Property in the Immediate Vicinity ((1) (c)):**

The Examiner finds that the proposal will not be materially detrimental to uses or property in the immediate vicinity. Because the property is and will continue to be used as a water utility facility, the proposal will not be detrimental to uses or to property in the immediate vicinity. It has not received any complaints since being built, according to evidence presented at the hearing. As noted previously, the fire station was granted a CUP in 1987. The proposed garage/shop is set well back from the right-of-way, and will be screened from view by the existing vegetation. There will still likely be little activity at the site, as it is expected that members of the association will only be using it occasionally.

**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 ((1)(d)):**

The CUP revision does expand the overall facility, but the setbacks, painting the standpipe green, shielding of lighting, and retaining the existing vegetation mitigate the aesthetic impact. The current uses surrounding the water facility include residences, small farms, and large wooded lots.

All applicable conditions of approval of the existing CUP have been incorporated into this approval. The Examiner finds that the proposed major CUP revision, subject to the preconditions and conditions of approval included in this decision, is consistent with the comprehensive plan and complies with the applicable requirements of this title.

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over CUP applications pursuant to Chapter 30.72 SCC, Chapter 30.42C SCC and Chapter 2.02 SCC.
2. In considering the major revision, application of many of the decision criteria require the exercise of discretion by the Examiner.
3. The Examiner concludes that 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 proposed major revision of the CUP with the conditions of approval as outlined below will be consistent with the comprehensive plan and comply with the applicable requirements of Title 30 SCC.
6. The Examiner concludes that the major revision of 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.
7. The major revision of the CUP, with recommended preconditions 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.
8. Any Conclusion in this decision, which should be deemed a Finding of Fact, is hereby adopted as such, and vice versa.

### **DECISION**

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

The request for a **MAJOR REVISION TO A CONDITIONAL USE PERMIT** is hereby **CONDITIONALLY APPROVED**, subject to the following **PRECONDITIONS** and **CONDITIONS**:

#### **PRECONDITIONS**

1. Right-of-way such that 30 feet exists north of the centerline of 58<sup>th</sup> Street SE shall be deeded to the satisfaction of the County.
2. The applicant shall supply a new Exhibit B1 depicting a 20-foot landscaping buffer along the south edge of the property as required by Snohomish County Code 30.25.017.

### **CONDITIONS**

- A. This conditional use permit supersedes and replaces the conditional use permit approved under County planning file number ZA 8707327.
- B. The conditional use permit site, landscape, and floor plans received pursuant to Precondition (2) (Exhibit B1) shall be the approved site configuration. Changes to the approved site plan are governed by SCC 30.42C.110.
- C. Desirable overstory vegetation shall be retained during site development to the maximum extent feasible consistent with construction requirements and ultimate building and life safety considerations.
- D. The new standpipe shall be painted a green color similar to the existing standpipes.
- E. Any and all exterior lighting on site shall be shielded so as not to cast any direct glare onto adjacent and nearby private properties and public roads.
- F. Prior to initiation of any further site work and/or prior to issuance of any development/construction permits by the county:
  - i. A Land Use Permit Binder shall have been completed, signed, and recorded with the County Auditor's Office. (Forms provided by PDS)
  - ii. A grading permit, to include a Storm Water Pollution Prevention Plan (SWPPP), issued pursuant to SCC Chapter 30.63B shall have been obtained for any on-site grading.
  - iii. All site development work shall comply with the requirements of the plans, landscape modification, and permits approved pursuant to Condition A, above.

Nothing in this permit 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 1<sup>st</sup> day of February, 2010.



Barbara Dykes, Hearing Examiner

**THIS APPROVAL SUPERSEDES ALL PREVIOUS APPROVALS AND CONDITIONS GRANTED ON THIS PROPERTY, SPECIFICALLY HEARING EXAMINER DECISION 87-107302 LU.**

## 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, 2<sup>nd</sup> 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 11, 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, 2<sup>nd</sup> 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 16, 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.

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Staff Distribution:

Department of Planning and Development Services: Tom Barnett

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 1, 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.

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**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)