



**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

**Millie Judge**  
Hearing Examiner

M/S 405  
3000 Rockefeller Ave.  
Everett, WA 98201

(425) 388-3538  
FAX (425) 388-3201

DATE OF DECISION: March 15, 2011

PLAT/PROJECT NAME: *Talasera*

APPLICANT/  
LANDOWNER: Phoenix Development, Inc.  
16108 Ash Way Suite 201  
Lynnwood, WA 98087

FILE NO.: 07-100489 SD

TYPE OF REQUEST: Rezone and Subdivision

DECISION (SUMMARY): **REZONE IS GRANTED  
PRELIMINARY SUBDIVISION APPROVAL IS GRANTED,  
SUBJECT TO CONDITIONS**

**BASIC INFORMATION**

LOCATION: On the west side of 45th Ave SE between 228th St SE and approximately 230th Pl SE, Bothell, Washington, in Section 33, Township 27 North, Range 5 East, W.M., Snohomish County, Washington.

ACREAGE: 10.98 acres

NUMBER OF LOTS: 55

AVERAGE LOT SIZE: 7,214 square feet

MINIMUM LOT SIZE: 4,331 square feet

GROSS DENSITY: 5.0 du/acre (6.0 net du/acre)

GMACP DESIGNATION: Urban Low Density Residential (ULDR)

CURRENT ZONING: R-9,600

REQUESTED ZONING: R-7,200

UTILITIES:

Water: Alderwood Water and Wastewater District  
Sewer: Alderwood Water and Wastewater District  
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Northshore School District No. 417

FIRE DISTRICT: Snohomish County Fire District No. 7

STAFF RECOMMENDATION: Approve the rezone; Grant preliminary subdivision approval subject to conditions.

**NOTE:** For a complete record, an electronic recording of the hearing in this case and the Tape Log is available in the Office of the Hearing Examiner.

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

### **FINDINGS OF FACT**

1. **Regulatory Review and Vesting.** A complete application was submitted to Planning and Development Services (PDS) on April 17, 2007. The original application sought to construct a 104-lot subdivision and rezone 22 acres. The application was then substantially redesigned by the applicant and resubmitted on June 11, 2010. As a result, SCC 30.71.110(3)(b) requires a re-start of the 120-day review period. As of the hearing date, 83 days of the 120-day period had expired.
2. **Public Hearing.** A new public hearing was held on February 15, 2011. Appearing for the applicant was Jim Egge and Loree Quade of Phoenix Development, Inc., and Todd Oberg, BlueLine Land Development Consulting. Stacey Abbott appeared and testified on behalf of PDS. No members of the public testified at the hearing.
3. **The Record.** All of the Exhibits shown on the master list of exhibits were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. The entire record was considered by the Examiner in reaching this decision.
4. **Public Notice.** The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrence and Impact Fee Determinations as required by the County Code. (Exhibits F.1, F.2, F.3)

#### **A. Background Information**

5. **Applicant's Proposal:** The applicant is requesting a rezone from R-9,600 to R-7,200 and preliminary approval of a 55-lot single-family residential subdivision on six parcels totaling 10.98-acres inside the UGA near Bothell in south Snohomish County. Access into the plat will be through a new public road system off of 45<sup>th</sup> Avenue SE and 230<sup>th</sup> Place SE. Each lot will have an individual driveway off of the new public road system. The plat will be constructed in two phases. Phase One will consist of 31 lots, and Phase Two will consist of an additional 24 lots. Water and sewer will be provided by Alderwood Water and Wastewater District.
6. **Issues of Concern:**
  - A. **Agency Comments.** No issues of concern were raised during agency reviews.

- B. Citizen Comments. Public comments were received from two citizens, although their comments are not part of the record before the Hearing Examiner. The first letter from Mr. Lars Ollestad raised concerns about stormwater runoff along a private road easement on 233<sup>rd</sup> Place SE. (Exhibit I.1) This area is no longer part of the development proposal. The applicant's consultant, Todd Oberg, wrote to Mr. Ollestad and responded to his concerns. Stormwater runoff from the developed site will be conveyed through a series of pipes and catch basins to the proposed detention vault and storm filter located along the western boundary of the site. (Exhibit I.2) The second letter was an email inquiry from Ms. Karen McKenzie relating to traffic concerns on 45<sup>th</sup> Avenue SE. Mr. Robert Long, PE, Lovell-Sauerland and Associates, provided a written response to Ms. McKenzie. The letter discusses traffic counts for 45<sup>th</sup> Ave SE and describes the improvements that will be constructed as part of this subdivision. (Exhibit I.1)

### **B. Compliance with Codes and Policies.**

7. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within Park District 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. The Examiner finds that such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies.
8. Traffic Mitigation and Road Design Standards (Title 13 SCC, Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC, Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards.
- (a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC). The applicant shall be required to pay a road system capacity impact fee to the County in the amount of \$106,644.00, based on \$230.00/ADT (based upon 463.67 ADT), pursuant to SCC 30.66B.310 and SCC 30.66B.330. The application was deemed to be concurrent pursuant to SCC 30.66B.120 and SCC 30.66B.130(4) as of October 12, 2007. The expiration date of the concurrency determination is six years from this date. IRCs have been analyzed according to the requirements of SCC 30.66B.210, and as a result, the applicant is not required to make improvements to any IRC locations within TSA E.
- (b) Frontage Improvements (SCC 30.66B.410) Full urban frontage improvements are required along the subject property's frontage on two roads:
- 45<sup>th</sup> Avenue SE. As a collector arterial, the frontage improvements shall consist of: (1) Asphalt concrete pavement consisting of 18 feet in width from roadway centerline to the face of curb; (2) Cement concrete vertical curb and gutter; (3) A planter strip with a width of 5 feet; and (4) A cement concrete sidewalk with a width of 5 feet; and
  - 228<sup>th</sup> Street SE. As a minor arterial, the frontage improvements shall consist of: (1) Asphalt concrete pavement of 28 feet in width from centerline to the face of curb; (2) Cement concrete vertical curb and gutter; (3) A planter strip with a width of 5 feet; and (4) A cement concrete sidewalk with a width of 5 feet. Since 228<sup>th</sup> Street SE is an impact fee project, credit can be given up to the amount of the traffic impact fee for improvements that can be used in the final county

design. Since there are frontage improvements adjacent to the west on 228<sup>th</sup> Street that were recently completed by the developer of Westlake Heights (PFN 05-128186 SD), the frontage improvements for the subject development shall be constructed to match those existing improvements.

- (c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) The Public Works Department (DPW) considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. Their analysis is shown on pages 4 through 11 of the PDS Staff Recommendation (Exhibit J), which is incorporated herein by this reference as if set forth in full. The applicant has requested a deviation from the 2007 version of EDDS at Plate 3-065, which requires a minimum pavement width of 28 feet for a residential road serving up to 1,000 ADT. This requirement was later changes to allow a 24-foot pavement width for local access roads. The application is vested to the earlier requirement. In the present case, the deviation was granted because it reduces the number of stacked driveways (panhandles) along the main interior plat road and meets current EDDS requirements. However, the Department of Public Work's (DPW) approval was conditioned on the following: The number of lots to be allowed access on the two roads shall be restricted on the face of the final plat as follows: "the south road (Phase 1) will be restricted to Lots 6, 7, 8 and 12; the north road (Phase 2) [shall be restricted] to Lots 7, 8, 9, and 10." (Exhibit G.4)

The County Engineer and DPW staffs have determined that with the imposition of the conditions set forth in Exhibits G4 and J, the proposed development meets the requirements of SCC 30.66B.420 and Chapter 30.24 SCC.

- (d) In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record. (Exhibit J)
- (e) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520) The applicant will not be required to dedicate any additional right-of-way along 228<sup>th</sup> Street SE, because the required 40 feet of right-of-way already exists at this location along the development's side of the road. However, 45<sup>th</sup> Avenue SE requires a right-of-way width of 35 feet on each side of the centerline. One section of the frontage has 20 feet and one section has 30 feet in the pre-development condition on the applicant's side of the right-of-way. As such, the applicant is required to dedicate five (5) feet and fifteen (15) feet of right-of-way, which has been shown on the plans. (Exhibit B.2) The dedication of the required right-of-way shall be a condition of approval.
- (f) Impacts to State Highways (SCC 30.66B.710) The proposed application has been reviewed by the Washington State Department of Transportation (WSDOT) and PDS, and they have determined that the application does not impact any state highways. As such, no impact fees are required to mitigate impacts to state highways. (Exhibit H.5)
- (g) Impacts to City Streets and Roads (SCC 30.66B.720)

Mitigation requirements for impacts to streets within nearby cities will be established consistent with the terms of an interlocal agreement between the County and the other

jurisdictions pursuant to the County's SEPA substantive authority. Here, the County has executed a Reciprocal Traffic Mitigation Interlocal Agreement with the City of Bothell.

Through its traffic and SEPA reviews, DPW identified impacts from the development on the City of Bothell's street system which can be mitigated through the payment of an impact fee, as authorized through the ILA and SCC 30.66B.720. Based on the revised development proposal of 51 lots (with credit given for four existing residential homes), the applicant will be required to pay \$50,702.93 to the City of Bothell based on the following formula: 51 lots x 50% (sub area location) x \$2,093.00 per dwelling x 95% TDM credit = \$50,702.93. The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.

(h) Transportation Demand Management (TDM) (SCC 30.66B.630)

The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity. A TDM Plan was submitted with the application for this development, and was determined to meet the minimum code requirements for acceptance. Therefore the TDM obligation fee has been waived, and a 5% reduction credit on the number of ADT generated by this project has been given by PDS. Accordingly, the Examiner finds that the requirements of SCC 30.66B.630 have been met.

9. Pedestrian and Bicycle Facilities (RCW 58.17.110 and 58.17.060; SCC 30.66B.430(3)(I))

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision. PDS asserts that comments from the Northshore School District No. 407 indicate that all grade level school children from the development will walk to a school bus stop at 23022 45<sup>th</sup> Avenue SE, which is located along the frontage of the development, and from there they will ride a school bus to school. No comments from the School District were included in the record. Frontage improvements have been described above at Finding of Fact No. 8(b). Internal roads will also provide sidewalks on both sides and, therefore, safe walking conditions for school children making their way to the bus stop.

A condition has been included for construction of the pedestrian facilities. The Examiner finds that the proposed facilities are consistent with the County Code and EDDS, that no school children will be required to walk to school from the site, but will be required to walk to bus stops for which adequate facilities will be provided, and that the facilities will provide for the general public health, safety and welfare.

In terms of providing bicycle facilities, the County's current adopted Countywide Bicycle Facility System Map became effect on February 1, 2006. The subject development borders on a right-of-way that has been identified as part of the adopted Bicycle Facility System Map. A bicycle path is required along the development property frontage on 228<sup>th</sup> Street SE. (SCC 30.66B.430(3)(I)).

10. Mitigation for Impacts to Schools (Chapter 30.66C SCC)

Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base

Fee Schedule in effect for the Northshore School District No. 417, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibit H.7) Credit is to be given for six existing lots. Payment of school impact fees has been included as a condition of approval of the development.

11. Stormwater Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A and 30.63B SCC)

The applicant proposes a 55 lot subdivision (51 new lots). To construct those lots, the applicant proposes to clear and grade approximately 12,000 cubic yards of cut and 24,000 cubic yards of fill. The primary purpose of such activity is for roads, drainage facility, and home site construction. A grading permit and Storm Water Pollution Prevention Plan (SWPP) prepared in accordance with Volume 2 of the 2005 DOE Stormwater Manual shall be required. Water quality will 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. (Exhibit C.2)

The Targeted Drainage Report has proposed stormwater detention through a detention vault, with an approximate storage capacity of 40,320 c.f. Post-development runoff rates will be less than the existing conditions. (Exhibit C.2) The applicant has requested a modification of SCC 30.63A.200(1), seeking to consolidate the stormwater drainage outfall discharge location into an existing ravine, instead of across private property. PDS has recommended approval of the proposed modification. (Exhibit J) Final design of the drainage improvements will be made during the construction plan approval phase. Based on the fact that the applicant proposes in excess of 5,000 square feet of new impervious surfaces, the applicant shall provide a full drainage plan according to SCC 30.63A.120, which meets the requirements of SCC 30.63A.210.

Based on the Staff Recommendation, the applicant has sufficiently demonstrated that the County's code requirements and standards for storm water control, water quality treatment and the prevention of stormwater pollution can be met with development of this proposed site.

12. Critical Areas Regulations (Chapter 30.62 SCC)

There are no critical areas present on the site. Accordingly, the provisions of Chapter 30.62 SCC do not apply to this application.

13. 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 (GMACP), 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) 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 "...allows mostly detached housing developments on larger lot sizes. Implementing zones: R-7,200, PRD-7,200, R-8,400, PRD-8,400, R-9,600, PRD-9,600, and WFB. Except within the Lake Stevens UGA, areas containing critical areas that are large in scope, with a high rank order value, and are complex in structure and function, the implementing zone shall be R-

9,600.” (GMACP at p. LU-89). Here, no critical areas are present and the implementing zone of R-7,200 is appropriate.

The 55 units proposed are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2. The site is 10.98 acres. The Hearing Examiner finds the requested rezone to be consistent with the General Policy Plan’s ULDR designation of the property. The proposal is consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2. The Examiner further finds that the applicant and PDS have adequately analyzed the consistency of the requested rezone with the GMACP as show in the “Statement of Consistency with Adopted Codes and Policies” (Exhibit A.3) and the Staff Recommendation (Exhibit J).

14. Utilities.

- A. Sewer. Sewer will be supplied by the Alderwood Water and Wastewater District. A Certificate of Sewer Availability was received on November 1, 2010. (Exhibit H.3) Snohomish Health District recommended approval of the preliminary plat on June 22, 2010. (Exhibit H.6)
- B. Electricity. The Snohomish County PUD No. 1 notified the County on June 22, 2010, that they can provide electrical service to the development. (Exhibit H.2) The Applicant has also obtained an easement from Seattle City Light for use of its transmission line right-of-way. (Exhibit H.4)
- C. Water. Potable water will be supplied by the Alderwood Water and Wastewater District. The District indicated on November 1, 2010 that adequate water supply is available to serve the development. (Exhibit H.3)
- D. Fire. Although notice was sent to Snohomish County Fire District No. 7 on April 7, 2008, no comments were received by PDS. The Fire Marshall’s Office reviewed the project on December 10, 2010 and recommended approval subject to certain conditions, which have been recommended by PDS. The Fire Marshall has determined that fire apparatus access as depicted in the Plans meets the minimum requirements of SCC 30.53A.150.

15. Zoning (Chapter 30.2 SCC)

This project will meet zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements, if the rezone application is approved.

The proposal 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. 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 calculations were presented in the Staff Recommendation (Exhibit J). The minimum zoning requirement will be

7,200 square feet if the rezone is approved. 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.

16. Rezoning Request (Ch. 30.41C SCC)

The applicant is seeking a rezone from R-9,600 to R-7,200 pursuant to Chapter 30.42C SCC. In order to grant a rezone, the Hearing Examiner must find that (1) the proposal is consistent with the comprehensive plan; (2) that the proposal bears a substantial relationship to the public health, safety and welfare; and (3) where applicable, that minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

(A) The proposal is consistent with the Comprehensive Plan. The proposed project seeks a rezone to R-7,200. The rezone will allow higher densities than would be allowed under the existing zoning of R-9,600. Based upon the discussion of the applicable GPP policies in Finding of Fact No. 13 above, and as set forth in pages 15-17 of the Staff Recommendation (Exhibit J) and the facts presented in Exhibit A.3, the Hearing Examiner finds that the proposed rezone is consistent with the GMACP.

(B) The proposal bears a substantial relationship to the public health, safety, and welfare. Application for the proposed rezone is made concurrently with the application for a subdivision. Review of the land development proposal has been made for compliance with the relevant codes, policies, and standards of Snohomish County. PDS and DPW have determined that the project, as conditioned, will satisfy those requirements, including a concurrency determination for access routes to and from the development, an evaluation of the road and access routes to comply with the relevant EDDS standards and SCC 30.66B, evaluation of the adequacy of stormwater and drainage system, evaluation of critical areas, adherence to the short subdivision codes, compliance with the fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to ensure that adequate provision has been made for the public health, safety, and welfare of the citizens. Based upon the entire record, the Hearing Examiner finds that the proposed rezone and subdivision, as conditioned, bears a substantial relationship to the public health, safety and welfare.

(C) If applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met. Here, the proposed site is located within a residential neighborhood. The proposed rezone is to remain a residential zone within the Urban Low Density Residential designated area. Therefore, the zones specified in SCC 30.31A-F are not applicable to the proposal.

Based on the foregoing analysis, the Hearing Examiner finds that proposed rezone meets the requirements of Ch. 30.41C SCC and the rezone should be granted from R-9,600 to R-7,200.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on January 7, 2011. (Exhibit E.2) Notice was properly given of the SEPA determination. (Exhibits E.1, E.2, F.1, F.2, F.3) The DNS was not appealed. The requirements of SEPA have been met.



18. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads. In addition, the subdivision meets all of the County's transportation and road regulations and design standards. The Examiner finds that all 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. (SCC 30.41A.110) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions included in the PDS Staff Recommendation. (Exhibit J) Accordingly, the Hearing Examiner finds that the proposed plat, as conditioned, also meets the general requirements under SCC 30.41A.100 with respect to health, safety and general welfare of the community.

19. 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. The 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 pedestrian facilities for students.

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland, and buffer areas. The single-family homes within the subdivision will be in character with the rural area. 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 and Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water and sewage disposal will be provided by the Alderwood Water and Wastewater District.

20. 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 Hearing Examiner has jurisdiction to consider the requested rezone pursuant to Chapter 2.02 SCC and SCC 30.72.020. The Examiner concludes that the applicant has met its burden of proof to show that the rezone meets the requirements of Chapter 30.41C SCC. The Examiner further concludes that the requested rezone from R-9,600 to R-7,200 should be approved.
2. The Examiner has original jurisdiction over subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.

3. The Examiner must review the proposed subdivision application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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. The Examiner concludes the applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

4. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the applicant has met its burden in showing that the subdivision application meets the requirements of Chapter 30.41A SCC.
5. Adequate public services exist to serve this proposal.
6. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
7. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

### DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following final decision and order:

1. The application for a **REZONE** of the subject property from **R-9,600 to R-7,200** is **GRANTED**.
2. In addition, the preliminary plat approval of a **SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

#### CONDITIONS

- A. The preliminary plat received by PDS on December 29, 2010 (Exhibit B1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- 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.
  - ii. Construction plans shall be submitted for review and approval.
  - iii. A Stormwater Pollution Prevention Plan (SWPPP) shall be submitted and approved.

iv. A Grading Permit (Land Disturbing Activities Permit) shall be obtained.

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

i. "SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:

- The applicant shall be required to pay a road system capacity impact fee to the County in the amount of \$106,644.00, (\$1,938.98 per lot) for mitigation of impacts on county roads.
- The applicant shall be required to pay \$50,702.93 (\$921.87 per lot) in impact fees to the City of Bothell for mitigation of impacts to City streets resulting from the proposed development. Proof of payment is required.

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein."

ii. "The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

iii. "The lots within this subdivision shall be subject to school impact mitigation fees for the Northshore School District No. 417 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 six existing parcels. Lots 1 through 6 shall receive credit."

iv. "If there are dwellings that exceed 3,600 square feet, the required fire flow shall be determined using Appendix B of the 2006 Edition of the International Fire Code."

v. "No lot shall have direct access to 45<sup>th</sup> Avenue SE or to 228<sup>th</sup> Street SE. Access to all lots in the development shall be via the interior minor roads, except for Lot 6, Phase 2, which will continue to take access from a private road in the adjacent short plat (ZA 9007382) to the east."

vi. "A section of 5 feet and a section of 15 feet of right-of-way shall be dedicated along the property frontage on 45<sup>th</sup> Avenue SE, to total 35 feet from the right-of-way centerline."

vii. The number of lots to be allowed access on the two roads shall be restricted as follows: "the south road (Phase 1) will be restricted to Lots 6, 7, 8 and 12; the north road (Phase 2) shall be restricted to Lots 7, 8, 9, and 10."

**D. Prior to recording of Phase 1 of the final plat:**

i. Urban standard frontage improvements shall be constructed along the property frontage on 45<sup>th</sup> Avenue SE to the satisfaction of the county, unless bonding of improvements is

allowed by PDS, in which case construction is required prior to any occupancy of the development.

- ii. The work to remove the temporary cul-de-sac inside Westlake Heights (PFN 05-128186 SD) and to install vertical curb, planter and sidewalk for the road connection shall be shown on the construction plans and completed to the satisfaction of the County.
- iii. The road connection to 230<sup>th</sup> Place SE shall have been completed to the satisfaction of the County.
- iv. Temporary turnarounds shall have been constructed at the 90-degree intersection elbows east of 230<sup>th</sup> Place SE and at the north end of Road B to the satisfaction of the County, until the road construction for Phase 2 has been completed.

**E. Prior to recording of Phase 2 of the final plat:**

- i. Urban standard frontage improvements shall be constructed along the property frontage on 228<sup>th</sup> Street SE, including a bicycle lane, and matching the frontage improvements completed by Westlake Heights (PFN 05-128186 SD), to the satisfaction of the county, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. Temporary turnarounds installed in Phase/Division 1 shall have been removed to the satisfaction of the county.

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 seven (7) 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 15<sup>th</sup> day of March, 2011.

  
Millie Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before MARCH 25, 2011**. 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 **within 14 days from the date of this decision**. 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 No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before MARCH 29, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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: Stacey Abbott

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.

PARTIES OF RECORD REGISTOR  
07-100489-SD TALASERA  
HRG: 02/15/11  
07-100489-SD

PHOENIX DEVELOPMENT, INC.  
LOREE QUADE  
16108 ASH WAY SUITE #201  
LYNNWOOD WA 98087

SNO CO PLANNING & DEV/LAND USE  
STACEY ABBOTT  
3000 ROCKEFELLER AVE #604  
EVERETT WA 98201

DEPT OF PUBLIC WORKS  
COUNTY ENGINEER  
3000 ROCKEFELLER AVE #607  
EVERETT WA 98201

CHASE  
2273 N. GREEN VALLEY  
PARKWAYSUITE 14  
HENDERSON NV 89014

BIG WALL 70, LLC  
15 LAKE BELLEVUE DR #102  
BELLEVUE WA 98005

SEATTLE CITY LIGHT  
PO BOX 34023  
SEATTLE WA 98124

WA MUTUAL BANK  
2273 N GREEN VALLEY  
PARKWAYSUITE 14  
HENDERSON NV 89014

GERALD & CORLISS BRANCH  
22902 45TH AVE SE  
BOTHELL WA 98021

WESTLAKE HEIGHTS HOA  
JEFFREY HAMILTON  
15 LAKE BELLEVUE DR SUITE 102  
BELLEVUE WA 98005

CITY OF BOTHELL  
WASIM KHAN  
9634 NE 182ND ST  
BOTHELL WA 98011

LOVELL-SAUERLAND  
ROBERT LONG  
19400 33RD AVE W SUITE 200  
LYNNWOOD WA 98036

LOZIER HOMES  
JENNIFER MCCALL  
1203 114TH AVE SE  
BELLEVUE WA 98004

KAREN MCKENZIE  
4420 234TH ST SE  
BOTHELL WA 98021

THE BLUELINE GROUP  
TODD OBERG  
25 CENTRAL WAY SUITE 400  
KIRKLAND WA 98033

LARS OLLESTAD  
7327 NE 205TH ST  
KENMORE WA 98028

SNOHOMISH HEALTH DIST  
BRENT RAASINA  
3020 RUCKER AVE SUITE 104  
EVERETT WA 98201-3900

WA ST DEPT OF TRANSPORTATION  
SCOTT RODMAN  
PO BOX 330310  
SEATTLE WA 98133-9710

SNO CO PUD NO 1  
DEAN SAKSENA  
PO BOX 1107  
EVERETT WA 98206-1107

OLYMPIC PIPE LINE  
HOLLY WILLIAMSON  
2319 LIND AVE SW  
RENTON WA 98055

ALDERWOOD WATER &  
WASTEWATER DISTRICT  
JON WYRICK  
3626 156TH ST SW  
LYNNWOOD WA 98087

JIM EGGE  
Jim.egge@gmail.com