



**FINAL DECISION of the  
SNOHOMISH COUNTY HEARING EXAMINER**

**Hearing Examiner's Office**

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**Millie Judge**  
*Hearing Examiner*

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**DECISION DATE:** May 11, 2012  
**APPELLANTS:** William and Linda Legler  
**FILE NO.:** 06-100727 SP  
**TYPE OF CASE:** **Appeal of Conditions imposed on Short Subdivision**  
**LOCATION:** 12419 Smokes Road, Arlington, WA 98223  
**TAX PARCEL NO.:** 320617-004-004-00  
**DECISION (SUMMARY):** **Appeal DENIED**

This matter having come before the Hearing Examiner on April 25, 2012, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

**FINDINGS OF FACT**

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits 1 through 37), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

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

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.

3. **Public Hearing.** Notice of the appeal hearing was issued as required by SCC 30.71.080. (Exhibits 27, 28, 29) The Hearing Examiner held an open record appeal hearing on April 25, 2012. At the hearing, witnesses were sworn, testimony was presented, and exhibits were entered into the record. Stacy Abbott appeared on behalf of the Snohomish County Planning and Development Services Department (PDS). Additional witnesses for PDS included Ann Goetz, Jim Bloodgood and Erik Olson. Linda Legler, Appellant, appeared and testified along with her consultant, Gene Miller, of GFM Associates, LLC. Ronald Simmons, a neighbor of the Appellant appeared and testified in support of the appeal.

4. The Appellant requested and received approval for a 4-lot short subdivision of a parcel that is 25.1 acres in size. The preliminary subdivision approval contained certain conditions, two of which were timely appealed by the Appellants on March 23, 2012. (Exhibit 1)
5. The Appellant presents a narrow challenge to the decision approving the short subdivision. They object to the imposition of Conditions D(ii) and D(iv) in the decision. (Exhibit 1)

Condition D(ii) states:

“D. Prior to recording the final plat:

...

- ii. The private road intersection shall be designed to meet EDDS Standard Drawing 3-100 or as determined by DPW.”

Condition D(iv) states:

“D. Prior to recording the final plat:

...

- iv. An offsite walkway meeting the design requirements of EDDS and/or to the satisfaction of the County shall be construction in any location where none currently exists between the development and the nearest school bus stop identified by Arlington School District (currently the intersection of Smokes Road and 115<sup>th</sup> Avenue NE).”

6. Appellants argue that they relied on the guidance provided by County staff in designing the private/public road intersection (where a bus turnaround was shown on the plans), and the pedestrian walkway. They allege that County staff advised them that if they designed the project to the satisfaction of the Arlington School District, there would be no need for the design and construction of an offsite walkway. (Exhibit 1) PDS denies providing design guidance to the Appellant. They argue that the District did not ask the Appellant to provide a bus turnaround. They further argue that the two challenged conditions should be affirmed based upon the County's regulations and the facts of the case. (Exhibit 36)
7. In July, 2007, during the design phase of the application process, the Appellants approached the Transportation Manager for the Arlington School District about providing a bus turnaround for the short plat. Based on their conversation, Gene Miller re-designed the plans. The District allegedly told Mr. Miller that they would transmit their “approval” of the bus turnaround once they received the proposed design from PDS for review. Appellant claims that it took two years for this to occur, because PDS failed to transmit the plans to the District. In the interim period, a new Transportation Supervisor was hired by the School District.
8. PDS responds that it transmits Applicant's plans on the first review to the District as part of its routine process. However, after that, there is no further distribution of plans to third party agencies. (Testimony of Stacey Abbott; Exhibit 36) Ms. Abbott noted that there is no provision in the County's regulation that requires or authorizes the District to approve the Appellant's plans. PDS accepts comments and information from outside agencies and uses the information as only one factor in determining whether to approve or reject a development application. Id.

9. On May 10, 2011, Cheryl Power, Transportation Supervisor for the Arlington School District, wrote an email message to Gene Miller notifying him that the proposed bus turnaround was acceptable to the District if it would allow a forty-foot bus to turn around. However, in that email, Ms. Power stated that “[d]epending upon the number of riders in the area and the condition of Smokes Rd., the district may continue to turn around at 115<sup>th</sup> Ave NE and Smokes Rd, and may not make use of this new turnaround.” (Emphasis added; Exhibit 18) In an email dated July 19, 2011, Ann Goetz, PDS Transportation Development Reviewer contacted Cheryl Power asking her to confirm where the bus stop location will be for the proposed development. Ms. Power responded “That bus stop location will be at 115<sup>th</sup> and Smokes road.” (Exhibit 18)
10. Based on the School District’s statement, the Department of Public Works (DPW) denied the Appellant’s request for a deviation under SCC 30.66B.810, which sought to eliminate the requirement to construct an offsite walkway between the development and the nearest bus stop location of 115<sup>th</sup> Avenue SE and Smokes Road. (Exhibit 18) DPW cited RCW 58.17.110 as the basis for requiring safe walking conditions for school children through the construction of a paved offsite walkway.
11. The County’s requirements for non-arterial rural roads are found in EDDS Section 3-040. (Exhibit 35). The pavement surfacing requirements are found in Table 4-1 EDDS. Paved shoulders are to be constructed to the same structural section as the road. Asphalt concrete pavement (ACP) is the preferred road surfacing material. (See, EDDS 4-09 “Surfacing requirements”).
12. The Appellant argues that other developments have been allowed to use alternative materials for surfacing a pedestrian walkway. (Testimony of Gene Miller) In a letter dated October 13, 2011, Mr. Miller argues that if they are required to provide an offsite walkway, the existing conditions (a gravel shoulder) along Smokes Road provide adequate walking conditions. He notes that there is no conflict between pedestrians and vehicles traveling along the road given the low traffic volumes. (Exhibit 6)
13. PDS responds that the access for the proposed short plat is through Smokes Road, which is classified as a rural public local access road serving 0 to 250 ADT, with the potential to serve more than 250 ADT in the future. They argue that the public road is subject to EDDS 3-060 (Exhibit 34), which specifies a 28-foot pavement width for two 9-foot travel lanes and a 7-foot paved shoulder. Notes 3 and 4 on the Standard Drawing specify that a 7-foot paved shoulder for a walkway is required on one side of the road to provide safe walking conditions for students. (Exhibit 36) Ann Goetz testified at the public hearing that once a public road exceeds 90 ADT, a walkway out of the traffic lane should be constructed for the safety of school kids. She testified that asphalt is almost always required for pedestrian walkways, but that on occasion, DPW has allowed gravel surfaces. Lastly, she noted that the current shoulders consist of tall, wet grass pedestrians will likely try to avoid.
14. PDS further responds that to the extent the Appellant wants to voluntarily provide a bus turnaround at the intersection of Smokes road and the new short plat access road, it must be located entirely off of, and 50 feet back from, the public right-of-way. The intersection at that location must be designed to meet EDDS Standard Drawing 3-100. Jim Bloodgood of the DPW testified at the public hearing that they care about controlling access to County

roads at intersections because it is a public safety issue. They want to channelize traffic so that it moves safely to and from the public right of way.

15. Linda Legler testified at the public hearing that they have lived on the subject property for 45 years. She stated that although there has been growth in the area, there isn't very much traffic. She testified that they do not have the funds to provide sidewalks. This development is their retirement and property values have dropped. She reminded the parties that they are only adding three new homes to the area.
16. Mr. Miller argued on behalf of the Appellant that the requirement to provide an offsite walkway is disproportionate to the impacts of the proposed development. He estimated that the walkway would cost approximately \$60,000, plus plan reviews. He argued that the school district may use the bus turnaround, which alleviates the need for the walkway. Stacey Abbott of PDS responded that the Appellant had not provided enough justification to eliminate the need for the walkway. They did not present any financial impact information to them. She also noted that there is no evidence in the record to support their claims relative to other development projects. Erik Olson of DPW testified that the issue is whether there are safety concerns in light of the development. Mr. Miller contends there are no impacts that justify the challenged conditions.
17. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Examiner has jurisdiction over this Type 1 appeal pursuant to SCC 30.71.030.
2. The legal issue presented here is whether PDS properly imposed two conditions relative to the subject short plat, Conditions D (ii) and D (iv).
3. First, the Appellant challenges the imposition of a condition to provide an offsite walkway from the intersection of Smokes Road and the access road to the development, along Smokes Road to its intersection with 115<sup>th</sup> Avenue SE. Having considered all of the evidence in the record and the arguments of the parties at the public hearing, the Hearing Examiner concludes that the Appellant has failed to demonstrate that PDS lacked the legal authority to impose Condition D(ii). The EDDS clearly require that an intersection with a public right of way must meet Standard Drawing 3-100. Although the Appellant desires to provide a bus turnaround at that location, it cannot subvert the requirement to provide the intersection design required by the County's regulations.
4. Second, with regard to the requirement to provide safe walking conditions for school children, the Appellant has failed to demonstrate that PDS lacked the legal authority to impose Condition D (iv). There was substantial evidence in the record showing that the school bus will pick up children at the intersection of 115<sup>th</sup> and Smokes Road. Although this was not what was hoped by the Appellant, the School District refused to commit to a different location. Based on those facts, in addition to the requirements of Chapter 30.66B SCC and EDDS, PDS was mandated by the State Subdivision Act (RCW 58.17.110) to require the Appellant to provide a safe walkway to the bus stop for school children. The

County's EDDS clearly specify the type and nature of walkway that may be constructed, and those requirements were followed in this case through the required condition. (Exhibits 34, 36)

5. The Appellant raised constitutionally-based claims about the proportionality of the required walkway improvements in light of their cost to construct them. The Hearing Examiner has no jurisdiction to consider constitutional claims and does not comment on the issue, absent noting that the issue is preserved for further appeal, if desired.
6. The Examiner concludes that the appeal should be denied.
7. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact, is hereby adopted as such.

### DECISION AND ORDER

The appeal is **DENIED**.

Dated this 11<sup>TH</sup> day of May, 2012.



Millie M. Judge, Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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The decision of the Hearing Examiner is final and conclusive with a right of appeal to Superior Court. 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 30.85 SCC, the Snohomish County Hearing Examiner Rules and Superior Court Civil Rules.

#### **Reconsideration**

Any party of record may request reconsideration by the Hearing 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 MAY 21, 2012**. 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 30.85.210]

A petition for reconsideration shall meet the requirements of SCC 30.85.210(3). 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; and/or
- (e) New evidence which could not reasonably have been discovered prior to the hearing and which is material to the decision has been discovered;

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.85.210.

### **Appeal**

An appeal to Superior Court may be filed by any aggrieved party of record **within 21 days from the date of this decision** pursuant to Chapter 36.70C RCW, the Land Use Petition Act. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the Superior Court.

*NOTE: Please include the County file number in any correspondence regarding this case.*

### **Staff Distribution:**

Department of Planning and Development Services: Craig Odegaard, Tom Rowe, Howard Knight

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 REGISTER  
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ADMIN APPEALHG: 4/25/2012  
06 100727 SP

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