



**DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Gordon Sivley
Hearing Examiner

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DECISION DATE: February 7, 2013

PROJECT NAME: **Clearview Gospel Hall Assembly**

APPLICANT/
LANDOWNER: West Woodland Gospel Hall Assembly
13110 N.E. 177th Place, #126, Woodinville WA 98072

FILE NO.: 12-104580 LU

TYPE OF REQUEST: CONDITIONAL USE PERMIT (CUP)

DECISION (SUMMARY): **APPROVED, SUBJECT TO A PRECONDITION and CONDITIONS**

GENERAL LOCATION: 6726 180th Street SE, Snohomish WA, 98296

ZONING: R-5

COMPREHENSIVE PLAN: Rural Residential (1 du/5 acres basic)

PDS RECOMMENDATION: Approve, subject to the recommended precondition and conditions

A. BACKGROUND INFORMATION

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through M.2¹), 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. The Hearing Examiner held an Open Record Hearing on January 23, 2013. Witnesses were sworn, testimony was presented, and exhibits were entered into the record

¹ Exhibits M.1 and M.2, the traffic reviewer report and the Fire Marshal's report, were not included in the initial exhibits submitted by PDS as required by Rules of Procedure 4.3(a). At the public hearing, the Examiner indicated that the record would be left open for submittal of these reports until January 25th. The reports were submitted by PDS to the Hearing Examiner for the record on January 24, 2013. Copies of these documents will be sent to all parties of record along with this decision.

at the hearing. Notices of the application and public hearing were issued according to the provisions of SCC 30.70.050(5). (Exhibits F.1, F.2, and F.3)

Monica McLaughlin and Ann Goetz appeared and testified on behalf of Snohomish County Department of Planning and Development Services (PDS). Appearing for the Applicant was Todd Brandt, President of the Board of Directors of the West Woodland Gospel Hall, David Harmsen, Harmsen and Associates and Brad Lincoln, Gibson Traffic Consultants.

In addition, several interested citizens appeared at the public hearing. The following people offered testimony on the proposal: Michael Riston, Roy Desoto, Keith Abel and Thomas Regney.

B. FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter.

1. Application Request. The Clearview Gospel Hall Assembly ("the Applicant") has requested a CUP to site a church on a 3.12 acre lot in the R-5 zone. The land is designated as Rural Basic, 5 acres in the County's GMA Comprehensive Plan. The development will include a one-story, 8,194 square foot church, a 61 stall parking lot, a stormwater management system incorporating an above ground detention pond, right-of-way improvements consisting of roadway widening and a paved shoulder along the development's road frontages and installation of ornamental landscaping and utilities. Access to the subject development is proposed via an internal driveway off of 67th Avenue SE. A Category 4 wetland at the west side of the site will be preserved and placed within a Critical Area Protection Area (CAPA). Water service is to be provided by the Cross Valley Water District and the development will utilize an on-site septic system.

The Applicant previously submitted a CUP application (file number 09-101644 LU) which was initially denied without prejudice by the Hearing Examiner on December 2, 2010. A revised decision of denial was issued on February 4, 2011 (Exhibit A.5) in response to a petition for reconsideration by the Applicant. The Applicant appealed this decision to the Snohomish County Council and, while the Council revised some of the Findings of Fact and Conclusions in the Hearing Examiner's decision, it upheld the Hearing Examiner's denial on March 30, 2011 (see Exhibit A.4).

Subsequent to the County Council decision, a section of the County Code related to development on substandard lots was revised (via Amended Ordinance 11-058, effective February 16, 2012). The Applicant submitted a new application on June 6, 2012. In response to concerns raised in the review of the first application, the Applicant revised the project to add more parking stalls and to eliminate a previously proposed clothing bank associated with the primary church use. The revised project is also subject to the new drainage and Land Disturbing Activity (LDA) codes which went into effect on September 30, 2010.

As of the date of the hearing, 152 days of the 120 day review period had elapsed. However, by a letter dated January 16, 2013, the Applicant agreed to waive the 120 day review period and stipulated that the Hearing Examiner's decision could be rendered outside of the usual 120 day review period. (Exhibit K.1).

2. Site Description. The subject property is approximately 3.12 acres in size and is situated at the southeast corner of 180th Street and 67th Avenue SE. It is deemed a “substandard lot” because it fails to meet the minimum lot size for the R-5 zone described in the Bulk Matrix within the zoning regulations. The minimum lot size is 200,000 square feet. (See, Table 30.23.030(1) SCC). A Category 4 wetland is located at the west side of the site. A mobile home formerly occupied the northeast portion of the property, but has since been removed. Vegetation in this area is primarily comprised of lawn and brambles. The remainder of the site is vegetated with mature deciduous trees, young conifers and shrubs. The topography generally descends from north to south with an average grade of 5.5%.
3. Adjacent uses. The site is zoned R-5 and is surrounded by single-family residences and other rural/suburban uses on properties zoned R-5, including a commercial nursery on the adjoining property east of the subject site. Most of the surrounding lots are also smaller than the minimum lot size permitted in the current R-5 zoning, many significantly smaller than the subject site.
4. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) for the original application on October 7, 2010. The DNS was not appealed. An Addendum to the original DNS was issued on December 18, 2012 (Exhibit E.2). There was no appeal period associated with the Addendum. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
5. Issues of Concern.
 - A. Public Agency Review. No significant issues of concern were raised by reviewing agencies.
 - B. Citizens. Correspondence was received from seven neighborhood residents. Four requested to be Parties of Record and the others submitted additional comments (Exhibits H.1 – H.3; L.1). Issues of concern related to possible impacts on surrounding property values, traffic safety/increased traffic volumes, stormwater runoff, lack of adequate parking at the facility, bags of clothing being left after hours and after-hours use of the parking lot.

During the public hearing, concerned neighbors restated their concerns and opposition to the siting of the proposed church on the subject site. These concerns were related to increasing traffic volumes in the rural area and traffic safety issues attributable to turning movements at the intersection of 67th Avenue SE and 180th Street SE, the incompatibility of a church with the surrounding single-family uses (including the asserted negative impact on property values), the potential for growth and intensified use if the church membership should grow in the future; and stormwater runoff concerns from adding impervious surfaces to the subject property.

Michael Riston, who lives north of the subject site off of 67th Avenue, testified and presented a written statement of his concerns (Exhibit L.4). He stated that 55% of the landowners within the notification area for the proposal oppose approval of the CUP and he submitted a petition with over 40 signatures of residents opposed to the project (Exhibit L.3). The concerns he raised addressed the intensity of use relative to the surrounding properties, the level of traffic generation, the size of the structure proposed, the potential for future growth, the commercial-like characteristics of the church operations and the asserted negative impact on the value of nearby property.

Keith Abel, who owns property abutting the subject site on the east, testified and reiterated the concerns he raised in his written submittals (Exhibit H.1).

Thomas Regney, who lives across 180th Street SE from the subject site also testified and emphasized concerns about reduction of property values, noise and traffic safety. He submitted Exhibits L.5 and L.6 in support of his testimony. Exhibit L.6 is a print-out of a webpage in which real estate professionals responded in 2008 to a general question about a house next to a church.

While concerns about reduced property values were raised by Mr. Regney and other neighbors, no evidence was presented in the form of a professional appraisal or an expert opinion by a real estate professional that considered the specific proposal now under review.

Another neighbor, Roy Desoto, also testified and indicated that he thought the Applicant had done a good job of designing the proposed church to minimize the impact on the neighborhood and he was not opposed to it.

6. Applicant's testimony. The Applicant presented testimony from David Harmsen, the project manager, Todd Brandt, President of the Board of Directors of the West Woodland Gospel Hall, and Brad Lincoln of Gibson Traffic Consultants. Mr. Brandt testified about the changes that have been made to the proposal in response to the concerns that were raised in the prior review proceedings. He noted that due primarily to the originally proposed clothing bank operation, the previous Hearing Examiner found and concluded that the church's original proposal presented commercial aspects that were incompatible with the rural residential neighborhood. Mr. Brandt stated that the current proposal has eliminated all clothing bank aspects. He indicated that the Applicant would be willing to make this a deed restriction on the property. Mr. Brandt then addressed concerns about growth of the church and potential parking and traffic issues that could arise. He stated that to meet these concerns, the proposal has been modified to add additional on-site parking and he indicated a willingness to install "no parking" signs along 67th Avenue SE and that church members would be told that there is to be no off-site parking. With regard to potential noise impacts, Mr. Brandt noted that his congregation does not use a band or amplified music in their services, only singing by church members. The building will be used primarily on Sunday mornings, Sunday evenings, Wednesday evenings and for other events such as weddings, anniversaries, community suppers, seminars, etc. (Exhibit A.2).

The Applicant has also provided a written response to the concerns raised by surrounding property owners (see Exhibit I.1). The Applicant has revised the proposal from the previous application to provide additional parking and to eliminate a clothing bank. Stormwater from the project will be routed in the opposite direction from the concerned neighbor's property. The Applicant also indicated that it will provide locking gates to secure the parking lot during non-business hours.

In rebuttal testimony, David Harmsen of Harmsen and Associates addressed the concerns that had been raised about the impact the church will have on property values. He indicated that he did some internet research and found a 1994 study that showed a decrease in values of properties within 50 feet of a church of up to 3%. A 1996 study showed an increase in property values of up to 5.5% associated with nearby churches. A 2003 study

by the Church of Latter Day Saints showed no statistically significant impact on property values, either positive or negative.

Brad Lincoln of Gibson Traffic Consultants testified concerning traffic safety issues. He indicated that sight distances for the intersection of 67th Avenue SE and 180th Street SE meet County standards and that turn channelization is not warranted for this intersection. He also indicated that an analysis of collision history for the last five years shows that there has not been a history of a significant number of collisions. To further address turning safety concerns, Mr. Lincoln noted that a future County road improvement project on 180th Street SE planned for construction in the next few years, which will provide a center left turn lane and paved shoulders that will provide an additional measure of safety at the intersection.

7. Applicable Regulations.

A. Approval Criteria. The proposal must meet the requirements of the CUP regulations found in SCC 30.42C.100, as well as any required mitigation imposed pursuant to SEPA. SCC 30.42C.100 provides that the Hearing Examiner may approve, or approve with conditions, a CUP only when all the following criteria are met:

- The proposal is consistent with the comprehensive plan;
- The proposal complies with applicable requirements of [Title 30 SCC];
- The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- 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.

B. Consistency with the Comprehensive Plan (SCC 30.42C.100(1)). In the County Council's decision on the Applicant's previous church CUP application for the subject site, the County Council determined that the proposal was consistent with the Comprehensive Plan. The Examiner incorporates the pertinent portions of the County Council's findings on Comprehensive Plan consistency into this decision as set forth below:

The Comprehensive Plan contains several land use policies relating to churches on lands within Urban Growth Areas (UGAs), where it is assumed that most will be placed. In addition, churches may be included in the Public/Institutional Use land use designation on the Future Land Use Map (FLUM). However, there are no specific land use policies guiding the siting of churches on lands designated as rural in the Comprehensive Plan. As a long-term planning document, the Plan is neutral as to the siting of churches on rural lands; it neither promotes nor discourages their placement on these lands. To determine where churches are permitted, prohibited or conditional uses, one must look to the County's Zoning Code. Evidence in the record supports the finding that the proposed church is consistent with Policy LU 6.E of the Plan. Churches are a traditional part of rural communities across Snohomish County. They are part of a rural lifestyle.

C. Compliance with Chapter 30.42C.100(2) The proposal has been found to comply with the applicable provisions of Title 30 SCC, as described below:

- i. Zoning Regulations. The proposed church use is allowed as a conditional use in the R-5 zone.
- ii. Parking. SCC 30.26.030(1) specifies that the number of required parking stalls for churches is to be determined by PDS on a case-by-case basis. The Applicant has provided a sample floor plan (Exhibit B.6) which indicates that there will be 165 seats in the sanctuary and has calculated the required amount of parking needed for the church would be 42 stalls. This calculation was based on a previous version of the zoning code which required one parking stall for every four seats for churches. This ratio is also widely used by other municipalities and is listed in the 4th Edition of the Institute of Transportation Engineers (ITE) Parking Generation manual. The amount of parking previously proposed was 54 stalls. The Applicant has now increased the amount of parking to 61 stalls. (Exhibit J).
- iii. Building height and lot coverage. According to Table 30.23.030(1) SCC, (the "Bulk Matrix"), the maximum height limit in the R-5 zone is 45 feet. In accordance with SCC 30.23.050(1), church spires are not subject to the height limit requirements, provided they are located 50 feet or more from any adjoining lot line. The proposed church is to be one story and approximately 21 feet high as measured from the averaged finished grade to the midpoint of the pitched roof. A church spire is not proposed. The maximum lot coverage allowed in the R-5 zone is 35 percent. (SCC 30.23.030(1)) Proposed lot coverage is approximately 6 percent. (Exhibit J).
- iv. Building Setbacks SCC 30.23.110(5) requires that churches shall be located at least 25 feet from any other lot in a residential zone. Here the church will be setback 60 feet from 180th Street, 96 feet from the east property line, 240 feet from the south property line and 94 feet from 67th Avenue. (Exhibit A.2).
- v. Landscaping. Landscaping requirements are outlined in Chapter 30.25 SCC. SCC 30.25.020(2) obligates any development permitted as a conditional use in a zone not listed in SCC 18.43.021(1) (perimeter landscaping table) to provide at least 20 feet of Type A perimeter landscaping and 10 feet of Type B road frontage landscaping. In addition to this perimeter landscaping, parking area landscaping (SCC 30.25.022) and detention facility landscaping (SCC 30.25.023) must be installed. The proposed landscape plan (Exhibit B.4) complies with all of the landscaping requirements.

D. Other Development Regulations. The Applicant must demonstrate that the proposal meets all other applicable development regulations applicable to the proposed use. Each applicable regulation is reviewed below. The Applicant is vested to the regulations in effect on June 6, 2012. (Exhibit J).

- i. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC) The Traffic Review Section of PDS has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) "E." (Exhibit J).

- (a) Road System Impacts (SCC 30.66B.310) The proposed church will generate a total of 65.08 ADT (which includes a credit for the existing ADT

associated with the prior site use). Under the calculations made by PDS, the Applicant will be required to pay \$36,091.18 for traffic impact mitigation on County roads in TSA "E".

(b) Concurrency (SCC 30.66B.120) The County makes a concurrency determination for each development application to ensure the development will not impact a County arterial unit in arrears or cause a County arterial to go in arrears. The subject development has been evaluated for concurrency and has been deemed concurrent as of July 11, 2012. The expiration date of the concurrency determination is six years from that date.

(c) Inadequate Road Condition (IRC) (SCC 30.66B.210) Regardless of the existing Level of Service (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. The subject proposal will not impact any IRC locations identified at this time within TSA 'E' with three or more of its p.m. peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to IRCs and no restrictions to building permit issuance or Certificate of Occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC. (Exhibit J).

(d) Frontage Improvement Requirements (SCC 30.66B.410) All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road.

The Department of Public Works (DPW) has determined that full rural frontage improvements along the subject parcel's frontage on 67th Avenue SE must be installed which will be composed of asphalt concrete pavement consisting of 18 feet in width from the roadway/right-of-way centerline including a seven foot paved shoulder.

The DPW has also determined that full rural frontage improvements along the subject parcel's frontage on 180th Street SE must be installed which will be composed of asphalt concrete pavement consisting of 20 feet in width from roadway/right-of-way centerline including an eight foot paved shoulder. DPW recommends that these improvements to be installed prior to building occupancy.

(e) Access and Transportation Circulation (SCC 30.66B.420). Access to the subject development is proposed via a commercial drive aisle off of 67th Avenue SE, which is a dead end road that terminates approximately 1200 feet south of 180th Street SE. One access point is proposed on 67th Avenue SE, and the plans show a width at the right-of-way of 25 feet, which meets the width parameters of EDDS 2-03 C for a two-way commercial driveway located on a non-arterial road (25 feet minimum/40 feet maximum). PDS and DPW indicate that there are no access point spacing, horizontal, vertical, or grade issues related to the access.

The subject development will generate 65.08 ADT, all of which will access the site from 67th Avenue SE via 180th Street SE; a heavily used Major Collector Arterial. As a result of the previous Transportation review, and concerns raised by citizens; DPW asked the Applicant to provide a warrant analysis on the need for turn lanes and/or an acceleration lane at the intersection of 180th Street SE with 67th Avenue SE for vehicles entering or exiting the site.

An updated analysis by Gibson Traffic Consultants was submitted in October 2012. (Exhibit C.2). The document analyzed whether a westbound left turn lane is warranted on 180th Street SE at 67th Avenue SE since the improvement that was included in the 2009 to 2014 Six Year Transportation Improvement Program (TIP) by the County was moved out to 2016. The County improvement includes a two-way left turn lane at this intersection, which would provide left turn channelization. However, that County improvement would most likely not be completed prior to construction of the church. Therefore, the Applicant prepared an additional analysis of the need for a westbound left turn lane on 180th Street SE at 67th Avenue SE for the weekday p.m. peak hour of the generator and the Sunday peak hour of the generator. DPW concurred with the Gibson Traffic Consultant's warrant analysis that a westbound left turn lane is not warranted during the peak hour generation times of the development using added pipeline and project trip volumes.

(f) Right-of-Way Requirements (SCC 30.66B.510 and .520). A development is required to dedicate, establish or deed right-of-way to the County for road purposes as a precondition 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.

67th Avenue SE is designated as a Local Access Non-arterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way already exists on the development's side of the right-of-way.

180th Street SE is designated as a Major Collector Arterial. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. Thirty feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, the development is required to deed 10-feet of additional right-of-way.

Deeding of additional right-of-way that is tangent to the ultimate right-of-way on 67th Avenue SE and 180th Street SE with a 35 foot radius curve is required per the EDDS table 3-10.

The Examiner has reviewed the analysis and finds that there is substantial evidence in the record to support the required road and transportation improvements recommended by PDS and DPW. (See, Exhibit J).

(g) Impacts to State Highways (SCC 30.66B.710). Comments dated June 13, 2012 (Exhibit G.2) were submitted by the Washington State

Department of Transportation indicating that this development will not have a significant adverse impact upon state highways, and no traffic mitigation is requested from the Applicant.

(h) Impacts to City Streets and Roads in Another County (SCC 30.66B.720) Mitigation requirements for impacts on streets inside cities and roads in other counties are to be established consistent with the terms of any Reciprocal Traffic Mitigation Interlocal Agreements (ILA) between the County and the other jurisdictions. This development is subject to SEPA and therefore is subject to the ILA between Snohomish County and the Cities of Mill Creek and Bothell. PDS notified both cities regarding the proposed development. The City of Mill Creek indicated via a memo dated June 25, 2012 that no mitigation will be required. (Exhibit G.1). The City of Bothell did not provide a response and under the terms of the ILA between the City and the County, such lack of response is to be construed such that no mitigation for the City of Bothell is required.

(i) Other Issues or Items: The County's current adopted County Wide Bicycle Facility System Map became effect on February 1, 2006. The subject development borders on a right-of-way on 180th Street SE that has been identified on the adopted Bicycle Facility System Map. A bicycle path is included as part of the required paved eight foot shoulder that is included in the frontage improvements requirement.

ii. Drainage, Clearing and Grading – (Land Disturbing Activity) (Chapters 30.63A, 30.63B, and 30.63C SCC). The site lies south of 180th Street SE and east of 67th Avenue SE and west of Highway 9 and is mainly second and third growth forest and understory with a small wetland complex located near the northwest corner of the site that drains to the existing easterly ditch line along 67th Avenue SE. The full drainage report (Exhibit C.3) describes the general drainage conditions on-site. The site soils are underlain by a weathered Vashon lodgement till. This is a soil type that normally is not associated with critical recharge hazard areas. It appears that some fill from construction sites has been placed on this site in prior years. No water table was encountered in the test pits in 2008. A Category 3 wetland exists off-site by approximately 50 feet at the southeast corner of the property but no construction is proposed within its buffer. An existing single-family home exists near the southerly boundary of the site and east of 67th Avenue SE. Primary drainage from the site exits the site at the southwest corner of the site into the ditch line along 67th Avenue SE with some or approximately 10% of the site sheet flowing to the wetland near the southeast corner of the site.

The site falls within the Cross Valley sole source aquifer, but just north of and outside of the Cross Valley Water District's wellhead protection area as depicted on the County's Aquifer Recharge and Wellhead Protection Area Map dated October 1, 2007. The uses being proposed in this R-5 Zone for this site do not include vehicle washing or fueling operations. Parking of vehicles in a parking lot is an allowed use in this zone associated with churches in rural areas of the County.

Rainwater runoff from the site is to be transported via catch basins and pipes to an open detention pond located at the southwest corner of the site. The detention pond will provide "dead" or permanent storage of water to allow for sedimentation control

of pollutants. Water in the pond will be released at a controlled rate into the existing drainage system within the 67th Avenue SE right-of-way. Flow in this system travels to the south. The Applicant's engineer states that the drainage system downstream of the site has adequate capacity to handle the stormwater from the proposed church development. The plans indicate that the on-site wet pond is to include an impermeable liner to prevent pollutants from entering the sole source aquifer. This is specified as a 30 mil PVC membrane liner to be installed per the manufacturer's recommendations. 1.5 feet of soil is to be placed on top of the liner to prevent buoyancy of the liner itself, since it will be submerged as part of the dead storage in the detention pond. This dead storage is a requirement of the site detention facility to provide water quality treatment, since over 5,000 square feet of impervious surface is being developed or proposed on-site. Discharge from the pond is controlled to mimic the predevelopment discharge flows toward the ditchline at the southwest corner of the site.

Total proposed grading includes 6,700 cubic yards of cut and 4,200 cubic yards of fill. Therefore, an LDA permit and Storm Water Pollution Prevention Plan (SWPPP) in accordance with Volume 2 of the Drainage Manual is required. The grading plan indicates that drainage will either remain in its natural drainage courses, sheet flow or be infiltrated on site.

Preliminary findings of PDS's Engineering indicate that this project will meet the requirements of SCC 30.63A and SCC 30.63B and the Drainage Manual and SCC 30.62C.140 by protecting the sole source aquifer from contamination by installing an impermeable membrane liner. The full drainage plans that were reviewed constitute what is envisioned for drainage control from the subject property. However, these will need to be fully engineered and resubmitted as a full drainage plan and calculations prior to construction plan approval for the development.

The Applicant proposes greater than 5,000 square feet of new impervious surface. A full stormwater site plan is therefore required prior to development activity by SCC 30.63A.300(3). The project is not exempt from run-off treatment since the project site does exceed the thresholds listed in SCC 30.63A.530. The project is not exempt from flow control since the project exceeds the thresholds listed in SCC 30.63A.555. Special inspection will be required for construction of the stormwater detention pond and liner installation to assure that the liner is installed to the manufacturer's recommendation to protect the subsurface aquifer. A geotechnical engineer is to be involved in the inspection of the construction stormwater pollution prevention plans.

iii. Critical Areas Regulations (Chapters 30.62A, 30.62B, and 32.62C SCC). A Category 4 wetland is located at the west side of the lot. This wetland has been heavily disturbed and is vegetated with invasive plants. The standard wetland buffer width for a Category 4 wetland is 40 feet. There is a non-fish bearing stream off-site, approximately 270 feet away to the southeast and a Category 4 wetland is located approximately 50 feet offsite to the southeast. This project will not impact either of the off-site critical areas.

A portion (735 square feet) of the required wetland buffer for the on-site wetland will be impacted by construction of the new access driveway from 67th Avenue SE. Impacts are to be mitigated by the addition of 1,560 square feet of additional forested buffer. Buffer width averaging is also proposed in order to reduce the width of the

buffer along the eastern side of the wetland to accommodate the interior access drive. As mitigation for buffer averaging, the Applicant is to provide an additional 105 square feet of buffer. The wetlands, along with their designated buffers, will be preserved and designated as a CAPA.

iv. International Fire Code (Chapter 30.53A SCC) The application was reviewed and approved by the County's Fire Marshal Office who specified conditions regarding fire alarms, smoke detection, sprinkler system, hydrant requirements, emergency vehicle access and signage, to be imposed on any building permit for the proposed church. (Exhibit M.2). PDS determined that the fire apparatus access as depicted on the plans meets the minimum requirements of SCC 30.53A.150. PDS has indicated that its inspection staff will insure that prior to the start of combustible construction, the required fire hydrants will be installed and operational and that approved addresses are to be placed on the new building as required.

The project can comply with the items outlined in correspondence received from Fire District 7 (Exhibit G.7). Two fire hydrants are to be installed on-site. The building will also be provided with a fully monitored fire alarm system, with smoke detection and pull stations at all exits, and a fire sprinkler system.

v. Utilities. The project will utilize a septic drainfield. The Snohomish Health District has indicated that it has no objections to approval of the CUP, as stated in a memo to PDS dated August 16, 2012. (Exhibit G.8). Water service will be provided by the Cross Valley Water District after the Applicant has extended and looped the water mains in accordance with District requirements. (see Exhibits G.3 and G.4). Electrical service is available from the Snohomish County PUD No. 1 (Exhibit G.6).

vi. School Impact Mitigation (Chapter 30.66C SCC) This proposal does not meet the definition of "development" as set forth in SCC 30.91D.220 and, therefore, is not subject to school mitigation fees in accordance with SCC 30.66C.010(2).

vii. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) This proposal does not meet the definition of "development" as set forth in SCC 30.91D.200 and, therefore, is not subject to parks mitigation fees in accordance with SCC 30.66A.010(3).

viii. Land Use Permit Binder (SCC 30.42C.200) The Applicant will be required to file a Land Use Permit Binder (LUPB) prior to the initiation of any site work. A condition of approval has been added to ensure that a LUPB is recorded.

E. The proposal will not be materially detrimental to uses or property in the immediate vicinity.

While the former Hearing Examiner found, in the course of the review of the original proposal for a church on the subject site, that the proposal would be materially detrimental to the surrounding uses, the current proposal has been modified specifically to address some of those aspects of the original proposal that lead to the former Hearing Examiner's finding. For example, the former Examiner found, "that the church will have some impacts on the surrounding community that are similar to the impacts of a commercial use," referring to the operation of the then-proposed clothing bank distribution center. (Exhibit A.5, page 15). The former Examiner was particularly concerned with such matters as the daily use of

the site, the hours of use and the fact that the clothing bank distribution center would be open to the public at large. *Id.* With the elimination of the clothing bank function in the current proposal, the nature and intensity of the use of the subject property will have significantly reduced impacts upon the surrounding community. With its currently proposed limited days and hours of use, the proposal will not have impacts similar to a commercial use.

Most, if not all of the activities on the subject property will occur indoors. Primary use of the site will occur on Sundays and Wednesday evenings, with other occasional use at other times. Church leaders are volunteers and there will be no permanent, full time employees on the site during weekdays. (Exhibit A.2).

Based on the foregoing, the Examiner finds that, as currently proposed and conditioned, the proposal will not be materially detrimental to the uses or properties in the immediate vicinity.

F. 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.

The proposal has been designed to meet the County's design standards. The Applicant has sought to comply with the County's regulations and has made a significant effort to make the proposed use of the property compatible with the characteristics of the surrounding properties. The proposal exceeds all required setbacks and now includes significantly more (over 45% more) on-site parking spaces than required to meet the minimum requirements of County Code. This change was made specifically to address concerns raised by neighbors so as to make the proposal more compatible with the surrounding neighborhood. The Applicant also proposes to install locked gates to prevent off-hour, non-church-related use of the parking area.

The Applicant noted that its proposed use will be an improvement over the prior uses that occurred on the subject property. It was previously used by people to shoot off illegal fireworks, ride ATVs and engage in other nuisance activities. The Applicant's plans and building designs make the church structure appear more like a home and, although significantly larger than surrounding homes, it will fit into the surrounding neighborhood. The site plan and landscaping plan demonstrate the site specific features that will be used to create an attractive church facility with landscaping that will provide for a visual buffer for surrounding properties.

Accordingly, the Examiner finds that, with the revisions now proposed and under the conditions recommended by PDS, 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.

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

C. CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the CUP application pursuant to Chapter 2.02 SCC and SCC 30.72.020.
2. As discussed above, the County Council analyzed whether the previous church proposal for the subject site was consistent with the Comprehensive Plan and determined that it was consistent. The Examiner has incorporated the County Council's findings on this issue in this decision and now also incorporates the following portions of the County Council's conclusions on this issue:

The proposal must be consistent with the Comprehensive Plan. The Comprehensive Plan contains several land use policies relating to churches on lands within Urban Growth Areas (UGAs), where it is assumed that most will be placed. In addition, churches may be included in the Public/Institutional Use land use designation on the Future Land Use Map (FLUM). However, there are no specific land use policies guiding the siting of churches in lands designated as rural in the Comprehensive Plan. As a long-term planning document, the Plan is neutral as to the siting of churches on rural lands; it neither promotes nor discourages their placement on these lands. To determine where churches are permitted, prohibited or conditional uses, one must look to the County's Zoning Code. Here, the County Council and the Hearing Examiner found that the proposed church is consistent with Policy LU 6.E of the Plan. Churches are a traditional part of rural communities across Snohomish County. They are part of a rural lifestyle. The prior use of the subject property for single-family purposes with a mobile home was not a positive influence in the community because it frequently was the site of illegal activities such as the ignition of fireworks, noisy ATVs, junk and other problems. The church will provide a stable, attractive use with architectural features that give it a look and feel that is compatible with the neighborhood. Based on these facts, the Examiner concludes that the proposal is consistent with the Plan.

3. The legislative decision to identify churches as one of the many conditional uses in the County's zoning system represents a conclusion by the County's legislative officials that churches have different impacts and effects on the neighborhood depending upon the particular proposal and its surroundings. The question here is, as it always is in a CUP application, whether the characteristics of this particular proposal on this particular site will be sufficiently compatible or can be made sufficiently compatible with the surrounding neighborhood area to allow issuance of the requested permit. The focus is on the characteristics of the specific proposal and the area in which it would be located. Here, the Examiner concludes that the proposal is compatible with the existing character of the area.
4. Several members of the community made the effort to become involved in the process for review of the Applicant's proposal and are to be commended for voicing their understandable concerns and making the effort to participate. It appears that as a direct result of those efforts, the Applicant has significantly modified its proposal to address many of the community's most significant concerns with the original proposal. This has resulted in a proposal that is a much better "fit" for this area.
5. Regarding the concerns about effects upon property values that the location of a church might have on adjacent properties, the Examiner concludes that it has not been shown by a preponderance of the evidence that the proposed church is likely to have a significant negative effect on property values. The evidence in the record about property values is non-

specific and inconclusive. No expert opinion was provided that evaluated this particular proposal. The Washington Supreme Court in Sunderland Family Treatment Services v Pasco, 127 Wash.2d 782, 794, 903 P.2d 986 (1995) cautioned about the need for such expert opinion in order to base the denial of a CUP on property value impacts.

6. In evaluating whether to approve or deny a CUP, the Washington Court of Appeals in Hansen v. Chelan County, 81 Wn. App. 133, 139, 913 P.2d 409 (1996) has provided the following guidance:

The effect of a proposed use on its neighbors will not support a denial of a [conditional use] permit unless the effect is greater than that of uses permitted in the [zoning] district without a [conditional use] permit. 3 Robert M. Anderson, *American Law of Zoning* § 21.14, at 692 (3d ed.1986); see also Baxter v. Gillispie, 60 Misc.2d 349, 303 N.Y.S.2d 290 (1969); Berlant v. Zoning Hearing Bd., 2 Pa.Comm. 583, 279 A.2d 400 (1971).

Under the provisions of SCC 30.22.110, the following uses would be permitted on the subject site outright, without a CUP: family day care home, farm product processing, farm stand, fish farm, foster home, health and social services facility and commercial kennel. The Examiner is unable to conclude that the currently proposed church will have effects upon neighboring properties that are greater than some of these permitted uses.

7. Based on the totality of the facts in the record, the Examiner concludes that the proposal meets Zoning Code requirements for building height, parking, perimeter landscape buffers, parking area landscaping, building setbacks and other zoning code regulations and requirements, subject to the recommended conditions of approval.
8. Adequate public and/or private services exist to serve the proposal.
9. Conditioned as set forth below, 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.
10. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the proposal meets all of the requirements of the County's CUP regulations, provides for the public health, safety and welfare and should be approved, subject to the recommended precondition and conditions.
11. In issuing a CUP, the Examiner has broad discretion to impose conditions of approval. The Examiner may:
 - A. Increase requirements in the standards, criteria, or policies established by Title 30 SCC;
 - 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 CUP, reduce the requirements specified by Title 30 SCC as pertaining to any use nor otherwise reduce the requirements of Title 30 SCC 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.
12. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

D. DECISION AND ORDER

- 1. Exhibits M.1 and M.2 are added to the record in this matter.
- 2. A **CONDITIONAL USE PERMIT** is **GRANTED** to the Applicant for the construction and operation of a church on the subject property as described in the application, subject to the following **PRECONDITION** and **CONDITIONS**:

PRECONDITION

A Record of Developer Obligations and Certificate of Concurrency shall have been recorded with the County Auditor against the real property on which the development is proposed [30.66B.070 SCC].

CONDITIONS

- A. The Site Plan (Exhibit B.2) received by PDS on October 12, 2012, shall constitute the Official Site Plan. Any discrepancy between the content of the official site development plan and the performance standards of Title 30 SCC shall be resolved in favor of Title 30. SCC 30.42C.110 governs revisions to CUPs.
- B. In accordance with SCC 30.26.075, any parking lot lighting shall be arranged or shielded so as to reflect the light away from any dwelling units and the public right-of-way.
- C. The Landscape Plan (Exhibit B.4) received by PDS on October 12, 2012, shall constitute the approved preliminary landscape plan.
- D. Prior to any development activity (e.g. clearing, grading or filling) on the site and/or prior to issuance of any building permits by the County:

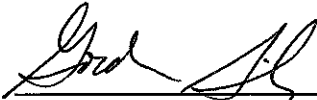
- (1) The Applicant shall have paid an impact fee to Snohomish County for traffic impacts to Transportation Service Area "E" totaling \$14,057.28.
- (2) Right-of-way that is tangent to the ultimate right-of-way on 180th Street SE and 67th Avenue SE sufficient for a 35-foot radius curb return must have been deeded to the County.
- (3) 10 feet of additional right-of-way, parallel and adjacent to the existing 30 feet of right-of-way for 180th Street SE shall be deeded to the County along the development's frontage, such that a total of 40 feet of right-of-way will result.
- (4) As required by SCC 30.42C.200, a LUPB, on a form provided by PDS, shall be executed by the Applicant and recorded with the County Auditor.
- (5) A performance security shall be provided and approved based on the mitigation plan contained in Exhibit C.5 and the requirements of Chapter 30.84 SCC.
- (6) The Applicant shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to PDS.
- (7) A CASP shall be recorded with the County in accordance with section 30.62A.160 SCC containing the following restrictive language:

"All CRITICAL AREA PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in UDC 30.91N.010 are allowed when approved by the County."

- E. The special conditions imposed by the Fire Marshal set forth in Exhibit M.2 shall be included in the building permit.
- F. Prior to the issuance of Certificate of Occupancy/final inspections;
 - (1) Rural standard frontage improvements shall be constructed along the property frontage with 180th Street SE to the satisfaction of the County.
 - (2) Rural standard frontage improvements shall be constructed along the property frontage with 67th Avenue SE to the satisfaction of the County.
 - (3) Site improvements and landscaping depicted on the approved plans shall be installed, inspected and approved.
 - (4) CAPA boundaries shall have been permanently marked on the site, with both CAPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The Applicant may use other permanent methods and materials provided they are first approved by the County. Where a CAPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

- (5) CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per critical area feature, and at least one Type 1 sign shall be placed in any lot that borders CAPA, unless otherwise approved by the County biologist. The design and proposed locations for the CAPA signs shall be submitted to the PDS Land Use Division for review and approval prior to installation.
- (6) All mitigation shall have been completed, inspected and approved.
- (7) The fire alarm, fire hydrants and fire sprinkler systems shall be installed and operational.
- G. Use of the site subject to this CUP shall not include the operation of a clothing bank, clothing bank distribution center, food bank or any similar operation or use.
- H. This CUP approval shall expire five years from the date of approval if construction of the proposed church has not commenced within the five year period.
- I. Nothing in this permit/approval shall excuse the Applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary

Decision issued this 7th day of February, 2013.


 Gordon Sivley, 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, 2nd 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 February 18, 2013**. 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 at the Public Assistance Counter of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before February 21, 2013**, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by PDS. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin

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.

PRECONDITION NOTICE

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 7, 2014.

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 six-month period will be allowed for resubmittal of any required document(s) which is (are) returned to the Applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

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

Certified by:

(Name)

(Title)

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.

PARTY OF RECORD REGISTER
12-104580-LU CLEARVIEW GOSPEL
ASSEMBLY
HEARING: JAN 23, 2013

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SNOHOMISH HEALTH DISTRICT
BRADLEY BALL
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ROY DESOTO
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