



**DECISION of the SNOHOMISH COUNTY
HEARING EXAMINER**

Gordon Sivley
Hearing Examiner

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

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DATE OF DECISION: April 18, 2013

PLAT/PROJECT NAME: **126th Street Short Plat**

APPLICANT/
LANDOWNER: Encore 41, LLC
10325 Airport Rd
Snohomish, WA 98296

FILE NO.: 12-104969 SP

TYPE OF REQUEST: Rezone
Preliminary Short Subdivision Approval using Lot Size Averaging

DECISION (SUMMARY): **Rezone is GRANTED;
Preliminary Short Subdivision is APPROVED SUBJECT TO
CONDITIONS**

LOCATION: 1327 126th Street SE, Everett

ACREAGE: 1.16 acres

NUMBER OF LOTS: 6 lots

MINIMUM LOT SIZE: 3414 square feet
GROSS DENSITY: 5.18 du/acre (5.64 du/acre net)

GMACP DESIGNATION: Urban Low Density Residential (ULDR)

ZONING: R-9600
PROPOSED ZONING: R-7200

UTILITIES:
Water: Silver Lake Water and Sewer District
Sewer: Silver Lake Water and Sewer District
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Everett School District No. 2

FIRE DISTRICT: Snohomish County Fire Protection District No. 1

PDS STAFF RECOMMENDATION: Approve, subject to conditions.

A. BACKGROUND INFORMATION

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through J), 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 and the Hearing Log 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. A public hearing was held on April 10, 2013. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notices of the application and public hearing were issued according to the provisions of SCC 30.70.050. (Exhibits F.1, F.2 and F.3) Notice was concurrently given concerning the SEPA Threshold Determination, Traffic Concurrency and Impact Fee Determinations as required by the County Code.

At the hearing on April 10, 2013, Stacey Abbott and Ann Goetz appeared and testified on behalf of the Department of Planning and Development Services (PDS). Appearing for the Applicant was Jesse Jarrell of Western Engineers, Inc.

No other parties of record or interested citizens appeared at the public hearing.

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. Applicant's Proposal. The Applicant is requesting approval of a rezone of approximately 1.16 acres from R-9,600 to R-7,200 concurrent with a six-lot single-family residential short subdivision. Snohomish County Code (SCC) 30.41B.030 requires a Type 2 process decision by the Hearing Examiner if dedication of right-of-way for a new public road is proposed or required.

Because the proposal is subject to Urban Residential Design Standards (URDS), Chapter 30.23A SCC, an administrative site plan approval for the six-lot short subdivision is also required. The URDS site plan decision is a Type 1 administrative decision to be rendered by the Department of Planning and Development Services (PDS). The rezone is necessary in order for the Applicant to achieve its proposed density. The administrative site plan is dependent on the short subdivision and must be consistent with the Hearing Examiner decision regarding the short subdivision.

2. Site Description. The 1.16 acre site contains an existing slab, small shed and gravel driveway. The majority of the site is lawn with the exception of all areas north of the existing wetland and stream buffers which are forested. Ornamental shrubs surround the foundation at the south end of the property. The north end of the parcel consists of mixed native forest and scrub-shrub vegetation. The parcel topography is a moderate 2-8 percent grade down to the north end of the parcel.

Located onsite are a wetland and stream. The onsite wetland is approximately 3,576 square feet in size. The wetland terminates at the western property boundary due to historic filling and development. The wetland continues offsite to the east into an adjacent parcel. A type Ns stream enters the property via a culvert which daylight within the wetland complex and exits the site through an existing culvert.

3. Adjacent uses. The parcels to the north, south and east are zoned R-9,600. The properties immediately adjacent to the site on the west are zoned R-7,200. These were recently subdivided and rezoned to R-7,200 (Bella Park PFN 05-127554 SD). All of the adjacent areas are developed with residential uses.
4. Project Chronology. The short subdivision and rezone applications were originally submitted to PDS on June 19, 2012, and were determined to be complete as of the date of submittal for regulatory purposes. A resubmittal of the application was received on October 9, 2012. As of the hearing date, 212 days of the 120-day review period had elapsed. A 120 day waiver letter has been received. (Exhibit A.5)
5. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) (Exhibit E.2) for the subject application on March 3, 2013. The DNS was not appealed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
6. Issues of Concern.
 - A. Public Agency Review. No significant issues of concern were raised by reviewing agencies.
 - B. Citizens. One citizen, Ron Rice provided a written comment expressing his concerns regarding density and the possibility of grading on steep slope and wetland areas. (Exhibit H.1)
7. Approval Criteria.
 - A. Rezone. The Applicant is seeking a rezone of the site from R-9600 to R-7200 pursuant to Chapter 30.42A SCC. The rezone will allow higher densities than would be allowed under the existing zoning of R-9600. 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.
 - (i) The Proposal is Consistent with the Comprehensive Plan.
 - (a) In the context of the Growth Management Act (GMA), development regulations and, therefore, rezones must be consistent with and implement the comprehensive plan. (RCW 36.70.040) But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan - as the Snohomish County Council explained in Motion 07-447, "The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation." The Examiner interprets this language, as well as the law applicable to rezones, to mean that the burden is upon the Applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies. The subject application has been evaluated for

consistency with the latest version of the GMACP. The subject property is designated "Urban High Density Residential" on the Future Land Use Map.

(b) The PDS analysis relating to the consistency of the requested rezone with the GMACP is set forth in Exhibit J at pages 14 through 15. The Applicant also prepared an analysis of GMACP consistency. (Exhibit A.3) Having reviewed the GMACP and the PDS and Applicant analyses relating to whether the proposed rezone is consistent with the GMACP, the Examiner concurs with said analyses and hereby adopts and incorporates by this reference Exhibits J and A.3 herein as if set forth in full. Accordingly, the Examiner finds that the proposed rezone is consistent with the County's adopted GMACP.

(ii) The Proposal Bears a Substantial Relationship to the Public Health, Safety, and Welfare. Application for the proposed rezone is concurrent with the application for a short subdivision. Review of the land development proposal for compliance with the relevant codes, policies, and standards of Snohomish County has been made by PDS. PDS 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. Accordingly, the Examiner finds that the proposed rezone bears a substantial relationship to the public health, safety and welfare.

(iii) 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 ULDR designated area. Therefore, the zones specified in Chapters 30.31A-F SCC are not applicable to the proposal.

Based on the foregoing analysis, the Examiner finds that proposed rezone meets the requirements of Chapter 30.42A SCC and the rezone should be granted from R-9600 to R-7200.

B. Short Subdivision Approval. In order to grant preliminary short subdivision approval, the Examiner must find that the Applicant has met the approval criteria set forth in SCC 30.41B.100 *et seq.* The Examiner considers each regulation in turn.

(i) Park and Recreation Impact Mitigation. (Chapter 30.66A SCC) The proposal is within the Nakeeta Beach Park Service Area 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. PDS has recommended a condition of approval for inclusion within the project decision to comply with the requirements of Chapter SCC 30.66A SCC. The Examiner finds that such payment is acceptable as mitigation for parks and recreation impacts in accordance with County codes and policies.

(ii) Traffic Mitigation and Road Design Standards. (Title 13 SCC, & Chapters 30.24 and 30.66B SCC)

(a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC).

(1) Road System Capacity Impacts (SCC 30.66B.310). A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by five new homes (credit is given for the previously existing home which has been removed from the site), which is 9.57 ADT/home. This rate comes from the 8th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 47.85 new ADT and has a road system capacity impact fee of \$12,775.95 (\$2,129.33/building permit) based on \$267.00/ADT; the rate for a residential development located in the Urban Growth Area (UGA) in TSA D. The impact fee payments are due in accordance with the provisions of SCC 30.66B.340. Payment of such impact fees as mitigation for impacts to County roads demonstrates compliance with SCC 30.66B.310.

(2) 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 is located in TSA D which, as of the date of submittal, had no arterial units in arrears. Therefore, pursuant to SCC 30.66B.130(4), the development was determined concurrent. The proposed development generates 3.75 AM peak-hour trips and 5.05 PM peak-hour trips which is less than the threshold of 50 peak-hour trips and, therefore, the development was not evaluated under SCC 30.66B.035.

The development was determined to be concurrent as of July 23, 2012. The concurrency determination expires six years from the date of the determination, in this case July 23, 2018. (Exhibit G.7)

(3) Inadequate Road Conditions (SCC 30.66B.210). Regardless of the existing level of service, development which adds three or more PM 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 Department of Public Works (DPW) has determined that the subject development proposal will not impact any IRC locations identified within TSA D with three or more of its PM peak hour trips, nor will it create any IRC. Therefore, mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under SCC 30.66B.210.

(b) Frontage Improvements (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 required improvements are to be constructed in

accordance with the EDDS, including correction of horizontal and vertical alignments, if necessary.

Here, the construction of full urban frontage improvements along the subject property's frontage on 126th Street SE is required. Required improvements will consist of:

- 18 foot pavement width from right-of-way centerline to curb face
- Cement concrete vertical curb and gutter
- Five (5) foot planter
- Five (5) foot cement concrete sidewalk

Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

(c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC). All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Access is proposed to Lots 1-4 by an extension of a public road, 125th Street SE, which currently stubs to the west boundary of the proposed development from the Bella Park subdivision. DPW has required that the subject development extend 125th Street SE through the property by dedicating the appropriate amount of right-of-way and constructing improvements to the east property line of the proposed development.

DPW classified the internal public road (125th Street SE) as a non-arterial Urban Local Access Road. The road will be a public urban road serving 1 to 250 ADT, as described by 2009 EDDS 3-02 (B.3), and as shown on EDDS Plates 3-065 and 3-050. This road has a design speed of 25 mph and the road shown on the plans meets the minimum requirements of EDDS for road grades and horizontal and vertical curves. The required road design shown on EDDS Plate 3-065 is a pavement width of 24 feet (for two 12 – foot wide travel lanes and no parking allowed), vertical curbs, five-foot planters and a five-foot wide sidewalk. The plans for the proposed development show that the Applicant will match the improvements inside the proposed development to those constructed in the adjacent plat, which is a 28-foot pavement width, vertical curbs, five-foot planters and five-foot sidewalks in a 51-foot right-of-way width. This road is to be constructed to the east property line of the proposed development so that it may be extended east when the 1.94 acre property adjacent to the east develops.

DPW has indicated that a vehicle turnaround at the temporary end of 125th Street SE is not needed because this road stub is less than 150 feet from the face of curb at the last road intersection on 125th Street SE. Because the plans show that there will be a (approximately) 2-foot drop off at the end of the road at the east property line of the development; two Type III barricades, an "End of Road" and "Future Road" signs must be installed at the temporary end of 125th Street SE (unless DPW make a different determination), and the developer will be charged for the cost of the signs and the installation by the County.

Lots 5 and 6 abut 126th Street SE on the north side and will have a shared driveway off of 126th Street SE. 126th Street SE is a non-arterial public road that intersects with 10th Drive SE (a collector arterial road) to the west and with SR 527 to the east. This road is a public urban road typically serving less than 2,000 ADT. The posted speed for the road is 25 mph. DPW indicates that the stopping and intersection sight distance from the shared driveway for Lots 5 and 6 on 126th Street SE meets the minimum EDDS 3-08 requirements looking east and west.

(d) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520). A development is required to dedicate, establish or deed right-of-way to the County for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving four lots in the development, 125th Street SE, is designated as a non-arterial public urban local access road, which was recently constructed in the plat of Bella Park. The road requires a right-of-way width of 51 feet total, or 25.5 feet on each side of the right-of-way centerline. Currently, no right-of-way exists on the proposed site. Therefore, 51 feet of right-of-way is required. This is adequately shown on the plans.

The road serving the other two lots in this development, 126th Street SE, is designated as a non-arterial road 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 exists on the development's side of the right-of-way. Therefore, no additional right-of-way is required. This is adequately shown on the plans.

(e) Impacts to State Highways (SCC 30.66B.710). When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the Interlocal Agreement (ILA) between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the County designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to the ILA between WSDOT and Snohomish County effective December 21, 1997, and as amended. The impact mitigation measures under the WSDOT ILA, Section IV(4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment per ADT. The Applicant has offered to meet its obligation through a voluntary payment in the amount of \$1722.60, based on the proportionate share calculation of 47.85 ADT x \$36 per ADT. Through comments dated July 26, 2012 (Exhibit G.1), WSDOT has indicated agreement with the offered amount.

(f) Impacts to City Streets and Roads (SCC 30.66B.720). An ILA has been executed between the County and the City of Mill Creek for traffic mitigation for impacts on the City's road system. However, Mill Creek has a threshold of three directional peak hour trips, and since DPW indicates that this development will not create three directional peak hour trips, traffic mitigation is not required for the City. While the City of

Everett is nearby, the County does not have a traffic mitigation ILA with Everett and, although the City was notified of the proposed project, the City did not provide any comments.

(g) Transportation Demand Management (TDM) (SCC 30.66B.630) The County requires all new developments in the urban area to provide TDM measures. Sufficient TDM measures are to be provided to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. This requirement is to be met by site design requirements provided under SCC 30.66B.640, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 or 30.66B.625. (SCC 30.66B.630). Under the TDM code applicable to this development, DPW determined that the cost of removing one peak hour trip from the road system is approximately \$6,500.00. The TDM obligation for this development is therefore equivalent to 5 percent of the 5.05 new PM peak hour trips x \$6,500.00 which equals \$1,641.25. This is equivalent to \$273.54 per lot for the six lots proposed and the Applicant has proposed to pay this amount. (Exhibit A.6)

Based on the Findings of Fact set forth above, the Examiner finds that the proposed short subdivision as conditioned, will meet the County's traffic mitigation and road design standards.

(iii) Pedestrian Facilities (RCW 58.17.110) The County is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments from the Everett School District dated July 13, 2012 were received by PDS. (Exhibit G.6) Those comments indicate that the students who live in the development will need to walk to the school bus stop located at 13th Avenue SE and 126th Street SE. With the sidewalk improvements that already exist in the development of Bella Park and with the sidewalks that will be constructed along both sides of the new public road serving the subject development and along the frontage on 126th Street SE, together with the existing sidewalks along 126th Street SE between the proposed development west to 13th Avenue SE, there will be concrete sidewalks along the entire walking route. Therefore, the requirement for safe walking conditions for children walking to the school bus stop will be fulfilled. Based on this, no additional off-site pedestrian facilities will be required.

(iv) 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 Everett School District No. 2 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibit J) Credit is to be given for one existing lot. Payment of school impact fees will be included as a condition of approval of the development.

(v) Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A, 30.63B and 30.63C SCC) PDS has found the targeted drainage plan (Exhibit C.1) submitted by the Applicant to be in conformance with the regulatory provisions of Chapter 30.63A SCC and the County Drainage Manual. The Applicant proposes 3,345 square feet of new impervious surface for the public road (125th Street SE extension) for a total of 10,245 square feet of new impervious surface for Basin A, and 5,915 square feet of new impervious surface in Basin B. Rainwater runoff from roof drains for Lots 1 and 2 will drain to the north through residential landscaping and the stream and wetland buffer areas into the stream. Driveway runoff for these

lots will flow north through a drainage easement between the lots and into a dispersion trench designed for the runoff from the 125th Street SE extension. Roof drains and driveway runoff for Lots 3 and 4 will also be directed to the drainage conveyance system for the 125th Street SE extension. With regard to Lots 5 and 6, runoff from all impervious areas has been designed to fully infiltrate. Roof drains will be directed to infiltration trenches and the shared driveway is to be constructed of pervious materials. As part of the construction plan review process for the short subdivision, a full drainage plan must be approved pursuant to Chapter 30.63A SCC.

Grading to accommodate site development is estimated at 300 cubic yards of cut and 400 cubic yards of fill. The Applicant proposes greater than 5,000 square feet of new impervious surface in each drainage basin. Therefore, a full Stormwater Site Plan will be required prior to final short plat approval and will be subject to Minimum Requirements 1-9 of Chapter 30.63A SCC and the Snohomish County Drainage Manual. A Stormwater Pollution Prevention Plan (SWPPP) is also required in accordance with Volume 2 of the Snohomish County Drainage Manual prior to construction.

(vi) Critical Areas Regulations (Chapter 30.62) The Critical Areas Report prepared by S.R. Jay Consulting Inc. (Exhibit C.2), identified an onsite wetland and stream. The onsite wetland is approximately 3,576 square feet in size. The wetland terminates at the western property boundary due to historic filling and development of the adjoining property. The wetland continues off site to the east into the neighbor's lawn. The overall size of the wetland is estimated to be less than two acres. PDS determined that the wetland meets the Category IV wetland criteria. Category IV wetlands require the establishment of 50-foot protective buffers adjacent to high intensity land uses pursuant to SCC 30.62A.230, Table 1. The type Ns stream enters the property from the west via a culvert which daylight within the wetland complex and exits the site through an existing culvert. Type Ns streams require the establishment of 50-foot protective buffers.

(vii) International Fire Code (Chapter 30.53A SCC)

PDS indicated that the Office of the Fire Marshal completed review of the project on August 17, 2012 and determined that the project was in compliance with Chapter 30.53A SCC, provided it complies with the following conditions:

(a) Fire flow and fire hydrants must be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. Fire hydrants serving single-family dwellings must have a maximum lateral spacing of 600 feet with no lot or parcel more than 300 feet from a hydrant. Hydrant locations must be depicted on the face of the short plat, and locations for new hydrants must be approved by the Fire Marshal. All hydrants must meet the following requirements: four (4) inch storz-type steamer port fittings must be provided on new hydrants, the tops of the hydrants must be colored green and blue street reflectors must be installed on the hydrant side of the centerline of the streets serving the lots in the short plat to indicate hydrant locations.

(b) The minimum required fire flow for this project is to be 1000 GPM at 20 psi for a one-hour duration. Prior to final short plat approval, in order to assure consistency with the applicable provisions of SCC 30.53A.520(16), the Applicant must provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1000 gpm at 20 psi for a one-hour duration can be provided. If the required fire flow cannot be provided, the new dwellings must be provided with NFPA

13-D fire suppression systems. 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.

(c) Approved numbers or addresses must be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.

The Fire Marshal also determined that fire apparatus access as depicted on the preliminary short plat meets the minimum requirements of SCC 30.53A.512 provided Lots 5 and 6 take access from 126th Street SE and Lots 1 - 4 take access from 125th Street SE.

Snohomish County Fire District No. 1 requested that fire hydrants would be required for the project. (Exhibit G.5) As discussed above, this is consistent with the recommendation of the Fire Marshal.

(viii) Utilities. Water and sanitary sewer will be supplied by the Silver Lake Water and Sewer District. Certificates of Water and Sewer Availability were received dated January 29, 2013. (Exhibit G.3) Snohomish County Public Utility District has provided correspondence indicating that it can provide electrical service for the project. (Exhibit G.4) Finally, Snohomish Health District has no objections to the project as long as public sewer and water is provided. (Exhibit G.5) The existing/remaining onsite sewage system will need to be abandoned by having the septic tank pumped by a certified pumper, then having the top of the tank removed or destroyed and the void filled.

(ix) Zoning (Chapter 30.2 SCC) If the proposed rezone is approved, this project will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, including those required under the Lot Size Averaging (LSA) Code, as discussed below.

(x) Landscaping Standards (Chapter 30.25 SCC) PDS evaluated the proposal for compliance with SCC 30.25.015. All residential developments located within UGAs are required to landscape a minimum of 10 percent of the total gross area of the site to the standards unless otherwise exempted. The 10 percent requirement may include perimeter landscaping, parking lot and detention facility landscaping, tree retention areas and street trees not in a public right-of-way. In the instant case, the gross site area is 52,522 square feet. Therefore, 5052 square feet must be landscaped. The Applicant proposes the retention of existing onsite vegetation located to the north of the most southerly 50-foot wetland buffer to meet onsite landscaping requirements. All of this vegetation is established and does not require additional plantings or irrigation. The landscaping is 18,133 square feet in area and, therefore, exceeds the minimum required.

(xi) Tree Retention. (Chapter 30.25 SCC) The Applicant proposes the removal of two significant trees since they are located in the future public road dedication area. One is a 48 inch cedar and the other is a 20 inch fir. No other significant trees will be removed. SCC 30.25.016(4) states, pertinent part:

(4) All significant trees within any perimeter landscaping required pursuant to SCC 30.25.020, on-site recreation space pursuant to SCC 30.23.A.080, or critical area protection areas and required buffers shall be

retained, except for trees exempted by SCC 30.25.016(2). All other significant trees that are removed shall be replaced by a number of new trees as set forth in SCC Table 30.25.016(3), except as may be modified by the provisions of SCC 30.25.016(5) and (6).

(Emphasis added). Thus, a total of five replacement trees are required. These are shown on Lots 1 through 4 on the revised preliminary landscaping plan, Exhibit B.4.

(xii) Lot Size Averaging Regulations (SCC 30.23.210) The proposal has been evaluated for compliance with the 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 50 percent of 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 will 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 short subdivision is a maximum of 55 percent. The LSA calculation is as follows:

Area in Lots (46,305 square feet) ÷ (6 lots proposed) = 7718 square feet.

The minimum zoning requirement of the requested R-7200 zone is 7200 square feet. 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. Accordingly, the Examiner finds that the proposal is consistent with the LSA provisions of SCC 30.23.210.

(xiii) As conditioned, the proposed short subdivision will meet all of the County's transportation and road regulations and design standards. The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions. Accordingly, the Examiner finds that the proposed short subdivision, as conditioned, also meets the general requirements under SCC 30.41B.100 with respect to health, safety and general welfare of the community.

C. Administrative Site Plan Approval. (Ch. 30.23A SCC)

(i) Urban residential design standards apply to new residential development located within UGA including short subdivisions regulated under SCC 30.41B. Under the requirements of SCC 30.23A.100, an administrative site development plan is required for all residential development that is subject to the requirements of Chapter 30.23A SCC. When residential development requires both an administrative site plan approval and a Type 2 decision issued by the Hearing Examiner after an open record hearing (as in the present case), the administrative site plan may not be approved until the Examiner's decision has been issued. Under SCC 30.23A100(2)(c), the Director of PDS must find that the administrative site plan is consistent with the applicable requirements of Subtitle 30.2 and the Director's decision must be consistent with the Examiner's decision issued for the residential development. These requirements will be implemented with a condition of approval.

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

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over rezone and short subdivision applications pursuant to Chapters 30.42A, 30.41B, 30.72 SCC and Chapter 2.02 SCC.
2. The Applicant has met its burden of proof to show that the rezone meets the requirements of Chapter 30.42A SCC and should be approved from R-9600 to R-7200.
3. The Examiner must review the proposed short 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

The Examiner concludes that the Applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute.

4. The proposed short subdivision also meets Chapter 30.41B SCC requirements. The proposed short subdivision conforms generally with the development regulations of Title 30 SCC. There is open space provided within the short subdivision in the form of open space, wetland, stream and buffer areas. The single-family homes within the short subdivision will be in character with the urban 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 short subdivision, 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. The proposal as conditioned meets the applicable version of the International Fire Code. Adequate drinking water and sewage disposal will be provided by the Silver Lake Water and Sewer District.
5. 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 short subdivision application meets the requirements of Chapter 30.41B SCC.
6. The Examiner concludes that adequate public services exist to serve this proposal.
7. If approved with the recommended preconditions and conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
8. 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. The approval of a **PRELIMINARY SHORT SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS

- A. The preliminary short plat received by PDS on October 9, 2012 (Exhibit B.1), shall be the approved short plat configuration. Changes to the approved preliminary short plat are governed by SCC 30.41B.310.
- B. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A above. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the County:
 - i. The platlor shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the County.
 - ii. A detailed landscape and tree retention/replacement plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit B.4 and with all required landscape standards.
 - iii. Construction plans and a Full Stormwater Site Plan shall be submitted for review and approval, subject to Minimum Requirements 1-9.
 - iv. A Land Disturbing Activities (LDA) permit shall be obtained, including a Stormwater Pollution Prevention Plan (SWPPP).
- C. The following additional restrictions and/or items shall be indicated on the face of the final short plat:
 - i. "SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:
 - \$2129.33 per lot for mitigation of impacts on County roads paid to the County.
 - \$273.54 per lot for transportation demand management shall be paid to the County for TSA D.
 - \$287.10 per lot for mitigation of impacts on State highways paid to the County.

These payments are due in accordance with the provisions of SCC 30.66B.340. Notice of these mitigation payments shall be contained in any deeds involving this short subdivision or the lots therein.”

ii. “Access for Lots 1 through 4 is restricted to 125th Street SE. Access for Lots 5 and 6 is restricted to 126th Street SE.”

iii. “The dwelling units within this development are subject to park impact fees for the Nakeeta Beach Park Service Area of the County parks system in the amount of \$1244.49 per each newly approved dwelling unit in accordance with Chapter 30.66A SCC. Park impact fees shall be based upon the rate in effect at the time of building permit issuance, provided that if the building permit is not issued within five years after the application is deemed complete the fee shall be based upon the rate in effect at the time of building permit issuance.”

iv. “The lots within this short subdivision will be subject to school impact mitigation fees for the Everett School District No. 2 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 one existing lot. Lots 1 shall receive credit.”

v. “If there are dwellings that exceed 3,600 square feet, the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code. If the dwellings that exceed 3,600 square feet cannot meet the required fire flow of Appendix B, the dwellings shall be provided with NFPA 13D fire suppression systems.”

vi. All critical areas and buffers shall be designated CAPA. The following restrictive language shall be indicated on the face of the final plat:

“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.”

D. Prior to recording of the final short plat:

i. A 51 foot wide strip of property aligned with 125th Street SE from the west property line to the east property line to be dedicated as public road right-of-way shall be depicted on the final short plat.

ii. The improvements to 125th Street SE shall have been completed to the satisfaction of the County.

iii. Urban standard frontage improvements shall have been constructed along the property frontage with 126th Street SE to the satisfaction of DPW.

iv. The east end of 125th Street SE at the east boundary line of the short plat shall have appropriate signage and barricades installed by the County, to be paid for by the Applicant, as part of the road signage and striping fee for the development.

v. CAPA boundaries shall have been permanently marked on the site prior to final inspection by the County, with both CAPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor 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.

vi. 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 wetland, and at least one Type 1 sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the County biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS Permitting for review and approval prior to installation.

vii. Documentation demonstrating that any existing onsite sewage systems have been abandoned by having the septic tank pumped by a certified pumper, then having the top of the tank removed or destroyed and the void filled (WAC 246-272A-0300) shall be provided to the PDS inspector and to the Snohomish Health District.

E. In conformity with applicable standards and timing requirements:

i. The final approved landscape plan shall be implemented. All required landscaping (including planting of replacement trees) shall be installed in accordance with the approved landscape plan prior to recording unless a security device is approved pursuant to Chapter 30.84 SCC.

ii. The administrative site plan required by Chapter 30.23A SCC (Urban Residential Design Standards) shall be approved.

iii. Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. The approved development/construction plans shall show hydrant locations and locations for new hydrants shall be approved by the Fire Marshal. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. The following requirements shall apply to the installation of any required hydrant:

- (a) Four (4) inch storz-type steamer port fittings shall be provided on new hydrants.
- (b) The top(s) of the hydrant(s) shall be colored green.
- (c) Blue street reflector(s) shall be installed on the hydrant side of centerline to indicate hydrant location(s).

iv. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or access way fronting the property. Numbers shall contrast with their background as required by Section 505.1 IFC.

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 short 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 30.41B.300.

DATED this 18th day of April, 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 April 29, 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 with the Department of Planning and Development Services, 2nd 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 May 2, 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.

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.

PARTY OF RECORDS REGISTER
126TH STREET SHORT PLAT
HEARING: 4/10/2013 10:00 am
12-104969-SP

ENCORE 41 LLC
LANCE HARVEY
10325 AIRPORT ROAD
SNOHOMISH WA 98296

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

WA ST DEPT OF TRANSPORTATION
STEVE BENENATI
PO BOX 330310
SEATTLE WA 98133-9710

EVERETT SCHOOL DISTRICT
HAROLD BEUMEL
PO BOX 2098
EVERETT WA 98208

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

SILVER LAKE WATER & SEWER
DISTRICT
RICHARD GILMORE
PO BOX 13888
MILL CREEK WA 98082

WESTERN ENGINEERS INC
JESSE JARRELL
13000 HWY 99 S
EVERETT WA 98204

SNOHOMISH HEALTH DISTRICT
BRENT RAASINA
NO ADDRESS GIVEN

RONALD & JAYLENE RICE
1403 126TH ST SE
EVERETT WA 98206

SNO CO PUD NO 1
ELISABETH A TOBIN
PO BOX 1107
EVERETT WA 98206-1107

SNO CO FIRE DISTRICT 1
JOHN WESTFALL
12425 MERIDIAN AVE
EVERETT WA 98208