



Snohomish County

Hearing Examiner's Office

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**DECISION of the SNOHOMISH COUNTY
HEARING EXAMINER**

DATE OF DECISION: June 12, 2013

PLAT/PROJECT NAME: **Cedar Crest Short Plat**

APPLICANT/
LANDOWNER: Catalyst Group LLC
13619 Mukilteo Speedway Suite D5, #321
Lynnwood, WA 98087

FILE NOS.: 12-105092 SP, 12-109954 LU

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

DECISION
(SUMMARY): **Preliminary Short Subdivision is APPROVED
SUBJECT TO CONDITIONS
Variance is APPROVED**

LOCATION: 24210 23rd Avenue West, Bothell

ACREAGE: 1.66 acres

NUMBER OF LOTS: 8 lots

MINIMUM LOT SIZE: 5230 square feet
GROSS DENSITY: 4.82 du/acre (6.50 du/acre net)

GMACP DESIGNATION: Urban Low Density Residential (ULDR)

ZONING: R-7200

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

SCHOOL DISTRICT: Northshore School District No. 417

FIRE DISTRICT: Snohomish County Fire 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 L.5), 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. Open Record Hearing. An open record hearing was held on May 22, 2013. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notices of the application and open record 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 Traffic Concurrency and Impact Fee Determinations as required by the County Code. The hearing was continued to May 29, 2013 when additional testimony was presented, and exhibits were entered into the record. The Examiner left the record open until May 30th to permit the Department of Planning and Development Services (PDS) to submit a revised staff report to reflect the additional information presented at the May 29th hearing.

At the hearings on May 22, 2013 and May 29, 2013, David Levitan appeared and testified on behalf of PDS. At the May 29th hearing, Ann Goetz provided additional testimony for PDS concerning traffic issues. Appearing for the Applicant at the May 22nd hearing was Mark Flury of North County Engineering

No other Parties of Record or interested citizens appeared at the public hearings.

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 an 8-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. The Applicant also seeks a variance to reduce the required setback from an existing turnaround easement on proposed Lot 6 from 15 feet to 10 feet. SCC 30.43B.020(2) provides that any variance submitted with another application requiring a Type 2 decision shall be processed concurrently as a Type 2 decision.

Because the proposal is subject to Urban Residential Design Standards (URDS), Chapter 30.23A SCC, an administrative site plan approval for the 8 lot short subdivision is also required. The URDS site plan decision is a Type 1 administrative decision to be rendered by PDS. 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 site is comprised of two parcels that total 1.66 acres in size. There are two existing single-family residences on the site, one of which will be demolished and one of which will remain on proposed Lot 2. Site soils are classified as Alderwood Urban Land Complex, 2-8% slopes per the USDA Soil Conservation Service. The grade of the site varies, with an average slope of approximately 8% from west to east towards 23rd Avenue West. There are no critical areas on or within 300 feet of the site.
3. Adjacent uses. Adjacent and surrounding uses are single-family in nature, including those within the City of Brier (the boundary of which is approximately 300 feet to the northwest) and the City of Kenmore (the boundary of which is approximately 500 feet to the south). The 16-home subdivision immediately to the north of the site is zoned R-7200, while adjacent properties to the west, south, and east are zoned R-9600. Surrounding properties further to the north and east are a mix of R-9600, R-7200, and PRD-9,600.
4. Project Chronology. The short subdivision application was originally submitted to PDS on June 25, 2012, and was determined to be complete as of the date of submittal for regulatory purposes, starting the 120-day clock period specified in SCC 30.70.110. On September 12, 2012, PDS staff provided a review completion letter to the Applicant, which detailed additional information needed for the County to continue its review of the application. In response to comments provided by the County, the Applicant requested a variance to reduce the required setback from an existing emergency turnaround easement on the site.

The variance application was submitted to PDS on November 9, 2012, along with a resubmittal of the short subdivision application, and was determined to be complete as of the date of submittal, resuming the 120-day clock. On January 11, 2013, PDS staff provided a review completion letter to the Applicant, which detailed additional information needed for the County to continue its review of the applications. A resubmittal of the applications was received on February 22, 2013, which was determined to be sufficient for further review. As of the hearing date, 229 days of the 120-day review period will have elapsed. On January 10, 2013, the Applicant submitted a letter waiving the 120 day processing requirement (Exhibit A.4).

5. State Environmental Policy Act Compliance. This 8-lot short subdivision is categorically exempt from SEPA.

6. Issues of Concern.

- A. Public Agency Review. No significant issues of concern were raised by reviewing agencies.
- B. Citizens. The County received three comments from nearby property owners concerning the proposed short subdivision. Phil Erickson raised concerns about traffic in the area, most notably cut-through traffic south of the project site on 243rd Place SW, which was alleged to have been caused by the installation of speed bumps along 61st Avenue NE (the continuation of 23rd Avenue West across the county line) in the City of Kenmore. (Exhibit I.1) Mr. Erickson indicated that he has previously requested that speed bumps be placed on 243rd Place SW to remedy the problem.

The second comment was from Sue and Rolf Kuestner who live on the adjacent property to the west and expressed a desire for the Applicant to consider the native flora and fauna on the project site and on their property and leave as much native vegetation as possible. (Exhibit I.2) Ms. Kuestner also indicated a concern that trees in the easement used to access her property not be disturbed during construction.

An additional comment was sent by Scott Larsen by email. (Exhibit I.3) Mr. Larsen expressed concerns about the analysis of potential stormwater and drainage impacts as well as the size of the proposed lots which, due to the use of lot size averaging, range in size as low as 4377 square feet. Mr. Larsen's drainage comments include concerns with the adequacy of the size of culverts down gradient from the site to handle the flows from the proposed development.

7. Approval Criteria.

- A. 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.

(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 six new homes (credit is given for the two previously existing homes, one of which will be 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 57.42 new ADT and has a road system capacity impact fee of \$13,206.60 (\$1886.66/new building permit) based on \$230.00/ADT; the rate for a residential development located in the Urban Growth Area (UGA) in TSA F. 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 F 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 4.50 AM peak-hour trips and 6.06 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 18, 2012. The concurrency determination expires six years from the date of the determination, in this case July 18, 2018. (Exhibit L.5)

(3) Inadequate Road Conditions (IRC). (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 F with three or more of its PM peak hour trips, nor will it create any IRCs. 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 SCC 30.66B.210.

- (4) Citizen Concerns. Regarding the concerns raised by Mr. Erickson about the need for speed bumps on 243rd Place SW, county Traffic Engineer Ann Goetz emailed Mr. Erickson to notify him that requesting the developer of the current short subdivision Applicant to install speed bumps along 243rd Place SW would not meet the required nexus between the potential impacts of an 8-lot short plat and the proposed improvements, as the current project would generate just a fraction of the trips currently utilizing that route. (Exhibit J.1) Ms. Goetz also notified the property owner that Snohomish County DPW previously completed a study to determine if this portion of 243rd Place SW qualified for traffic calming (including speed bumps), and that study determined that the amount of traffic and the speeds of the traffic did not meet the county's criteria for traffic calming. The Examiner concurs that the county lacks the legal authority to require the current Applicant to install speed bumps on 243rd Place SW which Mr. Erickson has requested due to the existing traffic situation.
- (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 23rd Avenue West 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 strip

- 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.

It is proposed that Lots 1 and 2 access directly onto 23rd Avenue West via individual driveways and the remaining six lots are proposed to be accessed by a new internal public road within the proposed development which intersects 23rd Avenue West near the southern boundary of the proposed development.

DPW classified the internal public road 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 road will serve six of the proposed lots in the development and will end in a cul-de-sac with a total length of approximately 300 feet. The plans show the proposed paved radius width as 30 feet, which is allowed by the 2009 EDDS in 3-10 A(1) provided specific written approval by the Fire Marshal is obtained. The 30-foot radius cul-de-sac was approved by the Fire Marshal's Office based on the provision of NFPA 13-D fire suppression systems in all of the new dwellings. (Exhibit G.2)

- (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 this development, 23rd Avenue West, 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 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). Comments dated July 2, 2012 (Exhibit H.2) were received from the Washington State Department of Transportation (WSDOT) indicating agreement with the traffic study that the development will not adversely impact state highways. WSDOT does not request any traffic mitigation and had no other comments; therefore, a traffic mitigation fee will not be required.
- (f) Impacts to City Streets and Roads. (SCC 30.66B.720). Mitigation requirements for impacts on streets inside cities and roads in other counties are to be established consistently with the terms of a Reciprocal Traffic Mitigation Interlocal Agreement (ILA) between the County and the other jurisdictions.

Snohomish County has an ILA with the City of Bothell and this development is within the influence area that requires traffic mitigation be considered for the City. A copy of an offer to pay Bothell traffic mitigation was submitted with the application for the amount of \$6,951.00 based on the GTC traffic study trip distribution showing that 25% of the development trips would impact city roads x \$4,634 per unit (6 units x .25 x \$4,634 = \$6,951.00). An offer for that amount was routed to the City of Bothell, and comments dated March 28, 2013 were received from Bothell accepting the offered amount. (Exhibit H.1) Payment of \$6,951.00 (\$993.00 per single-family home building permit) will be included as a condition of approval for this development.

- (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 PM 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. The TDM obligation for this development is therefore equivalent to 5% of the 6.06 new PM peak hour trips x \$6,500.00 which equals \$1,969.50. This is equivalent to \$281.36 per unit for the seven new homes proposed and the Applicant has proposed to pay this amount. (Exhibit C.1)

Based on the Findings of Fact set forth above, the Examiner finds that the proposed 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. PDS indicated that the Northshore School District Transportation Department stated on December 14, 2012 that elementary students attending Lockwood Elementary School and junior high school students attending Kenmore Junior High School would get on and off the bus at the intersection of 23rd Avenue West and 241st Street SW. High school students would walk to the bus stop at 23rd Avenue West at 243rd Place SW.

The existing walking conditions to these two locations are described below:

- 23rd Avenue West and 241st Street SW (north of the development): There is currently an approximately 30 foot gap between the required frontage improvements for the current project and the existing sidewalk to the north which was constructed as part of the development requirements for the plat of Kathy Lane.
- 23rd Avenue West and 243rd Place SW (south of the development): There is currently no pedestrian facility along the west side of 23rd Avenue West south of the current project. However, there is a paved shoulder walkway along the east side of 23rd Avenue West directly across 23rd Avenue from the development and it is located between the proposed public road serving the lots in the short plat and 243rd Place SW, where the bus stop for the high school students is located.

In order to provide safe walking conditions for students from the current project to reach the bus pickup location at 23rd Avenue West and 241st Street SW, the Applicant will need to construct frontage improvements on the west side of 23rd Avenue West that extend to the north approximately 30 feet from the frontage improvements for the project, in order to close this gap and connect with the existing improvements. Regarding access to the bus stop at 23rd Avenue West and 243rd Place SW, since the intersection of two public roads is considered a crosswalk under RCW 47.04.010 and by EDDS 4-05 D, students could cross 23rd Avenue West at the intersection with the proposed public road serving the development, and then walk to 243rd Place along the walkway to the bus stop. Therefore, the construction of an off-site walkway to the south is not

necessary. However, appropriate signage and pavement markings for the crossing point should be installed.

- (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 Northshore School District No. 417 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for two (2) existing lots. 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). Development of this 8-lot short subdivision is estimated to result in 34,000 square feet of total new impervious surfaces. As shown in the full drainage report (Exhibit L.1), stormwater will be detained in an underground detention tank located in Tract 999 along the southern boundary of the project. Water quality treatment will be provided by routing the pollution generating impervious surfaces (PGIS) through a stormfilter catch basin in the southeast corner of the site in Tract 999, before it is discharged to an existing ditch along the west margin of 23rd Avenue West. While Mr. Larsen raise concerns about the adequacy of the existing culverts along 23rd Avenue West, PDS reports that Snohomish County Surface Water Management has not identified any downstream drainage complaints or flooding issues.

Grading to accommodate site development is estimated at 3500 cubic yards of cut and 3500 cubic yards of fill. The Applicant proposes greater than 5,000 square feet of new impervious surface. Therefore a Full Stormwater Site Plan will be required prior to final short subdivision 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 (SWPP) Plan is also required in accordance with Volume 2 of the Snohomish County Drainage Manual prior to construction.

- (vi) Critical Areas Regulations. (Chapter 30.62A, 30.62B and 30.62C SCC). No critical areas are present on or within 300 feet of the site boundaries, as determined by PDS staff review and a wetland reconnaissance report prepared by Wetland Resources, Inc. (Exhibit C.3)
- (vii) International Fire Code. (Chapter 30.53A SCC). The Office of the Fire Marshal reviewed the project and determined that the project must comply with the following conditions:

- (a) All of the new dwellings must be provided with NFPA 13-D fire suppression systems due to the fact that the cul-de-sac does not meet the minimum requirement of a 40 foot outside turning radius.
- (b) 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 street serving the lots in the short plat to indicate hydrant locations.
- (c) The minimum required fire flow for this project is to be 1000 GPM at 20 psi for a 1-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 1-hour duration can be provided. If there are dwellings that exceed 3600 square feet, the required fire flow shall be determined using Appendix B of the 2006 edition of the International Fire Code. This restriction must be stated on the face of the final short plat.
- (d) Fire apparatus access is not to be obstructed in any manner, including the parking of vehicles. Since the access road is less than 28 feet wide, signage or pavement striping on both sides of the road, including the cul-de-sac, stating "NO PARKING – FIRE LANE" must be provided. If pavement striping is used, the curbs shall be painted yellow with black lettering.
- (viii) Utilities. Water and sanitary sewer will be supplied by the Alderwood Water and Wastewater District. Certificates of Water and Sewer Availability were received dated July 19, 2012. (Exhibits H.4 and H.5) The Snohomish County Public Utility District has not provided any comment concerning its ability to provide electrical service for the project but there is no evidence to suggest any difficulties with electrical service for the project. Finally, Snohomish Health District has no objections to the project as long as public sewer and water is provided. (Exhibit H.3) The existing/remaining on-site sewage systems will need to be abandoned by having the septic tanks pumped by a certified pumper, then having the tops of the tanks removed or destroyed and the voids filled.

- (ix) Zoning. (Chapter 30.2 SCC). The proposed project site is currently zoned R-7200 and designated ULDR in the Snohomish County GMA General Policy Plan (GPP). The site is located inside of a UGA. The eight lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2. This project meets zoning code requirements for lot size, including bulk regulations and other zoning code requirements including those required under the Lot Size Averaging Code, as discussed below. The lots are not proposed as duplex lots, and the proposed lot sizes would not meet the minimum lot size required for duplex lots. A condition of approval will require that a statement be added to the face of the final plat requiring that the lots not be used as duplex lots.

- (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 72,409 square feet. Therefore, 7241 square feet must be landscaped. The Applicant proposes 7857 of landscaped area on the stormwater facility (Tract 999). In addition, the project will include replacement trees (Douglas Firs) along the northern and western edges of the site.

- (xi) Tree Retention. (Chapter 30.25 SCC). The Applicant proposes to remove 20 significant trees to accommodate the new public road and the development of Lots 1-6. Consistent with the requirements of SCC 30.25.016, the Applicant has proposed 46 replacement trees, primarily along the northern and western edges of the site. A condition of approval will require implementation of the preliminary landscape plan (Exhibit B.4). A final landscape plan will be required when construction plans are submitted.

While the concerns about the removal of existing vegetation raised by Ms. Kuestner are legitimate, since the project is located within the UGA, the Applicant must replace the removed trees consistent with the requirements of SCC 30.25.016. In total, the Applicant has proposed 46 replacement trees, consisting of a mix of Douglas Firs, Western Hemlocks, and Red Sunset Maples, as illustrated on the Landscape Plan. (Exhibit B.4) As concerns the protection of significant trees both on the site and on adjacent properties, the project will be subject to the tree protection measures detailed in SCC 30.25.016(8), which are designed to protect trees from the potential impacts related to grading and other construction activities.

- (xii) Lot Size Averaging Regulations. (SCC 30.23.210). The proposal has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus 50% 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 3000 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 setbacks of 15 feet, except that garages must be setback 18 feet from the right-of-way (except alleys) and corner lots may reduce one right-of-way 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 (53,695 square feet) + Open space (7,857 square feet) = 61,552 square feet ÷ (8 lots proposed) = 7694 square feet per lot.

The minimum zoning requirement of the requested R-7200 zone is 7200 square feet. No lot is less than 3000 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.

While Mr. Larsen has raised concerns about the size of the proposed lots, even though the smallest lot will be 4377 square feet in size, the Applicant has complied with LSA requirements. The average lot size of 7694 square feet (determined by including open space areas in the overall average) meets the minimum lot size of 7200 square feet for the R-7200 zone.

- (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.

B. Variance. (Chapter 30.43B.100 SCC).

The Applicant has submitted a variance request regarding the setback from the emergency turnaround easement located in proposed Lot 6. According to SCC

30.43B.020(2), a variance submitted with another application requiring a pre-decision hearing by the Examiner must be processed concurrently by the Examiner as a Type 2 decision. A variance must meet the following four criteria:

- (i) There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone;
- (ii) A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question;
- (iii) The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located; and
- (iv) The granting of the variance will not adversely affect the comprehensive plan.

SCC 30.23.041 requires a building setback of 15 feet from the existing turnaround easement. The Applicant has submitted a variance request to reduce this setback to 10 feet. The Examiner considers each criterion in turn:

- (a) *There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone.*

Proposed Lot 6 is located in the northwestern corner of the project site. It will be accessed from the end of the proposed cul-de-sac via a 15 foot wide tail, which opens up to the buildable portion of the 7947 square foot lot. The turnaround easement for the adjacent short plat measures 30 feet from west to east and 20 feet from north to south. The buildable portion of Lot 6 measures approximately 100 feet by 70 feet, or 7000 square feet. Immediately north of Lot 6 is a 30 foot private road that provides access to properties to the west of the project site. Strict adherence to the 15 foot setback from the turnaround easement, when combined with the required 15 foot setback from the private road to the north, would eliminate the possibility of building a portion of any future home on the northwest portion of the site, and would reduce the buildable portion of the lot to less than half of the lot total. While some of the problems with the buildable area of Lot 6 are a result of the short subdivision design, the Examiner finds and concurs with the analysis of PDS that typical properties in the vicinity of the project site are not faced with similar encumbrances or limitations as those

created by the intrusion of the emergency turnaround easement into the project site.

- (b) *A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question.*

As noted above, strict adherence of the 15 foot setback, when combined with the 15 foot setback from the private road to the north, would significantly reduce the site's developable area of Lot 6 in relation to other adjoining, equivalently zoned and sized parcels in the immediate vicinity, to less than half of the total lot area. Granting the requested variance would provide the Applicant with a less constrained buildable area, while maintaining the front yard setback and providing adequate access and circulation.

- (c) *The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located.*

While the emergency turnaround easement was provided for use by emergency services, it does not meet current dimensional requirements to be used by the fire department or for use by the general public, and as such no longer functions as an emergency easement. Even if the turnaround was used for its intended purpose, the reduction in building setback from the turnaround would not impair the usability of the turnaround.

- (d) *The granting of the variance will not adversely affect the comprehensive plan.*

The Comprehensive Plan does not speak to the achievement of building setbacks. Instead, it calls for the achievement of urban densities within the UGA. Granting the proposed variance on the subject property would assist in development of the site in a manner that is consistent with the goals and policies in the Land Use Element of the Comprehensive Plan.

Based on the foregoing, the Hearing Examiner finds that the requested variance to the building setback meets the criteria of SCC 30.43B.100 and, therefore, the variance can be approved under the facts of this specific application.

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

Urban residential design standards apply to new residential development located within UGAs including short subdivisions regulated under Chapter 30.41B SCC. 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 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 short subdivision and variance applications pursuant to Chapters 30.41B, 30.43B, 30.72 SCC and Chapter 2.02 SCC.
2. 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

3. 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 subdivision. The single-family homes within the 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 Alderwood Water and Wastewater District.

4. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the short subdivision application meets the requirements of Chapter 30.41B SCC.
5. Based upon the Findings of Fact, the Examiner concludes that the requested variance from the building setback requirement from the emergency vehicle turnaround easement meets the requirements of SCC 30.43B.100 and, therefore, should be approved.
6. The Examiner concludes that adequate public services exist to serve this proposal.
7. If approved with the recommended 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 approval of a **PRELIMINARY SHORT SUBDIVISION** and a **VARIANCE** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS

- A. The zoning code variance granted hereby is limited solely to that requested in association with the short subdivision application 12-105092 SP (no other zoning code relaxation is authorized by this variance). Namely:
 - Allowance of 10 foot building setbacks from the emergency vehicle turnaround easement in Lot 6 (as depicted on Exhibit B.1).
- B. A Land Use Permit Binder for the variance, on a form provided by PDS, shall be executed by the Applicant and recorded with the County Auditor.
- C. The preliminary short plat received by PDS on April 10, 2013 (Exhibit B.1), shall be the approved short plat configuration. Changes to the approved preliminary short plat are governed by SCC 30.41B.310.
- D. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the County:

- i. 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.
 - ii. Construction plans and a Full Stormwater Site Plan shall be submitted for review and approval, subject to Minimum Requirements 1-9.
 - iii. A Land Disturbing Activities (LDA) permit shall be obtained, including a Stormwater Pollution Prevention Plan (SWPPP).
- E. All site development work shall comply with the requirements of the plans and permits approved pursuant to Conditions C and D above.
- F. The following additional restrictions and/or items shall be indicated on the face of the final short plat:
- i. "SCC Chapter 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:
 - \$1886.66 per lot for mitigation of impacts on County roads paid to the County.
 - \$281.36 per lot for transportation demand management shall be paid to the County for TSA F.
 - \$993.00 per lot for mitigation of impacts on City of Bothell streets paid to the City.

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. "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."
- iii. "The lots within this subdivision will be subject to school impact mitigation fees for the Northshore School District No. 417 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for two existing lots. Lots 1 and 2 shall receive credit."

- iv. "A modification to allow a 30-foot radius cul-de-sac turnaround has been approved by the Snohomish County Office of the Fire Marshal. In exchange, all new dwellings shall be provided with NFPA 13-D fire suppression systems."
- v. "If there are dwellings that exceed 3600 square feet, the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code."
- vi. "All new dwellings must be provided with NFPA 13-D fire suppression systems."
- vii. "The lots in this short subdivision have not been identified or approved as duplex lots under SCC 30.41B.835."

G. Prior to recording of the final short plat:

- i. Urban standard frontage improvements shall have been constructed along the property's frontage with 23rd Avenue West to the satisfaction of the County. Such improvement shall also be extended 30 feet to the north to connect with the existing improvements.
- ii. Appropriate signage and pavement markings in compliance with Department of Public Works standards shall be installed for the pedestrian crossing of 23rd Avenue West at the intersection of the new short plat road.
- iii. The administrative site plan required by Chapter 30.23A SCC (Urban Residential Design Standards) shall be approved.
- iv. Documentation demonstrating that any existing on-site 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.

H. 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. 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).
- iii. Signage or pavement striping on both sides of the road, including the cul-de-sac, stating "NO PARKING – FIRE LANE" must be provided. If pavement striping is used, the curbs shall be painted yellow with black lettering.

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 12th day of June, 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 June 24, 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 June 26, 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: David Levitan

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
12-105092-SP CEDAR CREST SHORT
PLAT
HEARING: 5/22/2013
Cont. to 5/29/13

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LEVITAN / WHEELER
3000 ROCKEFELLER AVE #604
EVERETT WA 98201

SNOHOMISH HEALTH DISTRICT
3020 RUCKER AVE SUITE 104
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SCOTT LARSEN
NO ADDRESS GIVEN

DALLAS & DINAH LEWIS
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