



**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

**Hearing Examiner's Office**

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Hearing Examiner

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DATE OF DECISION: May 9, 2013

PLAT/PROJECT NAME: **Speedway Mixed Use Rezone and Site Plan**

APPLICANT/  
LANDOWNER: DevCo, Inc.  
11100 Main Street, Suite 301  
Bellevue, Washington 98004

FILE NO.: 12-108409 LU

TYPE OF REQUEST: Rezone from BP to NB and from R-9600 to LDMR

DECISION (SUMMARY): **REZONE AND PRELIMINARY SITE PLAN APPROVAL GRANTED subject to a Pre-condition and Conditions**

**BASIC INFORMATION**

GENERAL LOCATION: 12909 Mukilteo Speedway, Lynnwood, Washington

TAX PARCEL NOS. 005378-000-008-00, 005378-000-009-00, 005378-000-010-00, 005378-000-011-00, 005378-000-012-00, 005378-000-030-00, 005378-000-031-01

ACREAGE: 9.75 acres

ZONING: CURRENT: Business Park (BP) and Residential-9600 (R-9600)  
PROPOSED: Neighborhood Business (NB) and Low Density Multiple Residential (LDMR)

COMPREHENSIVE PLAN DESIGNATIONS: Urban Commercial and Urban Medium Density Residential (UMDR)

UTILITIES:  
Water: Alderwood Water and Wastewater District  
Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo School District No. 6  
FIRE DISTRICT: Snohomish County Fire Protection District No. 1

SELECTED AGENCY RECOMMENDATIONS:  
Department of:  
Planning and Development Services: Approve

## **BACKGROUND INFORMATION**

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through K.3), 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 are available at the Hearing Examiner's Office.

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 24, 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)

## **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 Request. The Applicant is requesting the rezoning of 9.75 acres from BP and R-9600 to NB and LDMR and approval of a final Official Neighborhood Business Zone Site Plan. The portion of the site requested to be rezoned to LDMR is the lot bearing tax account number 005378-000-031-01, which currently is zoned R-9600 and is 1.00 acres in size. The remaining 8.75 acres currently is zoned BP, and a rezone to NB is requested. The Applicant also seeks approval of a Neighborhood Business site plan encompassing the entire site.
2. Site description. The site is irregular in shape, consisting of seven adjoining parcels. It is bordered to the north by an existing commercial development and York Road, to the east by developed and undeveloped residential properties, to the south by Russell Way, and to the west by the Mukilteo Speedway (SR-525). The majority of the site is unoccupied and undeveloped. Several existing duplexes with paved parking areas occupy the southernmost parcel of the project.
3. Adjacent uses. Parcels adjacent to the north and south are zoned BP. Zoning across SR-525 to the west is PCB and BP, and the parcels directly east are zoned R-9600. The general vicinity of the site is a mix of commercial, industrial, and residential zones and uses. The municipal boundary for the City of Mukilteo is approximately 400 feet to the northwest.
4. Project Chronology. The rezone application was originally submitted to the Department of Planning and Development Services (PDS) on September 28, 2012. A resubmittal of the application was received on January 29, 2013 which PDS determined was sufficient for further review. The 120-day clock started on this date and stopped on October 26, 2012. As of the hearing date, 151 days of the 120-day review period had elapsed.
5. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) for the subject application on March 15, 2013. (Exhibit E.2) Notice of the decision was made according to the County's regulations. (Exhibits F.1, F.2, and F.3) No appeal of the

SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.

6. Issues of Concern

Citizen Comments. Two property owners in the vicinity of the project have expressed concerns. (Exhibits H.1 and H.3) A representative of the property owner adjacent to the north noted that their future development plans include the possibility for non-residential business park uses that could be perceived as a nuisance to future residential occupants of the proposed project. The property owner's representative indicated that they did not necessarily oppose the current proposal but they were concerned that the residential development of the site would have an adverse impact on their ability to utilize their adjoining property for business park uses.

A residential property owner located to the east of the site expressed concerns regarding the proposed access to York Road and asserts that vehicles exceeding the speed limit are an ongoing problem that will be exacerbated by the proposed development.

At the public hearing, one nearby property owner, Ed Stalli, who owns property north of the project site, commented that he did not believe it is a good mix to have the apartments and commercial uses proposed. He indicated that he thought there was already no lack of property for apartments in the area and that more industrial development should occur on the subject site.

7. Approval criteria.

A. Rezone Approval

Chapter 30.42A SCC covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provide that the Hearing Examiner may approve a rezone only when all the following criteria are met: (1) The proposal is consistent with the comprehensive plan; (2) The proposal bears a substantial relationship to the public health, safety, and welfare; (3) The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009, and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3); and (4) Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met. The Examiner considers each criterion in turn.

(i) The proposal is consistent with the comprehensive plan.

(a) The subject application has been evaluated for consistency with the latest version of the GMACP. With the exception of tax parcel 00537800003101, the property is designated "Urban Commercial" on the Snohomish County General Policy Plan's (GPP) Future Land Use Map (FLUM). Tax parcel 00537800003101 is designated "Urban Medium Density Residential".

The GPP's Land Use chapter includes the following policy direction regarding the implementing zones for the two different comprehensive plan designations on page LU90 and LU91:

*Urban Commercial (UC). This designation identifies commercial designations within the UGA which allow a wide range of commercial as*

*well as residential uses. Implementing zones: Neighborhood Business, Planned Community Business, Community Business, General Commercial, Freeway Service and Business Park. In the Lake Stevens UGA, the implementing zoning shall be limited to Neighborhood Business, Community Business and Planned Community Business. In the Southwest County UGA, no rezones to General Commercial shall be approved out-side of the State Route 99 corridor.*

*Urban Medium Density Residential (UMDR). This designation allows a combination of detached homes on small lots, townhouses, and apartments in medium density, multi-family residential developments. Implementing zones: MHP, LDMR, PRD-LDMR, Townhouse, R-7,200, PRD-7,200 and WFB.*

Therefore, the request to rezone to NB on the portions designated UC, and to LDMR on the portion designated UMDR, is consistent with the County's adopted comprehensive plan.

PDS found that the following goals, objectives and policies contained in the GPP would be applicable to the proposed rezone:

**Land Use**

- GOAL LU 1                      Establish and maintain compact, clearly defined, well designed UGAs.
- Objective LU 1.A            Establish UGAs with sufficient capacity to accommodate the majority of the county's projected population and employment growth over the next 20 years.
  - 1.A.2                      Snohomish County shall ensure no net loss of capacity to accommodate the amount and type of projected employment growth for 2025 while ensuring an adequate supply of both new and existing affordable housing.
  - 1.A.3                      Snohomish County shall ensure a no net loss of housing capacity that preserves the County's ability to accommodate the 2025 growth targets, while pursuing compliance with all relevant federal, state and local laws and regulations.
  - 1.A.4                      UGAs shall have existing or planned infrastructure capacity to adequate support urban growth over the 20-year period.
- GOAL LU 2                      Establish development patterns that use urban land more efficiently.
- Objective LU 2.A            Increase residential densities within UGAs by concentrating and intensifying development in appropriate locations.
- LU Policies 2.A.1            Within UGAs, development regulations shall be adopted and maintained which will require that new residential subdivisions achieve a minimum net density of 4-6 dwelling units per acre in all unincorporated UGAs.

2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.

2.A.4 Any UGA shall provide opportunities for a mix of affordable housing types (e.g. small lot detached, townhouses, duplex, triplex, 6 to 8 unit apartment and small group housing units) within medium density residential areas.

## **Housing**

GOAL HO 1 Ensure that all county residents have the opportunity to obtain safe, sanitary, and affordable housing.

Objective HO 1.B Ensure that a broad range of housing types is available in urban and rural areas.

Objective HO 1.C Make adequate provisions for the existing and projected housing needs of all economic segments of the population.

Objective HO 1.D Maintain an adequate supply of appropriately zoned developable land.

Policy1.D.3 The county shall encourage expeditious and efficient infill development in urban growth areas.

GOAL HO 2 Ensure the vitality and character of existing residential neighborhoods.

Objective HO2.A Promote opportunities for all county residents to reside in safe and decent neighborhoods.

HO Policies 2.A.1 The county should preserve the character of stable residential neighborhoods through selective and innovative land use measures.

2.B.1 The county shall encourage a variety of housing types and densities in residential neighborhoods.

2.B.4 The county shall encourage the integration of a variety of housing types and densities in residential neighborhoods.

GOAL HO 3 Land use policies and regulations should contribute as little as possible to the cost of housing.

Objective HO3.A Encourage land use practices, development standards, and building permit requirements that reduce housing production costs.

HO Policies 3.A.3 The county shall encourage cluster housing in order to minimize land and infrastructure costs.

## **Utilities**

Objective UT 2.A All new residential developments should be able to demonstrate the availability of a potable water supply meeting state water quality standards and of sufficient capacity to serve domestic requirements.

UT Policy 2.A.1        The county shall review new residential projects requiring land use or construction permit approval for the availability of an adequate water supply.

UT Policy 3.A.1        The county shall review new residential project within urban growth areas requiring land use or construction permit approval for the availability of an adequate public wastewater and treatment system.

The area is already characterized by urban growth. The increased density would implement the comprehensive plan by facilitating the accommodation of new population growth into urban areas per the directive of the State Growth Management Act (GMA). The neighborhood is located near shopping and transit. Public water and sewer is available to service any future development. The rezone would not be out of character with the neighborhood, which is already a mixture of housing types and commercial development.

When detailed construction plans are submitted for any future site development, the project will be reviewed for compliance with county GMA development regulations (which are required to implement the policies in the comprehensive plan) relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation, critical areas protection, compliance with 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. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A. The rezone of this parcel is not incompatible with the changes occurring elsewhere in the nearby area and will provide tools for more efficient infill in the future. There are no critical areas or shorelines on the site, nor are there any other sensitive areas that would warrant larger zoning classification. The site is near a major transit corridor, SR-525. There are numerous shopping opportunities in the area with Everett Mall, Alderwood Mall and other shopping centers nearby.

(ii) The proposal bears a substantial relationship to the public health, safety, and welfare.

The proposed rezone will not have a deleterious effect on the public health, safety, and welfare. When detailed construction plans are submitted for the future site development, the project will be reviewed for compliance with County GMA development regulations (which are required to implement the policies in the comprehensive plan) relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation, critical areas protection, compliance with fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The requirements of these regulations as applied to the proposed development are discussed later in this decision. 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) The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009.

and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3).

No significant trees were removed after January 7, 2009 or within six years of the submittal date. The proposal does include a landscaping plan, which includes a tree replacement schedule.

(iv) Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

The project is in compliance with the minimum zoning criteria referenced, as discussed later in this decision.

(v) The Examiner finds that the requirements of Chapter 30.42A.100 are satisfied by the present application and the rezone should be approved.

#### B. Development Regulation Compliance

In determining whether to grant site plan approval, the Examiner will review the development regulations applicable to the proposal. 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 \$491.05 per each new dwelling unit, to be paid prior to building permit issuance for each multifamily building. 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 Applicant proposes to develop a mixed use site that will contain multi-family residential (201 units), and commercial/retail uses (29,380 square feet). Specific commercial uses are not yet determined, but are likely to include restaurants, coffee shops, retail shopping, and similar small commercial businesses.

The subject property is located on the northeast corner of the Mukilteo Speedway, SR-525, and Russell Way in Transportation Service Area (TSA) "D", inside the Urban Growth Area (UGA). The site also fronts York Road.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 201 new living units, 7,930 sq. ft. High Turnover Sit Down Restaurant, and a 21,450 sq. ft. shopping center.

Utilizing the 8th Edition of the ITE Trip Generation Report, PDS determined that the proposal will generate 1057.88 new ADT for the 201 apartments (Land Use Code 221), 491.25 new ADT for the restaurant (Land Use Code 932), and 519.72 new ADT for the shopping center (Land Use Code 820).

Thus the development will generate at total of 2068.85 new ADT and has road system capacity impact fees of \$282,453.96 (\$1405.24/living unit or lot) for the apartments, \$111,513.75 (\$14.06/sq. ft.) for the Restaurant and \$117,976.44 (\$5.50/sq. ft.) for the Shopping Center. 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 134.11 new AM peak-hour trips and 187.06 new PM peak-hour trips which is more than the threshold of 50 peak-hour trips and, therefore, PDS evaluated the development under SCC 30.66B.035. Pursuant to 30.66B.035(1), the Applicant has evaluated the future Level-of-Service (LOS) on the road system consistent with the specific traffic study requirements imposed by the County and has found that there are no arterial units in arrears in the TSA based on forecast level-of-service conditions and the development is deemed concurrent under 30.66B.130(4).

The development was determined to be concurrent as of March 1, 2013. The concurrency determination expires six years from the date of the determination, in this case March 1, 2019.

(3) Inadequate Road Conditions (SCC 30.66B.210) Regardless of the existing LOS, development which adds three or more PM peak-hour trips to a location in the road system determined to have an existing Inadequate Road Condition (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 improvement is to be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if necessary.

DPW Rule 4222.020(1) requires full urban frontage improvements along the subject property's frontage on Russell Way and York Road. These improvements will consist of:

- 18 foot of asphalt concrete pavement width from right-of-way centerline to curb face. On York Road, the curb needs to match the existing curb to the west.
- Cement concrete curb and gutter
- Five (5) foot planter strip
- Seven (7) foot cement concrete sidewalk

Russell Way and York Road, on which the development's frontage improvements are required, are not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore, credits towards the Applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

Construction of frontage improvements is required prior to any occupancy of the development.

Urban frontage improvements already exist on SR-525. The Applicant has proposed to remove two of the four existing driveways which the Washington State Department of Transportation (WSDOT) has indicated in correspondence is acceptable provided the Applicant provides improvements to restrict left turns into the site from SR-525 and applies for an access connection permit.

(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.

The County Engineer, in accordance with the EDDS, has classified the County roads Russell Way and York Road as non-arterial local access roads. The posted speed for Russell Way is 35 MPH and 25 MPH for York Road.

The proposed development will take access from SR-525 and York Road. DPW evaluated sight distance at the proposed access point on York Road and found that it met the minimum requirements of EDDS 3-08 if the Applicant removes brush on the north side of York Road east of the proposed access point. Access was approved to SR-525 by the WSDOT with conditions.

In considering the concern raised by a neighboring property owner on York Road, the traffic review sections of PDS and DPW analyzed the proposed access, and concluded that it meets all applicable standards for location, size and other design and safety issues.

(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 roads serving this development, Russell Way and York Road, are designated as non-arterials and typically require 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, but two additional feet is required to accommodate the required frontage improvements. A condition of approval will be imposed to require that this right-of-way is deeded.

Russell Way and York Road are not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore, credit towards the Applicant's impact fee for the deeded right-of-way is not applicable.

(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 between the County and the 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.

Pursuant to SCC 30.66B.055 a written proposal from the Applicant proposing measures to mitigate impacts on state highways is required and has been received. The Applicant has offered to mitigate impacts to WSDOT project numbers 11 and 59. Since project number 59 has been completed, WSDOT cannot collect mitigation for that project. PDS indicated that in correspondence from WSDOT, the State has accepted the mitigation offer for DOT project number 11 (which will be adjusted to \$7,777.42 to account for the adjusted shopping center trip generation rate and credits for crossover trips and TDM measures). WSDOT also requires that the Applicant add "C" curbing to SR-525 to restrict left turns to and from the site, apply for an access connection permit and construct improvements to the intersection of Lincoln Way/SR-525. PDS has recommended that a condition of approval be included that the Applicant obtain an access connection permit from the State and that the State's conditions be fulfilled prior to issuance of a Certificate of Occupancy.

(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 consistent with the terms of a Reciprocal Traffic Mitigation Interlocal Agreement (ILA) between the County and the other jurisdictions.

An ILA has been executed between the County and the City of Mukilteo for traffic mitigation for impacts on the City's road system. The Applicant's traffic study indicates that mitigation for the City will be required. (Exhibit C.1) The Applicant has offered to mitigate impacts to city streets by paying \$108,000.00. The City indicated in a letter dated November 8, 2012 that it accepts this offer. Due to the change in the trip generation information and applying the provisions of the ILA, the dollar amount should be adjusted to \$106,834.53.

(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).

The Applicant submitted a TDM plan that was determined by PDS to be acceptable. (Exhibit K.1) TDM measures described in the plan include providing pedestrian facilities within the development to connect residential and retail commercial building and to connect to the existing transit facilities along SR-525, providing on-site lighting and providing secure bicycle storage.

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

(iii) Bicycle Facilities The County's currently adopted County Wide Bicycle Facility System Map became effect on February 1, 2006. The subject development does not border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. Therefore, a bicycle path is not required along the development's frontage on Russell Road or York Way.

(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 Mukilteo School District No. 15 at the time of building permit submittal and collected at the time of building permit issuance for the proposed multifamily units. Credit is to be given for six (6) existing dwellings. Payment of school impact fees has been 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)

#### Existing Conditions

Soils on the site consist of Alderwood Urban Complex, 2 to 8 percent, which have a hydrologic classification of "Type C". The majority of the site contains between five to 20 feet of loose to medium dense silty sand with gravel having varying levels of soil moisture being documented.

#### Proposed Conditions

The Applicant proposes to remove the existing single-family residences and construct 16 multi-family buildings, a leasing office and recreation facility with pool, two commercial buildings along the Mukilteo Speedway, together with a access aisles, parking and five-foot wide pedestrian walkways. Frontage improvements will include construction of curb, gutter and sidewalk along Russell Way and York Road.

The proposal would include construction of approximately 283,168 square feet of new or replaced impervious surfacing.

Total proposed excavation includes approximately 34,850 cubic yards of cut (including 7,750 cubic yards of strippings) and 63,300 cubic yards of fill.

Stormwater will be collected and conveyed to two buried detention vaults which will be located under the drive aisles and parking areas. A flow control manhole will be located immediately downstream from the detention vaults. Stormwater from pollution generating impervious surfaces will be treated by flowing through storm filter vaults immediately downstream from the flow control manholes.

Controlled stormwater will be conveyed to the east and south in roadside ditches, through driveway culverts and under Pacific Highway (SR-99) to a tributary of Swamp Creek. The Snohomish County Drainage Needs Report for the North Swamp Creek region mentioned accounts of flooding that were caused by driveway culverts with inadequate flow capacity. No specific references were made along the routes from the site to the Swamp Creek tributary. The project engineer did not report any drainage restrictions or erosion problems within one mile of the site. The mitigation measures to provide flow control and water quality treatment for the site will reduce impacts from the site over what exists today.

The Applicant proposes more than 5,000 square feet of new impervious surface. Therefore, a Full Stormwater Site Plan will be required prior to development activity under the requirements of SCC 30.63A.300(3). The Applicant proposes more than 100 cubic yards of grading. Therefore, approval of a Land Disturbing Activity (LDA) permit and Storm Water Pollution Prevention Plan (SWPPP) in accordance with Volume 2 of the Drainage Manual and Chapter 30.63B SCC will be required prior to construction. A Right of Way permit will be required for construction of frontage improvements along Russell Way and York Road.

PDS determined that, based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project will meet the requirements the SCC 30.63A and SCC 30.63B and the Drainage Manual.

(vi) Critical Areas Regulations (Chapter 30.62)

A critical area site assessment was conducted and outlined in a report prepared by Talasaea, dated September 25, 2012. (Exhibit C.4) No critical areas were identified on site and all critical areas within 300-feet of the project boundaries were evaluated for the proposed project. PDS concurs with the report findings that the buffers from the off-site type F /Ns stream and off-site Category III wetland do not fall onto the subject property. This development proposal requires no additional critical area evaluation pursuant to SCC 30.62A. This development proposal is in conformance with Chapter 30.62A SCC.

(vii) International Fire Code (Chapter 30.53A SCC) The Fire Marshal's Office has reviewed the project for compliance with the Fire Code and found it to be in compliance with that code.

(viii) Utilities. Water and sanitary sewer will be supplied by the Alderwood Water and Wastewater District. Preliminary Certificates of Sewer and Water Availability were received dated October 22, 2012. (Exhibit G.6) Snohomish County Public Utility District has provided correspondence indicating that it can provide electrical service for the project although some utility poles may have to be relocated. (Exhibit G.5)

(ix) Urban Residential Design Standards (Chapter 30.23A SCC) This project is subject to the Urban Residential Design Standards (URDS), including the compatibility design standards (SCC 30.23A.030) because the property to the east is designated UMDR and is zoned R-9600.

PDS provided the following analysis of the project's compliance with the URDS which is hereby adopted by the Examiner:

Compatibility Design Standards:

- A minimum building setback of 25 feet is provided from the east property line (30.23A.030(3)(a));
- Buildings C, D, E, G, H, and J are duplex townhouses and will be separated by at least 20 feet (30.23A.030(3)(e));
- Buildings B, K, and L will incorporate architectural features to break up blank walls greater than 500 square feet (30.23A.030(3)(e));

Buildings C, D, E, G, H, J, M, and N are townhouses, and therefore are subject to SCC 30.23A.050. These proposed structures comply with this portion of the URDS by having an integrated pedestrian circulation system, surface parking at the side of the buildings, and by incorporating the architectural design elements required at SCC 30.23A.050(3):

- Roofline changes at intervals not greater than 40 feet (30.23A.050(3)(b)(i));
- Stepbacks on the façade at intervals of not more than 30 feet (30.23A.050(3)(b)(iv));
- Changes in the wall plane of the front façade of the building (30.23A.050(3)(b)(vi));

Buildings A, B, F, K, L, P, Q, and R are multifamily dwellings, and therefore are subject to SCC 30.23A.060. Elements of compliance include the following:

Site layout and pedestrian circulation (30.23A.060(1)):

- Integrated pedestrian circulation;
- Common spaces at all building main entries (Exhibit B.4);
- Visible pedestrian paths.

Location of parking (30.23A.060(2)):

- Parking located at side and rear;
- Parking in structures in Buildings C, D, E, G, H, J, M, and N;
- Not more than 15 parking spaces in a row.

Exterior lighting (30.23A.060(3)):

- Building entrances and walkways are illuminated (Exhibit B.1, Sheet 5.0);
- Lighting standards placed between pedestrian walkways and vehicle maneuvering areas.

Architectural design elements (30.23A.060(5)):

- Roofline changes at intervals not greater than 40 feet;
- Covered porches and other changes in the facades;
- Variations in building setback from the front lot line.
-

Building location and orientation (30.23A.070):

Subsection 30.23A.070 allows multifamily complexes with more than five buildings to be oriented to a cohesive system of common space, open space, and pedestrian pathway. The project's site plan includes such a system, including walkways connecting directly to the public sidewalks along SR-525 and the York Road.

On-site recreation space (30.23A.080):

The project is required to provide 100 square feet of recreation space per unit, for a total of 20,100 square feet. The open space provided totals 27,800 square feet, including a two story, 8,400 square foot recreation building.

(x) Landscaping Standards (Chapter 30.25 SCC) PDS evaluated the proposal for compliance with Chapter 30.25 SCC. A 15 foot wide Type B landscape buffer is provided along the property line to the east abutting the existing residentially zoned properties. Additional detail of the landscaping near the east property line is provide in Exhibit B.2, which shows how the retaining wall near the York Road access will be landscaped.

Ten foot wide Type B landscaping is provided along SR-525 and York Road. A ten foot wide Type A buffer is proposed along the north property line, to provide additional buffering from any future development on the neighboring lot.

(xi) Parking (Chapter 30.26 SCC) PDS evaluated the proposal for compliance with the parking requirements of Chapter 30.26 SCC. It found that the base requirement for parking stalls is 548 stalls, calculated using two stalls per dwelling unit and 4.5 stalls per 1,000 square feet of commercial building space. The Applicant requested a reduction in required parking to 477 stalls pursuant to SCC 30.26.040(3). The request is to provide 1.7 stalls per dwelling unit and a 50 percent reduction in the stalls provided for the commercial buildings. The standard for PDS approval of a reduction of parking stalls is found at SCC 30.26.040(3), and allows a reduction of up to 40 percent when an applicant demonstrates that effective alternatives to automobile use exist. Here, the Applicant proposed the following in support of the parking reduction request:

- Compatible mixed land uses on-site to reduce off-site trips;
- An on-site trip reduction coordinator for vanpooling / carpooling services;
- Reduced price transit passes for residents; and
- An on-site commuter center.

The Applicant also requested a 50 percent reduction in the number of parking stalls required for the proposed commercial buildings pursuant to SCC 30.26.050(1). The uses in the commercial buildings are proposed to be primarily daytime uses, while the multifamily use is a nighttime use. This assumption is based upon a study produced by the Urban Land Institute, titled Shared Parking, Second Edition (2009).

PDS has approved the requested parking reductions on the condition that the Applicant submit for approval by PDS and the Prosecuting Attorney, a proper legal instrument that will provide for the joint use of parking by the residential and commercial uses. This instrument must be submitted prior to the issuance of any building permits for the commercial buildings.

C. Neighborhood Business Site Plan Approval. (Ch. 30.31A SCC)

(i) Developments in the Neighborhood Business zone must meet the applicable minimum requirements of SCC 30.31A.020. The applicable provisions are set forth below:

(3) A tract of land proposed for NB zoning shall contain sufficient area to create a contiguous tract of NB zoned land at least three acres in size.

(4) A tract of land must be in single ownership or, for multiple parcels, under unified control. This requirement shall apply during preliminary and final plan stages to ensure continuity of plan development.

(5) Zoning request must be accompanied by a preliminary development plan prepared by a team of design professionals in compliance with the regulations and requirements of this chapter.

(6) Preliminary and final plans must comply with bulk regulations contained in SCC 30.23.030.

(7) All utility services and distribution lines shall be located underground, and in the case of the BP zone the property shall be served by public water and sewer services and paved streets, paved private roads, or paved common access areas.

The proposed development meets these requirements in the following manner:

- The area requested to be rezoned to NB is 8.75 acres.
- The Applicant currently has unified control of the property, and it will be in single ownership during construction.
- The preliminary development plan consisting of Exhibits B.1 and B.5 contains a list of the design professionals involved in the proposal.
- The preliminary plan complies with the regulations found in SCC 30.23.030, regarding setbacks, building height, and maximum lot coverage.
- All utility services and distribution lines are proposed to be underground.

(ii) Neighborhood Business development must also meet the following general performance standards set forth in SCC 30.31A.100:

(1) Processes and Equipment. Processes and equipment employed and goods processed or sold shall be limited to those which are not objectionable beyond the boundaries of the lot upon which the use is located by reason of offensive odors, dust, smoke, gas, or electronic interference;

(2) Development Phases. Where the proposal contains more than one phase, all development shall occur in a sequence consistent with the phasing plan which shall be presented as an element of the preliminary plan unless revisions are approved by the department;

(3) Building Design. Buildings shall be designed to be compatible with their surroundings, both within and adjacent to the zone;

(4) Restrictive Covenants. Restrictive covenants shall be provided which shall ensure the long-term maintenance and upkeep of landscaping, storm drainage facilities, other private property improvements, and open space areas and facilities. Further, the covenants shall reference the official or binding site plan(s) and indicate their availability at the department, and shall provide that Snohomish County is an additional beneficiary with standing to enforce, and shall preclude the avoidance of performance obligations through lease agreements;

(5) Off-street Parking. Permanent off-street parking shall be in accordance with terms of chapter 30.26 SCC, except that parking shall be in accordance with SCC 30.34A.050 when the property is designated Urban Village on the future land use map;

(6) Signing. Signs for business identification or advertising of products shall conform to the approved sign design scheme submitted with the final plan, and must comply with chapter 30.27 SCC;

(7) Noise. Noise levels generated within the development shall not exceed those established in chapter 10.01 SCC – noise control, or violate other law or regulation relating to noise. Noise of machines and operations shall be muffled so as to not become objectionable due to intermittence or beat frequency, or shrillness; and

(8) Landscaping. General landscaping and open space requirements shall be in accordance with chapter 30.25 SCC.

The proposed development complies (or will comply) with these standards in the following manner:

- There is no indication that any uses that will produce offensive odors, dust, smoke, gas, or electronic interference will be located on this property.
- The project is proposed in two phases, with construction of the commercial buildings being Phase Two. The plan presented shows the two phases.
- The proposed building designs are compatible with their surroundings, but, as PDS has noted, the surrounding area has a broad variety of building types and uses. The proposed structures comply with the county's Urban Residential Design Standards.
- Restrictive covenants to ensure the long-term maintenance and upkeep of landscaping, storm drainage facilities, other private property improvements, and open space areas and facilities have not yet been provided. Since this is a required element of a final NB site development plan, the site development plan that has been submitted must be considered a preliminary plan and will be treated as such for purposes of this decision. A condition will be imposed that an appropriate set of restrictive covenants be submitted before final site development plan is granted by PDS pursuant to SCC 30.31A.200(1)(b).
- The Applicant has requested and PDS has granted a reduction in the amount of parking required, as noted earlier in this decision.
- A sign design scheme has not yet been submitted. Therefore, a condition of approval will be included that a sign design scheme be submitted prior to approval of the final plan by PDS.
- There are no obvious noise sources proposed by this project.
- The proposed landscaping plan shows compliance with the landscaping requirements of SCC 30.25.

(iii) Chapter 30.31A SCC requires that Neighborhood Business development be undertaken pursuant to an approved site plan. SCC 30.31A.200 and SCC 30.31A.310 provide for either the submission of preliminary and final site plans or for direct approval of a final site plan when no preliminary site plan has been prepared. SCC 30.31A.200 allows for two alternative rezone and site plan approval mechanisms. The general rule is that a preliminary site plan will be considered for approval concurrently with the rezone application. SCC 30.31A.200(1). SCC 30.31A.200(2) provides an alternative procedure that would permit concurrent final plan and rezone applications. PDS requested that the current proposal be considered under this alternative. However, because the site plan submitted did not contain all the elements of a final plan – most notably a set of restrictive covenants required by SCC 30.31A.100(4) and a sign



design scheme required by SCC 30.31A.100(6), (but did include all elements of a preliminary plan under SCC 30.31A.210), the Examiner has considered the current proposal under SCC 30.31A.200(1) and will include conditions of approval of the preliminary site plan that will enable PDS to approve the final plan administratively under SCC 30.31A.200(1)(b).

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 the rezone and NB site plan applications pursuant to SCC 30.42A.020, 30.31A.200 and 30.72.020(2).
2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. See, *Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The County's regulations are consistent with the criteria expressed in case law.
3. Chapter 30.42A SCC covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) The proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009, and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3);
- (4) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

4. The proposal is consistent with the comprehensive plan.

In the context of the 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. Based upon the analysis set forth in the Findings of Fact, above, the Examiner concludes that the Applicant has met this burden of proof. The proposed rezone

is both consistent with the land use designation but also with the applicable Elements of the GPP.

5. The proposal bears a substantial relationship to the public health, safety, and welfare.

Based on the analysis set forth in the Findings of Fact, the Examiner concludes that the proposal bears a substantial relationship to the public health safety and welfare. The Examiner also concludes that the proposed residential development will not result in any increased mitigation or buffering requirements on the adjoining property to the north when it is developed under its existing BP zoning.

6. The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009, and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3).

Based on the Findings of Fact, the Examiner concludes that no significant trees were removed after January 7, 2009 or within six years of the submittal date.

7. Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

The Examiner concludes that, conditioned as set forth in this decision, the proposal meets the minimum criteria in Chapter 30.31A SCC.

8. The Examiner concludes that the rezone should be approved.

9. Neighborhood Business Preliminary Site Plan Approval.

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 proposal as submitted meets the requirements of Chapter 30.31A SCC for approval of a preliminary site plan.

10. 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 BP to NB and from R-9,600 to LDMR is **GRANTED**.
2. The approval of a **PRELIMINARY NEIGHBORHOOD BUSINESS SITE PLAN** is hereby **GRANTED** subject to the following **PRE-CONDITION** and **CONDITIONS**:

## PRE-CONDITION

A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.

## CONDITIONS

- A. The site plan dated January 28, 2013 (Exhibit B.5) shall be the approved preliminary Neighborhood Business Official Site Plan.
- 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. A Final Neighborhood Business Official Site Plan shall have been submitted to and approved by PDS. The Final Site Plan shall include approved restrictive covenants as required by SCC 30.31A.100(4) and a sign design scheme required by SCC 30.31A.100(6).
  - ii. Construction plans and a Full Stormwater Site Plan shall be submitted for review and approval.
  - iii. A Land Disturbing Activities (LDA) permit shall be obtained, including a Stormwater Pollution Prevention Plan (SWPPP).
- C. Prior to issuance of any building permits by the County:
- i. A park impact mitigation payment of \$491.05 per each new dwelling unit shall be paid, for impacts to Nakeeta Beach Park Service Area No. 307. Credit is to be given for the six existing dwellings.
  - ii. A school impact mitigation payment in an amount to be determined according to the Base Fee Schedule in effect at the time of building permit application shall be paid, for impacts to the Mukilteo School District No. 6. Credit is to be given for the six existing dwellings.
  - iii. The Applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amounts of:
    - (a) \$282,453.96 (\$1,405.24/living unit) (Transaction Code 5210) for the apartments;
    - (b) \$111,513.75 (\$14.06/sq. ft.) (Transaction Code 5210) for the Restaurant; and
    - (c) \$117,976.44 (\$5.50/sq. ft.) (Transaction Code 5210) for the Shopping Center

Payment shall be made in accordance with the provisions of SCC 30.66B.340. This payment may be made proportionately with each building permit. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code.
  - iv. The Applicant shall make a payment to Snohomish County for mitigation of traffic impacts to State highways for project number 11 (Transaction Code 5401) in the amounts of:

- (a) \$3,977.09 (\$19.79/living unit) (Transaction Code 5210) for the apartments;
- (b) \$1,846.45 (\$0.23/sq. ft.) (Transaction Code 5210) for the Restaurant; and
- (c) \$1,953.88 (\$0.09/sq. ft.) (Transaction Code 5210) for the Shopping Center

This payment may be made proportionately with each building permit.

- v. The following amounts shall be paid to the City of Mukilteo for traffic impacts to projects within the City. These payments may be made proportionately with each building permit. Proof of Payment shall be provided to the County.

- (a) \$54,628.47 (\$271.78/living unit) for the apartments;
- (b) \$25,367.94 (\$3.20/sq. ft.) for the Restaurant; and
- (c) \$26,838.12 (\$1.25/sq. ft.) for the Shopping Center

- vi. The Applicant shall have deeded two-feet to the County as right-of-way along the property frontage on Russell Way and York Road for a total of 32-feet from the centerline of the right-of-way.

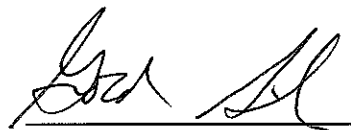
D. Prior to issuance of any building permits for the proposed commercial buildings, a joint parking agreement in accordance with SCC 30.26.055(3) shall be submitted to and approved by PDS.

E. Prior to any Certificate of Occupancy or Final Inspection:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on York Road and Russell Way to the satisfaction of the County.
- ii. An "Access Connection Permit" shall be obtained and processed to the satisfaction of the WSDOT.
- iii. The features on the approved TDM plan shall be constructed / installed.
- iv. The landscape plan (Exhibit B.1) shall be implemented.

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.

Decision issued this 9<sup>th</sup> day of May, 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, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before MAY 20, 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 has been discovered; or
- (f) The Applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record **within 14 days from the date of this decision**. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the Hearing Examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before MAY 23, 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.

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Staff Distribution:

Department of Planning and Development Services: Tom Barnett

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.

**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than MAY 9, 2014.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

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**ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

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

Certified by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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PARTY OF RECORDS REGISTER  
12-108409-LU SPEEDWAY MIXED  
USE  
HEARING: 4/24, 2013  
TIME: 9:00 AM

DEVCO, INC  
TOM NEUBAUER  
375 118TH STREET SE SUITE 118  
BELLIEVUE WA 98005

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

MUKILTEO SCHOOL DISTRICT  
JOSETTE BAINES  
NO ADDRESS GIVEN

CONNOLLY HOLDINGS  
CHRIS CONNOLLY  
NO ADDRESS GIVEN

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

WA ST DEPT OF TRANSPORTATION  
ERIK HANSEN & ERIK WALGAMOTT  
NO ADDRESS GIVEN

CPH CONSULTANTS  
MATTHEW HOUGH  
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CITY OF MUKILTEO  
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11930 CYRUS WAY  
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JOHN KOOY  
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ARLINGTON WA 98223-8769

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210  
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EVERETT WA 98204

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SNO CO PUD NO 1  
D SAKSENA & E TOBIN  
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EVERETT WA 98206-1107

ALDERWOOD WATER &  
WASTEWATER DISTRICT  
DAN SCHEIL  
3626 156TH ST SW  
LYNNWOOD WA 98087-5021

SNOHOMISH HEALTH DISTRICT  
BRUCE STRAHN  
3020 RUCKER AVE SUITE 104  
EVERETT WA 98201-3900

GENE & DONNA STROMO  
12613 29TH PL W  
EVERETT WA 98204

TALASAEA CONSULTANTS  
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WOODINVILLE WA 98077

SNO CO FIRE DISTRICT #1  
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EVERETT WA 98208