

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
) **FILE NO. 04 119240 SD**
BPH ASSETS CORPORATION)
)
Preliminary plat approval for a 65-lot planned)
residential development of 16.8 acres as a reduced)
drainage discharge demonstration project)

DATE OF DECISION: September 27, 2006

PLAT/PROJECT NAME: *Orchid Lane*

DECISION (SUMMARY): The application for a PRD subdivision with public and private internal roads as a Reduced Drainage Discharge Demonstration Project is **CONDITIONALLY APPROVED** to include a precondition.

BASIC INFORMATION

GENERAL LOCATION: This project is located just north of the intersection of Timberbrook Drive and 146th Street NE, Marysville, Washington.

ACREAGE: 16.8 acres

NUMBER OF LOTS: 65

AVERAGE LOT SIZE: 4,350

MINIMUM LOT SIZE: 3,950

DENSITY: 3.9 du/ac (gross)
9.82 du/ac (net)

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6-du/ac)
Subarea Plan: Marysville
Subarea Plan Designation: Suburban (1-4 du/ac)

UTILITIES:

Water/Sewer: City of Marysville

SCHOOL DISTRICT: Marysville

FIRE DISTRICT: No. 12

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions

Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on December 8, 2004 (Exhibit 1) which was superseded by Exhibit 16 submitted on October 28, 2005.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 25, 26 and 27)

A SEPA determination was made on July 10, 2006. (Exhibit 24) No appeal was filed.

The Examiner held an open record hearing on September 12, 2006, the 65th day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on September 12, 2006 at 10:05 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, John Lakhani, BPH Assets Corporation, was represented by Merle Ash of Land Technologies. Snohomish County was represented by Monica McLaughlin and Randy Sleight of the Department of Planning and Development Services and by Mark Brown of the Department of Public Works.
3. No member of the general public attended the hearing. Vicinity resident Rick Williams, by letter received July 17, 2005 (Exhibit 31), urges an additional vehicular access to and from 152nd Street NE to ease congestion in existing neighborhoods along Timberbrook Drive. He reports that responding fire apparatus earlier this year blocked Timberbrook Drive for nearly an hour for dozens of families. Vicinity residents John and Kathy Runge by letter of November 21, 2005 (Exhibit 32) echo those concerns and recommendations.

4. Fire District 12 by letter of November 4, 2005 (Exhibit 35), opposes some of the proposed deviations to road widths based on asserted limitations to emergency apparatus access.
5. The Arlington Municipal Airport by letter of December 22, 2004 (Exhibit 33) points out that the proposed residential subdivision is directly in line with the aircraft approach to the main runway and within the “Outer Safety Zone” of the “Airport Influence Area” outlined in the Arlington Airport Master Plan approved by the Arlington City Council.
6. The Olympic Pipeline Company by letters of May 2, 2005 and April 5, 2006 (Exhibit 43) requests specific actions to protect its 16-inch and 20-inch high-pressure pipelines, with emphasis on protection for the pipelines where a plat road or utilities cross the pipelines.

The hearing concluded at 11:00 a.m.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The applicant, BPH Assets Corporation, filed an application for a 65-lot Planned Residential Development (PRD) subdivision on nearly 17 acres located immediately north of the intersection of Timberbrook Drive and 146th Street NE, Marysville.
2. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
3. The PDS staff report has analyzed the nature of the application, the issues of concern, the application’s consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
4. The basic issue is whether the application meets the criteria for: (1) preliminary subdivision approval at SCC 30.41A.100 et seq. and RCW 58.17.100 and .195; (2) subdivision modification procedure at SCC 30.41A.215(4); (3) planned residential development approval at SCC 30.42B; and (4) the Reduced Drainage Discharge Demonstration Program at SCC 30.34B.
5. Conventional stormwater drainage systems collect runoff and pipe it to a detention facility. Merle Ash, the applicant’s representative, testified that the water table is so high at the subject site that eight feet of fill would be needed in order to construct a standard plat with conventional drainage detention. Mr. Ash testified that the cost of that much fill would be “unbearable”. As an option, the applicant sought approval of the PRD as the fifth and final project in the County’s *Reduced Drainage Discharge Demonstration Program* (hereinafter, the “Program”). The County Council had established the Program by Ordinance No. 02-064 effective February 1, 2003, (SCC 30.34B) in order to encourage:

“...innovative design and development techniques which will significantly reduce drainage discharge from a site after development.” (SCC 30.34B.010(1))

6. Stated conversely, it is not the purpose of the Program to merely provide a less costly drainage solution for a site that presents drainage compliance challenges. However, there does have to be a “win-win” or few, if any, project applications would ever be submitted to the Project Selection Committee. That Committee consists in up to ten persons representing at least the Department of Planning and Development Services, the Department of Public Works, the County Planning Commission, an environmental organization, a university or college and the construction or development industry. (SCC 30.34B.020) That Committee recommended this subdivision (with its roadways as proposed) to be the fifth and final project in the Demonstration Program. The purpose of the deviations requested by the applicant is to reduce impervious surfaces to the extent that storm drainage leaving the subdivision will be zero. That purpose is consistent with the above-quoted SCC 30.34B.010(1). However, Chapter 30.34 allows the EDDS flexibility but only “...while maintaining necessary safety features. (SCC 30.34B.010(1)(d)).
7. The Snohomish County Department of Public Works (DPW) has approved all roads but one (Timberbrook Drive) in the proposed subdivision for deviations from the EDDS for modified road section width. (Exhibit 46) In summary, as to Timberbrook Drive the DPW does not fully accept the recommendation of the Project Selection Committee.
8. The evidence of record demonstrates the DPW’s concern is about granting a proposed 26-foot curb-to-curb dimension for Timberbrook Drive. DPW reports that Timberbrook Drive is expected to carry more than 1,000 average weekday trips in the future, upon connecting to adjoining plats to the north and to the south. In the plat abutting on the south, existing pavement width is 36 feet: ten feet wider than the 26 feet proposed for Timberbrook Drive herein. That connection at the south would be made immediately upon construction of the proposed plat but, at the north (at 152nd Street NE) the connection will have to await private development of parcels now separating the proposed plat from 152nd Street NE. In anticipation of those future connections to the north and south, DPW asserts that Timberbrook Drive must be built to EDDS public road standards of 36 feet of curb-to-curb traveled way plus five-foot planters plus five-foot sidewalks: requiring 59 feet of right-of-way.
9. In contrast, the applicant asserts that Timberbrook Drive is treated on the plat map as a main, through, public collector street with no driveways having access to or from it, and with standard traveled width but without the standard eight-foot parking lane. That parking is provided, instead, by 30 perpendicular guest parking stalls adjacent to the three internal loop roads roads. The stalls are to be surfaced by grass or pervious pavers. The applicant asserts that removal of the eight-foot parking lane eliminates nearly 30% (28.6%) of the polluted runoff generated by a standard road. If the eight feet of parking lane were to be required, the zero-discharge goal of the demonstration project could not be met: i.e., there would be stormwater runoff from the subdivision.
10. The applicant argues that the proposal provides 225 parking spaces instead of the 163 spaces required by the Code to serve 65 dwellings. That excess of parking spaces relates to the concern of Fire District 12 (Exhibit 35) that in real life “...a small percentage of garages in smaller homes will allow the parking of even one car.” In brief, if parking occurs along the proposed Timberbrook Drive despite a “no parking” area, the passage would likely be too narrow for emergency apparatus.

11. The applicant summarizes that the traveled lanes of proposed Timberbrook Drive are of standard width and the proposed road section meets the criteria for emergency vehicle access while, simultaneously, the replacement of the paved parking lanes by the pervious surfaces of the perpendicular parking stalls significantly reduces drainage discharge in furtherance of the Reduced Drainage Discharge Demonstration Program.

12. The Timberbrook Drive issue is enunciated concisely in the testimony of Mark A. Brown, Engineer III, Snohomish County Department of Public Works, Land Use. He states:

“The public east-west road centerline radius is agreed upon. The easterly north-south public road [Timberbrook Drive] may change. It may get bigger. It may not. It might stay. But since this is a neat and approximate drawing, any changes to that will come as a deviation to the design standards and those are under the authority of the County Engineer. That will be dealt with between the County Engineer and the applicant through Public Works staff review: the deviation process.”

13. The Snohomish County Department of Planning & Development Services and the applicant urge the Hearing Examiner to decide whether Timberbrook Drive should be a public road or a private road through this PRD subdivision. Reasoning on that issue begins by noting that public roads are favored in subdivisions pursuant to SCC 30.41A.210(3):

“All subdivisions roads shall be dedicated public roads designed and constructed in conformance with the EDDS, except that

“(b) Private roads may be permitted as part of a planned residential development approved pursuant to chapter 30.42B SCC;...”

14. The next step is to apply the PRD provisions of SCC 30.42B.140(3):

“Access to all dwelling units within a PRD shall be by public road, except that access may be by private road when approved by the county engineer upon a finding that the following criteria are met:

“(a) The PRD consists of no more than 40 dwelling units;...”

15. The quoted language is clear on its face. Thus, under the rules of statutory construction, the language is not to be interpreted or construed but must be applied. The proposed PRD is for 65 dwellings, which exceeds the maximum of 40 below which the County Engineer is given discretion to approve a private road. Conversely stated, the County Engineer has no discretion to allow a private road in a PRD of more than 40 dwellings. The argument that this PRD consists in three internal looped road systems each serving fewer than 40 dwellings is not determinative. If the County Council had intended to exempt internal roadway loops, the County Council would have so provided.

16. In fact, the County Council does so provide, at SCC 30.34B: **REDUCED DRAINAGE DISCHARGE DEMONSTRATION PROGRAM**. Therein is codified the language establishing the legislative choice of policy and process by which standards, including road standards, are made more flexible in order to stimulate and support the innovation in design by which low impact drainage approaches can be field-tested. It is provided at 30.34B.060(3):

“Deviations from the requirements of the county code and the EDDS authorized pursuant to SCC 30.34B.070 and 30.34B.080 may be ... approved by ... the hearing examiner for permits under the jurisdiction of that office.”

17. The quoted excerpt establishes that the Hearing Examiner has the jurisdictional authority to decide whether Timberbrook Drive shall be a public road or a private road. The Hearing Examiner should exercise that authority only after having the recommendation of the Public Works Director. (See 30.34B.080) As shown by the quote of Mark Brown’s testimony at Finding No. 12 above, that recommendation is not in this record but is delayed until the deviation process, which could be several months deferred. The applicant will find it impossible to move forward with the PRD until the width of Timberbrook Drive is known. In fact, that width is determinative of whether the proposal meets the runoff containment requirements of the demonstration project. All parties should expedite finalizing the engineering detail of that road, noting that any alterations of proposed designs that would result in runoff would constitute a substantial alteration of the character of the Reduced Drainage Discharge Demonstration Program aspect of the subject PRD.
18. It is noteworthy that the internal looped roadways proposed are a design that allows responding emergency vehicles to approach any home in the PUD from two directions. Still, it will be imperative that “No Parking” be enforced along the PRD roadways. The homeowners’ association will logically stay focused on that issue of mutual safety. But for those concerns, the Examiner finds no evidence of record providing specific facts showing that the proposal is dangerous or otherwise contrary to the public health, safety and welfare.
19. The DPW review of the request covered Title 13 SCC and Chapter 30.66B SCC as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
20. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,040.00 for each new single-family home.
21. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. Students in the PRD will attend Shoultes Elementary, Marysville Middle School, Marysville Junior High and Marysville Pilchuck High School. Students in the secondary schools will be bussed but those in Shoultes Elementary School will require a safe walking route. That route is provided via the five-foot pathways encircling the PRD along the rear lot lines of each lot.
22. The middle fork of Quilceda Creek (Type 3 stream) borders the eastern property line and Edgecomb Creek (Type 3 stream) and an associated Category 3 wetland are located in the western quarter of the site. Both streams are known Chinook salmon and presumed bull trout habitat. The applicant is using Option B of PDS’ Salmonid Rule to reduce the stream buffers from 150 feet to 75 feet in return for enhancing the stream buffers by planting native tress and shrubs within them.
23. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC.

24. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
25. Public water and sewer service will be available for this development as well as electrical power.
26. The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation “covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-9,600, which is the case here.
27. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
28. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions. The Examiner concurs with the proposed conditions and finds that Timberbrook Drive should be built as a public road but that any other roads designated to be private roads during the preceding review should remain so designated.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and(4) the applicable design and development standards.
4. Specifically, the proposed subdivision makes appropriate provisions for the public health, safety and welfare, open space, drainage, streets and roads, potable water supply, sanitary waste, parks and recreation and safe walking conditions for school pedestrians. As to fire safety, the internal plat roads meet Code requirements as to width despite the lack of parking lanes and the loop road design enhances access by responding emergency units. The requests of the airport will remain matters of record for inspection by subsequent parties in interest but are not imposed as conditions herein.
5. The request should be approved subject to compliance by the applicant with the following precondition and conditions:

PRECONDITION

As required by SCC 30.34B.060(5), the applicant shall have recorded with the County Auditor a concomitant agreement after it has been executed by the landowner(s), approved as to form by the Prosecuting Attorney, and executed by the County.

CONDITIONS

- A. The Preliminary Plat (Exhibit 23B & C) received by PDS on July 28, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The PRD Site Plan received by PDS on August 14, 2006 (Exhibit 23 A-C), Conceptual Building Elevations received by PDS on October 28, 2005 (Exhibit 18) and Detailed Landscape and Recreation approved per condition B. ii., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.

- B. 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 recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 23D-E and with all required landscape standards for perimeter, streetscape and open space treatment.

 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

 - iii. A final mitigation plan based on the conceptual HMP and buffer reduction plan for Orchid Lane, prepared by Wetland Resources, Inc. dated October 25, 2005 (Exhibit 23 F-G) shall be submitted for review and approval during the construction review phase of this project.

 - iv. Any construction activities within the within the 50 foot wide Olympic Pipeline Easement located on the subject property must be in compliance with the conditions outlined in correspondence received from the Olympic Pipeline Company (Exhibit 43).

 - v. PDS shall establish the required road/right-of-way width of Timberbrook Drive with deliberate speed.

 - vi. An EDDS deviation shall be approved to use 120-foot centerline road radiuses.

- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
\$1,961.85 per lot for mitigation of impacts on county roads paid to the County,
\$75.75 per lot for TDM to be paid to the County.

\$344.52 per lot for impacts on the state highways paid to the County,

\$733.87 per lot for mitigation of impacts on Arlington streets paid to the City. Proof of payment shall be provided.

\$631.26 per lot for mitigation of impacts on city streets for the City of Marysville paid to the City. Proof of payment shall be provided.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- ii. “Your real property is within, adjacent to, or within 1,300 feet of designated farmland; therefore, you may be subject to inconveniences or discomforts arising from agricultural activities, including but not limited to noise, odors, fumes, dust, smoke, the operation of machinery of any kind (including aircraft), the storage and disposal of manure, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural activities.

“Snohomish County has adopted Agricultural Lands Regulations (chapter 30.32B SCC) which may affect you and your land. You may obtain a copy of Chapter 30.32B SCC from Snohomish County.

“A provision of chapter 30.32B SCC provides that “agricultural activities conducted on designated farmlands in compliance with acceptable agriculture practices and established prior to surrounding non-agricultural activities are presumed to be reasonable and shall not be found to constitute a nuisance unless the activities have a substantial adverse effect on the public health and safety.”

This disclosure applies to the real property which is subject to a development or building permit as of the date of the development or building permit approval or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable thereafter if areas designated farmland are changed from the farmland designation.

“Nothing in chapter 30.32B SCC shall affect or impair any right to sue for damages.”

- iii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-119240 SD.
- iv. All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include any open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, benches, and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.

- v. The dwelling units within this development are subject to park impact fees in the amount of \$1,040.00 per newly approved dwelling unit, as mitigation for impacts to the Marysville park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by December 8, 2009 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
- vi. The lots within this subdivision will be subject to school impact mitigation fees for the Marysville School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing lot. Lot 1 shall receive credit.
- vii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

D. Prior to recording of the final plat:

- i. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS.
- ii. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.
- iii. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125(5)(b).
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

v. The Final Critical Areas Mitigation Plan shall have been completely implemented.

E. Prior to occupancy of any unit in the PRD:

The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

Preliminary plats which are approved by the county are valid for five (5) years from their effective date and must be recorded within that time period unless an extension has been properly requested and granted pursuant to Section 30.41A.300.

6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a 65-lot Planned Residential Development Subdivision on 16.8 acres **CONDITIONALLY APPROVED**, subject to compliance by the applicant, with the precondition and conditions set forth in Conclusion No. 5, above.

Decision issued this 27th day of September, 2006.

Ed Good, Deputy 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. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **OCTOBER 9, 2006**. 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. 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 #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **OCTOBER 11, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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: Monica McLaughlin
Department of Public Works: Mark Brown

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.
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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 SEPTEMBER 27, 2007.

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.

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)
