

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: May 15, 2009

PLAT/PROJECT NAME: **ARBOR MIST**

APPLICANT/
LANDOWNER: Craig and Sue Pierce

FILE NO.: 07 102236 SP

TYPE OF REQUEST: **Official Site Plan** for seven-lot Planned Residential Development (PRD); **Rezone** from Residential-9600(R-9600) to Residential-7200 (R-7200); Building Setback **Variances**

DECISION (SUMMARY): **APPROVED WITH CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: 5617 and 5621 143rd Street SW, Edmonds (in Section 33, Township 28 North, Range 4 East, W.M., Snohomish County, Washington).

Acreage: .99 acres	Avg. Lot Area: 3,999 square feet	Gross Density: 7.07 du/ac
Lots: 7	Smallest Lot Area: 3,019 square feet	Net Density: 8.13 du/ac

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (ULDR) (6-12 du/acre)

UTILITIES:

Water:	Alderwood Sewer and Water District
Sewage:	Alderwood Sewer and Water District

SCHOOL DISTRICT: Mukilteo

FIRE DISTRICT: Fire District No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve
Public Works: Approve

INTRODUCTION

The applicant filed the master application on May 1, 2007, which was determined complete on June 26, 2007. (Exhibit A1; H)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by SCC 30.72.030(4). (Exhibits F1 (mailing), F2 (publication) and F3 (posting))

A SEPA determination was made on February 11, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on April 22, 2009. Witnesses were sworn, exhibits were entered and testimony was given.

PUBLIC HEARING

The public hearing commenced on April 21, 2009 at 9:00 a.m.

1. Monica McLaughlin, Senior Planner, appeared on behalf of PDS and gave an overview of the proposal and answered questions from the Examiner.
2. Ry McDuffy appeared on behalf of the applicant.
3. No other witnesses appeared.

NOTE: To obtain a complete record of the proceedings, an electronic recording of this hearing is available through the Office of the Hearing Examiner.

FINDINGS OF FACT

1. All exhibits and witnesses included on the Master Exhibit and Witness List were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. State Environmental Policy Act Compliance. A Determination of Nonsignificance (DNS) was issued February 12, 2009. (Exhibit E2) The DNS was not appealed.

3. Project Request/Description of Proposal: The applicant requests a rezone of a .99 acre site, from Residential-9600 (R-9600) to Residential-7200 (R-7200) and approval of a Planned Residential Development (PRD) Official Site Plan for a seven-lot single family development. Building setback variances for two existing homes on the site are also requested. A concurrent application for a seven-lot short plat is being processed administratively by PDS and is not considered by or under the jurisdiction of the Hearing Examiner.

Two existing single-family residences will be retained on two of the lots and the remainder developed with new single-family homes. Access to the new homes will be provided by a private road/auto court intersecting with 143rd Street SW, which will run between the two existing homes. Because of the proximity of this road to the existing homes, PDS required approval of two building setback variances. (See Finding 19 and Conclusion 3) Also associated with the proposal is construction of a stormwater management system incorporating an underground detention vault along with storm filter and right-of-way improvements consisting of curb, gutter, planter strip and sidewalk along the development's 143rd Street SW road frontage. A stand of mature trees will be retained within an open space tract at the north side of the property. Water and sewer service is to be provided by the Alderwood Water and Wastewater District.

4. Site description: The subject property, a rectangular-shaped assemblage of 2 lots in an existing short plat, is .99 acres in size. The site lies on the north side of 143rd Street SW, approximately 500 feet west of its intersection with 55th Avenue W. Two existing homes and associated outbuildings occupy the site. A stand of mature trees occupies the northern side of the property. There are no critical areas on the site. The topography of the site can be generally described as sloping gently down towards the south/southeast.

5. Adjacent uses:

Location	Existing Use	Zoning
Subject property	2 single family homes (to remain)	R-9,600
North of subject parcel	Single Family Residential	R-9,600
South of subject parcel	Single Family Residential	R-9,600
East of subject parcel	Single Family Residential	R-9,600
West of subject parcel	Single Family Residential	LDMR

6. Parks Mitigation. The proposal is within the Nakeeta Beach Park Service Area and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county codes and policies. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with the requirements of Chapter SCC 30.66A SCC.

7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

The Traffic Review Section of PDS, in concert with the Department of Public Works (DPW), has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of the Snohomish County Code and is recommending approval. A summary of their comments is provided below.

A. Road System Capacity [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 development will generate 47.85 new average daily trips (ADT) and has a road system impact fee of \$12,775.95 (\$2,555.19/unit) based on \$267/ADT, the current fee rate for residential developments inside the Urban Growth Area (UGA), for TSA D. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Single Family Residential

ITE Land Use Code: 210

Applicable Measurement Unit (ITE Independent Variable): 9.57 ADT/lot.

Number of applicable measurement units for this development: 5 new lots

Trips	Calculations	
ADT	$(7 \text{ New SFR} - 2 \text{ Exist.}) \times (9.57 \text{ ADT/SFR}) =$	47.85
AM PHT	$(7 \text{ New SFR} - 2 \text{ Exist.}) \times (0.75 \text{ AM PHT/SFR}) =$	3.75
PM PHT	$(7 \text{ New SFR} - 2 \text{ Exist.}) \times (1.01 \text{ PM PHT/SFR}) =$	5.05

B. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with LOS A representing the best operating condition, and LOS F the worst.

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears.

The development has been deemed concurrent on the following basis:

Small or Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160. The subject development is located in TSA D, which, as of the date of submittal, had the following arterial units in arrears; Seattle Hill Road from 132nd St. SE to 35th Ave SE and 35th Ave from Seattle Hill Road to 132nd Street SE. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 3.75 a.m. peak-hour trips and 5.05 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

C. Inadequate Road Condition (IRC) [SCC 30.66B.210]

Regardless of the existing LOS, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject proposal will not impact any IRC locations identified at this time within TSA D with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to IRCs and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B.

D. Frontage Improvements [SCC 30.66B.410]

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable. As per DPW Rule 4222.020(1), full urban frontage improvements are required along the subject parcel's frontage on 143rd Street SW and consist of:

- Asphalt concrete pavement consisting of 18 feet width from roadway centerline to the face of curb.
- Cement concrete curb and gutter
- Planter strip with a width of 5 feet
- Cement concrete sidewalk with a width of 5 feet

The road, 143rd Street SW, on which the development's frontage improvements are required, is 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 recording of the administrative short plat unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement

E. Access and Circulation [SCC 30.66B.420]

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

Access into the plat is proposed by an "auto court", an access alternative to public road provided by the PRD code.

On August 30, 2007 the County Engineer approved a deviation to the design standards to allow for a permanent hammer head turn around at the end of the "auto court" access into the development (Exhibit G1).

F. Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving this development, 143rd Street SW, is designated as a collector non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, no additional right-of-way is required.

G. State Highway Impacts [SCC 30.66B.710]

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV(4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at \$36.00 per new ADT.

A voluntary offer, acceptable to the State, signed by the applicant indicating their chosen method of fulfilling their mitigation requirement under the ILA has been sent to the Washington State Department of Transportation. A signed agreement between the WSDOT and the applicant has been received indicating that a proportionate share payment to the following projects is acceptable.

The traffic study submitted with the application indicates that this development will not impact any WSDOT project with 3 PM peak-hour trips. The WSDOT email of May 16, 2007 (Exhibit H1) agrees that no traffic impact mitigation will be required.

H. Other Streets and Roads [SCC 30.66B.720]

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions.

There are no city jurisdictions that have an ILA with the County that will be impacted by new trips from the subject development.

I. Transportation Demand Management (TDM) [SCC 30.66B.630]

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. SCC 30.66B.610(1). SCC 30.66B.630(1) succinctly states the basic requirements:

All new developments in the urban growth area are required to provide sufficient TDM measures 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. SCC 30.66B.630. This requirement may be met by:

- (a) Earning trip reduction credits for construction of onsite features pursuant to SCC 30.66B.640;
- (b) Construction of offsite TDM measures pursuant to SCC 30.66B.620; or
- (c) A voluntary payment into an account established for the purpose of contributing to the construction or purchase of specific TDM measures pursuant to SCC 30.66B.625.

A TDM offer to pay \$378.75 was received with the initial application. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement.

8. Pedestrian Facilities [RCW 58.17.110]

Comments were received from the Mukilteo School District dated May 7, 2007 stating that the students will attend the following schools and will:

School Type	Elementary	Middle School	High School
School Name	Picnic Point	Harbor Pointe	Kamiak High
Walk to School	Yes	No	No
Walk to School Bus	No	Yes	Yes
Will busses pick up children within/adjacent to this project	No	No	No
Bus Stop Locations	Walk to School	Picnic Point Road at 55 th Ave W	Picnic Point Road at 55 th Ave W

(Exhibits H8 and H9) The applicant has provided documentation regarding the safe walking conditions for the school children from this development which will require deviations to the design standards for the walkway improvements needed if full standard walkways cannot be provided. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement.

9. Mitigation for Impacts to Schools [Chapter 30.66C SCC]

The proposal is subject to Chapter 30.66C SCC which requires payment of mitigation fees or comparable mitigation for each new dwelling unit to the appropriate school district. Pursuant to SCC 30.66C.100, school impact mitigation fees will be determined, according to the Base Fee Schedule in effect for the Mukilteo School District, at the time of building permit application and collected at the time of building permit issuance for the proposed new units. Credit shall be given for two existing lots. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement.

10. Drainage and grading

Drainage. PDS has found the targeted drainage plan (Exhibit B4) and supplementary drainage report (Exhibit C2) submitted with the land use application to be in conformance with the regulatory provisions of Chapter 30.63A SCC. Rainwater runoff from the site will be collected and transported via catch basins and pipes to an underground detention vault to be constructed at the west central side of the site, partially underneath the proposed auto court. Water quality treatment will be provided via a storm filter. Stormwater will be released at a controlled rate into the existing drainage system along the north side of 143rd Street SE. Flow in this system travels westward, eventually outfalling into Norma Creek. Prior to site development, a full drainage plan must be approved pursuant to Chapter 30.63A SCC.

Grading Grading quantities are anticipated to be approximately 5,000 cubic yards excavation and 5,000 cubic yards fill cubic yards of fill.

11. Critical Areas Regulations (Chapter 30.62 SCC)

A site investigation found no wetlands or other critical areas as defined by Snohomish County Critical Areas Regulations (SCC 30.62) on or within 300 feet of the subject property.

12. Consistency with the GMA Comprehensive Plan

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Plan; and the Comprehensive Park & Recreation Plan. The GPP has been revised since its initial adoption by a number of amendments. On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to UGAs and adopted area-wide rezones within the UGAs of the county respectively. This application was complete after the effective date of the Amended Ordinances. Therefore, the subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on February 1, 2006, and as revised through the completeness date of the application.

The subject property is designated as ULDR on the Future Land Use map and is located within an UGA. The ULDR designation allows mostly detached housing developments on larger lot sizes. Allowed implementing zones are R-7,200, PRD-7,200, R-8,400, PRD-8,400, R-9,600, PRD-9,600 and

WFB. The applicant is proposing a rezone of the site from R-9,600 to R-7,200, a listed implementing zone.

13. Planned Residential Development Code (Chapter 30.42B SCC)

The applicant has proposed a PRD as well as a subdivision. The requirements for a PRD are set out below:

- A. SCC 30.42B.040(2) - Unit yield and bonus. The application complies with the requirements for maximum number of dwelling units as follows:

Net Development 30.42B.040 (2)(a)

Gross Site Area	= 42,949 square feet (.99 acres)
Minus critical areas and buffers	= 0 square feet (.20 acres)
Minus lakes and ponds	= 0 square feet
Net Development Area	= 42,949 square feet (.99 acres)

30.42B.040 (2)(b)

Net Development Area (42,949 square feet) divided by 7,200 (underlying zone) = 5.96 units

30.42B.040(2)(c)

Divide critical areas and buffer (0 square feet) by 7,200 (underlying zone) = 0 units

30.42.040(2)(d)

Add the numerical unit results of (2)(b), 5.96 and (2)(c), 0 = 5.96 and multiply by 1.2 = 7.158 Unit Yield (7 units allowed)

[SCC 30.42B.040(4) allows the maximum number of dwelling units to be rounded to the nearest whole number.]

Per SCC 30.42B.040(3), the maximum number of dwelling units in the residential zones shall be reduced so that maximum net density does not exceed 9 du/net acre. The maximum net density as calculated per SCC 30.42B.040(3) is 7.07 du/ac and does not exceed 9 du/ac.

- B. SCC 30.42B.100 - Design criteria - General. The application complies with all of the general design criteria. All requirements of the underlying zone have been applied to this project. This PRD is accompanied by an application for a preliminary short subdivision and the applicant has appropriately proposed the construction of single-family detached residential units in the 7,200 zone.

- C. SCC 30.42B.115 - Design criteria – Open Space.

- (1) Total Open Space: A minimum of 20% of the gross site area is required to be dedicated for open space. For this project, 8,590 square feet (.2 acres) of open space, is required. The total open space provided is 9,308 square feet (.21 acres).

Total open space will be permanently established in clearly designated separate tracts. The tracts in this development will be owned by all lot owners per SCC 30.42B.115(1)(e)(iii). Required covenants, conditions and restrictions will be recorded to provide for maintenance of the total open space in a

manner which will assure its continued use as approved. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement.

- (2) Usable Open Space: Total open space must contain usable open space to be developed for active and/or passive recreation purposes, in the amount of 600 square feet per dwelling unit. The minimum requirement in this case is 7 units x 600 = 4,200 square feet. The developer has provided 9,308 square feet of the total open space as usable within Tract 998.

"40% (10,320 square feet) of the required usable open space shall be located in a single open space tract or permanent easement." Tract 998 contains 9,308 sq. ft. of usable open space.

As required by SCC 30.42B.115(2)(d), no areas of usable open space can be less than 20 feet wide (except for segments containing trails, which can be no less than 10 feet wide). Usable open space shall be accessed by all-weather pedestrian pathways and/or sidewalks from all lots and dwellings within the PRD [SCC 30.42B.115(2)(e)]. The proposal meets this criterion.

- (3) Active Recreation Use: 30% of the provided usable open space is to be developed for active recreation uses if the PRD has 10 or more lots. Since only 7 lots are proposed in this development, this code section does not apply.

D. SCC 30.42B.125 - Design Criteria - Landscaping.

...

- (2) Drainage Detention Facilities: No man-made surface detention facilities are proposed. Therefore, the landscaping standards of this subsection are not applicable to this application.

- (3) Site Perimeter Landscaping: Site perimeter landscaping shall be established as a tract or easement along any property boundary of a PRD, except for any portion developed as usable open space pursuant to SCC 30.42B.115 or as permanently protected as Native Growth Protection Area (NGPA), where adjacent property is currently zoned or designated for single-family residential use. Perimeter landscaping shall consist of a vegetative screen located along the perimeter of the PRD site with a minimum planting bed width of no less than 15 feet when adjacent property is not developed as a PRD. There are certain circumstances outlined in the code when the 15 foot wide buffer can be waived:

(3)(a) – Exceptions: The following exceptions are applicable to this project::

...

- (ii) Where the perimeter of the PRD abuts a utility easement greater than 15 feet in width, no perimeter landscaping will be required:

...

- (vii.) Where the proposed perimeter lots have a minimum area of 6,000 square feet or are at least 100 feet in depth, no site perimeter landscaping will be required.

A useable open space tract abuts Lots 3-5 and a utility easement is adjacent to the east property lines of proposed Lots 6 and 7. Lot 1 is over 6,000 square feet. Therefore, the only location where a perimeter buffer is required is along the west side of Lot 2. Under SCC 30.42B.125(3)(a)(xi), PDS has elected to waive the landscaping requirement and allow the applicant to substitute a 10 foot wide buffer in combination with a 6 foot high fence at this location (which is adjacent to a recently constructed single family detached unit (SFDU) development). The project complies with the perimeter landscaping requirements.

- (4) Streetscape Landscaping: Landscaping has been provided that complies with the criteria for streetscape as shown on the landscape plans (Exhibit B3).
 - (5) Performance Bond: The submittal of a bond or other guarantee of performance, for approval by PDS prior to construction plan approval, will be required as per the requirements of county code. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement.
- E. SCC 30.42B.130 - Design criteria - Tree retention. The applicant has submitted a conceptual tree plan (Exhibit B3) that provides trees at the required rate of two per lot and identifies the number of significant trees to be retained and/or replaced within the open space tracts, perimeter landscaping buffers and NGPAs. Trees within these types of tracts, which cannot be saved due to site grading, are required to be replaced at a 2:1 ratio per SCC 30.42B.130(3)(b). The conceptual plan shows that 15 significant trees are to be retained within Tract 998. A final landscape plan will be required prior to issuance of any development permits.
- F. SCC 30.42B.135 - Design criteria – Drainage detention facilities. The applicant proposes an underground detention vault for detention of stormwater. Preliminary plans have been determined to conform to the provision of Chapter 30.63A SCC, Washington Department of Ecology Drainage Manual, and the Engineering Design and Development Standards (EDDS).
- G. SCC 30.42B.140 - Roads, access, circulation, pedestrian facilities and parking.
- (1) The PRD has been designed to provide adequate road access, connection and circulation to minimize traffic congestion, provide connection to adjoining neighborhoods where feasible, ensure adequate utility services, and provide emergency vehicle access.
 - (2) The configuration and design of the roads and access facilities in this development are in accordance with Chapter 30.24 SCC, 30.66B SCC, Chapter 30.53A SCC, and the EDDS.
 - (3) An auto court/private road, intersecting with 143rd Street SW is proposed. The auto court will provide access to Lots 2-6. Lots 1 and 7 will continue to use their existing driveways which access directly onto 143 Street SW.
 - (4) The county engineer has determined that the project provides adequate connection to county roads. Because of the size of the development and adjacent land uses, additional road connections were not required.

...

- (6) The PRD has been designed to provide adequate and safe pedestrian access to, and circulation within the development by pavement. Due to the length of the proposed auto court and number of proposed lots utilizing the auto court (5), sidewalks were not required within the development. A sidewalk will be constructed along the 143rd Street SW property frontage.
 - (7) The PRD has been designed to provide parking as required by Chapter 30.26 SCC. The code requires two spaces per dwelling unit plus ½ space per dwelling unit for guest parking. Two spaces per single-family dwelling unit (located in each home's garage) are proposed.
 - (8) The County Engineer approved an EDDS deviation to allow the proposed auto court (Exhibit G1).
- H. SCC 30.42B.145 - Design criteria – Bulk Regulations. The proposed PRD site plan has been determined to comply with the dimensional standards within Table 1 for single-family residential development to include lot width, lot area, setbacks and lot coverage. All lots can meet these requirements except for Lots 1 & 7, which do not meet the required 20 foot combined front/rear setback along their east/west sides that PDS has determined applies to the project. The applicant has applied for a zoning code variance (see further discussion below). PDS recommends approval of the variance.
- I. SCC 30.42B.150 - Specific Housing Types. The applicant proposes single-family residential structures for this development. The development plans indicate variation in modulation of the front setbacks and building envelopes of the proposed residences. The typical floor plans and street elevation drawings submitted (Exhibit B 5-6) will provide for a visually diversified streetscape as shown in the plans. The use of a variety of floor plans, elevations, and product types provide the modulation and variation prescribed. No portion of any building or appurtenance shall project into any open space. PDS will be including a condition of approval within the project decision for the administrative short plat to insure that this requirement is carried over into the building permit stage.
- J. SCC 30.42B.200 - Approval of PRD official site plan - Decision criteria. PDS recommends approval of the PRD official site plan, subject to conditions provided in Section V. of the PDS staff report. (Exhibit K) The applicant has provided all of the minimum submittal requirements and demonstrated the project can comply with the requirements of Chapter 30.42B SCC.
- K. SCC 30.42B.210 – Official site plan – Effect and recording procedure.
- (1) The PRD Site Plan received by PDS on December 5, 2008 (Exhibit B1) shall constitute the PRD Official Site Plan.
 - (2) Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved unless PDS approves deferral until building occupancy and a bond or other guarantee of performance is submitted to and accepted by PDS. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement.

- (3) Covenants, Conditions and Restrictions (CCRs) will be submitted and reviewed by PDS to assure establishment of a Homeowners Association for the development and mandatory membership in it by all homeowners. The CCRs must also require on-going maintenance of commonly owned tracts and restrict the use of the tracts to that specified in the approved PRD. PDS will be including a condition of approval within the project decision for the administrative short plat to comply with this requirement.

30.42B SCC as noted above.

14. Zoning.

Single-family dwellings are a permitted use in the R-7200 zone. There are no duplexes proposed for any of the lots. Prior to the issuance of building permits for the proposed dwellings, PDS staff will confirm that building setbacks and lot coverage requirements outlined in this section are met as well as the building height requirements outlined in SCC 30.23.030(1) Bulk Matrix. The proposal meets the minimum net density requirements of SCC 30.23.020.

15. Utilities

- A. Water. Water is available from the Alderwood Water and Wastewater District. (Exhibit H5)
- B. Sewer. Sewer service is available from the Alderwood Water and Wastewater District. (Exhibit H7)
- C. Electricity. The Snohomish County PUD submitted a letter stating that it has sufficient capacity to provide electric power to the proposed project. (Exhibit H3)
- D. Snohomish Health District (SHD) - the SHD has no objections to the plat and rezone as long as public sewer and water is provided to the site. (Exhibit H2)

16. Compliance with Fire Code

Fire apparatus access as depicted has been found to meet the minimum requirements of SCC 30.53A.150. During the construction plan review stage, detailed plans will be reviewed by the Fire Marshall's Office to determine the appropriate placement of fire hydrants and any required signage or pavement striping denoting fire lanes to ensure adequate access by emergency vehicles. PDS inspection staff will ensure that prior to the start of combustible construction, fire hydrants are installed and operational and that approved addresses are placed on all new buildings as required. No comments were received from Fire District 1.

17. State Environmental Policy Act Determination (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 12, 2009 (Exhibit E2). The DNS was not appealed.

18. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated ULDR 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 ULDR designation allows mostly detached housing developments on larger lot sizes. Allowed implementing zones are R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB. The applicant is proposing a rezone of the site from R-9600 to R-7200, a listed implementing zone.

19. Variance Request.

A. Standards. Per SCC 30.43B.020(2), any variance request submitted with another application requiring a predecision hearing by the Hearing Examiner, shall be processed concurrently before the Hearing Examiner as a Type 2 decision. To grant a variance, the Hearing Examiner must find the request meets the following criteria:

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

SCC 30.43B.100.

B. Request. The request in this instance is a variance from the PRD bulk standards. The PRD Bulk Standards Table, SCC 30.42B.145(2), specifies that 20 foot total front/rear yard building setbacks are required. Footnote 6 of this table specifies that a 1.5 foot setback is allowed from an auto court. Even though this is a limited access right-of-way, under which normal circumstances two front/rear setbacks would not be required, (SCC 30.23.120(7)), a memorandum from PDS Chief Planning Officer, Linda Kuller, dated July 20, 2006, clarifying PRD setbacks, concludes that the 20-foot total front/rear setback requirement is not superseded by footnote 6 (Exhibit A3). She states that,

“If you have a 1.5 foot setback from an auto court, then the rear setback must be 18.5 feet” (to total 20 feet). Per SCC 30.91L.170, Lot line, front

“means the lot line separating the lot from the street or private road. Corner lots have front lot lines along each street or private road.”

SCC 30.91L.180, Lot line, rear “means a lot line which is opposite and most distant from the front lot line.”

Therefore, proposed Lots 1 and 7 of the subject PRD each have two front yards (one adjacent to 143rd Street SW and one adjacent to the proposed auto court). Both lots meet the 20 foot front/rear setbacks from 143rd Street SW (north-south setbacks), but don’t from the auto courts (east-west setbacks). The applicant requests that Lot 1 be allowed an 18.7 combined front/rear setback from the auto court and that Lot 7 be allowed a 14.8 foot combined front/rear setback from the auto court.

- C. The applicant asserts the following in support of the application for variance:
 - 1. The applicant states that the proposed auto court is located in the only feasible location for the property, given the desire to retain the existing residences.
 - 2. Without the variance the applicant would not be allowed to develop the 5 additional homes.
 - 3. Lots 1 & 7 will still meet the front/rear setbacks from 143rd Street SW (north-south sides).
 - 4. The proposed east/west setbacks will still allow for yard space.
- D. PDS recommends approval of the requested variances, asserting that approval of the requested setback variances would be *de minimis*. The staff report states:

The *de minimis* principle essentially holds that the law ignores trivial and insignificant discrepancies from fixed requirements. The size of the existing property and the location of the existing homes preclude utilizing another location for the auto court/private road and thus represents a special circumstance. The appearance from the street of the existing homes will not be altered. Lots 1 and 7 will be the largest lots in the short plat and will have substantial yard areas on 3 sides of each home. Without the variances the applicant will not be allowed to redevelop his property to the same extent as his neighbors. The variance will not be detrimental to the public welfare and will not adversely affect the comprehensive plan, which, in fact, encourages in-fill development such as this proposal.

Staff Report (Exhibit K)

- 20. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the PRD, variances, and rezone applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. **Conclusions Regarding the PRD Application.** Based on the Findings 13A-K, the Examiner concludes that the PRD application should be approved subject to the conditions in this decision. No dedication of property is required.
3. **Conclusions Regarding the Variance Application.**
 - A. The fact that this variance was required at all is very troubling to the Examiner. The Examiner is not sure where the error occurred, but Ms. Kuller's memo applies to a private road and a public road. In that situation, it may be appropriate to have two front yard setbacks. It is important to note that her memo did not apply directly to this case.
 - B. An auto court, by definition, may be any type of access way. It could be a street, it could be a hammerhead, or a private road. Its distinguishing feature is that area is designated for pedestrians and bicyclists:

30.91A.305 "Auto court" or "shared court" means an access way designed to accommodate vehicles, pedestrians, and bicycles within the same circulation space. A sidewalk area may include a sidewalk separate from paved vehicle areas or be surfaced with paving blocks, bricks or other ornamental pavers to clearly indicate that the **entire street** is intended for pedestrians as well as vehicles. An auto or shared court may also include traffic calming measures to ensure safe co-existence of pedestrians, vehicles, and bicycles.

- C. There is also a provision that provides a setback exception for corner lot provisions, applicable to the R-7200 zone by virtue of the Bulk Matrix at SCC 30.23.030(2) ftn.34. SCC 30.23.120(7) states:

- (7) Corner or through lots on limited access right-of-way:
Where one of the roads creating a corner or through lot is a limited access right-of-way, side or rear yard setbacks shall apply along the limited access right-of-way.

This provision indicates that Lots 1 and 7 need only meet side yard setbacks, which are 5 feet. Under the PRD code, the side yard setback may be reduced to 1.5 feet on the side containing the auto court, and under the logic of Ms. Kuller's opinion, the rest of the setback could be included on the other side. Even so, both homes meet the requirement without need to resort to a variance.

- D. Large front yard setbacks are intended to provide enough area to allow road improvements and additional dedication of right-of-way should the need arise in the future. In this case, the code is quite clear in its intent that limited access ways should not be treated in a way that treats them as corner lots. It makes no sense to require enormous setbacks on a limited access right-of-way where no additional improvements

will ever be made to the street to widen it for intensified future use. The Examiner finds that to interpret the code in this manner is at odds with the purpose of the requirement.

- E. The Examiner concludes that the applicants were erroneously required to submit a variance application and their fees should be refunded.

4. **Conclusions Regarding the Rezone Application.**

- A. 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. *Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); see *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The county's regulations are a direct expression of the criteria expressed by case law.
- B. 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) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.¹
- C. In the context of the Growth Management Act, 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 *A Motion Vacating and Remanding the Hearing Examiner's Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) Back to the Examiner to Supplement the Record at 3* (August 8, 2007), “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.
 - D. This rezone is a request to up-zone these properties in the ULDR designation from R-9600 to R-7200 to allow a total of 7 units on .99 acre site. Although it is clear that this request fits within the ULDR designation, as stated above, the analysis of consistency must go

¹ This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.

beyond the designation and identify how the project is consistent with the policies in the plan.

- E. The Land Use Element of the GPP introduces the way in which UGAs are planned for and how densities are to be determined:

The GMA requires that urban growth areas (UGAs) be designated through the county's plan. UGAs are to include areas and densities sufficient to permit the urban growth that is projected to occur in the county over the next twenty years. Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas.

Planning for growth in this way accomplishes two GMA goals: 1) the efficient provision and utilization of public facilities and services, including public transportation; and 2) reduced conversion of undeveloped land into sprawling, low-density development.

GPP at LU-1.

This rezone application invokes consideration most directly of Goal LU 2 and its policies. The introduction to that Goal states:

To promote efficient utilization of land within unincorporated UGAs, the county will encourage well-designed, more pedestrian-friendly urban development patterns with a greater mix of uses and a more efficient, creative use of land. By improving land use efficiency in UGAs, several GMA objectives can be accomplished:

- reduced dependence on the automobile;
- increased support for public transportation;
- improved air quality;
- increased choice of housing types;
- improved efficiency of infrastructure provision and usage; and
- reduced consumption of rural lands.

To improve the efficiency of urban residential land utilization, planning within UGAs and development regulations will ensure that future residential subdivisions will achieve a minimum net density of 4 to 6 dwelling units per acre except in areas within or near critical areas that are large in scope, with a high rank order value, and are complex in structure and function. In addition, the county will provide for higher density and mixed use housing types around and within centers and along major transportation corridors; encourage infill and intensification of areas at existing residential densities; and also broaden the variety of housing types within both traditional single family and multi-family neighborhoods while respecting the vitality and character of established residential neighborhoods. A mix of housing types with a range of densities will be encouraged throughout UGAs, as long as they are carefully sited, well designed, and sensitively integrated into existing communities.

General Policy Plan at LU-15.

Goal LU 2 of the GPP requires that the County “[e]stablish development patterns that use urban land more efficiently”, although Objective LU 2.A qualifies that statement by requiring the County to “[i]ncrease residential densities within UGAs by concentrating and intensifying development in appropriate locations.” GPP at LU-16 (emphasis added). GPP at LU-89.

Specific policies under Goal LU 2 that are relevant to this development are:

- 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.
- F. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the Council in the adoption of the proposed plan and provide the Examiner a reasonable foundation on which to analyze urban rezone proposals to determine whether they meet Goal LU 2 and Objective 2, providing efficient urban development patterns in appropriate locations and other related ‘GPP policies.
 - 1. Is the area proposed for rezoning already characterized by urban growth? Explain. **(Goal LU 2; Objective LU 2)**
 - 2. Does the area proposed for rezoning already have adequate existing facility and service capacities to serve more intense development for the following types of public facilities and services? Please demonstrate. **(See Goal LU 2; Objective LU 2)**
 - a. Streets, roads and highways (including but not limited local access and circulation, arterial systems and road systems capacity, concurrency, state highway impacts);
 - b. Sidewalks;
 - c. Street and road lighting systems;
 - d. Traffic signals;
 - e. Domestic water systems;
 - f. Sanitary sewer systems;
 - g. Public parks and recreational facilities, or useable open space, common areas, or other recreational facilities within the development;
 - h. Storm and sanitary sewer disposal system;
 - i. Fire and police protection suppression;
 - j. Law enforcement;
 - k. Public health;
 - l. Education; and
 - m. Other services.²
 - 3. How will the rezone help to establish development patterns that use urban land more efficiently? **(See Goal LU-2)**
 - 4. Does the development concentrate and intensify development at an appropriate location? Why? **(Objective LU-2.A)**

² Taken from the GMA definitions of public facilities and services. RCW 36.70A.030(12) &(13).

- (a) Critical areas/shorelines.
 - (i) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
 - (ii) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (iii) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.³
 - (b) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities? **(Policy LU 2.A.5)**
 - (c) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas? **(Policy 2.A.4)**
5. Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? **(Policy LU 2.A.4)(H.O.2.B.1)**
 6. Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? **(Policy I.C.2)**
 7. If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(Policy HO 2.A.4)**
 8. Does the development encourage the integration of a variety of dwelling types and intensities in residential neighborhoods? **(Policy H.O. 2.B.4)**
- G. Applying this test to the Arbor Mist project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:
1. The area is already characterized by urban growth. The entire area is changing. There are areas of the larger neighborhood that are converting to higher zoning classifications while other parts of the neighborhood remain in large-lot existing single-family residential. Much of the area was developed quite awhile ago, making it ideal for redevelopment at a higher density.
 2. The area is already characterized by urban growth such that it has adequate existing public facilities and services to serve the development for the following types of facilities and services, as demonstrated below:

³ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

- a. Streets, roads and highways. The Examiner relies on Finding of Fact 7 in part to conclude that the development is adequately served by existing streets, roads and highways.
- b. Sidewalks. While 143rd St. SW does not have sidewalks, the street is wide and there is little traffic, making for safe walking conditions on the street. (Finding 8)
- c. Street and road lighting system. It is unknown whether street and road lighting systems currently exist along 143rd Street SW; they are not currently required by the county code or administrative rules as a requirement for approval of this project.
- d. Traffic signals. There are no traffic signals in the vicinity. The County's analysis of the proposal does not indicate that any new signals are warranted for this proposal, according to SCC 30.66B.165 and EDDS Section 7-03.
- e. Water systems. Water will be provided by the Alderwood Sewer and Water District. The case file contains a preliminary certificate of water availability. (Exhibit H5)
- f. Sanitary Sewer Systems. Sewers will be provided by Alderwood Sewer and Water District. The file contains a preliminary certificate of sewer availability. (Exhibit H-7)
- g. Park and recreational facilities. As stated in Finding of Fact 6, the developer will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. (See Snohomish County Parks Plan at page 41) These criteria, however, addresses existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the county. The Examiner can determine, based on a map located on the County Parks and Recreation Department website, that there are a number of county parks in the vicinity of the development, the closest being Meadowdale County Park, but also including McCollum Park, North Creek Park, Logan County Park, Brierwood Park and Hilltop Elementary. Regional parks in the area are Lord Hill Park, Silver Creek Park, Rhody Ridge Arboretum, Picnic Point Park, and Forsgren Park.
- h. Storm and sanitary sewer disposal system: A stormwater disposal system is provided as indicated in Finding of Fact 10.
- i. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Fire District 1 has made no comments to the proposal. (see Finding 16) The Fire Marshall's Office in PDS approved the proposal. Police protection is provided by the Snohomish County Sheriff's Department. (Exhibit K)

- j. Public health: Public health issues are addressed by the Snohomish Health District. (See Exhibit H2)
 - k. Education: The site is served by the Mukilteo School District. (Exhibits H8 and H9)
3. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 by 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 current zoning of the area is R-9600. While some of the lots in the vicinity are divided at this size, which is a very low urban density under the county's GMA plan, many are at even lower densities. This neighborhood contains very old housing stock which could easily be redeveloped at higher density. With its proximity to transit corridors, this area is a good candidate for redevelopment. As always, this type of infill needs to be done well with appropriate development standards and infrastructure to create livable neighborhoods. This rezone will help further establish the continuing pattern of using land more efficiently in an area where it has not historically been used very efficiently.

4. Does the development concentrate and intensify development at an appropriate location? Why? **(Objective LU-2.A)**
- i. The development is carefully sited.
 - (a) There are no critical areas or shorelines on the site or within close proximity to the site. (Policy LU 2.A.3)⁴
 - (b) The development is not proposed in an area that is within walking distance of transit access. A bus is available at the corner of Picnic Point and 52nd Avenue SW that will take passengers to the Lynnwood Transit Center and Alderwood Mall within one-half hour. The subject property is also located near major transit corridors, including Highway 99 and I-5, which have park and ride lots and shopping opportunities nearby. Intensification of land use in this location should help relieve congestion and air pollution. As stated above in Conclusion 8, there are multiple parks in the vicinity. **(Policy LU 2.A.5)**
 - (c) The development made possible by the requested rezone may tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation because of the proximity of the property to mass transit and park and ride lots, which may encourage commuting by buses or carpools instead of using single occupancy vehicles. **(Page LU-15)**
 - ii. The rezone proposal is adequately integrated into the neighborhood. (See LU-15)
 - (a) The Examiner characterizes the neighborhood as actively changing. The area near the Beverly Park-Edmonds Road has experienced rapid in-fill residential development during the last several years, with many larger

⁴ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

parcels being redeveloped into small-lot, single-family subdivisions or single-family detached unit (SFDU) projects. An SFDU project has recently been built adjacent to the west side of the subject property. Hence, the proposed single family subdivision will fit into the existing single family character of the immediate neighborhood. This zoning classification will help fulfill the GPP goal of providing efficient use of the county's infill area. **(LU-15, Policy 2.A.4)**

- (b) The proposal will help provide a mix of affordable housing types, such as smaller lot detached units. This type of housing helps provide a desirable type of housing to the public, but on a smaller lot than the traditional R-9600 lot. The cost of the development per unit is reduced, resulting in a more cost effective and affordable type of housing. (Exhibit A3) **(Policy LU 2.A.4)**
 - (c) There are no city comments in the record regarding the rezone. **(See Policy I.C.2)**
- iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)
- (a) The proposed density of this development is 8.13 units per acre (net). This density is one that is not inconsistent with other densities in this changing area. The building design is expected to be conventional, two-story, stick-built construction. The homes will be similar to many of the newer homes in the area. (See Exhibit A3) **(See LU-15)**
 - (b) The applicant indicates the building design will be consistent with new development in the neighborhood. (Exhibit A3) **(LU-15)**
 - (c) The Examiner is not aware of any "selective and innovative land use measures" that will be used to preserve the character of the stable residential neighborhood. **(See Policy HO 2.A.4)** In this case, this policy is not applicable because the Examiner would not characterize this neighborhood as a "stable residential neighborhood".
 - (d) There do not appear to be any significant negative visual impacts from the addition of the two homes in this area that have been brought to the attention of the Examiner. **(LU-15)**
 - (e) The development appears to be designed to provide for adequate fire and medical emergency access through the provision of adequate turnaround as approved by the Department of Public Works and the Fire Marshall. (Exhibit H and Exhibit B1) **(LU-15)**
 - (f) The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. There appears to be adequate pedestrian facilities. (Finding of Fact B1)
- H. The other criteria in SCC 30. 42A.100 is whether the proposal bears a substantial relationship to public health, safety, and welfare. (See SCC 30.42A.100(2)) Returning

to Council Motion 07-447, the Council clarified the proper role of the Examiner in reviewing this criteria:

Although consistency with the Comprehensive Plan is a significant factor in determining whether a proposed rezone bears a substantial relationship to the public health, safety and welfare, in some cases, there may be other factors outside the Comprehensive Plan policies that may be relevant to that issue and which may be considered. If there are such factors apparent from the application documents or otherwise known to PDS, they must be identified and discussed both in the written PDS staff report and by the Examiner in his/her decision. The written PDS staff report and the Examiner's decision should specify if any of these other factors are related to the rezone or should be considered at the project level with the specific development proposal being made. PDS staff is not required to anticipate opposition or to consider factors or issues outside of the Comprehensive Plan or not required by the Snohomish County Code. However, this does not limit the Hearing Examiner's ability to consider testimony at the public hearing concerning whether the proposed rezone bears a substantial relationship to the public health, safety and welfare.

Motion 07-447 at 3.

The Examiner interprets this language to mean that most of the time, analysis of whether the rezone is consistent with the Comprehensive Plan should suffice for review of a rezone proposal because in most cases, analysis of the comprehensive plan policies is analysis of whether the proposal bears a substantial relationship to the public health, safety and welfare. However, the Examiner and PDS may use this second criteria to analyze other issues of concern that may be raised outside of the scope of the Comprehensive Plan.

- I. In this case, the Examiner concludes there are no issues of concern that warrant analysis under SCC 30.42A.100(2). No issues of concern were identified in the PDS staff report (See Exhibit 30) and no one except the applicant and PDS staff testified at the hearing. The Examiner identified no issues of concern in reviewing the file.
 - J. Any details or conditions which would normally appear as conditions of the development in the Examiner's decision will be issued as a part of the administrative plat approval by PDS.
 - K. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
5. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

- 1. The request for a **REZONE** from R-9600 to R-7200 for this property is **GRANTED**.

2. The request for the **VARIANCES** is **VACATED** and the application determined moot by the Examiner. The application is fully in compliance with all setback requirements in code and has no need to apply or receive a variance to receive approval of this application.
3. The Examiner respectfully requests that PDS refund to the applicant its application fees for both variances applied for in error.
4. The **PRD OFFICIAL SITE PLAN** of Arbor Mist is **APPROVED subject to the following CONDITIONS:**

CONDITIONS

- A. The PRD Site Plan received by PDS on December 5, 2008 (Exhibit B1) 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, administrative approval of the concurrent seven-lot short plat is required.
- C. The conditions of the short plat shall include all conditions noted in the Findings of this Decision.

Nothing in this permit/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 15th day of May 2009.

Barbara. Dykes, 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 **MAY 26, 2009**. 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 **MAY 29, 2009** 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 this case.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.