

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: April 29, 2008

PLAT/
PROJECT NAME: **LIBERTY PLACE**

OWNER/
APPLICANT: Tyler Echelbarger, Thomas Lake Development, LLC

FILE NO: 06-103232-000-00-SD

TYPE OF REQUEST: Rezone and seven lot subdivision

DECISION
(SUMMARY): APPROVE WITH CONDITIONS

BASIC INFORMATION

GENERAL LOCATION: 4235 141st Street SE, Snohomish at the northeast corner of 141st Street and Seattle Hill Road, within Section 33, Township 28N, R5E, W.M.

ACREAGE: 1.71 acres

NUMBER OF LOTS 7

AVERAGE LOT SIZE: 7,444 square feet

MINIMUM LOT SIZE: 3,678 square feet

DENSITY: 4.11 du/ac (gross), 7.07 du/ac (net)

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

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

UTILITIES:

Water and Sewer: Silver Lake Water and Sewer
Electricity: Snohomish County Public Utility District No. 1

SCHOOL DISTRICT: Everett School District No. 2

FIRE DISTRICT: No. 2

SECLECTED AGENCY RECOMMENDATIONS:

Planning and Development Services: Approve with conditions

INTRODUCTION

The application (Exhibit 1) was originally submitted on June 19, 2006, and determined complete for regulatory purposes but insufficient for further review. The application was resubmitted on April 19, 2007, August 22, 2007 and on October 8, 2007.

The Deputy Hearing Examiner made a site familiarization visits on February 16, 2008, and

The Department of Planning and Development Services (PDS) gave proper public notice of the open record public hearing as required by the County code. Exhibits 19 and 42 (Affidavit of Mailing); Exhibit 20 and 43, (Affidavit of Notification by Publication); Exhibit 21 and 41(Posting Verification).

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued, dated November 1, 2007 (Exhibit 18). The initial DNS was withdrawn and reissued on January 16, 2008. No appeal was filed.

The Deputy Examiner held an open record hearing on February 21, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered. Subsequently, with the applicant's consent, a pro tempore hearing examiner reviewed the audio CD of the hearing and rendered the decision herein.

PUBLIC HEARING

The public hearing commenced on February 21, 2008 at 4:58 p.m.

1. Representing PDS was Stacey Abbott, Planner.
2. Representing the Applicant was Larry Deisher of Land Planning Northwest.
3. There was no public testimony.

The hearing concluded at 5:14 p.m.

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

FINDINGS OF FACT

A. General

1. The master list of Exhibits and Witnesses are in the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. Summary of the Proposal: The applicant proposes a 7-lot subdivision on 1.71 acres along with a rezone of the site from R-9600 to R-7200.

Using lot size averaging provisions, the minimum lot area require in the new zone will be met. There will be a Native Growth Protection Area in a tract at the northern end of the property. The detention pond will be located in a separate tract along the west side. Access will be by an internal culdesac (42nd Place) which will lead off of 141st Street SE on the south. The culdesac will be dedicated as a public road. Public water and sewer service will be provided by the Silver Lake Water and Sewer District. Mitigation fees are to be paid in accordance with Chapters 30,66A, B, and C, SCC, for the project impacts to community parks, to nearby road system traffic, and to Lake Stevens School District No. 4.

3. Site Description: This 1.71 acre site is triangular in shape with the peak at the north end. It is presently zoned R-9,600 and lies within the County's Southwest Urban Growth Area. Seattle Hill Road runs along the northwest side of the parcel. 141st Street SE borders the south. The eastern boundary abuts a neighboring residential plat.

The property is relatively flat with a depression in the northern portion. The northern half of the property is dominated by forest. The southern half has an existing single-family residence, a driveway, a stormwater detention pond, and a yard.

The subject parcel is a portion of Lot One (Boundary Line Adjustment 109-85) from the previously platted Thomas Lake Estates to the east. The site presently contains the detention pond for Thomas Lake Estates. This detention facility will be enlarged and reconfigured to include flow control and treatment for both the existing Thomas Lake Estates and the proposed Liberty Place subdivision.

Two Category 3 forested wetlands were identified on the northern portion of the site, both smaller than 5,000 square feet. Development will not occur in the wetlands. Buffers will be preserved by using buffer averaging.

4. Adjacent zoning and uses: The site is surrounded and connected to new single-family development and established neighborhoods. Properties to the north and west across are located within the City of Mill Creek and range in size from approximately 6,000 square feet to 10,000 square feet. Parcels to the immediate east and south are zoned R-9,600. A mixture of newly constructed urban commercial/business park facilities are located approximately one mile to the north (132nd Street SE). A newly constructed urban center is located approximately ½ mile to the south.

B. Issues of Concern

5. Comments were received from three citizens, all residents of Thomas Lake Estates. They expressed concerns about traffic, access, drainage, lot size, and the sign which identifies their neighborhood. These matters have all been addressed in project review.

Staff analysis shows that appropriate frontage improvements and dedications of additional right-of-way are to be made. No additional right-of-way is needed on 141st Street SE. Due to the proximity of the new access road to Seattle Hill Road, additional traffic on 141st Street SE is not anticipated. Seattle Hill Road is an arterial and therefore access is preferred off 141st Street SE, a lower volume dead end street. The proposed site design provides adequate access for emergency vehicles. The existing detention pond is proposed to be reconstructed in a more efficient location that will provide better functionality for Lake Thomas Estates as well as the proposed Liberty Place subdivision. Lot size averaging has been correctly calculated under the County Code. The Thomas Lake Estates entrance sign will have to be moved, but it will be retained and relocated as close as possible to the original location.

Particular drainage concerns of Jerry Stone the owner immediately to the east were referred to the project engineer and revisions to the drainage plans have apparently resolved his concerns.

There was no public testimony at the hearing.

C. Compliance with Codes and Policies

6. Parks Mitigation (Chapter 30.66A SCC)

The proposal is within Nakeeta Beach Park District No. 307 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 either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.

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

- A. Road System Capacity [SCC 30.66B.310]

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 6 new lots at 9.57 adt/lot. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 57.42 new ADT and has a road system capacity impact fee of \$15,331.14, based on \$267/ADT. This impact fee must be proportionally paid prior to the issuance of the building permits associated with this development.

Trips	Calculations	
ADT	(7 New SFR - 1 Exist.) x (9.57 ADT/SFR) =	57.42
AM PHT	(7 New SFR - 1 Exist.) x (0.75 AM PHT/SFR) =	4.50
PM PHT	(7 New SFR - 1 Exist.) x (1.01 PM PHT/SFR) =	6.06

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 level-of-service A representing the best operating condition, and level-of-service F the worst.

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with Public Works' final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

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; Arterial unit # 202 and arterial unit # 204. Based on the size of the development, 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 4.50 a.m. peak-hour trips and 6.06 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]

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 inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located along Seattle Hill Road. Urban standard frontage improvements are required consisting of 23 feet of pavement to face of a 6 inch vertical curb, a 5 foot planter, and a 5 foot sidewalk. Construction of frontage improvements is required prior to recording of the plat unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

The subject property frontage is located along 141st Street SE. Urban standard frontage improvements are required consisting of 18 feet of pavement to the face of a 6 inch vertical curb, a 5 foot planter, and a 5 foot sidewalk. Construction of frontage improvements is required prior to the recording of the plat unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

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

Access is proposed from a public road intersecting with 141st Street SE in SE corner of the plat. There is a plat restriction on the face of the Thomas Lake Estates subdivision that states, "No further subdivision without submitting for formal plat procedure".

This proposed preliminary plat is proposing access from a public road that is less than 150 feet long. Roads less than 150 feet long and are providing access to 4 or more lots in the last 50 feet of the road are required to have at least a 30 radius cul-de-sac turn around. This is shown on the current proposed development plat. No direct access is proposed from either Seattle Hill Road or 141st Street SE. No direct access to either Seattle Hill Road or 141st Street SE will be permitted.

Urban standards roads less than 150 feet long and ending in a permanent cul-de-sac are required to have a sidewalk on one side and around the cul-de-sac bulb. This is correctly shown on the latest submittal.

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

Seattle Hill Road is designated as a Minor Arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. 30 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 10 feet of additional right-of-way is required.

141st Street SE 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. 30 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, no additional right-of-way is required.

Dedication of additional right-of-way that is tangent to the ultimate right-of-way on Seattle Hill Road and 141st Street SE with a 35 foot radius curve is required. The correct right-of-way dedications are shown on the proposed preliminary plat.

G. State Highway Impacts [SCC30.66B.710]

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement, 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 57.42 ADT x \$36.00/ADT = \$2,067.12.

A voluntary offer for the above amount was submitted to the WSDOT and was accepted by the WSDOT as adequate traffic impact mitigation to state highways. The per lot amount to be paid to the WSDOT will be \$344.52.

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

Public Works will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 30.61.230 between the county and the other agency.

Using the "Area Averages" method of the revised City of Mill Creek mitigation program in lieu of a traffic study, this project is in Snohomish County Area Zone 1. Therefore 56% of the new peak hour trips (PHT) would have an impact on Mill Creek roadways. The traffic mitigation fee would be:

$$6 \text{ net new SFR's} \times 1.01 \text{ PHT per SFR} \times 56\% \times \$996 \text{ per PHT} = \$3,380.03$$

Comments have been received from the city of Mill Creek stating that the mitigation for traffic impact to the city of Mill Creek's streets would be the above stated amount. The per lot amount to be paid to the City of Mill Creek for traffic impact mitigation will be \$563.24.

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

All new developments in the urban area shall provide transportation demand management measures. Sufficient transportation demand management measures shall be provided to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes

construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and 30.66B.625.

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500 times the required trip reduction percentage times the development's peak hour trip generation. [SCC 30.66B.615]

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 6.06 new PM peak hour trips x \$1,500.00 which equals \$454.50. A written offer for payment of this TDM obligation is required before Public Works can make a final recommendation of approval.

The applicant has provided a TDM offer in the amount of \$454.50 dated February 28, 2007 and received by this development on April 19, 2007. The per lot amount to be paid for TDM will be \$75.75.

J. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments have been received from the Everett School District, dated July 25, 2007. The construction of the frontage improvements will provide safe walking conditions for school children from this development to the school bus stop.

8. Mitigation for Impacts to Schools (Chapter 30.66C SCC)

Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Everett School District No. 2, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot.

9. Drainage and Grading (Chapters 30.63A and 30.63B SCC)

The proposed development generates in excess of 5,000 square feet of new impervious surface which meets the definition of major development activity per SCC 30.63, and therefore a full drainage plan and report is required for review and approval at construction plan submittal. The plan and report shall meet the requirements of SCC 30.63A.230- Redevelopment. Proposed grading is in excess of 100 cubic yards which triggers the need for a Grading Permit and SWPP Plan per SCC 30.63B and Rule 3044. Per SCC 30.63A.360 the detention facility is located in a separate tract: Tract 999. Downstream and upstream drainage problems have been evaluated and mitigated. Public drainage concerns have been accommodated.

Full Operations and Maintenance (O&M) of the new detention facility will be provided by the proposed Liberty Place Home Owner's Association. (Thomas Lake Estates will only have O&M for the conveyance system up to the Liberty Place property line.) A Letter of Intent has been provided to enter into an off-site Construction Easement with the adjacent northeastern property owner, Mr. Jerry Stone, to provide a drainage conveyance system in an easement through Liberty Place to drain a low spot on Mr. Stone's property.

Staff concludes that the proposal can successfully meet the grading and drainage requirements of Snohomish County. These requirements include erosion control, preservation of existing drainage patterns, mitigation for major adverse impacts, drainage basin flow analysis, conveyance system design, considerations for facility maintenance and adherence to critical area restrictions. Complete calculations supporting the drainage design proposal must be submitted during the construction plan review phase of the permitting process.

Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

10. Critical Areas Regulations (Chapter 30.62 SCC)

Two Category 3 forested wetlands were identified in the north portion of the subject site. These wetlands were accurately flagged in the field, categorized, and depicted on the site plans. Both wetlands are smaller than 5,000 square feet and would be considered best management plan wetlands.

Category 3 wetlands within the UGA require a 25-foot buffer per SCC Table 30.62.310(1). Existing wetland buffers will be impacted for road frontage improvements to Seattle Hill Road. In addition, a small portion of wetland buffer adjacent to Lot 7 is proposed to be reduced. A total of 1,132 square feet of wetland buffer is proposed to be reduced and a total of 1,582 square feet of wetland buffer will be added.

Under SCC 30.62.360(6), all development activities are allowed within Category 3 wetlands smaller than 5,000 square feet in size, provided that such activities are conducted pursuant to best management practices. The applicant will not fill the BMP wetlands for this project and has proposed buffer averaging to mitigate for the reduction for wetland buffer adjacent to Seattle Hill Road and Lot 7. A total of 1,132 square feet of wetland buffer is proposed to be reduced and a total of 1,582 square feet of wetland buffer will be added. This will provide 450 square feet of additional buffer on the subject site. Based on the information provided, the mitigation proposal meets the requirements of SCC 30.62.350(1)(c)(i).

PDS has reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with the critical areas regulations.

11. Consistency with 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 General Policy Plan 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 Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas 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 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-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.”

The subject rezone and future development proposal is for a 7 lot subdivision and rezone resulting in a density of 6 dwelling units per acre. PDS finds that the requested rezone is consistent with, and implements the General Policy Plan’s Urban Low Density Residential designation of the property.

The subject rezone and future development proposal is for a 4 lot short plat and rezone resulting in a density of 6 dwelling units per acre.

12. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

The proposal has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way (ROW) setbacks of

15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 35%.

The LSA calculation is as follows:

Area in Lots (42,927 square feet) + Critical Areas and Buffers (9,140 square feet)
= 52,107 square feet ÷ 7 of lots proposed = 7,444 square feet

The minimum zoning requirement is 7,200 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. PDS concludes that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

13. State Environmental Policy Act

PDS issued a DNS for the subject application on November 1, 2007 (Exhibit 18). The DNS was withdrawn and reissued on January 16, 2008 (Exhibit 39). There were no DNS appeals.

14. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on June 19, 2006. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.

15. Plat – Subdivisions – Dedications (Chapter 58.17 RCW)

RCW 58.17.100, 110, 120 and 195 require that the plat conform with applicable zoning ordinances and comprehensive plans and make “appropriate provisions” for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

The proposed plat conforms with the applicable zoning standards and the comprehensive plan. Open space is provided in the form of wetland and buffer areas. The single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State Department of Ecology drainage standards. The Plat, as conditioned, will conform to Chapters 30.66A, B, and C SCC, satisfying County requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water and sewer are to be provided by the Silver Lake Water and Sewer District.

16. Rezone (Chapter 30.42A SCC)

Under SCC 30.42A.100, the hearing examiner may approve a rezone only when all the following decision criteria are met.

- a) The proposal is consistent with the comprehensive plan.
- b) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- c) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

A. The rezone proposal is consistent with the Comprehensive Plan. The subject property is located within an Urban Growth Area (UGA) and is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map. The GPP states that R-7,200 is an implementing zone for lands designated ULDR and that housing of various types should be directed to the UGA. Therefore, based on the finding that the subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map the requested rezone is consistent with the adopted comprehensive plan.

B. The requested rezone bears a substantial relationship to the public health, safety, and welfare.

The requested rezone conforms to the Comprehensive Plan, and through detailed review by PDS adequate provisions have been made to ensure compliance with the County's development codes in the UDC. Therefore, the rezone implements public policy and advances the public health, safety and welfare.

C. The minimum zoning criteria found in chapters 30.31A through 30.31F SCC are NOT applicable to this application.

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.

This rezone is a request to up-zone the subject property in the Urban Low Density Residential (ULDR) designation from R-9,600 to R-7,200 to allow a total of 7 single family homes. In recent rezone decisions, the Examiner requested that applicants, who carry the burden of proof, provide an analysis to a series of questions relating to a project's compliance with applicable GPP land use policies. The applicant has provided a thorough response to these questions that PDS feels adequately addresses the rezone criteria (exhibit 45). See also staff discussions under the "Comprehensive Plan" section above.

The proposed future development plans submitted for the project have been deemed to be in compliance with county GMA development regulations relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation and critical areas protection.

Based on the finding above the proposed rezone bears a substantial relationship to the public health, safety and welfare and the request to rezone the property from R-9600 to R-7,200 should be approved.

17. The reviewing Examiner concurs with the analysis of Staff and adopts the same.
18. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to Chapters 30.72 and 2.02 SCC.
2. The requirements of SEPA have been met.
3. The proposal is consistent with the GMA-Comprehensive Plan and with applicable development regulations. RCW 58.17.100, 195.
4. The proposal, as conditioned, makes “appropriate provisions” for the public health, safety and general welfare, and for applicable items of design and infrastructure as required by RCW 58.17.110. Adequate public services exist to serve the proposal.
5. The public use and interest will be served by the platting of the subdivision.
6. The proposed rezone meets the applicable criteria for rezone approval. SCC 30.42A.100 (a) and (b).

DECISION

The application for a rezone of the subject site from R-9600 to R-7,200 is hereby GRANTED.

The preliminary subdivision approval is hereby GRANTED, subject to the following CONDITIONS.

- A. The preliminary plat received by PDS on January 11, 2008 (Exhibit 15) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330

- B. Prior to initiation of any further site work; and/or prior to issuance of any Development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A.
 - ii. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPAs) 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 Critical Areas Report and Conceptual Mitigation Plan for Liberty Village 2 (dated June 22, 2006) and the Addendum to Critical Areas Report and Conceptual Mitigation Plan for Liberty Place (dated March 8, 2007) prepared by the Jay Group shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and items shall be indicated on the face of the final plat:
- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District No. 2 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 33.66C.010. Credit shall be given for one existing parcel. Lot 6 shall received credit."
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,555.19 per lot for mitigation of impacts on county roads paid to the County: Credits for certain expenditures may be allowed against said Payment to the extent authorized by County Code.

\$344.52 per lot for mitigation of impacts on State highways paid to the County.

\$563.24 per lot for mitigation of impacts on city streets for the City of Mill Creek, paid to the City. Proof of payment is required.

\$75.75 per lot for transportation demand management paid to the county.

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 lots therein. Once a building permit has been issued on a lot, all mitigation payments for that lot shall be deemed paid.

- iii. All Critical Areas shall be designated Native Growth Protection Areas (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 30.91N.010 are allowed when approved by the County.”
- iv. “On lots that have frontage on both arterial and non-arterial roads, access shall be limited to the non-arterial road unless a formal deviation to the design standards is granted by the Department of Public Works.”
- v. “Additional right-of-way, parallel and adjacent to the right-of-way centerline of Seattle Hill Road shall be dedicated to the County along the development’s frontage such that 40 feet of right-of-way exists from the centerline of the Seattle Hill Road right-of-way.”
- vi. Dedication of additional right-of-way that is tangent to the ultimate right-of-way on Seattle Hill Road and 141st Street SE with a 35-foot radius curve is required.
- vii. The developer shall pay the county \$1,244.49 per new dwelling unit as mitigation for Nakeeta Beach #307 parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. Native Growth Protection Area (NGPA) boundaries 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 in NGPA boundary crosses another boundary (e.g.: lot, tract, plat, roads, etc.), a rebar marker with surveyor’s cap and license number must be placed at the line crossing.

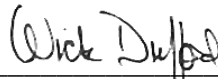
NGPA signs shall be placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the County biologist. The design and proposed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

- ii. The final wetland mitigation plan (additional buffer) shall be completely implemented.
 - iii. Frontage improvements conforming to the County standards shall have been constructed along the development's frontage along Seattle Hill Road and 141st Street SE.
 - iv. The Thomas Lake Estates entrance sign shall have been relocated behind the new frontage improvements in the closest proximity possible to the original location.
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 16) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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.

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

Order issued this 29th day of April, 2008



Wick Dufford, Hearing Examiner Pro Tempore

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 9, 2008**. 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 13, 2008** 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: Stacey Abbott

<p>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.</p>
