

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

DATE OF DECISION: March 19, 2008

PLAT/PROJECT NAME: *Bartlett Road Short Subdivision and Rezone*  
APPLICANT/  
LANDOWNER: Ivan Kraemer

FILE NO.: 06-129988-LU

TYPE OF REQUEST: Rezone from Residential-9600 (R-9600) to Residential-7200 (R-7200)

DECISION (SUMMARY): **APPROVED**

**BASIC INFORMATION**

GENERAL LOCATION: The project site is located at 20004 Bartlett Road, Bothell

ACREAGE: 1.01

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

**COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential (4-6 du/acre)

**UTILITIES:**

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

SCHOOL DISTRICT: Northshore School District No. 417

FIRE DISTRICT: Fire District No. 1

**SELECTED AGENCY RECOMMENDATIONS:**

Department of:  
Planning and Development Services: Approve with conditions

## **INTRODUCTION**

The applicant filed the Master Application on February 20, 2007. *See* Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on March 10, 2007 in the afternoon.

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). *See* Exhibits 12 (mailing), 13 (publication) and 14 (posting).

A SEPA determination was made on December 11, 2007. *See* Exhibit 11. No appeal was filed.

The Examiner held an open record hearing on March 11, 2008, the 116th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

## **PUBLIC HEARING**

The public hearing commenced on March 11, 2008 at 10:24 a.m.

1. Stacey Abbott, Senior Planner, appeared on behalf of PDS and gave an overview of the rezone request and answered questions from the Examiner.
2. Ron Guest appeared on behalf of the applicant, Ivan Kraemer.
3. No one appeared in opposition to the request. Two neighbors, Gagandeep Singh and Harwet Sapra testified regarding concerns about the construction process.

The hearing concluded at 10:46 a.m.

**NOTE:** For a complete record, 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 December 11, 2007. Exhibit 11. The DNS was not appealed.

3. Rezone Request: The request before the Examiner is for a rezone from R-9600 to R-7200. Exhibit 1. The applicant is requesting an administrative site plan from PDS, which PDS staff has included in the file for the Examiner's reference. The Examiner has no jurisdiction over approval of the site plan. The Examiner does appreciate the information and the visual reference as it is crucial in deciding the issues in the rezone.
4. Site description: This is a 1.01 acre site lying west of Bartlett Road. A single family residence is located on the south end of the site. The single family is to remain. No wetlands or critical areas exist onsite. The remaining land cover consists of grass and landscaping. Exhibit 30.
5. Adjacent uses: The parcel to the northwest is zoned R-7,200 and contains residential uses. The parcels to the east and south are zoned R-9,600 and also contain residential uses. State Route 405 abuts the parcel along the southwest property line. Exhibit 30; testimony at hearing.
6. Transportation: The development is situated upon Bartlett Road, a non arterial. The staff report contains the following information on the development's compliance with county transportation requirements, which the Examiner incorporates herein for a better understanding of the transportation impacts of the higher density development at this site:

*PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.*

1. *Road System Capacity [SCC 30.66B.310]*

*The impact fee for this proposal is based on the new average daily trips (ADT) generated by 4 new units at 9.57 adt/unit. This rate comes from the 7<sup>th</sup> Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 38.28 new ADT and has a road system capacity impact fee of \$8,804.40, based on \$230/ADT. This impact fee must be paid proportionately prior to the issuance of each building permit.*

<i>Trips</i>	<i>Calculations</i>	
<i>ADT</i>	<i>(5 homes – 1 existing home) x (9.57 ADT/SFR)</i>	<i>= 38.28</i>
<i>AM PHT</i>	<i>(4 homes) x (0.75 AM PHT/SFR)</i>	<i>= 3.00</i>
<i>PM PHT</i>	<i>(4 homes) x (1.01 PM PHT/SFR)</i>	<i>= 4.04</i>

2. *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:*

*Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160: The subject development is located in TSA F which, as of the date of submittal, had the following arterial unit in arrears: 337. 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 3.00 a.m. peak-hour trips and 4.04 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.*

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

*The subject proposal will not impact any IRC locations identified at this time within TSA F 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.*

*4. Frontage Improvements [SCC 30.66B.410]*

*The subject property frontage is located along Bartlett Road. Urban standard frontage improvements will be required, consisting of 18 feet of pavement widening from the centerline of right-of-way, 5-foot sidewalk, 5-foot planter strip and vertical curb.*

*Construction of frontage improvements is required prior to recording the subdivision.*

*5. Access and Circulation [SCC 30.66B.420]*

*Access is proposed from Bartlett Road via individual driveways and a shared driveway. Individual driveways are proposed to lots 3, 4, and to lot 5 with the existing home; which is acceptable since Bartlett Road is not classified as an arterial road. A shared driveway to lots 1 and 2 is shown on the plans in a 20-foot wide access drive. The existing home currently has two driveways. EDDS 2-02 (A) allows one access per urban residential home. It will be required that the north driveway on Bartlett Road be eliminated.*

*The sight distance was checked along the frontage of Bartlett Road, and it appears to meet the minimum requirements.*

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

*Bartlett Road is designated as a non-arterial road 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. 20 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, which has been shown on the plans.*

7. *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. If a development does not impact a state road project with 3 or more peak hour trips, it is the policy of WSDOT that traffic mitigation is not required. Traffic mitigation will not be required in this case.*

8. *Other Streets and Roads [SCC 30.66B.720]*

*This project falls within the interlocal agreement area designated by the City of Bothell for traffic mitigation, and it was indicated on the presubmittal form for this project that the application was to be routed to the City by the County counter staff. No comments have been received from Bothell, so we will assume that the City does not have any comments about the development.*

9. *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 4.04 new PM peak hour trips x \$1,500.00, which equals \$303.00. A written offer for payment of this TDM obligation has been received.*

7. Environmental Impacts of Higher Density.

**A. Grading, drainage, and critical areas.**

There are no critical areas on or within 100 feet of the project site, and during site development only a relatively small amount of cut and fill will be occurring. According to the staff report, grading quantities are anticipated to be approximately 5,455 cubic yards of cut and 500 cubic yards of fill, primarily for road, drainage facility, and home site construction. 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. Exhibit 30 at 6; *see also* Exhibits 9 and 10C.

The site lies within the Lower North Creek Basin of the North Creek sub-basin which is part of the Lake Washington basin. The existing site runoff is overland sheet flow which moves northeast across the site, eventually exiting the site on the northeastern boundary of the parcel. The proposed development area of the site is underlain by Alderwood gravelly sandy loam. Alderwood soils are categorized as moderately well drained with moderately rapid permeability in their upper layers to very slow permeability. Flow control will be obtained using one on-site detention vault designed according to the requirements set forth by Snohomish County. The vault will be constructed in a storm water facility tract along the eastern boundary of the property. . Exhibit 30 at 6; *see also* Exhibits 9 and 10C.

**B. Parks and schools impacts.**

1. **Parks.** The staff report contains the following information on the development's compliance with county parks mitigation requirements which the Examiner incorporates herein for a better understanding of the parks impacts of the higher density development at this site:

*The proposal is within Nakeeta Beach Park Service Area 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 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.*

Exhibit 30 at 3.

2. **Schools.** The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended 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 Northshore School District No. 417, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 1 existing lot. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

8. General Policy Plan Designation. 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 5 lot short plat and rezone resulting in a density of 5.38 dwelling units per acre. Consistency with policies implementing the comprehensive plan will be discussed in the conclusions of law, below.

9. As a part of approving the development under the short subdivision code, PDS is required to make findings regarding safe walking conditions for school children who may reside in the subject development. Comments dated February 23, 2007 have been received from the Northshore School District that indicates all public school students would be provided with bus transportation to school. The school district identified the bus stop location as 20004 Bartlett Road for elementary students and at Bartlett Road and Filbert Road for middle and high school students. It appears that there are large sections of sidewalk already in place between the development property and Filbert Road to the north on the same side of Bartlett Road as the proposed development. In order to meet the requirements to provide safe walking conditions for children walking to the bus stop, the applicant will be required to install offsite walkway meeting the design requirements of EDDS in any locations where none currently exist to the bus stop location from the development.
10. Two citizens, Gagandeep Singh and Harwet Sapra, are a married couple who live adjacent to the proposed development. They both testified at the hearing that they are not opposed to the development, but are concerned about the impacts of construction. Mr. Singh has cancer and is very prone to infections. He is concerned that workers will be coming into his yard, which is adjacent to the proposed development site. They are both also concerned about their young child wandering over into the construction area. They requested the applicant put up a fence. The Examiner informed them that she had no authority to require a fence. The applicant himself, Ivan Kraemer, then testified that he would voluntarily put up a silt fence or other similar temporary fencing as a barrier while construction was going on, which would both prevent workers from wandering into Mr. Singh’s yard and prevent the small child from wandering into

the construction site. The other solution, which was not mentioned at the hearing, is that Mr. Singh could install a fence at his own cost around his yard.

11. 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 rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. *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.
3. Chapter 30.42A SCC covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

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

- (1) The proposal is consistent with the comprehensive plan;
  - (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
  - (3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.<sup>1</sup>
4. 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.**

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



5. This rezone is a request to up-zone a property in the Urban Low Density Residential (ULDR) Designation from R-9600 to R-7200 to allow 5 units on this site. Although it is clear that this request fits within the UDLR designation (which allows up to 6 units per acre), as stated above, the analysis of consistency must go well beyond the designation and identify how the project is consistent with the policies in the plan. In this particular case, the rezone provides the applicant with one additional lot than he would be entitled to under the present zoning.
6. The Land Use Element of the General Policy Plan (GPP) introduces the way in which Urban Growth Areas 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 UGAs.

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.

General Policy Plan 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.

7. Goal and Objective LU-2 focus on establishing development patterns that use urban land more efficiently by concentrating and intensifying development at appropriate locations. (Objective LU-2.A). The Examiner finds the test of what is “appropriate” to rely on three general areas of inquiry, which are found in the policies of LU-2 and in HO 2A.1. They have to do with careful siting of the development to minimize impacts to environmentally sensitive areas and to urban infrastructure; to provide integration of the infill project into the neighborhood and nearby cities that may annex, and ensuring that design of the project itself does minimize impacts on the character of the residential neighborhood area. They are laid out in outline form below:

**i. Is the development carefully sited?**

- (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.<sup>2</sup>
- (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) How will the development made possible by the requested rezone tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation? **(Page LU-15)**

**ii. Is the rezone proposal/development sensitively integrated into the existing community? (See LU-15)**

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<sup>2</sup> 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) 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 variety of housing types in neighborhoods? **(LU-15, Policy HO 2.B.1)**
- (b) Does the rezone/development proposal help to provide a mix or variety of housing types, especially if the area is a medium density area? **(Policy LU 2.A.4, Policy HO 2.B.1)**
- (c) 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? **(See Policy I.C.2)**

**iii. If known at the time of submittal of the rezone, is the development well designed? (See Policy HO 2.A.1, LU-15)**

- (a) Even if density is at a higher level are efforts made to have the character fit into the existing community? If so, what is the character of the existing community and how will the development maintain it? **(See Policy HO 2.A.1, LU-15)**
- (b) How specifically will the building design integrate into the existing neighborhood? Are structures of a size, height, mass, and separation to be consistent with vicinity homes and the surrounding neighborhood? Describe in detail. Will the development be at the same elevation as the rest of the existing neighborhood? How will the elevation affect the perception of the development? Is there something that can be done to mitigate differences? **(Policy HO 2.A. 1, LU-15)**
- (c) If applicable, what other selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(See Policy HO 2.A.1)**
- (d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using features such as landscaping, fencing, setbacks, or other design features to soften or eliminate those impacts. **(LU-15)**
- (e) Will the development be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation? Has the opinion of both the County Fire Marshall and any local Fire District been placed in the record? **(LU-15)** (See also discussion of public health, safety and welfare criteria, below).
- (f) Is the public health, safety and welfare adequately provided for (examples are safe pedestrian access, safe place for children to wait for school bus, adequate off-street parking so that a fire truck can access development)? **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

8. Applying this test to the Bartlett Road rezone project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:
- A. 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:
- i. Streets, roads and highways. The Examiner relies on Finding of Fact 6 in part to conclude that the development is adequately served by existing streets, roads and highways. There does not appear to be any major transportation issues or concurrency problems in the area. There appear to be no local circulation issues.
  - ii. Sidewalks. The developer will be providing internal sidewalks as a part of the development proposal and along Bartlett Road. School children will use these sidewalks to get to the school bus stop at Filbert Road. **(Policy HO 2.A.4)**
  - iii. Street and road lighting system. It is unknown whether there are street lights on Bartlett Road.
  - iv. Traffic signals. It is unknown to the Examiner whether traffic signaling is adequate in the area.
  - v. Water systems. Water will be provided by Alderwood Water and Sewer District and the file contains a preliminary certificate of water availability. Exhibit 23.
  - vi. Sanitary Sewer Systems. Sewer will be provided by Silver Lake Water District and the file contains a preliminary certificate of sewer availability. Exhibit 23.
  - vii. Park and recreational facilities. As stated in Finding of Fact 7.B., 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. This 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, including Logan Park, Locust Park, Grannis Hills Park, Forsgren Park, Lord Hill Park, and others. The Parks Plan was not altogether clear that levels of service had been adopted for every type of park, although Objective CF 7.C of the GPP states, related to parks, “[m]onitor and maintain minimum LOS standards, as defined in the Comprehensive Park and Recreation Plan and the CIP, through adequate CIP funding.”
  - viii. Storm and sanitary sewer disposal system: Stormwater disposal systems are provided by Snohomish County right-of-way on Bartlett Hill Road.
  - ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Fire District 1 has made specific comments to the plan review, including requesting appropriate fire hydrants, access, and requirements for addressing of homes. Exhibit 24.
  - x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit 25.
  - xi. Education: The site is served by the Northshore School District. Exhibit 20.

xii. Other services: The Examiner is not aware of any other services that are available that should be discussed in the decision.

B. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A.

The Examiner's conclusion relies on the following analysis:

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)**<sup>3</sup>
- (b) The rezone or development is not proposed in an area that is within walking distance of transit access, but this policy applies more specifically to properties in the urban medium density residential designation. **(Policy LU 2.A.5)**
- (c) The development made possible by the requested rezone probably will not tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation, but this policy applies specifically to properties in the Urban Medium Density Residential designation. **(Policy LU 2.A.5)(Page LU-15)**

ii. The rezone proposal is adequately integrated into the neighborhood. (See LU-15)

- (a) Character of the Existing Neighborhood. The neighborhood is primarily comprised of single-family homes. There is a mix of zoning in the vicinity of the site, including R-7200, PRD-7200, and R-9600. In the immediate vicinity, there are both brand new homes on small lots and older homes on larger lots. The redevelopment of this site at a higher density will encourage a more efficient use of urban land. **(LU-15, Policy HO 2.B.1)**
- (b) Allowing for a Mix of Housing Types. The R-7200 zoning designation will allow for duplexes, mobile homes and single-family homes. **(Policy HO 2.B.1)**
- (c) City Comments. PDS requested comments from the City of Mill Creek, but received a letter back indicating that the proposed development was outside the City's area of influence. Exhibit 21.

iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)

- (a) Density of Surrounding Neighborhood and How the Development Will Help Maintain Existing Character. The proposed density fits well into this neighborhood, which can be fairly characterized as a transitioning neighborhood. While there are a few pockets of rural/suburban type zoning, much has already converted to higher density urban zoning. This rezone is

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<sup>3</sup> 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.

consistent with much of the area that has already converted to more urban zoning. **(See Policy HO 2.A.1)**

- (b) Integration of Building Design into the Existing Neighborhood. The Examiner is not aware of the building design or how the design will fit into the neighborhood. As stated above, the character of the neighborhood overall is changing. Most of the new homes in the neighborhood are two-story and it is assumed the homes in this development will likely be the same. **(See Policy HO 2.A.1; LU-15)**
- (c) Other Selective and Innovative Land Use Measures Used to Preserve the Character of the Existing Neighborhood. 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) Mitigation of Negative Impacts through Landscaping, Fencing and other Design Features. The developer will be providing a planter and sidewalks along the frontage of the project on Bartlett Road, which will help mitigate any negative effect of higher density. Exhibit 28 at 4. **(Policy HO 2.A.1)**
- (e) Adequate Fire and Medical Emergency Access. The development will be required to provide for adequate fire and medical emergency access. Exhibit 24 and Exhibit 10A. The opinion of the local Fire District appears in the record at Exhibit 24, as stated above, and provides guidance to PDS for requirements for the plat review. **(LU-15)**
- (f) Adequate Provision for Public Health, Safety and Welfare. The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. There appears to be adequate pedestrian access to Filbert Road, a safe place for children to wait for a school bus, and adequate fire and medical emergency access has or will be provided as a condition of the development. **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

The applicant has also provided a good analysis of comprehensive plan policies and an adequate justification for supporting the rezone as implementing the comprehensive plan. See Exhibit 28. While this particular rezone has fairly minor impacts (the allowance of one additional building unit), the Examiner will always look at the salient factors from the comprehensive plan that support the rezone. As indicated in earlier decisions, the analysis needs to focus on the type of urban infrastructure capabilities, the availability of urban services, and whether, even in this lowest urban density designation, R-7200 zoning is appropriate in this location.

- 9. The Examiner concludes that the applicant has demonstrated that the rezone will implement the comprehensive plan.
- 10. The other criteria in SCC 30. 42A.100 is whether the proposal bears a substantial relationship to the 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 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.

11. In this case, the Examiner concludes there are no issues of concern that warrant analysis under SCC 30.42B.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.
12. Since this request involves rezoning only, 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 plan approval by PDS.
13. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
14. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

### **DECISION**

The request for a Rezone from R-9600 to R-7200 for this property is granted.

Decision issued this 18<sup>th</sup> day of March, 2008.

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **MARCH 31, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 2, 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 this case.

### Staff Distribution:

Department of Planning and Development Services: Paul Lichter

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.