

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

DATE OF DECISION: April 10, 2008

PLAT/PROJECT NAME: Serene Vista

APPLICANT/  
LANDOWNER: Doug Hageman  
P.O. Box 13189  
Mill Creek, WA 98082-1189

FILE NO.: 06-133274-000-00-LU

TYPE OF REQUEST: Rezone

DECISION (SUMMARY): Approved

**BASIC INFORMATION**

GENERAL LOCATION: 14131 Serene Way, Lynnwood (in Section 34, Township 28 North, Range 4 East, W.M., Snohomish County, Washington).

ACREAGE: .96 (the site is comprised of .56 acres of upland with the remainder of the property below the Ordinary High Water Mark of of Lake Serene)

ZONING: CURRENT: WFB  
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:  
General Policy Plan Designation: Urban Medium Density Residential

School District: Mukilteo School District No. 6

Fire District: No. 1

Water Source: Alderwood Water District

Sewer Service: Alderwood Wastewater District

**SELECTED AGENCY RECOMMENDATIONS:**

Department of Planning and Development Services: Approve

**INTRODUCTION**

The applicant filed the Master Application on December 4, 2006. (Exhibit 1)

The Deputy Hearing Examiner (Examiner) Ed Good made a site familiarization visit on January 21, 2008.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 17, 18 and 19)

A SEPA determination was made on November 20, 2007. (Exhibit 16) No appeal was filed.

The Examiner, Ed Good held an open record hearing on January 31, 2008, the 81st 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 January 31, 2008 at 3:04 p.m.

1. The Examiner, Ed Good, indicated that he had read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Monica McLaughlin, planner from Snohomish County Department of Planning and Development Services, appeared and testified under oath. She presented the county staff report.
3. Jesse Jarrell, applicant's agent, appeared and testified under oath. He described the proposal.
4. No one appeared in opposition to the request.
5. By consent of the applicant filed March 19, 2008, Examiner Pro Tem James Densley listened to the record, reviewed the file and made a decision on this matter.

The hearing concluded at 3:19 p.m.

**NOTE:** The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of these hearings are available in the Office of the Hearing Examiner.

## FINDINGS, CONCLUSIONS AND DECISION

### FINDINGS:

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. Nature of Request: The applicant desires to rezone a .96 acre property from WFB (Waterfront Beach) to LDMR (Low Density Multiple Residential).

An Administrative Site Plan, Shoreline Substantial Development permit application and grading permit application for future construction of 3 single family residences is currently being reviewed administratively by PDS.

3. Site Description: The property is located on the northwest side of Lake Serene. The .96 acre triangular shaped site (comprised of .56 acres of upland with the remainder of the property below the Ordinary High Water Mark of the lake) is situated on the east side of Serene Way, approximately 600 feet south of its intersection with 140<sup>th</sup> Street SW. The property is developed with a single family home (to be removed). Vegetation on site consists primarily of lawn and shrubs. The site generally slopes towards the northeast, towards Lake Serene, at slopes ranging from 2% to 8%. A Category 3 wetland is located on site adjacent to the lakeshore.
4. Adjacent zoning: Adjacent properties to the north and south are zoned WFB. Property across the street is zoned R-8,400. All surrounding properties are developed with single family homes.
5. Park Mitigation: The project will comply with Chapter 30.66A SCC, which in this case requires payment of \$1,244.49 per each new single family residential unit to be paid prior to building permit issuance for each unit. Compliance with Chapter 30.66A SCC is acceptable mitigation for parks and recreation impacts in accordance with county policies.
6. Traffic: 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 Snohomish County Code and is recommending approval. A summary of their comments is provided below.

1. Road System Capacity [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 19.14 new average daily trips (ADT) and has a road system impact fee of \$5,110.38 (\$1,703.46/unit) based on \$267/ADT, the current fee rate for residential developments inside the urban growth area, 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.

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

ITE Land Use Category: Single Family Detached Residences

ITE Land Use Code: 210

Applicable Measurement Unit (ITE Independent Variable): number of SFR units

Number of applicable measurement units for this development: 3 SFR

### *Trip Generation Calculations*

Trip Generation Based on Average Rates

New average daily trips =  $(3 \text{ SFR} - 1 \text{ ex SFR}) \times 9.57 \text{ ADT/SFR unit} = 19.14 \text{ ADT}$

New PM peak-hour trips =  $(3 \text{ SFR} - 1 \text{ ex SFR}) \times 1.01 \text{ ADT/SFR unit} = 2.02 \text{ PM PHT}$

New AM peak-hour trips =  $(3 \text{ SFR} - 1 \text{ ex SFR}) \times 0.75 \text{ ADT/SFR unit} = 1.50 \text{ AM PHT}$

#### 2. Concurrency [SCC 30.66B.120]

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 subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of January 22, 2007. The expiration date of the concurrency determination is six years from this date. The project was deemed concurrent on the following basis:

Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: 202 and 204. The subject development will 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 1.50 a.m. peak-hour trips and 2.02 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]

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

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

#### 4. 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 Serene Way 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 7 feet

The applicant has proposed a 5 foot sidewalk and submitted a deviation request from the 7 foot sidewalk standard. The Count Engineer denied this request January 8, 2007. 7 foot sidewalks will be required for the proposed development.

Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

#### 5. 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.

The proposed development will take access off of Serene Way from a 25 foot wide commercial driveway located near the north property line. This width complies with EDDS chapter 2. Construction of the proposed driveway must otherwise meet standards specified in EDDS chapter 2 for commercial access points. The County accepts the proposed layout.

#### 6. Dedication/Deeding of Right-of-Way [SCC 30.66B.510, 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, Serene Way, is designated as a 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. However, the development is required to deed 2 feet of additional right-of-way to accommodate the 7 foot sidewalk. This is adequately shown on the site plan.

Serene Way is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for the right-of-way deeded that is more than 30 feet from centerline is not applicable.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT have been received as January 8, 2007. Revised comments were received from WSDOT via e-mail on April 10, 2007, which provide credit for the existing single family residence. Thus required mitigation shall be \$689.04 (19.14ADT x \$36.00/ADT) or \$229.68 per new single family residence. The County has reviewed the WSDOT requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.

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

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

9. 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. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five (5) percent of the 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 SCC 30.66B.625.

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 2.02 new PM peak hour trips x \$1,500.00 which equals \$151.50 (\$50.50/unit). An acceptable written offer for payment of this TDM obligation has been received. Payment of TDM mitigation is a condition of approval.

7. School Impact: The proposal is subject to Chapter 30.66C, which requires payment of mitigation fees or comparable mitigation for each new dwelling unit to the appropriate school district. Pursuant to Section 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 units. Credit will be given for 1 existing lot.
8. Critical Areas: The site contains a Category 3 wetland along the shoreline of Lake Serene. The on-site portions of the Category 3 wetland and the associated 25 ft. buffer has been maintained as mowed lawn since at least 1972 based upon aerial photos. PDS staff made two site visits to verify the wetland boundary and the OHWM of Lake Serene. The applicant provided photographic evidence of the existence of a bulkhead since 1972. The wetland boundary and the OHWM and the location of the bulkhead have all been properly depicted on the submitted site plan as required per SCC 30.62.055(1)(a)(v).

The applicant is proposing three residential units on a single parcel. The wetland and buffer along the lake front will continue to be maintained as existing lawn. Stormwater will be discharged into the outer edge of the wetland buffer via a level spreader trench. After installation of the spreader trench, the disturbance area will be re-seeded to match the pre-existing lawn. The level spreader could not be pulled out of the buffer completely because of elevation requirements but the applicant minimized the impacts as much as possible per SCC 30.62.365. The existing lawn is exempt from being protected as NGPA/E per SCC 30.62.320.

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application is complete and in conformance with Chapter 30.62 UDC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare.

A grading permit for this project will not be issued until a Critical Area Site Plan (CASP) is prepared, submitted for review, approved and recorded with the county auditor's office.

9. Comprehensive Plan Compliance: The subject property is designated Urban Medium Density Residential (UMDR: 6-12 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). According to the GPP, the Urban Medium Density Residential designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones."

The Examiner finds the requested rezone to be consistent with the General Policy Plan's Urban Medium Density Residential designation of the property.

PDS review and analysis of the rezone request found that current GMA adopted regulations, governing future site development will implement such Goals, Objectives, and Policies development as reviewed and analyzed under the subject request, bears a substantial relationship to the public health, safety and welfare. The Examiner agrees with the analysis of PDS and so finds that the project implements the GMA.

10. Zoning: (Unified Development Code, Title 30)

Single family dwellings are a permitted use in the LDMR zone. Per SCC 30.23.040(4), maximum allowed density in the LDMR zone is calculated by dividing the property square footage by 4,000. The maximum number of dwelling units allowed on this site (only using the upland portion of the site) is 6 units. The applicant is proposing 3 units. The proposal meets the minimum net density requirements of SCC 30.23.020, access requirements of SCC 30.24.052, lot coverage (30.23.040(15) & 30.23.040(1)), landscaping (30.25) and parking (30.26) requirements. Prior to the issuance of building permits for the proposed dwellings, PDS staff will verify that the building setbacks and building height requirements outlined in SCC 30.23 will be met.

11. Rezoning considerations: 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.

#### REQUIRED FINDINGS

(1)The proposal is consistent with the Comprehensive Plan. The Comprehensive Plan designation is Urban High Density Residential. This designation supports a rezone to LDMR which would ensure density is increased, meeting the goals of the Comprehensive Plan and Growth Management Act, while preserving the single and multi-family character of the area.

(2) Staff review found that adequate public utilities exist to serve any future proposed new single family detached or multi-family structures. Future development proposals will have to provide parks, school and traffic mitigation fees and construct frontage improvements which will meet county code requirements increasing public safety. Any future development proposals will be required to meet county code requirements for structure layout and siting, safe vehicular and pedestrian traffic, along with the recommended conditions, during the development review, which will make adequate provisions for the public health, safety and general welfare.

(3) Not applicable to this request.

#### DISCUSSION:

The subject property is zoned WFB (Waterfront Beach), which is equivalent to the R-7,200 zone. A rezone is requested to the LDMR (Low Density Multiple Residential) zone. Although it is clear that the subject rezone request fits within the UMDR designation, an analysis of consistency must go well beyond the designation and identify how the project is consistent with the policies in the comprehensive plan. To this end, the Examiner has requested that applicants, who carry the



burden of proof, provide an analysis to a series of questions (see 06-103099 SD for a listing of the questions) relating to a project's compliance with applicable GPP land use policies relating to Land Use and Housing. The applicant has provided a written analysis adequately addresses the rezone criteria (see Exhibit 20).

PDS reviewed and analyzed the rezone request for purposes of assisting in establishing consistency of the request with the GMA Comprehensive Plan and for establishing that the proposal bears a substantial relationship to the public health, safety and welfare. The Examiner accepts the PDS review.

The current GPP, effective February 1, 2006, (page LU-15) encourages: broadening the variety and mix of housing types in traditional single-family and multi-family neighborhoods, while respecting the vitality and character of established residential neighborhoods, and that such encouragement will be tied to a mix of housing types being "carefully sited, well designed, and sensitively integrated into existing communities.

The rezone request is consistent with the "Urban Development Patterns" statement for encouraging and broadening the mix of urban housing types, promoting more efficient utilization of land within UGAs and reducing consumption of rural lands. The subject property is located in an area that is in essence "...already characterized by urban growth that have adequate existing public facilities and service capacities..." Public facilities and services such as, but not limited to, roads, sidewalks, water, sewer and storm collection currently exist, or are being constructed throughout the general vicinity. Fire protection and law enforcement services are available. A transit stop is located within a ¼ mile of the subject property. The rezone request will implement as well as encourage a variety of mix of urban housing types in traditional single-family neighborhoods.

The Examiner finds that the preceding discussion is particularly applicable to the following key Comprehensive Plan Element Goals, Objectives and Policies that might be considered relevant to the rezone request:

Land Use Goal LU 2 - "Establish development patterns that use urban land more efficiently"

Land Use Objective LU 2.A - "Increase residential densities within UGAs by concentrating and intensifying development in appropriate locations"

LU Policy 2.A.4 - "Any UGA shall provide opportunities for a mix of affordable housing types... within medium density residential areas."

Housing Opportunity Objective HO1.B - "Ensure that a broad range of housing types is available in urban and rural areas."

Capital Facilities Policy CF 7.1 - "The County shall utilize impact fees as authorized under the GMA to help fund the cost of parkland and facilities expansion and as required to serve new development."

Natural Environment Objective NE 1.A - "Balance the protection of the natural environment with economic growth, housing needs and the protection of property rights."

Natural Environment Objective NE 1.B - "Accommodate population growth in a manner that maintains and protects elements of the natural environment."

PDS review and analysis of the rezone request finds that current GMA adopted regulations, governing future site development will implement such Goals, Objectives, and Policies development as reviewed and analyzed under the subject request, bears a substantial relationship to the public health, safety and welfare. The Examiner adopts the PDS analysis.

Regarding traffic impacts, the project has been deemed concurrent and the applicant will be paying traffic impact fees to the county and to state. The project will provide a sidewalk in front of the development. There is not a requirement in code for the applicant to install street lighting in front of the development. The project is located within walking distance to a bus stop.

Sewer and water are available from the Alderwood Water District. The site is located on a lake, which will provide recreational opportunities to the residents, either by direct access from the property or via the public boat launch which is located nearby at 140<sup>th</sup> Street SW. The project has been deemed to comply with the County Fire Code and a county fire station is located at Serene Way and 140<sup>th</sup> Street SW. A new fire hydrant will be installed in front of the development. Police protection is available through the County Sheriff's Office and the site is served by the Mukilteo School District

The development will meet the requirements of the County's Critical Areas Ordinance. A wetland adjacent to the lake will be preserved from development. PDS determined that the part of the property earmarked for development is located outside a flood hazard area and that no flood hazard permit is required. A Shoreline Substantial Development Permit is required since the estimated cost to construct the development is more than \$5,000. The property is designated as a Suburban Environment on the Snohomish County Shoreline Master Program maps. Prior to issuance of a Shoreline Permit for the project, the applicant will need to demonstrate compliance with all the applicable policies and regulations contained within the Master Program, including, but not limited to Residential Development, Water Quality, Vegetative Management and Access, as well as those pertaining specifically to the Suburban Environment. The detailed construction plans submitted with the grading permit application are in compliance with these policies and regulations and the only outstanding issue remaining is in regards to allowing all future residents of the development access to the lake directly from the property. PDS is awaiting further analysis from the applicant, which will be addressed during the administrative review of the Shoreline Permit application.

The applicant revised his project from a 5 unit development (with the possibility of 3 story buildings), to the current 3 unit development comprised of 2 story buildings. This should integrate seamlessly into the neighborhood, as many lots around the lake have been short platted into similar configurations (the property adjacent to the south has been short platted into 3 lots and the property to the north has been short platted into 2 lots). The project will provide landscape buffers along the road frontage and within the driveway "parking area."

The City of Mukilteo commented on the initial 5 unit proposal (see Exhibit 34). They did not provide any comment on the revised application to 3 units or appeal the SEPA determination, so it is assumed they have no further objections. The rezone to LDMR will facilitate the accommodation of new population growth into urban areas per the directive of the Growth Management Act.

The preliminary plans submitted for the project have been deemed to be in compliance with county GMA development regulations (which are required to implement the policies in the comprehensive plan) relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation, critical areas protection, compliance with fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to insure that adequate provision has been made for the public health, safety, and welfare of the citizens. PDS has determined that the proposed project can comply with the relevant provisions.

The zoning criteria found in Chapters 30.31A through 30.31F SCC, which pertains to development in certain commercial and industrial zones, and to townhouse projects, are not applicable to this application.

The Examiner thus finds that implementing the rezone request will broaden the availability of a variety of future housing types tied to GMA adopted development regulations and therefore bears a substantial relationship to the public health, safety and welfare.

The Examiner finds that the applicability of specific comprehensive plan policies to a development application is also limited by the *Citizens v. Mt. Vernon* (133 Wn. 2d 861) Decision. Today's GMA adopted development regulations are in place and will sufficiently address future development activity.

12. Utilities: Water and sewer service can be provided by the Alderwood Water District (see Exhibit 35). The Snohomish County P.U.D. No. 1 indicates that it has sufficient capacity to provide electrical power to the future project (see Exhibit 37).
13. Uniform Fire Code (Chapter 30.53A SCC): Fire apparatus access as depicted meets the minimum requirements of SCC 30.53A.150. The applicant shall install a new fire hydrant near the entrance of the development. Since the access drive is less than 150 feet in length, there are no cul-de-sac or turnaround areas required for emergency vehicles. Prior to the start of combustible construction, fire hydrants will need to be installed and operational. Approved addresses are required to be placed on all new buildings and signage or pavement striping denoting fire lanes placed on the proposed access driveway to ensure access by emergency vehicles is not impeded.
14. Public Comments and Response thereto:

Several negative comments were received from neighborhood residents and the City of Mukilteo in response to the applicant's initial proposal to develop 5 single family homes on the property (see Exhibits 22-27 & 34). Since then the project has been downsized to 3 units, and one of the neighbors who was previously opposed to the project now supports it. Topics outlined within the correspondence can be summarized as follows:

**Drainage/Water Quality Impacts to Lake Serene/Environment**

- Water quality will be negatively impacted. The lake cannot handle the existing nutrient loading.
- The project does nothing to improve water quality.
- Where will the stormwater go when the lake level is high? The stormwater pipe will be underwater.
- Underground water quality treatment will not work because of the high lake levels.

- The project will cause the level of the lake to rise, causing additional flooding to homes.
- Current drainage codes do not accurately calculate the amount of anticipated runoff. The project should be designed to the 2005 storm water manual.
- The outfall of the lake, an 18 inch pipe, is at full capacity (under water).
- The proposed infiltration system will not work. It will be underwater all winter.
- The stormwater dispersion system needs to be outside the wetland buffer area.
- Stormwater from paved areas needs to be cleaned before release.
- What will happen to the eagles and other wildlife?

#### Zoning/Density/Quality of Life/Compatibility with neighborhood

- The project will be aesthetically degrading/out of character with the neighborhood.
- The Urban Medium Density comprehensive plan designation does not make sense around Lake Serene.
- LDMR rezones should not be allowed on properties adjacent to Lake Serene.
- New regulations and design standards need to be developed for LDMR developments. They are out of touch with good urban planning.
- There should be a moratorium placed on LDMR zoning/projects.
- The City of Mukilteo would not allow this kind of development.
- The acreage of the property on the application form is misleading, as much of the lot is under the lake. Density should not be based on the entire lot.
- The proposed density is too high for the neighborhood.
- Three story buildings five feet from adjacent properties do not fit into the surrounding area. This will create a “wall of housing.”
- The development will not provide enough space for parking. Currently there is no parking available on the street.
- The downsized proposal (3 units) now fits nicely into the neighborhood. I now support the project.
- I support Mr. Hageman’s wish to restrict his future tenants’ access to the lake.

#### Fire Safety

- The project will be unsafe to residents and adjacent homeowners.
- The 20 foot access driveway is not adequate for fire trucks

#### Transportation/Pedestrian Safety

- The intersection of Serene Way and Shelby Road is unsafe.

The applicant has provided written responses to these concerns for the file (see Exhibits 31 and 40). The Examiner accepts these responses as accurate.

The negative correspondence from the neighbors was in response to the applicant’s initial application to develop 5 single family residences on the property. The density allowed for the project has always been based on that part of the property that is NOT underwater (.56 acres). Maximum density allowed on the .56 acre site with LDMR zoning would be 6 dwelling units. The applicant is now proposing 3 dwelling units (all two story homes) in response to the neighbors’ concerns, and this density is what would be allowed under the existing WFB zoning (which is equivalent to R-7,200 zoning). The parking required per code is two stalls per dwelling unit (6 stalls required). The project will provide 7 stalls within the homes’ garages, and there will also be enough room in front of the garages (7 additional stalls) to park (and still maintain a 20 foot wide fire lane). The project meets county fire code requirements. Fire and emergency vehicle access complies with Snohomish County Code provisions.

The Ordinary High Water Mark of the Lake is now accurately depicted on the plans. The county's Critical Areas Ordinance allows the stormwater outfall to be located within the wetland buffer. The level spreader could not be pulled out of the buffer completely because of elevation requirements, but the applicant minimized the impacts as much as possible per SCC 30.62.365. The existing lawn is exempt from being protected as NGPA/E per SCC 30.62.320.

The applicant's engineer states that the detention system has been designed to include more stormwater detention than required and hence will not increase the lake level during high water events. He also states that the erosion control and grading plans incorporate best management practices from the 2005 DOE Manual in order to prevent silt leaving the site. A storm filter will help to clean stormwater before reaches the storm detention pipe. Stormwater from the detention pipe will be released at a controlled rate to an infiltration trench with a bubble up spreader. According to the engineer, it will not matter if the trench is covered by water during any high water events, since the function of the trench is to release water into the lake.

The county is mandated by the State Growth Management Act to plan for future population growth and to funnel that growth primarily into urban areas. The state Growth Management Act (GMA) requires that the county's development regulations be consistent with its comprehensive plan. The 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.

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

### **CONCLUSIONS:**

1. The Examiner has jurisdiction to hear this matter and render a decision thereon.
2. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
3. Adequate public services exist to serve the proposal.
4. The proposal makes adequate provisions for the public health, safety and general welfare.
5. The request is approved as submitted.
6. 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 WFB to LDMR for this property is hereby APPROVED.

Decision issued this 10<sup>th</sup> day of April, 2008.

---

James Densley, Hearing Examiner Pro Tem

## 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, 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 **APRIL 21, 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 24, 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: 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.