

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: November 3, 2009

PLAT/PROJECT NAME: ***Cherba Short Plat***

APPLICANT/
LANDOWNER: Alex Cherba

FILE NO.: 07 114135 LU

TYPE OF REQUEST: Rezone from Residential- 8400 (R-8400) to Residential-7200 (R-7200)

DECISION (SUMMARY): **APPROVED, CONDITIONED ON ADEQUATE SEWER CONNECTION**

BASIC INFORMATION

GENERAL LOCATION: The project site is located at 12809 25th Avenue SE, Everett, WA 98208

ACREAGE: .95 acres

ZONING: CURRENT: R-8400
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Silver Lake Water District

Sewage: Silver Lake Water District

SCHOOL DISTRICT: Everett School District #2

FIRE DISTRICT: Fire District No. 1

INTRODUCTION

The applicant filed the rezone application on November 27, 2007, with an administrative review of a five-lot short subdivision. See Exhibit A1; K.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing on October 14, 2009 as required by SCC 30.72.030(4). See Exhibits L1 (mailing), L2 (publication) and L3 (posting).

A SEPA threshold determination of nonsignificance was made on June 8, 2009. See Exhibit E2. No appeal was filed.

The Examiner held an open record hearing on October 14, 2009.

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

FINDINGS OF FACT

1. All exhibits and witnesses included on the Master Exhibit and Witness List were admitted and 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 June 8, 2009. Exhibit E2. The DNS was not appealed.
3. Rezone Request: The applicant is requesting a rezone from R-8400 to R-7200 with a concurrent 5-lot short plat of approximately .95 acres. The rezone is processed as a Type 2 application requiring a hearing examiner's decision. The short plat will be processed as a Type 1 administrative decision and is dependent upon approval of the rezone. Water and sewer will be provided by Silver Creek Water District.

PDS staff has included information pertaining to the short plat 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: The site is developed with an existing single-family residence and outbuildings (sheds). The yard is landscaped and encumbered with a drainage easement in the northeastern corner. The buffer from an offsite wetland associated with an unnamed stream to the northeast extends onto the northeastern corner of the site.
5. Adjacent uses: Immediately adjacent to the site (approximately within a radius of 500 feet) are single-family residential homes on large lots, most of which are still on septic. Farther out from there is a mixture of R-8400 (around Rugg's Lake), R-7200, R-9,600, PRD 8,400, PRD 7,200, LDMR, and MR.
6. Transportation: The development is located on 25th Ave SE, several blocks northeast from the intersection of 132nd Street SE and the Bothell-Everett Highway (SR 527). The staff report (Exhibit K) 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*

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 38.28 new average daily trips (ADT) and has a road system impact fee of \$10,220.76 (\$2,555.19/lot) based on \$267/ADT, the current fee rate for residential developments inside the urban growth area, for TSA D. These figures do include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. PDS will include a condition to require the traffic mitigation fees as a part of the administrative approval of the short plat.

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

ITE Land Use Category: Single-family separated units

ITE Land Use Code: 210

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

Number of applicable measurement units for this development: 4 new lots

Calculations

Trips	(5 New SFR – 1 Exist.) x (9.57 ADT/SFR) =	38 28
AM PHT	(5 New SFR – 1 Exist.) x (0.75 AM PHT/SFR) =	3.
PM PHT	(5 New SFR – 1 Exist.) x (1.01 PM PHT/SFR) =	4.04

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 14, 2008. The expiration date of the concurrency determination is six years from this date.

The development has been 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: Arterial Units 202, 204 and 218 are in arrears. Based the limited number of peak hour trips, 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 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.

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 25th Ave SE and consist of:

- Asphalt concrete pavement consisting of 18 feet width from roadway centerline to the face of curb.
- Cement concrete curb and gutter

*Planter strip with a width of 5 feet
Cement concrete sidewalk with a width of 5 feet*

The road, 25th Ave SE, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

PDS will include a condition to require the frontage improvements as a part of the administrative approval of the short plat.

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.

*Access into the site for three of the lots will be by a private road less than 150 feet long with out 4 lots accessing in the last 50 feet which would require a cul-de-sac turn around at the end of the road. A deviation to the design standards was approved by the County Engineer on January 14, 2007 which sets the standard for the private road. The approved standard was;
24 feet of pavement between two vertical curbs
A 5 foot sidewalk on the south side of the private road*

Lots 1 and 2 will take direct access from 25th Ave se with a common access point which will require a common access easement over a portion of lots 1 and 2. Lots 4 and 5 will share an access easement over the panhandle of lot 4. Lot 3 has 20 feet of frontage on the private road.

*A deviation to the design standards to allow for the construction of the private road serving lots 3, 4, and 5 was approved (Exhibit G.1) to the following standard:
Twenty four feet of pavement between two 6 inch vertical curbs
A 5 foot sidewalk on the south side of the road adjacent to the vertical curb, no planter strips
Curb and gutter on the end of the road utilizing the standard drop curb driveway approach*

[Note: this deviation was an issue at the Open Record Hearing. See Exhibit G1. PDS Representative Ed Caine informed the Examiner that all issues regarding the Deviation were moot, since PDS was no longer planning to allow the applicant to rely on the deviation as a part of the short subdivision approval.]

PDS will include conditions in the preliminary approval of the short subdivision to require frontage improvements.

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

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

The road serving this development, 25th Ave SE, is designated as a non-arterial collector on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is not required to dedicate any additional right-of-way along 25th Ave SE.

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.

Pursuant to SCC 30.66B.055 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required and has been received as of the date of this memorandum. The applicant has offered to provide the mitigation measures for impacts on state highways as follows: Proportionate Share Mitigation (ILA Section 5.2). Payment of \$1,378.08 based on standard rate of \$36/ADT.

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT were received by email on December 17, 2007 (Exhibit H1). WSDOT agrees to the mitigation measures proposed by the applicant. The County 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.

PDS will include conditions in the preliminary approval of the short subdivision to require traffic mitigation payments.

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

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

There are city jurisdictions that have an ILA with the County that will be impacted by new trips from the subject development. The proposed development is subject to SEPA and thus is subject to interlocal agreements for impacts on city streets and is effected by the interlocal agreement (ILA) with the City of Mill Creek.

The city was provided notice of application for this project and an opportunity to comment. Comments from the city were received on November 29, 2007 (Exhibit H8). The city indicates "no comments" for this proposal. Consequently, a condition to require mitigation fees for traffic impacts to the City of Mill Creek will be included in the administrative preliminary plat decision.

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.

Since a TDM plan was not submitted with the initial application, a cash payment is required. This requirement is indicated on the presubmittal review conference form signed by the County and the applicant's representative on November 1, 2007. The trip reduction percentage for this development is 5 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 (\$75.75/lot). A written offer for payment of the TDM obligation was received on November 27, 2007.

7. Environmental Impacts of Higher Density.

A. **Critical Areas, Drainage, and Grading.**

(i) Critical Areas:

The following information is taken from the staff report (Exhibit K at p. 8-9):

PDS staff conducted a site visit on January 11, 2008 and found no wetlands or streams on-site but found two Type F streams and associated wetlands within 300 ft. of the subject property. One of the Type F streams lies approximately 50 ft. from the NE corner of the site and flows into the other Type F stream that lies to the north and flows to the east into nearby Rugg's Lake. The northern Type F stream lies approximately 250 ft. to the north. There is a large Category 2 wetland to the north and east of the property that is associated with Rugg's Lake and Silver Lake Creek.

The short plat will require an off-site sewer line connection through critical areas and buffers within the 25th Ave SE right-of-way. The applicant has proposed buffer reduction with fencing to reduce portions of the on-site stream buffer as allowed per SCC 30.62A.320(1)(e) and restoration of the stream buffer for installation of the off-site sewer line to the north within the Ave SE R/W per SCC 30.62A.320(2).

An evaluation of the information submitted in the revised Critical Area Study (Exhibit C2) coupled with an on-site investigation has resulted in a determination that the application is in conformance with Chapter 30.62A SCC (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.

In reviewing the Critical Areas Study and Mitigation Plan, the Examiner did see that the applicant proposed to disturb approximately 9350 square feet of buffer to Silver Lake Creek for sewer line installation. The report filed failed to present the requisite justification required by SCC 30.62A.320(2)(a) that allow utility corridors within buffers only when

- (i) No other feasible alternative exists or the alternative would result in unreasonable or disproportionate costs; and
- (ii) Location, design and construction minimizes impacts to the buffers pursuant to SCC 30.62A.310.

When questioned regarding this issue at the hearing, the applicant's representative stated that their first preference was to extend the sewer main through the right of way from the property to the east, but apparently some private property was involved and the neighboring property owner would not agree to that option. He explained that there were no other extensions that would work with topography of the site.

While this may be true, this analysis should have been included in the Critical Areas Study and Mitigation Plan to demonstrate a lack of feasible alternatives. There should have been also been a discussion of location, design and construction that would meet SCC 30.62A.310(2)(a)(ii). As noted by the neighbors who testified at the hearing, no mitigation for the temporal impact or the loss of trees in the buffer was shown. The study did indicate it would not re-plant any trees that were taken out, due to potential damage to the sewer line. The study did not indicate how it would mitigate for the loss of trees along the creek, although it did state that native shrubs would be planted (Exhibit C2 at 7).

While this lack of compliance with the critical areas code is troubling, it is a matter that should be addressed by PDS as a matter under the administrative short plat approval, not as a matter with respect to the rezone approval.

(ii) Drainage and Grading:

The following information is taken from the staff report (Exhibit K at p. 8-9):

The applicant proposes to subdivide the parcel into 5 lots. A private road of length 95 feet is proposed along the north property line taking access off 25th Ave SE. The existing structures onsite will be demolished. Frontage improvements are required for this project along the west side of 25th Ave S.E.

A drainage complaint from SWM was received concerning water flowing onto a piece of property from a channel getting plugged. Surface water agreed to clean a pond and made recommendations concerning the preliminary plat of Eastlake Estates.

Three letters concerned citizens were received which expressed concerns of increased runoff from this proposal. A full drainage plan is being required in which this proposal will be required to install runoff quantity and quality controls in accordance with SCC 30.63A.

Grading of 400 yards of cut and fill are proposed. New impervious in excess of 5,000 square feet is proposed including the private road and future houses and driveways.

There is a 300-foot Resource Management Zone setback on the proposal in which effective impervious is required to be infiltrated. Roof drains for lots 3, 4, and 5 are proposed to be directed to infiltration trenches. Driveways are proposed to be constructed of pervious asphalt or concrete.

Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project will meet the requirements the UDC Chapter 30.63A and 30.63B.

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. Grading quantities are anticipated to be approximately 400 cubic yards of cut and 400 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.

At the hearing, the concerned neighbors brought in an expert witness, Thomas Holz. Mr. Holz has a master's degree in engineering and has concentrated on drainage for the last 20 years. He reviewed the project and testified that the targeted drainage plan does not meet the 1992 Department of Ecology (DOE) Manual requirements for a drainage report in numerous respects.

The Department of Planning and Development's position can be stated as defending its pending administrative approval of the plat on two grounds: 1) the Examiner has no jurisdiction to get into the project level details regarding whether or not the targeted drainage plan meets code requirements for the preliminary short plat; and 2) because the document is a targeted drainage plan rather than a full drainage plan, and the 1992 manual does not differentiate between targeted and full drainage plans. The targeted drainage plan is only conceptual in nature, and does not need to adhere to the requirements of the 1992 DOE Manual.

The Examiner agrees with the first argument made by PDS. The Examiner does not have jurisdiction over the preliminary short subdivision application, and therefore cannot comment on the propriety of the targeted drainage plan and its adherence to the 1992 DOE manual.

B. Parks and schools impacts.

- 1. Parks.** The staff report (Exhibit K) 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 Park District No. 307 (Nakeeta Beach) and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies. PDS will include a condition to require the park mitigation fees as a part of the administrative approval of the short plat.

Exhibit K at 3.

- 2. Schools.** The staff report states the following regarding mitigation of impacts to schools that are a result of the development.

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 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 will be given for the 1 existing lot. PDS will include a recommended condition of approval for inclusion within the preliminary plat decision to comply with the requirements of Chapter 30.66C SCC.

Exhibit K at 8.

8. General Policy Plan Designation. In the General Policy Plan (GPP), 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 "allows mostly detached housing developments on larger lot sizes. Implementing zones: R-7,200, PRD-7,200, R-8,400, PRD-8,400, R-9,600, PRD-9,600 and WFB." GPP at LU-89.

9. Health and Safety Issues.

A. Compliance with Fire Code and Safety Issues. PDS included the following comments at pp.14-15 of the staff report (Exhibit K):

PDS sent a request for review document to Fire District # 1 on November 27, 2007. PDS received a response from Fire District # 1 on December 6, 2007 (Exhibit H.6), wherein standard requirements regarding fire hydrants, fire access, and appropriate numbering on buildings was requested.

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on January 10, 2008. The conclusions of the review were that:

(a) The existing fire hydrant meets the minimum spacing requirements per SCC 30.53A.516(a).

(b) Prior to final plat approval the developer shall provide this office with a final certificate of water availability stating that the required 1,000 gpm is available for a 2 hour duration. If the required flow is not available the developer will be required to make the request in writing and provide NFPA 13-D fire suppression systems in the new dwellings.

(c) Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Construction and Final Short Plat plans shall provide signage or pavement striping stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering. Indicate on the site plan the location for the signage and or / pavement striping. Be sure to include the area around the fire hydrants.

(d) Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background Section 505.1 IFC. Provide address signage for the panhandle lots that is visible from the public way.

(e) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.512 and we have no further requirements.

The application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access. Conditions to require the requirements contained in

the above comments will be included in the administrative decision for the short subdivision.

Exhibit K at 14-15.

- B. Pedestrian Facilities [RCW 58.17.110]** The staff report contains the following information regarding pedestrian facilities to be provided to allow for safe walking conditions for school children:

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject short subdivision. Comments have been received from the Everett School District dated September 5, 2008 showing that the students will attend the following schools and will:

<i>School Type</i>	<i>Elementary</i>	<i>Middle School</i>	<i>High School</i>
<i>School Name</i>	<i>Silverlake</i>	<i>Gateway</i>	<i>Cascade</i>
<i>Walk to School</i>	<i>Yes</i>	<i>No</i>	<i>No</i>
<i>Walk to School Bus</i>	<i>No</i>	<i>Yes</i>	<i>Yes</i>
<i>Will bus pick up children within/adjacent to this project</i>	<i>No</i>	<i>Yes</i>	<i>Yes</i>
<i>Bus Stop Locations</i>		<i>25th Ave @130 St SE</i>	<i>25th Ave @124th St SE</i>

The applicant states in the Comp. Plan Overview Letter (Exhibit A.3) that: Sidewalks will be provided along the projects frontage on 25th Ave. SE. Other existing sidewalks in the neighborhood consist of multiple 5-foot concrete sidewalks, on the east and west side of 25th Ave, located approximately 175-feet, 425-feet and 750-feet south of the site. A 7-foot asphalt walkway also exists on the west side of 25th Ave from the north side of 132nd Street to approximately 450-feet north of 132nd Street. Lastly a 7-foot asphalt sidewalk exists along the entire north side of 129th Place.”

The proposed improvements are acceptable to DPW. A condition to require the proposed pedestrian facilities will be included in the preliminary plat decision.

Exhibit K at 7. The Examiner agrees with the need for pedestrian facilities as necessary to preserve the public health and safety, and finds that improvements are required to all locations where children are required by the district to walk from the development.

10. **Utilities - Sanitary Sewer.** SCC 30.29.100(1) requires connection to a public sewer as a condition of a subdivision or short subdivision inside the Urban Growth Area. Therefore, the subdivision approval is required by code to be conditioned upon approval of the sewer connection. In turn, this sewer connection itself is a conditional approval. According to the provider, “offsite sewer extension will be required and probable easement acquisition subject to developer subject to confirmation of topographic information of topographic proving gravity service is available.” Exhibit H5 at 2. Further, the document states: “Confirm gravity service can be achieved. No service by individual . . . pumps will be allowed. Service conditioned on full compliance with all District standards, specifications, and requirements.” *Id.*

While this is a development level issue, it is also a comprehensive plan consistency level issue that should be reviewed as part of a rezone. Objective UT 3.A. requires the county to review new construction approval for the availability of an adequate public wastewater collection and treatment system, as approved under Wastewater system plans allowing for orderly development and expansion of Urban Growth Areas in accordance with the Countywide Planning Policies. GPP Policy LU 5.A.9 states that: “Infrastructure improvements shall be coordinated and shall be provided, where financially feasible, to support the creation of neighborhoods, focal points, and Neighborhood and Commercial Centers.”

11. **Compatibility with the Neighborhood.** Some of the neighbors, represented by Attorney David Bricklin, raise issues regarding the compatibility of the development to the present neighborhood. Mr. Bricklin submitted Exhibits M1, M2, and M3 to demonstrate the densities of existing parcels in the immediate area and to provide a chart with the proposed densities of the lots in the development. The chart shows that some of the lots in the proposed development would be roughly twice as dense as existing lots already divided at urban densities (R-8400). In addition, the neighbors argue that 1) there is not a qualified certificate from the sewer provider; 2) there will be impacts to the wetland, and the applicant has failed to show that there are no feasible alternatives; and 3) there has not been an adequate showing that the requirement for a deviation has been met.

Neighbor Kathleen Walsh testified that the character of the neighborhood, with single-family homes on large lots, has been maintained for years. Waterways have been protected, and the neighborhood is protective of its small enclave. She stated that to take this one lot and populate it with dense lots would change the character of the neighborhood. A number of petitions were turned in expressing compatibility concerns with the proposed development. Exhibit M5.

Applicant’s representative Jesse Jarrell stated in rebuttal that many of the sites are large lots simply because there is no sewer. But once you get out of the immediate area, you get out of the large lots.

12. 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.¹
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.

¹ 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 these properties in the Urban Low Density Residential (ULDR) Designation from R-8400 to R-7200 to allow a total of five units on .95 acre site. Although it is clear that this request fits within the ULDR designation (which allows up to 6 units per acre), as stated above, the analysis of consistency must go beyond the designation and identify how the project is consistent with the policies in the plan.

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 urban growth areas.

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

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 (emphasis added). The urban low density residential designation allows mostly detached housing developments on larger lot sizes. GPP at LU-89.

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

2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.

7. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the Council in the adoption of the proposed plan and provide the Examiner a reasonable foundation on which to analyze urban rezone proposals to determine whether they meet Goal LU 2 and Objective 2, providing efficient development urban development patterns in appropriate locations and other related ‘GPP policies. **Note: This test has been revised in light of the Council’s Motion 08-217.**

A. Is the area proposed for rezoning already characterized by urban growth? Explain. (Goal LU 2; Objective LU 2)

B. Does the area proposed for rezoning already have adequate existing facility and service capacities to serve more intense development for the following types of public facilities and services? Please demonstrate. (See Goal LU 2; Objective LU 2)

- i. Streets, roads and highways (including but not limited local access and circulation, arterial systems and road systems capacity, concurrency, state highway impacts);
- ii. Sidewalks;
- iii. Street and road lighting systems;
- iv. Traffic signals;
- v. Domestic water systems;
- vi. Sanitary sewer systems;
- vii. Public parks and recreational facilities, or useable open space, common areas, or other recreational facilities within the development ;
- viii. Storm and sanitary sewer disposal system;

- ix. Fire and police protection suppression;
- x. Law enforcement;
- xi. Public health;
- xii. Education; and
- xiii. Other services.²

C Will the rezone help to establish development patterns that use urban land more efficiently? How? (See Goal LU-2)

D. Does the development concentrate and intensify development at an appropriate location? Why? (Objective LU-2.A)

- (1) Critical areas/shorelines.
 - (a) 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)**
 - (b) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (c) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.³
- (2) 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)**
- (3) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas? **(Policy 2.A.4)**

E. Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? (Policy LU 2.A.4)(H.O.2.B.1)

F. Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? (Policy I.C.2)

G. If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? (Policy HO 2.A.4)

H. Does the development encourage the integration of a variety of dwelling types and intensities in residential neighborhoods? (Policy H.O. 2.B.4)

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

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

8. Applying this test to the Cherba Short Plat rezone, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

A. Although the immediate area surrounding the proposed development is not characterized by urban growth, the larger neighborhood is certainly an urbanizing area characterized by urban growth. In the Examiner's mind, the key to whether this development is appropriate is whether there will be adequate sanitary sewer facilities to serve the development. While there are other legitimate issues the neighbors have raised during the public hearing process, those issues are mostly project level issues for PDS to consider at the preliminary short subdivision approval stage. The Examiner considers the consistency of the rezone with the comprehensive plan, and in the very unusual case, whether there is an issue of whether the rezone is consistent with the public health, safety and welfare.

B. **Does the area proposed for rezoning already have adequate existing facility and service capacities to serve more intense development for the following types of public facilities and services? Please demonstrate. (See Goal LU 2; Objective LU 2).** With the exception of the public sewer issue, the area proposed for rezoning already 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.
- ii. Sidewalks. The applicant will be providing adequate pedestrian facilities as a part of the development proposal. Finding 9B.
- iii. Street and road lighting system. It is not known if streetlights exist along Lincoln 25th Ave SE; they are not currently required by the county code or administrative rules as a requirement for approval of this project.
- iv. Traffic signals. There are no traffic signals in the vicinity. The County's analysis of the proposal does not indicate that any new signals are warranted for this proposal, according to SCC 30.66B.165 and EDDS Section 7-03.
- v. Water systems. Water will be provided by Silver Lake Water District and the file contains a preliminary certificate of water availability. Exhibit H4.
- vi. Sanitary Sewer Systems. Sewer will be provided by Silver Lake Water District and the file contains a conditional preliminary certificate of sewer availability as discussed in Finding of Fact 12. Exhibit G5.
- vii. Park and recreational facilities. As stated in Finding of Fact 7.B.1, the applicant will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. See Snohomish County Parks Plan at page 41. These criteria, however, addresses existing park and recreational facilities the

inhabitants of the development may use and whether they are sufficient at this location in the county. The Examiner can determine, based on a map located on the County Parks and Recreation Department website, that there are a number of county parks in the vicinity of the development. Regional parks in the area include McCollum Park, Picnic Point Park, Meadowdale Park, Willis Tucker Park, Martha Lake Park, Lord Hill Park, Silver Creek Park, Rhody Ridge Arboretum, and Forsgren Park. In the future, the Examiner would like to hear from parks planners whether the parks level of service is met for citizens in each particular proposed development and how that may be determined at the planning level. 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: A stormwater disposal system is provided in the area through the sewer system and streets.
- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. The Fire Marshall’s Office in PDS approved the proposal. Police protection is provided by the Snohomish County Sheriff’s Department.
- x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit G1.
- xi. Education: The site is served by the Everett School District. Exhibit G8.
- xii. Other services: There is sufficient electrical system capacity for the proposal, according to a letter from the Snohomish County PUD No. 1, dated July 26, 2007. Exhibit H2.

C. **How will the rezone help to establish development patterns that use urban land more efficiently? (See Goal LU-2)** 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 (if sewer service can be brought into the neighborhood), in furtherance of Objective LU2-A. The current zoning of the area is R-8400. While some of the lots in the vicinity are divided at this size, (a very low urban density under the county’s GMA plan) many are at even lower densities. This neighborhood contains old housing stock which could be redeveloped at higher density. With its proximity to transit corridors, this area is a good candidate for redevelopment. As always, this type of infill needs to be done well with appropriate development standards and infrastructure to create livable neighborhoods

While it is understandable that the immediate neighborhood enjoys its oasis of large lots amidst the urban infill that is happening all around them, the truth was spoken by Mr. Jarrell, the applicant’s representative: it is only that way because there is no sewer in the street. Once sewer becomes available, those large lots will start disappearing. That is what is supposed to happen under GMA. Only if it is impossible to serve the areas with sewers should the area remain in a

large lot configuration. The rezone Mr. Cherba asks for here will only allow for a modest increase of one lot from that which he is already entitled to. The Examiner sees no barrier from granting the rezone except for the obvious explicit need for sanitary sewer to support higher density.

D. Does the development concentrate and intensify development at an appropriate location?

Why? (Objective LU-2.A)

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.

1. There are no critical areas or shorelines on the site or although there are some within close proximity to the site. The development itself is in the management zone of a Fish and Wildlife Habitat Conservation Area. The applicant is complying with requirements for limiting effective impervious surface area within the management zone by simply fencing off the portion of the buffer on the property. *See Finding of Fact 7(a)(i).* (Policy LU 2.A.3)⁴
2. The rezone or development is proposed in an area that is within walking distance of transit access. The subject property is only a few blocks off 132nd Street SE and the Bothell Everett Highway. Proximity to parks has already been discussed in B (vii). **(Policy LU 2.A.5)**
3. The Examiner characterizes the neighborhood as single-family but one in which infill is occurring and density is increasing. The immediate neighborhood is large lots, but that will likely change when a sewer line is brought down the street. Exhibit D2 is a vicinity map which shows the property itself and the surrounding area. Given the mix of zoning densities already existing in the area, and the ability of the road system to handle it, this level of density appears appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in these areas. **(Policy 2.A.4)**

E. Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? (Policy LU 2.A.4)(H.O.2.B.1)

This a low density area, not a medium density area. **(Policy LU 2.A.4)(H.O.2.B.1)**

F. Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? (Policy I.C.2)

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

This development is close to Mill Creek, Lynnwood and Everett. None of these cities commented on the record regarding the rezone. (See Policy I.C.2)

G. **If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? (Policy HO 2.A.4)**

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).

H. **Does the development encourage the integration of a variety of dwelling types and intensities in residential neighborhoods? (Policy H.O. 2.B.4)** The units proposed for this development in the administrative site plan are single-family detached, although the units are much closer together than other units in the immediate vicinity. The development definitely encourages a variety of intensity that is not seen in nearby.

I. **Under Objective TR 1.C it is incumbent upon the Examiner to ensure that all rezones adequately provide for maintenance of the arterial roadway system.** Objective TR1.C states: Establish access and on-site circulation standards to maintain the safety and integrity of the arterial roadway system. **Are there access and on-site circulation issues addressed by the policies under Objective TR 1.C or TR 1.D that should be addressed in the rezoning process?** None were brought to the attention of the Examiner during the hearing process. The traffic report from the applicant and from PDS from the administrative short plat file indicates that the development was granted a concurrency certificate. Finding of Fact (6) (2).

9. The other criteria in SCC 30.42A.100 is whether the proposal bears a substantial relationship 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 these 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.

10. In this case, the Examiner concludes there are no issues of concern that warrant analysis under SCC 30.42B.100 (2). While a number of issues of concern were brought to the attention of the Examiner by the neighbors, the Examiner concludes that those issues are more properly addressed through the short subdivision preliminary approval process, and not through the auspices of public health, safety and welfare under the rezoning process.
11. 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.
12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
13. 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-8400 to R-7200 for this property is granted, CONDITIONED on provision of adequate sewer connection as indicated by Exhibit H5 in this file or as otherwise may be required by the Silver Lake Water District.

Decision issued this 3rd day of November 2009.



Barbara. Dykes, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The Decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more Parties of Record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **November 13, 2009**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A Petition for Reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved Party of Record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been

disposed of by the hearing examiner. An aggrieved party need not file a Petition for Reconsideration but may file an appeal directly to the County Council. If a Petition for Reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the Petition for Reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **November 17, 2009** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

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.