

**DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

DECISION DATE: November 21, 2012

PROJECT NAME: **LDS EVERETT MEETINGHOUSE**

APPLICANT/
LANDOWNER: Church of Jesus Christ of Latter Day Saints
Attn: Bob Beadles, P.O. Box 105, Graham, WA 98338

FILE NO.: 12-101169 LU

TYPE OF REQUEST: CONDITIONAL USE PERMIT (CUP)

DECISION (SUMMARY): APPROVED, SUBJECT TO A PRECONDITION and CONDITIONS

GENERAL LOCATION: 11915 29th Avenue SE, Everett, WA

ZONING: R-7200

COMPREHENSIVE PLAN: Urban Low Density Residential (4-6 du/acre)

PDS RECOMMENDATION: Approve, subject to the recommended precondition and conditions

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered:

I. FINDINGS OF FACT

A. BACKGROUND INFORMATION

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through K.3), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.¹

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

¹ See note at Paragraph 13(D) below.

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the Open Record Hearing.
3. Public Hearing. The Hearing Examiner held an Open Record Hearing on November 7, 2012. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5). (Exhibits E.1, E.2, F.1, F.2, and F.3)

Monica McLaughlin, Randy Sleight, and Ann Getz appeared and testified on behalf of Snohomish County Planning and Development Services Department (PDS). Brian Herron and Gary Kienast appeared on behalf of the Applicant.

In addition, several interested citizens appeared at the public hearing. The following people offered testimony on the proposal: James Moran, Lucie Pinkos, Sandra Richards, Richard Pettit, and James Hughes.

4. Application Request. The Applicant requests a Conditional Use Permit (CUP) to operate a church facility on the subject property. The development will include the construction of a one-story church building that is approximately 19,422 square feet in size, a 200 stall parking lot, perimeter landscaping, parking lot landscaping and utilities, a stormwater management system using underground detention vaults and other features, and road right-of-way improvements consisting of a curb, gutter, sidewalk and planter strip along the property's frontage. Water and sewer will be provided by the Silver Lake Water and Sewer District.
5. Site Description. The site consists of a 4.75 acres parcel that is rectangular in shape. The site is located on the east side of 29th Avenue SE, approximately 300 feet south of the intersection of 118th Place SE. The property was previously cleared and graded in preparation for an approved subdivision (*Stonecrest*, File No 05-117518 SD). However the project went into bankruptcy and was sold to the church. The approved subdivision will be withdrawn once the CUP is issued. Large stockpiles of dirt remain on the back of the site from the prior developer. Those stockpiles will be removed and the property will be re-graded to reflect the site's original topographic conditions. The property slopes gently to the west at an approximately 4 percent grade.
6. Adjacent uses. The site is zoned R-7200 and is surrounded by single-family residences on properties zoned R-8400.
7. State Environmental Policy Act Compliance. A revised SEPA Checklist was submitted by the Applicant on February 14, 2012. (Exhibit E.1) A Determination of Nonsignificance (DNS) was issued on August 31, 2012. (Exhibit E.2) Notice of the decision was made according to the County's regulations. (Exhibits F.1, F.2, and F.3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
8. Issues of Concern.
 - A. Public Agency Review. No issues of concern were raised by reviewing agencies.
 - B. Citizens. Several citizen comment letters were received asking questions and raising specific concerns about the development. Letters and messages were received from Rebekah Contreras (Exhibit H.1), Phyllis Mahoney Dale (Exhibit H.2),

William B. Lewis (Exhibit H.3), Rich and Robin Pettit (Exhibit H.4), Sandra Richards (Exhibit H.5), and Chela Riggs Stewart (Exhibit H.6).

Citizens also attended the public hearing and offered comments and testimony on the projects. Neighbor concerns related to:

- increased traffic, especially at the intersection of 116th Street and 29th Avenue SE during peak hours;
- increased noise during weekends;
- lack of sidewalks on 29th Avenue SE;
- hours of operation and future potential uses of the site; and
- localized flooding and drainage impact

On July 13, 2012, the Applicant's representative wrote a series of letters responding to each of their concerns. (Exhibit I.1)

The traffic section of PDS found that the project would not have an adverse impact on the neighborhood and that a left turn lane or traffic signal at the intersection of 29th Avenue SE and 116th Street SE was not warranted. The amount of traffic will be less than what would have been generated by the subdivision that was to be developed on the site. Frontage improvements, including a sidewalk, will be constructed along 29th Avenue SE.

The building will be used primarily on Sundays from approximately 9 a.m. – 3 p.m. for church services and classroom instruction, though small group meetings may take place at other times during the week. Some high school-aged programs may be offered at 6 a.m. for one hour on weekdays.

No pre-school, daycare or food banks are proposed at the church or will be conducted in the future. If any such use would be desired in the future, a modification to the CUP, pursuant to SCC 30.24C.110, would need to be submitted to and reviewed by PDS.

The large stockpile of dirt at the back of the property will be removed and the site re-shaped as much as possible to conform to historic conditions. In order to solve off-site flooding impacts near the Lewis property, the Applicant has volunteered to install an interceptor trench which will be installed near the northeast property line so that stormwater will not be routed to adjoining properties.

B. APPLICABLE REGULATIONS

9. Approval Criteria. The Applicant must meet the requirements of the CUP regulations found in SCC 30.42C.100, as well as any required mitigation imposed pursuant to SEPA. The Hearing Examiner enters the following Findings of Fact as to the Applicant's compliance with those applicable regulations.
10. Conditional Use Permit. SCC 30.42C.100 provides that the Hearing Examiner may approve, or approve with conditions, a CUP only when all the following criteria are met:
 - The proposal is consistent with the comprehensive plan;
 - The proposal complies with applicable requirements of [Title 30 SCC];

- The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

The Hearing Examiner considers each applicable criterion in turn.

11. Consistency with the Comprehensive Plan (SCC 30.42C.100(1))

There are two comprehensive plan policies directly addressing churches in the urban areas. However, they do not provide policy direction relevant to this case. One calls for additional land use planning for purposes of promoting neighborhood connectivity where a feature such as a church is present (LU 5.A.5). Another relating to the Public/Institutional Use designation discusses the nature of zoning related to churches. (Future Land Use Map (“FLUM” at page LU-92) This project is not in the P/IU zone.

Here, the testimony in the record was that the proposed church is consistent with the County’s Comprehensive Plan and Zoning Code. The property is zoned R-7200, which allows churches as a conditional use. (SCC 30.22.100)

The Growth Management Act (GMA) Chapter 36.70A RCW, 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 fire safety, traffic, drainage, and zoning, subject to recommended conditions of approval. Accordingly, the Hearing Examiner finds that the proposal is consistent with the County’s GMA Comprehensive Plan and Zoning Code.

12. Compliance with Chapter 30.42C.100(2) The proposal has been found to comply with the applicable provisions of Title 30 SCC, as described below.

- A. Zoning Regulations. The proposed church use is allowed as a conditional use in the R-7200 zone.
- B. Parking. SCC 30.26.030(1) specifies that the number of required parking stalls for churches is to be determined by PDS on a case-by-case basis. The Applicant has provided a sample floor plan (Exhibit B.6) and a parking analysis (Exhibit C.4), which indicate that the parking required for the facility would be between 165 to 176 stalls. This is consistent with a previous version of the Zoning Code, which required one parking stall per every four seats for churches. In addition, this parking ratio is widely used by other municipalities and is listed in the 4th addition of the Institute of Transportation Engineers (ITE) Parking Generation Manual. The Applicant is proposing 200 parking stalls, which the LDS church has found optimal for other of their facilities of a similar size. PDS has determined that the amount of parking proposed will be adequate for the proposed use.
- C. Building height. According to Table 30.23.030(2) SCC, (the “Bulk Matrix”), the maximum height limit in the R-7200 zone is 30 feet. Per SCC 30.23.050(1), church spires are not subject to the height limit requirements, provided that they are located 50 feet or more from any adjoining lot line. The proposed church will be a one-story

building that is approximately 20-feet high, as measured from the averaged finished grade to the midpoint of the pitched roof. The church spire will be 59 feet from the nearest adjoining lot line. The maximum lot coverage allowed in the R-7200 zone is 35 percent. (SCC 30.23.030(2)) Proposed lot coverage is approximately 10 percent and is, therefore, well below the allowed maximum lot coverage.

- D. Zoning Setbacks Per SCC 30.23.110(5), churches shall be located at least 25 feet from any other lot in a residential zone. Here the church will be setback 110 feet from the property line on the north side of the building and approximately 50 feet back from the property line on the south side of the building. To the west, the church is setback well in excess (over 100 feet) from the property line. Accordingly, the zoning setback requirements have been met.
- E. Perimeter Landscaping. Landscaping requirements are outlined in Chapter 30.25, SCC. Table SCC 30.25.020(1)) indicates that for CUPs, a 20-foot-wide Type A landscape buffer is required along the property's perimeter, apart from the portion of the site abutting public road frontage, where a 10-foot-wide Type B buffer is required per SCC 30.25.020(4). The Applicant has submitted an administrative landscape modification request, pursuant to SCC 30.25.040, to substitute a chain link fence with slats for the solid fence required to block headlight glare from the parking lot (per SCC 30.25.022) along the north, south and east property lines. In conjunction with the alternative fencing, the size of the shrubs and trees will be larger than the required minimum and the landscape treatment proposed has been designed to provide landscape screening which is more sensitive to the grades of adjoining properties. PDS found that the proposed landscape design more than fulfills the perimeter landscaping requirements and will be highly successful in blocking headlight glare from the adjoining properties and approves of the modification. (See Exhibits K.1 and K.2)
- F. Parking Area Landscaping. SCC 30.25.022(2) requires at least 10 percent of the parking lot area to be landscaped and trees included in the parking lot landscaping at the rate of one tree for every seven parking stalls or one per landscaping area or island, whichever is greater. In addition to the perimeter and screening buffers, parking area landscaping is required to be installed. The proposed landscape plan (Exhibit B.3) complies prescriptively the parking area landscaping requirements.
- G. Landscaping Modification. Pursuant to SCC 30.25.040, an applicant may request a modification of landscaping requirements as part of project review, except modifications to landscaping in planter strips located in a public right-of-way shall be processed as deviation from the EDDS. The Hearing Examiner may approve a request for modification when: (a) The proposed landscaping represents an equal or better result than would be achieved by strictly following the requirements of the code; and (b) The proposed landscaping fulfills the purpose of this chapter set forth in SCC 30.25.010(1).

In considering requests for modification of perimeter landscaping requirements, the following alternative screening and buffering strategies shall be favored:

- (a) Preservation of existing vegetation, particularly significant trees or other groupings of natural vegetation in consolidated locations;

- (b) Better accommodation of existing physical conditions on site, including incorporation of elements to provide for wind protection or improve solar access;
- (c) Incorporation of elements to protect or improve upon water quality;
- (d) Increased landscaping width adjacent to residential uses or zones or in other strategic locations;
- (e) Provision of a unique focal point of interest or better useable open space; and
- (f) Increased protection of wetlands and fish and wildlife habitat conservation areas and their buffers beyond.

(See, SCC 30.25.040(4)) A modification is not required to provide more than the minimum width, density, or quality of landscaping. SCC 30.25.040(5)

The Applicant has submitted an administrative landscape modification request, pursuant to SCC 30.25.040, to substitute a chain link fence with slats for the solid fence required to block headlight glare from the parking lot (per SCC 30.25.022) along the north, south and east property lines. The Code provides that the Hearing Examiner has the authority to approve or disapprove the modification request. SCC 30.25.040

In conjunction with the alternative fencing, the Applicant proposes to include shrubs and trees that will be larger than the required minimum (which does not require approval), and the landscape treatment proposed has been designed to be provide landscape screening which is more sensitive to the grades of adjoining properties. PDS noted that the proposed landscape design more than fulfills the perimeter landscaping requirements and will be highly successful in blocking headlight glare from the adjoining properties and approves of the modification.

Having reviewed the proposed landscaping modification, the Hearing Examiner finds that the proposal better accommodates existing physical conditions on the site, and will increase the landscaping width adjacent to residential uses. As such, the Hearing Examiner finds that the proposed landscaping modification (Exhibits K.1 and K.2) represents an equal or better result than would be achieved by strictly following the requirements of the Code. In addition, the Hearing Examiner finds that the proposed landscaping fulfills the purpose of this chapter set forth in SCC 30.25.010(1). Accordingly, the Hearing Examiner finds that the landscaping modification should be approved.

A condition is included at the end of this report to assure that the features on the site and landscape plans are installed as per the approved plans prior to final occupancy of the building to assure that zoning regulations are implemented in accordance with code.

H. Consistency of the Use with the Densities allowed in the Zone. Based on the totality of the facts in the record, the Hearing Examiner finds that the proposal meets Zoning Code requirements for building height, parking, perimeter landscape buffers, parking area landscaping, building setbacks and other zoning code regulations and requirements, subject to the recommended conditions of approval.

13. Development Regulations. Finally, the Applicant must demonstrate that they have met all other applicable development regulations applicable to the proposed use. Each applicable regulation is reviewed below. The Applicant is vested to the regulations in effect on February 14, 2012. (Exhibit J)

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

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) "A."

- (i) Road System Impacts [SCC 30.66B.310] A development must mitigate its impact upon the future capacity of the Snohomish County 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. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation report published by the ITE, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330 or acceptable specific trip generation information provided by the Applicant or their traffic engineer.

The proposed church will generate a total of 167.36 ADT (which includes a 5 percent credit for transportation demand measure (TDM)). The Applicant will be required to pay \$36,091.18 for traffic impact mitigation on County roads in TSA "D".

- (ii) Concurrency [SCC 30.66B.120] The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit in arrears or cause a County arterial to go in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and has been deemed concurrent as of March 30, 2012. The expiration date of the concurrency determination is six years from that date.

The development was deemed to be concurrent based on the fact that it generates fewer than 50 peak-hour trips in a TSA with no arterial unit in arrears. (See, SCC 30.66B.130(4)). The subject development generates 9.62 a.m. peak-hour trips and 9.19 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips, which means that SCC 30.66B.035 does not apply.

- (iii) 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 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.

Here, several citizens commented on the difficulty of making left turns from 29th Avenue onto 116th Street S.E. Snohomish County DPW Traffic Operations group performed an IRC evaluation on the intersection of 29th Avenue SE and 116th Street SE. An IRC analysis was also performed at the intersection of 29th Avenue SE and 124th Street SE.

A location will not be identified as an IRC if it receives a score below 40 after the evaluation. Each location is scored using existing trip counts on each leg of the

intersection and also scored using forecast trips that include the estimated trips from the proposed development as well as forecast area wide growth and new development trips. The IRC evaluation considers data showing the number of accidents within the last three years, the accident rate, accident severity, traffic volume/capacity ratio, sight distance ratio, pedestrian/bicycle facilities, traffic conflict, and driver expectancy. If the score is over 40, the Internal Review Board in Public Works will review the evaluation to determine if the location should be classified as an IRC, depending upon what the issues were and what the fix was determined to be.

In the present case, the result of the IRC analysis was that neither intersection would be classified as an IRC based on the resulting scores, which were as follows:

- 29th Avenue SE and 116th Street SE – the existing condition scored 17.19 and the forecast condition scored 17.31.
- 29th Avenue SE and 124th Street SE – the existing condition scored 29.84 and the forecast condition scored 30.04.

Mr. Harron testified at the hearing for the Applicant in response to citizen complaints about the wait times at the intersection of 29th Avenue SE and 116th Street. He stated that the County's Department of Public Works has determined that the intersection already needs a left-turn lane without the development. The pre-existing condition is not an impact of the proposed church development and, therefore, unless it is determined to be an IRC location, they are not required to fund the road improvement project. Ann Goetz, PDS traffic reviewer, concurred. She testified that the left turn at that intersection already warrants a left turn lane due to weekday traffic in the area.

Only where substantial evidence exists that the proposed development is the cause of the need for the traffic improvement can such a regulatory burden be imposed on the Applicant. (*Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685 (2002)). Based on the foregoing evidence in the record, the Hearing Examiner finds that the Applicant is not required to furnish a left turn lane at the intersection of 116th Street SE and 29th Avenue SE. Those improvements are not a direct result of the proposed development and, therefore, cannot be properly charged to the Applicant. *Id.*

- (iv) Frontage Improvement Requirements [SCC 30.66B.410] All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road.

The Applicant is required to install urban standard frontage improvements on 29th Avenue SE, consisting of 18 feet of pavement from the right-of-way centerline, vertical curb, 5-foot planter and 5-foot sidewalk. EDDS 4-05 (B) requires a sidewalk width of 5 feet for areas with a residential zoning, which is the case for this development. A condition is included requiring these improvements to be installed prior to building occupancy.

- (v) Access and Transportation Circulation [SCC 30.66B.420] All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and this chapter applicable to the

particular development, to design and construct such access in accordance with the EDDS, and to improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430. (See, SCC 30.66B.420) Access to state highways and city streets must be in accordance with the applicable state or city standards and requirements. Additionally, all developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is not designed and constructed in accordance with the EDDS, will be required to improve such road to bring it into compliance with the EDDS when the director of public works determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements will be established by the director of public works in accordance with SCC 30.66B.430.

The Hearing Examiner has reviewed the analysis and finds that there is substantial evidence in the record to support the required road and transportation improvements recommended by PDS and DPW. (See, Exhibit J at pp. 5-11).

- (vi) Right-of-Way Requirements [SCC 30.66B.510, and .520] A development shall be required to dedicate, establish or deed right-of-way to the County for road purposes as a precondition 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.

In the present case, 29th Avenue SE is designated as a non-arterial road on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Thirty feet already exists on both sides of the right-of-way centerline. Therefore, no additional right-of-way is needed, which has been shown in the current plans.

- (vii) Impacts to State Highways [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 Washington State Department of Transportation (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.

In the present case, the WSDOT has indicated that the proposed development will not impact any state highways and, therefore, no mitigation is required. (Exhibit G.3)

- (viii) Impacts to City Streets and Roads in Another County [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 a Reciprocal Traffic Mitigation Interlocal Agreement (ILA) between the County and the other jurisdiction(s). This development is subject to SEPA and therefore is subject to the Interlocal Agreement (ILA) between Snohomish County and the City of Mill Creek.

The City sent comments on March 19, 2012 indicating that there are no impacts to City streets from the proposed development and, therefore, no mitigation is required. (Exhibit G.2)

- (ix) Transportation Demand Management (TDM) [SCC 30.66B.630] 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 on-site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and SCC 30.66B.625.

A TDM Plan was submitted with this application. (Exhibit B.5) SCC 30.66B.640 (2) stipulates that for a commercial development to receive TDM credit; the plans must show a safe, convenient pedestrian facility that meets the EDDS that joins the front building entrances directly with frontage improvements; and joins the front building entrances with all other on-site front building entrances; secure bicycle parking (preferably covered) spaces located near the front entrances that number at least two percent of the development's calculated p.m. peak-hour trips; and for employment sites, signed preferential parking spaces for carpools or vanpools that number at least six percent of any employee parking spaces. It will be a recommended condition of approval that the TDM measures shown on the plans are constructed.

- B. Drainage, Clearing and Grading – (Land Disturbing Activity) (Chapters 30.63A, 30.63B, and 30.63C SCC) The land use and construction permit applications for the Everett LDS Church have been reviewed by the Engineering Section within PDS for compliance with Chapters 30.63A SCC (drainage) and 30.63B SCC (grading). PDS found the full drainage and grading plans (Exhibit B.1) and supplementary drainage report (Exhibit C.2) submitted with the land use and building permit applications to be in conformance with the County's regulations.

The site is fairly level with scotch broom as the primary ground cover, having previously been cleared and partially graded. A partially vegetated stockpile of 2,300 cubic yards of material exists at the easterly end of the property away from 29th Avenue SE. There is an existing detention vault at the southwest corner of the site that was installed as part of the work for the proposed *Stonecrest* project.

As noted above, the Applicant proposes to construct a church/meetinghouse and parking lot. Total "pollution-generating impervious surfaces" will be 112,502 square feet (2.58 acres). Rainwater runoff will be collected and transported via catch basins and pipes to two underground detention vaults (one existing) at the southwest side of the property. Water quality will be provided by dead storage within one of the vaults. Water from the underground system will be released at a controlled rate in the existing drainage system within 29th Avenue SE. Water in this system flows towards the south and west, eventually draining into Penny Creek, approximately 500 feet west of 29th Avenue SE (see Exhibit C.5 for graphics depicting the neighborhood drainage network). (Exhibit B.1)

Total proposed grading includes 4,000 cubic yards of fill and 4,000 cubic yards of cut, unless the stockpile is comprised of totally unsuitable material, in which case an additional 2,300 cubic yards of cut would be necessary to remove the stockpiled material from the site via trucking. If this were to occur it would take roughly 230 truck trips to remove the stockpile. The grading plan reflects the area where the stockpile is located to be re-contoured and graded to drain westerly back onto the site from the east.

Because the Applicant proposes greater than 5,000 square feet of new impervious surfaces, a full stormwater site plan is required prior to development activity per SCC 30.63A.300 (3). The project is not exempt for runoff treatment since the project site does exceed the thresholds listed in SCC 30.63A.530. The project is not exempt from flow control since the project exceeds the thresholds listed in SCC 30.63A.555. The storm layout is depicted on Sheet C.5.0 (Exhibit B.1). A new vault is shown on the south side of the proposed church to meet the detention and flow control minimum requirements. This vault, combined with the existing vault on-site, will provide the required detention. Water quality treatment will be provided by 5.2 feet of dead storage in the new vault.

A Land Disturbing Activity (LDA) permit (file number 12-101172 LDA) consistent with regulatory provisions of Title 30.63B SCC and a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Volume 2 of the Drainage Manual is required and has already been submitted and conditionally approved by PDS. The grading plan reflects that drainage from the east will no longer be blocked by the stockpile, and the natural drainage course will be restored with the proposed construction.

- C. Critical Areas Regulations (Chapters 30.62A, 30.62B, and 32.62C SCC) A site investigation performed for the prior plat of *Stonecrest* found no wetlands or other critical areas as defined by Snohomish County Critical Areas Regulations on or within 100 feet of the subject property. Accordingly, the Applicant is not required to comply with Chapter 30.62A SCC.
- D. International Fire Code (Chapter 30.53A SCC) The application was reviewed and approved by the County's Fire Marshal Office. (Exhibit K.3)² No comments on the project were received from Snohomish County Fire District No. 1.

Fire apparatus access as depicted on the site plan was found to meet the minimum requirements of SCC 30.53A.150 on August 2, 2012. (Exhibit B.1) Two new fire hydrants are to be installed in the parking lots to the north and south sides of the building and an existing fire hydrant at the southwest side of the site in the right-of-way will be relocated just east of its current location. The building will also be provided with a fully monitored fire alarm system, with smoke detection and pull stations at all exits, a fire sprinkler system, and will also be provided with emergency responder radio coverage.

Prior to the start of combustible construction, all required fire hydrants shall be installed and operational and approved addresses shall be placed on the new building as required.

² Exhibit K.3 was submitted by PDS to the Hearing Examiner for the record on November 20, 2012. It was inadvertently left out of the original hearing record and the Examiner finds that it should be included. The Exhibit List will be modified to reflect the new Exhibit. Copies of the document will be sent to all parties of record along with this decision.

Prior to building occupancy, the alarm and sprinkler systems shall be installed and operational. In addition, any required signage or pavement striping denoting fire lanes shall be installed to ensure that access by emergency vehicles is not impeded.

- E. Utilities (Ch. 58.17 RCW) As indicated in correspondence received from the Silver Lake Water and Wastewater District, water and sewer will be available to serve this development. (Exhibit G.4) Electrical service is available from the Snohomish County PUD No. 1 (Exhibit G.5). The Snohomish Health District indicated that it had no objection to approval of the CUP (Exhibit G.6).
- F. School Impact Mitigation (Chapter 30.66C SCC) This proposal does not meet the definition of “development” as set forth in SCC 30.91D.220 and, therefore, is not subject to school mitigation fees in accordance with SCC 30.66C.010(2).
- G. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) This proposal does not meet the definition of “development” as set forth in SCC 30.91D.200 and, therefore, is not subject to parks mitigation fees in accordance with SCC 30.66A.010(3).
- H. Land Use Permit Binder (SCC 30.42C.200) The Applicant is required to file a Land Use Permit Binder (LUPB) prior to the initiation of any site work. A condition of approval has been added to ensure that a LUPB is recorded.

Based on the foregoing facts set forth in Paragraphs 12 and 13, the Hearing Examiner finds that the proposal complies with the County’s zoning and development regulations.

14. The proposal will not be materially detrimental to uses or property in the immediate vicinity.

The site plan and landscaping plan demonstrate the site specific feature that will be used to create an attractive church facility with mature landscaping that provides for a visual buffer for surrounding properties. The building design consists of brick and a single tall church spire with an arched entry way, which is adjacent to sidewalks, lighting, grass lawns, shrubs and trees. The 19,402 square foot building will be stately and refined, and not overly large in size, and will blend well with the existing single-family residences in the area.

Most, if not all of the activities on the subject property will occur indoors. Primary use of the site will occur on weekends, with occasional classes or meetings on week nights or before school hours in the morning. Church leaders are volunteers and there will be no permanent, full time employees on the site during weekdays. (Exhibits A.2, B.6)

Accordingly, the Hearing Examiner finds that as conditioned, the proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property. The proposal will not be materially detrimental to the uses or properties in the immediate vicinity.

15. Based on the foregoing Findings of Fact, the Hearing Examiner finds that the proposal meets all of the requirements of the County’s CUP regulations and should be approved, subject to the recommended precondition and conditions.

16. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the CUP application pursuant to Chapter 2.02 SCC and SCC 30.72.020.
2. In issuing a CUP, the Hearing Examiner has broad discretion to impose conditions of approval. The hearing examiner may:
 - (a) Increase requirements in the standards, criteria, or policies established by Title 30 SCC;
 - (b) Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
 - (c) Require structural features or equipment essential to serve the same purpose set forth in 30.42C.100 (2)(b);
 - (d) Impose conditions similar to those set forth in items 30.42C.100(2)(b) and 30.42C.100(2)(c) as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not in connection with action on a CUP, reduce the requirements specified by Title 30 SCC as pertaining to any use nor otherwise reduce the requirements of Title 30 SCC in matters for which a variance is the remedy provided;
 - (e) Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
 - (f) Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
 - (g) Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
 - (h) Impose any requirement that will protect the public health, safety, and welfare.
3. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the application has met all of the required approval criteria for an amendment to a CUP, subject to the proposed precondition and conditions of approval and provides for the public health, safety and welfare.
4. The CUP should be granted subject to the precondition and conditions of approval required below.
5. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted zoning density and applicable design and development standards.

6. The Hearing Examiner concludes that the landscape modification should be granted.
7. The proposal complies with applicable requirements of Title 30 SCC.
8. As conditioned, the proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
9. Adequate public and/or private services exist to serve the proposal.
10. If approved with the recommended precondition and conditions, the proposal will make adequate provisions for the public health, safety and general welfare.
11. The Examiner concludes that the CUP should be granted.
12. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

DECISION AND ORDER

1. Exhibit K.3 is added to the record in this matter.
2. The **LANDSCAPE MODIFICATION** is **GRANTED**.
3. A **CONDITIONAL USE PERMIT** is **GRANTED** to the Applicant for the construction and operation of a church and meetinghouse on the subject property as described in the application, subject to the following **PRECONDITION** and **CONDITIONS**:

PRECONDITION

A record of developer's 30.66B SCC mitigation obligations shall be recorded with the County Auditor [30.66B.070 SCC].

CONDITIONS

- A. The site plan (page C2.0, Exhibit B.1) received by PDS on July 9, 2012, shall constitute the official site plan. Any discrepancy between the content of the official site development plan and the performance standards of Title 30 SCC shall be resolved in favor of Title 30 SCC. SCC 30.42C.110 governs revisions to conditional use permits.
- B. The landscape plan identified as Exhibit K.1 dated January 2012, and K.2 dated 10-29-2012 shall constitute the approved landscape plan.
- C. Per SCC 30.26.075, any parking lot lighting shall be arranged or shielded so as to reflect the light away from any dwelling units and the public right-of-way.

- D. Prior to building permit issuance by the County:
- i. The Applicant shall have paid an impact fee to Snohomish County for traffic impacts to Transportation Service Area "D" totaling \$36,091.18.
 - ii. Per SCC 30.42C.200, a Land Use Permit Binder, on a form provided by PDS, shall be executed by the Applicant and recorded with the County Auditor.
 - iii. Per SCC 30.41A.310, the owner shall file with the Hearing Examiner's Office a notarized written statement requesting withdrawal of the Preliminary Plat of Stonecrest (file number 05-117518 SD), and acknowledging the effects of such withdrawal.
 - iv. The special conditions imposed by the Fire Marshal set forth in Exhibit K.3 shall be included in the building permit.
- E. Prior to the issuance of certificate of occupancy/final inspections;
- i. Urban standard frontage improvements, consisting of 18 feet of pavement from the right-of-way centerline, vertical curb, a 5-foot planter and a 5-foot sidewalk, shall be constructed along the property's frontage on 29th Avenue SE to the satisfaction of the County Engineer.
 - ii. Site improvements, fencing and landscaping depicted on the approved plans shall be installed, inspected and approved.
 - iii. The fire alarm, fire hydrants and fire sprinkler systems shall be installed and operational.
 - iv. Transportation Demand Management (TDM) measures shown on the plans shall be constructed as described in Exhibit B.5.
- F. This conditional use permit approval shall expire five (5) years from the date of approval if construction of the proposed church has not commenced within the five year period.
- G. Nothing in this permit shall excuse the Applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.

Decision issued this 21st day of November, 2012.



Millie M. Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before December 3, 2012**. 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 **within 14 days from the date of this decision**. 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 at the Public Assistance Counter of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before December 5, 2012**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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

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

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

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

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by PDS. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin

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

PRECONDITION NOTICE

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than November 21, 2013.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One six-month period will be allowed for resubmittal of any required document(s) which is (are) returned to the Applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the Applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of _____, _____.

Certified by:

_____ (Name)

_____ (Title)

Nothing in this approval excuses the Applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.