



Snohomish County

Hearing Examiner's Office

Email: Hearing.Examiner@co.snohomish.wa.us

**REPORT AND SECOND SUPPLEMENTAL
DECISION CLARIFYING CONDITION 4.B.vii. of the
SNOHOMISH COUNTY HEARING EXAMINER**

Robert J. Backstein
Hearing Examiner

Peter T. Donahue
Deputy Hearing Examiner

PLAT/PROJECT NAME: Village at Webster's Pond

APPLICANT/
LANDOWNER: Rob Purser/Stafford Homes

FILE NO.: 98 108094

TYPE OF REQUEST: Concurrent rezone from Residential-9,600 (R-9,600) to
Planned Residential Development-9,600 (PRD-9,600) and
Preliminary Plat approval to subdivide approximately 30.5
acres into 149 lots.

MAILING ADDRESS:
M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

LOCATION ADDRESS:
Cogswell College Building
2802 Wetmore Ave., 2nd Floor
Everett, WA 98201

(425) 388-3538
FAX (425) 388-3201

DECISION (SUMMARY): Both requests are APPROVED subject to CONDITIONS.

HEARING EXAMINER
RECEIVED

DATE OF ORIGINAL DECISION: March 15, 2001
DATE OF CORRECTED DECISION: March 27, 2001
DATE OF MODIFIED DECISION: January 31, 2003
DATE OF CLARIFIED DECISION: January 27, 2003

FEB 27 2003
CASE 98 108094
EXHIBIT 132

BASIC INFORMATION

GENERAL LOCATION: On the east side of 35th Avenue SE, between 144th Street SE and 148th Street SE,
approximately 1/4 mile north of Seattle Hill Road.

ACREAGE: 30.5 acres

DENSITY: GROSS: 4.89 du/ac NET: 8.7 du/ac

NUMBER OF LOTS: 149

AVERAGE LOT SIZE: 3,825 square feet MINIMUM LOT AREA: 3,500 square feet

OPEN SPACE: Approximately 8 acres- including extensive landscaping

ZONING: CURRENT: R-9,600 PROPOSED: PRD-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)/Growth phasing overlay
Subarea Plan: North Creek
Subarea Plan Designation: Rural (.4-1 du/ac)/Watershed site sensitive overlay

UTILITIES:

Water: Silver Lake Water District
Sewage: Silver Lake Water District

SCHOOL DISTRICT: Everett No. 2

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services Approval subject to conditions

Public Works: Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on September 16, 1998.

The Hearing Examiner (Examiner) made his second site familiarization visit on February 28, 2001 in the afternoon. (Previously viewed on November 8, 2000.)

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

The Examiner held an open record hearing on, the 98th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The matter first came on before the Hearing Examiner on November 14, 2000. However, it was continued for hearing to March 6, 2001 at 9:00 a.m. at which time the public hearing commenced.

1. Mr. Craig Krueger of Core Design, representing the applicant, appeared and stated that there will be sidewalks on both sides of the street. He indicated that the property is pasture and wetland and there will be fill of wetlands of .56 and .39 of the area. He stated that the Preliminary Plat will have 140 lots with the average lot size of 4,540 square feet and that there will three homes to the acre, for approximately 80-90 homes, with the balance of 5 to the acre.

He indicated that they support the PDS staff recommendations as submitted and they have no objection to the staff report or conditions.

2. Ms. Jeanie Johnson, PDS, appeared and submitted the staff report.
3. Mr. Norm Stone, Department of Public Works (DPW) appeared and in response to questions indicated that 35th Avenue will have three lanes in spots to provide for turning. He further indicated that there would be a signalized intersection at 35th Avenue and Seattle Hill Road, which hopefully would be completed by the end of the year.

4. Ms. Camille Christ, the applicant's representative, appeared and stated that she is in support of this project and it will enhance the area with the additional lots.
5. No one appeared in opposition to the request.

The hearing concluded at 9:22 a.m.

NOTE: The verbatim report of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. Upon viewing the area the Examiner noted that the site is gently rolling pastureland and that critical areas are several wetlands. What is listed on the map is Thomas Lake, also known as Webster's Pond, which empties into Penny Creek. The adjacent property to the east is developed with platted lots, which straddle the new 148th Street SE alignment.
4. The proposed plat will be consistent with the land uses in the area.
5. Ms. Jeanie Johnson has done an excellent analysis of questions raised by the property owners nearby and of the proposed use and the compatibility of the proposal with the area, and its effect upon the critical areas.
6. Any finding of fact in this Report and Decision, which should be deemed a conclusion, is hereby adopted as such.

CONCLUSIONS:

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefor hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition; except where there are conflicts with any of the findings, conclusions and/or decisions of the Hearing Examiner.

2. This proposed request would provide for additional homes and living units for the citizens of the County in an attractive and growing residential area.
13. The original condition as set forth in Condition 4.B.vii. is hereby deleted and is modified and/or clarified by the replacement of said condition as follows:

“Applicant shall install a drainage system (which shall have capacity to convey the flow from a free-flowing 12-inch culvert described in the easement set forth in Auditor’s File No. 9001220471) of design approved by the County to convey storm water discharges (if any) introduced to its property from the culvert described in the easement (or as relocated by the County) set forth in Auditor’s File No. 9001220471.”

4. The request should be approved subject to compliance, by the applicant, with the following conditions:
 - A. The preliminary plat/PRD site plan and landscape plans, Exhibits 89 and 90, shall be the approved plat configuration and official PRD site plan. Changes to the approved preliminary plat are restricted by Section 19.20.020(1) SCC, and changes to the official site plan are restricted by Section 18.51.080 SCC.
 - B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county:
 - i. The plattor shall have marked with temporary markers in the field the boundary of all NGPAs required by 32.10 SCC, or the limits of the proposed site disturbance outside of the NGPAs, using methods and materials acceptable to the county. (Chapter 32.10 SCC)
 - ii. A final detailed mitigation plan based upon the Final Conceptual Wetland Mitigation Plan – Village at Webster’s Pond, revised May 3, 2000 and received by PDS on May 5, 2000, and the July 11, 2000 letter from Cooke Scientific Services, Inc. for the proposed sewer line restoration, date stamped received by PDS on July 25, 2000 shall be submitted to Planning and Development Services for review and approval.
 - iii. A Critical Area Site Plan (CASP) for the off-site sewer line easement shall be submitted to Planning and Development Services for approval and recorded with the Snohomish County Auditor’s Office.
 - iv. A detailed drainage plan shall have been submitted and approved pursuant to Chapter 24.16 SCC.
 - v. At the sole discretion of Planning and Development Services, limited site work may be allowed prior to approval of the full construction plans, if and only if a grading permit and Temporary Erosion and Sedimentation Control Plan (TESCP) have first been approved by the county for the limited site work. Any approved grading permit and TESCP for the limited site work must be consistent with any and all clearing limitations and/or other plans and conditions imposed and/or required herein.

¹ Clarified on Reconsideration February 27, 2003
98108094e.doc

- vi. The platlor shall have submitted to Planning and Development Services covenants, deeds and homeowners' association by-laws and other documents guaranteeing maintenance and common fee ownership, if applicable, of open space, community facilities, private roads and drives, and all other commonly owned and operated property. These documents shall be reviewed and accompanied by a certificate from an attorney that they comply with SCC 18.51 requirements.
 - 2vii. "Applicant shall install a drainage system (which shall have capacity to convey the flow from a free-flowing 12-inch culvert described in the easement set forth in Auditor's File No. 9001220471) of design approved by the County to convey storm water discharges (if any) introduced to its property from the culvert described in the easement (or as relocated by the County) set forth in Auditor's File No. 9001220471."
- C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition B., above.
- D. The following additional restrictions shall be indicated on the face of the final plat:
- i. All critical areas shall be designated Native Growth Protection Areas with the following language on the face of the plat:

"The NATIVE GROWTH PROTECTION AREA is to be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."
 - ii. "The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 26C.20.020. Credit shall be given for two existing residences."
 - iii. If a bond or other guarantee of performance is posted in lieu of construction of landscaping and recreational facilities prior to recording of the subdivision, the following restriction shall be included on the face of the final plat:

"Prior to occupancy of any dwelling unit within the plat, the landscaping and recreational facilities shall have been installed in accordance with the approved PRD site development/landscape plans. Inspection and approval from the Land Use Division of Planning and Development Services is required."
- E. Prior to the recording of the final plat:
- i. The sum of \$918.00 per new dwelling unit shall have been paid to Snohomish County as mitigation for project impacts on park and recreation services. Credit shall be provided for two existing residences. The mitigation payment may be deferred if the requirements of SCC 26A.04.020 are followed. Some or all of the mitigation obligation may be

satisfied pursuant to SCC 26A.03.080 and .090 by provision of certain approved on- and/or off-site facilities. (Title 26A SCC)

- ii. The sum of \$244,781.46 (\$1,665.18 per new unit) shall have been paid to Snohomish County for road system capacity impacts within Transportation Service Area D. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code. [SCC 26B.55.020]
- iii. The sum of \$11,135.25 (\$75.75 per new unit) shall have been paid to Snohomish County for Transportation Demand Management within Transportation Service Area D.
- iv. The applicant shall have paid \$28,077.00 (\$191.00 per new unit) to the county for mitigation of traffic impacts to the state highway system in accordance with the WSDOT/County Interlocal Agreement. [SCC 26B.55.070].
- v. The applicant shall have paid \$60,061.00 (\$408.58 per new unit) for the City of Mill Creek to mitigate the development's impacts to City streets as provided for in the County/Mill Creek Interlocal Agreement.
- vi. The interior public road system shall have been constructed in accordance with the standards specified by the Department of Public Works.
- vii. NGPA boundaries shall have been permanently marked on the site prior to final inspection by the county, with both Native Growth Protection Area signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The plattor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g. tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the Native Growth Protection Areas. Only Type 1 signs shall be used for this site due to the density of the proposed dwelling units. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval. (Chapter 32.10 SCC)

- viii. The approved Final Critical Area Mitigation Plan shall have been implemented. Approval from the county biologist is required. [SCC 32.10]
- ix. A bond or other guarantee of performance shall have been posted for landscaping and recreational facilities, or all landscaping and proposed facilities shall have been installed in accordance with the approved Landscape Plan.

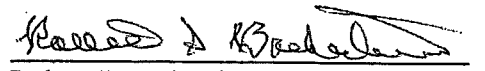
5. Any conclusion in this Report and Decision which should be deemed a finding of fact, is hereby adopted as such.

Preliminary plats which are approved by the county are valid for five (5) years from their effective date and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 19.20.010(1).

DECISION:

The request for a rezone from R-9,600 to PRD 9,600 and for subdivision plat approval for 149 lots is hereby **APPROVED** subject to compliance by the applicant with the **CONDITIONS** set forth in Conclusion 4, above.

Clarified Report and Decision issued February 27, 2003.


Robert J. Backstein, Hearing Examiner

EXPLANATION OF APPEAL PROCEDURES

This decision of the Hearing Examiner following reconsideration is final and conclusive and may be appealed to the County Council. No further requests for reconsideration will be accepted. No appeal may raise an issue which has not been the subject of a Petition for Reconsideration. The following paragraphs summarize the appeal process. For more information about appeals to the County Council, please see Chapter 2.02 SCC.

Appeals may be filed by any aggrieved Party of Record; PROVIDED, that only the petitioner for reconsideration may appeal from the denial of a 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, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **MARCH 13, 2003** and shall be accompanied by a filing fee in the amount of one hundred dollars (\$100.00); 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.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

Appeals will processed and considered by the County Council pursuant to the provisions of SCC 2.02.175 *et seq.*
Please include the county file number in any correspondence regarding this case.

Distribution:

Petitioner

Department of Planning and Development Services: Ryan Larsen

Parties of Record

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.



Hearing Examiner's Office

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

Robert J. Backstein
Hearing Examiner

Peter T. Donahue
Deputy Hearing Examiner

PLAT/PROJECT NAME: Village at Webster's Pond

APPLICANT/
LANDOWNER: Rob Purser/Stafford Homes

FILE NO.: 98 108094

TYPE OF REQUEST: Concurrent rezone from Residential-9,600 (R-9,600) to Planned Residential Development-9,600 (PRD-9,600) and Preliminary Plat approval to subdivide approximately 30.5 acres into 149 lots.

DECISION (SUMMARY): Both requests are APPROVED subject to CONDITIONS.

DATE OF ORIGINAL DECISION: March 15, 2001

DATE OF CORRECTED DECISION: March 27, 2001

GENERAL LOCATION: On the east side of 35th Avenue SE, between 144th Street SE and 148th Street SE, approximately 1/4 mile north of Seattle Hill Road.

ACREAGE: 30.5 acres

DENSITY: GROSS: 4.89 du/ac NET: 8.7 du/ac

NUMBER OF LOTS: 149

AVERAGE LOT SIZE: 3,825 square feet MINIMUM LOT AREA: 3,500 square feet

OPEN SPACE: Approximately 8 acres- including extensive landscaping

ZONING: CURRENT: R-9,600 PROPOSED: PRD-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)/Growth phasing overlay

Subarea Plan: North Creek

Subarea Plan Designation: Rural (.4-1 du/ac)/Watershed site sensitive overlay

UTILITIES:

Water: Silver Lake Water District

Sewage: Silver Lake Water District

SCHOOL DISTRICT: Everett No. 2

FILE COPY

M/S #405
3000 Rockefeller Ave.
Everett, WA 98201
(425) 388-3538
FAX (425) 388-3201

HEARING EXAMINER
RECEIVED

AUG 19 2002

CASE **98 108094**

EXHIBIT **93A**

98094-000

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

<u>Department of:</u>	
Planning and Development Services	Approval subject to conditions
Public Works:	Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on September 16, 1998.

The Hearing Examiner (Examiner) made his second site familiarization visit on February 28, 2001 in the afternoon. (Previously viewed on November 8, 2000.)

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

The Examiner held an open record hearing on, the 98th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The matter first came on before the Hearing Examiner on November 14, 2000. However, it was continued for hearing to March 6, 2001 at 9:00 a.m. at which time the public hearing commenced.

1. Mr. Craig Krueger of Core Design, representing the applicant, appeared and stated that there will be sidewalks on both sides of the street. He indicated that the property is pasture and wetland and there will be fill of wetlands of .56 and .39 of the area. He stated that the Preliminary Plat will have 140 lots with the average lot size of 4,540 square feet and that there will three homes to the acre, for approximately 80-90 homes, with the balance of 5 to the acre.

He indicated that they support the PDS staff recommendations as submitted and they have no objection to the staff report or conditions.

2. Ms. Jeanie Johnson, PDS, appeared and submitted the staff report.
3. Mr. Norm Stone, Department of Public Works (DPW) appeared and in response to questions indicated that 35th Avenue will have three lanes in spots to provide for turning. He further indicated that there would be a signalized intersection at 35th Avenue and Seattle Hill Road, which hopefully would be completed by the end of the year.
4. Ms. Camille Chriest, the applicant's representative, appeared and stated that she is in support of this project and it will enhance the area with the additional lots.
5. No one appeared in opposition to the request.

The hearing concluded at 9:22 a.m.

NOTE: The verbatim report of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. Upon viewing the area the Examiner noted that the site is gently rolling pastureland and that critical areas are several wetlands. What is listed on the map is Thomas Lake, also known as Webster's Pond, which empties into Penny Creek. The adjacent property to the east is developed with platted lots, which straddle the new 148th Street SE alignment.
4. The proposed plat will be consistent with the land uses in the area.
5. Ms. Jeanie Johnson has done an excellent analysis of questions raised by the property owners nearby and of the proposed use and the compatibility of the proposal with the area, and its effect upon the critical areas.
6. Any finding of fact in this Report and Decision, which should be deemed a conclusion, is hereby adopted as such.

CONCLUSIONS:

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefor hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition; except where there are conflicts with any of the findings, conclusions and/or decisions of the Hearing Examiner.
2. This proposed request would provide for additional homes and living units for the citizens of the County in an attractive and growing residential area.
3. The use itself is clearly consistent with the comprehensive plan and zoning regulation. Furthermore, the use is consistent with the subdivision regulations and will allow a reasonable use in this area while at the same time preserving the open space and wetlands. Its use should not have any series adverse affects upon these persons residing in the area; but rather it will allow orderly development to proceed in accordance with the goals and policies of the Growth Management Act (GMA).

4. The request should be approved subject to compliance, by the applicant, with the following conditions:
- A. The preliminary plat/PRD site plan and landscape plans, Exhibits 89 and 90, shall be the approved plat configuration and official PRD site plan. Changes to the approved preliminary plat are restricted by Section 19.20.020(1) SCC, and changes to the official site plan are restricted by Section 18.51.080 SCC.
 - B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county:
 - i. The plattor shall have marked with temporary markers in the field the boundary of all NGPAs required by 32.10 SCC, or the limits of the proposed site disturbance outside of the NGPAs, using methods and materials acceptable to the county. (Chapter 32.10 SCC)
 - ii. A final detailed mitigation plan based upon the Final Conceptual Wetland Mitigation Plan – Village at Webster’s Pond, revised May 3, 2000 and received by PDS on May 5, 2000, and the July 11, 2000 letter from Cooke Scientific Services, Inc. for the proposed sewer line restoration, date stamped received by PDS on July 25, 2000 shall be submitted to Planning and Development Services for review and approval.
 - iii. A Critical Area Site Plan (CASP) for the off-site sewer line easement shall be submitted to Planning and Development Services for approval and recorded with the Snohomish County Auditor’s Office.
 - iv. A detailed drainage plan shall have been submitted and approved pursuant to Chapter 24.16 SCC.
 - v. At the sole discretion of Planning and Development Services, limited site work may be allowed prior to approval of the full construction plans, if and only if a grading permit and Temporary Erosion and Sedimentation Control Plan (TESCP) have first been approved by the county for the limited site work. Any approved grading permit and TESCP for the limited site work must be consistent with any and all clearing limitations and/or other plans and conditions imposed and/or required herein.
 - vi. The plattor shall have submitted to Planning and Development Services covenants, deeds and homeowners’ association by-laws and other documents guaranteeing maintenance and common fee ownership, if applicable, of open space, community facilities, private roads and drives, and all other commonly owned and operated property. These documents shall be reviewed and accompanied by a certificate from an attorney that they comply with SCC 18.51 requirements.
 - vii. The existing drainage easement conveyed under Auditor’s File No. 9001220471 shall have been extinguished or appropriately altered to accommodate the proposed development.
 - C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition B., above.
 - D. The following additional restrictions shall be indicated on the face of the final plat:

- i. All critical areas shall be designated Native Growth Protection Areas with the following language on the face of the plat:

“The NATIVE GROWTH PROTECTION AREA is to be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County.”

- ii. “The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 26C.20.020. Credit shall be given for two existing residences.”

- iii. If a bond or other guarantee of performance is posted in lieu of construction of landscaping and recreational facilities prior to recording of the subdivision, the following restriction shall be included on the face of the final plat:

“Prior to occupancy of any dwelling unit within the plat, the landscaping and recreational facilities shall have been installed in accordance with the approved PRD site development/landscape plans. Inspection and approval from the Land Use Division of Planning and Development Services is required.”

E. Prior to the recording of the final plat:

- i. The sum of \$918.00 per new dwelling unit shall have been paid to Snohomish County as mitigation for project impacts on park and recreation services. Credit shall be provided for two existing residences. The mitigation payment may be deferred if the requirements of SCC 26A.04.020 are followed. Some or all of the mitigation obligation may be satisfied pursuant to SCC 26A.03.080 and .090 by provision of certain approved on- and/or off-site facilities. (Title 26A SCC)
- ii. The sum of \$244,781.46 (\$1,665.18 per new unit) shall have been paid to Snohomish County for road system capacity impacts within Transportation Service Area D. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code. [SCC 26B.55.020]
- iii. The sum of \$11,135.25 (\$75.75 per new unit) shall have been paid to Snohomish County for Transportation Demand Management within Transportation Service Area D.
- iv. The applicant shall have paid \$28,077.00 (\$191.00 per new unit) to the county for mitigation of traffic impacts to the state highway system in accordance with the WSDOT/County Interlocal Agreement. [SCC 26B.55.070].
- v. The applicant shall have paid \$60,061.00 (\$408.58 per new unit) for the City of Mill Creek to mitigate the development’s impacts to City streets as provided for in the County/Mill Creek Interlocal Agreement.

- vi. The interior public road system shall have been constructed in accordance with the standards specified by the Department of Public Works.
- vii. NGPA boundaries shall have been permanently marked on the site prior to final inspection by the county, with both Native Growth Protection Area signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g. tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the Native Growth Protection Areas. Only Type 1 signs shall be used for this site due to the density of the proposed dwelling units. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval. (Chapter 32.10 SCC)
- viii. The approved Final Critical Area Mitigation Plan shall have been implemented. Approval from the county biologist is required. [SCC 32.10]
- ix. A bond or other guarantee of performance shall have been posted for landscaping and recreational facilities, or all landscaping and proposed facilities shall have been installed in accordance with the approved Landscape Plan.

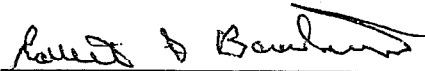
5. Any conclusion in this Report and Decision which should be deemed a finding of fact, is hereby adopted as such.

Preliminary plats which are approved by the county are valid for five (5) years from their effective date and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 19.20.010(1).

DECISION:

The request for a rezone from R-9,600 to PRD 9,600 and for subdivision plat approval for 149 lots is hereby **APPROVED** subject to compliance by the applicant with the **CONDITIONS** set forth in Conclusion 4, above.

Corrected Report and Decision issued March 27, 2001


Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION PROCEDURES

This decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. Reconsideration has been elected pursuant to SCC 2.02.167(1). Reconsideration must be sought by one or more parties before an appeal of the Examiner's decision can be filed with the County Council. No appeal may raise an issue which was not raised in a Petition for Reconsideration. The following paragraphs summarize the reconsideration process. For more information about reconsideration and appeal procedures, please see Chapter 2.02 SCC.

Any Party of Record may request reconsideration by the Hearing Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, Room AA103, 1st Floor, Administration Annex, 3000 Rockefeller Avenue, Everett, Washington (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **April 10, 2001**. There is no fee for filing a Petition for Reconsideration.

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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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 2.02.167. Please include the county file number in any correspondence regarding this case.

Staff Distribution:


Department of Planning and Development Services: Jeanie Johnson
Department of Public Works: Norm Stone

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.

SNOHOMISH COUNTY
PLANNING AND DEVELOPMENT SERVICES
LAND USE DIVISION
M/S 604

MEMORANDUM

TO: Robert J. Backstein, Snohomish County Hearing Examiner

FROM: Jeanie Johnson, Senior Planner 

DATE: March 21, 2001

SUBJECT: Hearing Examiner's Decision of March 15, 2001
PFN 98 108094 – Village at Webster's Pond

At the direction of Barb Mock, Subdivision Team Lead, the purpose of this memorandum is to request correction of the conditions imposed by the Hearing Examiner in the above referenced decision.

Planning and Development Services (PDS) issued an initial staff report one week prior to the hearing scheduled for November 14, 2000. PDS and the applicant concurrently requested a continuance of this hearing to allow the applicant to revise his proposal from a 149-unit condominium development on six underlying lots to a 149 lot preliminary plat. PDS issued a second full staff report, which included adjustments to recommended conditions to address the revised proposal, one week prior to the March 6, 2001 continued hearing. It appears that the conditions from the first staff report were inadvertently included in the Examiner's decision instead of the recommended conditions for the revised proposal as stated in our second staff recommendation. Since the revised conditions reflected appropriate numbers for exhibits which are to act as the approved preliminary plat configuration as well as specific conditions relating to the revised design, PDS respectfully requests that the Examiner issue a corrected decision containing the conditions as recommended in our Staff Recommendation dated February 27, 2001.

Both staff recommendations are available within the Hearing Examiner's storage on the g: drive. The appropriate conditions are contained in the 9808094b document. It appears that the conditions were inserted into the Examiner's decision from the document without the "b", which would have been our initial recommendation prior to revision of the proposal. If you or your staff have any questions concerning this request, please give me a call at Extension 2253.

Your attention to PDS' request for a corrected decision in this matter is sincerely appreciated.

HEARING EXAMINER
RECEIVED

MAR 21 2001

CASE 98 108094
EXHIBIT 93B



CORRECTED
REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER

Robert J. Backstein
Hearing Examiner

Peter T. Donahue
Deputy Hearing Examiner

M/S #405
3000 Rockefeller Ave.
Everett, WA 98201
(425) 388-3538
FAX (425) 388-3201

FILE COPY

PLAT/PROJECT NAME: Village at Webster's Pond

APPLICANT/
LANDOWNER: Rob Purser/Stafford Homes

FILE NO.: 98 108094

TYPE OF REQUEST: Concurrent rezone from Residential-9,600 (R-9,600) to Planned Residential Development-9,600 (PRD-9,600) and Preliminary Plat approval to subdivide approximately 30.5 acres into 149 lots.

DECISION (SUMMARY): Both requests are APPROVED subject to CONDITIONS.

DATE OF DECISION: March 27, 2001

GENERAL LOCATION: On the east side of 35th Avenue SE, between 144th Street SE and 148th Street SE, approximately 1/4 mile north of Seattle Hill Road.

ACREAGE: 30.5 acres

DENSITY: GROSS: 4.89 du/ac NET: 8.7 du/ac

NUMBER OF LOTS: 149

AVERAGE LOT SIZE: 3,825 square feet MINIMUM LOT AREA: 3,500 square feet

OPEN SPACE: Approximately 8 acres- including extensive landscaping

ZONING: CURRENT: R-9,600 PROPOSED: PRD-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)/Growth phasing overlay
Subarea Plan: North Creek
Subarea Plan Designation: Rural (.4-1 du/ac)/Watershed site sensitive overlay

UTILITIES:

Water: Silver Lake Water District
Sewage: Silver Lake Water District

SCHOOL DISTRICT: Everett No. 2

**HEARING EXAMINER
RECEIVED**

AUG 19 2002

CASE **98 108094**
EXHIBIT 93C

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services Approval subject to conditions
Public Works: Approval subject to conditions

INTRODUCTION

On March 21, 2001 the Examiner received from Jeanie Johnson, Senior Planner, Department of Planning and Development Services (PDS) a request to correct the Hearing Examiner's Report and Decision of March 15, 2001.

She indicated that the conditions issued in that decision were inadvertently taken from the first PDS staff report (Exhibit 72) and not from the second, new and full staff report (Exhibit 91).

Upon review the Examiner reviewed and is in agreement with her request. Therefore, this decision shall correct and replace the conditions in the March 15, 2001 Report. These correct conditions will replace all of the old conditions in Conclusion 4 of the Examiner's March 15, 2001 Report and Decision as follows:

4. The request should be approved subject to compliance by the Applicant as follows:
 - A. The preliminary plat/PRD site plan and landscape plans, Exhibits 89 and 90, shall be the approved plat configuration and official PRD site plan. Changes to the approved preliminary plat are restricted by Section 19.20.020(1) SCC, and changes to the official site plan are restricted by Section 18.51.080 SCC.
 - B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county:
 - i. The plattor shall have marked with temporary markers in the field the boundary of all NGPAs required by 32.10 SCC, or the limits of the proposed site disturbance outside of the NGPAs, using methods and materials acceptable to the county. (Chapter 32.10 SCC)
 - ii. A final detailed mitigation plan based upon the Final Conceptual Wetland Mitigation Plan – Village at Webster's Pond, revised May 3, 2000 and received by PDS on May 5, 2000, and the July 11, 2000 letter from Cooke Scientific Services, Inc. for the proposed sewer line restoration, date stamped received by PDS on July 25, 2000 shall be submitted to Planning and Development Services for review and approval.
 - iii. A Critical Area Site Plan (CASP) for the off-site sewer line easement shall be submitted to Planning and Development Services for approval and recorded with the Snohomish County Auditor's Office.
 - iv. A detailed drainage plan shall have been submitted and approved pursuant to Chapter 24.16 SCC.

- v. At the sole discretion of Planning and Development Services, limited site work may be allowed prior to approval of the full construction plans, if and only if a grading permit and Temporary Erosion and Sedimentation Control Plan (TESCP) have first been approved by the county for the limited site work. Any approved grading permit and TESCP for the limited site work must be consistent with any and all clearing limitations and/or other plans and conditions imposed and/or required herein.
 - vi. The platlor shall have submitted to Planning and Development Services covenants, deeds and homeowners' association by-laws and other documents guaranteeing maintenance and common fee ownership, if applicable, of open space, community facilities, private roads and drives, and all other commonly owned and operated property. These documents shall be reviewed and accompanied by a certificate from an attorney that they comply with SCC 18.51 requirements.
 - vii. The existing drainage easement conveyed under Auditor's File No. 9001220471 shall have been extinguished or appropriately altered to accommodate the proposed development.
- C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition B., above.
- D. The following additional restrictions shall be indicated on the face of the final plat:
- i. All critical areas shall be designated Native Growth Protection Areas with the following language on the face of the plat:

“The NATIVE GROWTH PROTECTION AREA is to be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County.”
 - ii. “The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 26C.20.020. Credit shall be given for two existing residences.”
 - iii. If a bond or other guarantee of performance is posted in lieu of construction of landscaping and recreational facilities prior to recording of the subdivision, the following restriction shall be included on the face of the final plat:

“Prior to occupancy of any dwelling unit within the plat, the landscaping and recreational facilities shall have been installed in accordance with the approved PRD site development/landscape plans. Inspection and approval from the Land Use Division of Planning and Development Services is required.”
- E. Prior to the recording of the final plat:
- i. The sum of \$918.00 per new dwelling unit shall have been paid to Snohomish County as mitigation for project impacts on park and recreation services. Credit shall be provided for two existing residences. The mitigation payment may be deferred if the requirements

of SCC 26A.04.020 are followed. Some or all of the mitigation obligation may be satisfied pursuant to SCC 26A.03.080 and .090 by provision of certain approved on-and/or off-site facilities. (Title 26A SCC)


- ii. The sum of \$244,781.46 (\$1,665.18 per new unit) shall have been paid to Snohomish County for road system capacity impacts within Transportation Service Area D. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code. [SCC 26B.55.020]
- iii. The sum of \$11,135.25 (\$75.75 per new unit) shall have been paid to Snohomish County for Transportation Demand Management within Transportation Service Area D.
- iv. The applicant shall have paid \$28,077.00 (\$191.00 per new unit) to the county for mitigation of traffic impacts to the state highway system in accordance with the WSDOT/County Interlocal Agreement. [SCC 26B.55.070].
- v. The applicant shall have paid \$60,061.00 (\$408.58 per new unit) for the City of Mill Creek to mitigate the development's impacts to City streets as provided for in the County/Mill Creek Interlocal Agreement.
- vi. The interior public road system shall have been constructed in accordance with the standards specified by the Department of Public Works.
- vii. NGPA boundaries shall have been permanently marked on the site prior to final inspection by the county, with both Native Growth Protection Area signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g. tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the Native Growth Protection Areas. Only Type 1 signs shall be used for this site due to the density of the proposed dwelling units. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval. (Chapter 32.10 SCC)
- viii. The approved Final Critical Area Mitigation Plan shall have been implemented. Approval from the county biologist is required. [SCC 32.10]
- ix. A bond or other guarantee of performance shall have been posted for landscaping and recreational facilities, or all landscaping and proposed facilities shall have been installed in accordance with the approved Landscape Plan.

DECISION:

The Examiner's Report and Decision of March 15, 2001 is hereby **CORRECTED** as set forth above. A copy of the Corrected Report and Decision as it should now read, is attached hereto.

Decision issued March 27, 2001


Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION PROCEDURES

This decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. Reconsideration has been elected pursuant to SCC 2.02.167(1). Reconsideration must be sought by one or more parties before an appeal of the Examiner's decision can be filed with the County Council. No appeal may raise an issue which was not raised in a Petition for Reconsideration. The following paragraphs summarize the reconsideration process. For more information about reconsideration and appeal procedures, please see Chapter 2.02 SCC.

Any Party of Record may request reconsideration by the Hearing Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, Room AA103, 1st Floor, Administration Annex, 3000 Rockefeller Avenue, Everett, Washington (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **April 10, 2001**. There is no fee for filing a Petition for Reconsideration.

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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;

- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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 2.02.167. Please include the county file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Jeanie Johnson
Department of Public Works: Norm Stone

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.



Hearing Examiner's Office

Email: Hearing.Examiner@co.snohomish.wa.us

**ORDER GRANTING A PETITION
FOR RECONSIDERATION AND
REVISING THE INITIAL DECISION**

Robert J. Backstein
Hearing Examiner

Peter T. Donahue
Deputy Hearing Examiner

MAILING ADDRESS:
M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

LOCATION ADDRESS:
Cogswell College Building
2802 Wetmore Ave., 2nd Floor
Everett, WA 98201

(425) 388-3538
FAX (425) 388-3201

Applicant: Rob Purser/Stafford Homes (*Village at Webster's Pond*)
File No.: 98 108094
Date of Initial Decision: January 31, 2003
Name of Petitioner: Joel Haggard, Attorney for the Applicant
Date Petition Filed: February 3, 2003

WHEREAS, Joel Haggard, Attorney for the Applicant filed a timely Request for Reconsideration (Exhibit 128) regarding the above-referenced Decision; and

WHEREAS, the Examiner issued an Order Accepting a Petition for Reconsideration and Calling for Comments (Exhibit 129) on February 11, 2003; and

WHEREAS, the Examiner received no objections to the Request for Reconsideration; and

WHEREAS, the Request for Reconsideration asks for a clarification regarding Condition 4.B.vii; and

WHEREAS, the Examiner intended that the easement remain; and

WHEREAS, it is the Examiner's desire to eliminate any ambiguity and provide clarification regarding said Condition 4.B.vii. as modified.

NOW, THEREFORE, it is hereby ordered that Conclusion 3 is hereby modified to read as follows:

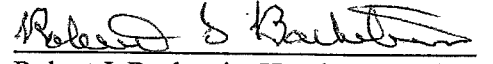
3. The original condition as set forth in Condition 4.B.vii. is hereby deleted and is modified and/or clarified by the replacement of said condition as follows:

"Applicant shall install a drainage system (which shall have capacity to convey the flow from a free-flowing 12-inch culvert described in the easement set forth in Auditor's File No. 9001220471) of design approved by the County to convey storm water discharges (if any) introduced to its property from the culvert described in the easement (or as relocated by the County) set forth in Auditor's File No. 9001220471."

The Decision shall be modified and/or clarified to read as follows:

Condition 4.B.vii. of the Village of Webster's Pond is hereby allowed and approved as said condition is set forth in Conclusion 3, above.

ORDER issued February 27, 2003.


Robert J. Backstein, Hearing Examiner

EXPLANATION OF APPEAL PROCEDURES

This decision of the Hearing Examiner following reconsideration is final and conclusive and may be appealed to the County Council. No further requests for reconsideration will be accepted. No appeal may raise an issue which has not been the subject of a Petition for Reconsideration. The following paragraphs summarize the appeal process. For more information about appeals to the County Council, please see Chapter 2.02 SCC.

Appeals may be filed by any aggrieved Party of Record; PROVIDED, that only the petitioner for reconsideration may appeal from the denial of a 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, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **MARCH 13, 2003** and shall be accompanied by a filing fee in the amount of one hundred dollars (\$100.00); 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.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

Appeals will be processed and considered by the County Council pursuant to the provisions of SCC 2.02.175 *et seq.* Please include the county file number in any correspondence regarding this case.

Distribution:

Petitioner

Department of Planning and Development Services: Ryan Larsen

Parties of Record

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.

