

BEFORE THE HEARING EXAMINER
IN AND FOR THE COUNTY OF SNOHOMISH

In Re Snohomish Garden Townhomes

No. 22-116648 PSD/SPA
22-116648 001 PSD/SPA
Order Denying Reconsideration

1 The Office of Hearings Administration received 31 emails on March 4, 2024, and March 5, 2024,
2 asking for reconsideration of the February 22, 2024 decision conditionally approving the
3 preliminary unit lot subdivision and Urban Residential Design Standards administrative site
4 plan. Thirty emails did not comply with requirements for timeliness, proof of service on other
5 parties of record, or party of record status. Procedurally defective requests for reconsideration
6 are denied, as explained below.

7 Only one email complied with procedural requirements. It was timely filed by two parties of
8 record and served on the other parties of record and is therefore reviewed on the merits. The
9 timely petition for reconsideration is denied because it merely disagrees with the weight given
10 evidence by the Hearing Examiner and the decision. The petition did not identify any facts, legal
11 conclusions, or conditions that lacked any support in the record. The petition is therefore
12 denied.

13 **FAILURE TO COMPLY WITH PROCEDURAL REQUIREMENTS**

14 A petitioner for reconsideration must:¹

- 15 A. Be a party of record by the close of the open record hearing;
16 B. File the petition for reconsideration within ten days of issuance of the decision; and
17 C. Provide a copy of the petition for reconsideration to all parties of record.²

¹ SCC 30.72.065(1) (2013).

² The petitioners identified in this section did not comply with H. Ex. R. of Proc. 1.8 (2023) that requires a certificate of service or some other appropriate indication of service on the other parties of record.

1 Despite explicit written advice of these county code requirements in the decision,³
 2 approximately 30 petitioners failed to comply with one or more of these requirements. The
 3 following table lists their petitions and indicates which of these three requirements were not
 4 met:

Exhibit	Petitioner	Party of Record	Filed within 10 days	Served on other parties
P.2	Gladys Wehland			No
P.3	Wendy and Dave Schilling			No
P.4	John Belanich			No
P.5	Ralph W Rohwer			No
P.6	Terry Doulas			No
P.7	James R Trott	No		No
P.8	John Reding II			No
P.9	Jacqueline Clayburn-Nardone			No
P.10	David Bishop			No
P.11	Dave Horton			No
P.12	Connie Taylor and Patrick Haglin			No
P.13	Brian Donovan			No
P.14	Janet Louise Anderson			No
P.15	Erlend Millikan			No

³ Decision, p. 33 (“Any party of record may request reconsideration . . . by filing a petition for reconsideration no later than **March 4, 2024.**” (Emphasis in original; footnote omitted)) (“The petitioner . . . shall mail or otherwise provide a copy of the petition to all parties of record on the date of filing. SCC 30.72.065.”)

P.16	Susanne Winter			No
P.17	Mark Wilson			No
P.18	Andrea Cantwell			No
P.19	Cathleen Gustavson			No
P.20	Jacqueline McKee			No
P.21	Melissa Reiner			No
P.22	Eileen Breseman			No
P.23	Francis Garriott		No	No
P.24	Jeanne Koruga		No	No
P.25	Linda Gilbert		No	No
P.26	Steven Gilbert		No	No
P.27	Robert Sample		No	No
P.28	Debra Perkins		No	No
P.29	Connie Carroll	No	No	No
P.30	Ellen Olson		No	No
P.31	Jane Hutchinson		No	No

1 These petitions are denied for failure to comply with SCC 30.72.065(1).

2 **WETZEL/GRAY PETITION**

3 Parties of record Ms. Deborah Wetzel and Ms. Linda Gray timely petitioned for reconsideration
4 and filed a declaration that they served the other parties of record. The Hearing Examiner
5 therefore considers the merits of their petition.

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RECONSIDERATION STANDARDS

The proper purpose of a petition for reconsideration is **not** to re-argue the case. *See United States v. Westlands Water District*, 134 F. Supp. 2d 1111, 1130 (E.D. Cal. 2001). A petition for reconsideration may be granted if it demonstrates any of the following:

- 1. The Hearing Examiner exceeded their jurisdiction.
- 2. The Hearing Examiner failed to follow the applicable procedure in reaching a decision.
- 3. The Hearing Examiner committed an error of law.
- 4. The findings, conclusions, or conditions are not supported by the record.
- 5. The applicant responded to deficiencies identified in the decision by proposing changes to the proposal.

SCC 30.72.065(2) (2013). The petition does not contend the Hearing Examiner lacked jurisdiction, failed to follow applicable procedures, or committed an error of law. The applicant did not propose changes to its proposal.

Petitioners repeat their public comments and disagree with the decision and the weight given to evidence. No evidence was offered that could not have been available at the time of the open record hearing. Petitioners’ disappointment with the outcome is not a basis for reconsideration. *See In re Jones’ Estate*, 116 Wash. 424, 426, 199 P. 734, 734 (1921), citing *Morgan v. Williams*, 77 Wash. 343, 137 Pac. 476 (1914).

Petitioners contend the findings or conclusions were not supported by the record. The disputed findings and conclusions were supported by the record; petitioners simply do not like the result.

EMERGENCY SERVICES

Petitioners allege: “The Hearing Examiner disregarded the evidence in the record provided by the local emergency services Fire Marshals submitted by Linda Gray and instead opined and speculated as to what concerns the regional fire authority may or may not have. * * * the regional fire authority was never directly asked if [the fire authority] still supported Deputy Chief Fitzgeralds [sic] concerns . . .”⁴

⁴ P.1, pp. 1-2 (footnote omitted).
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1 When asked in late 2020 whether Snohomish Regional Fire and Rescue (the successor to
2 Snohomish County Fire District no. 7) had any additional comments about the proposed 360-
3 unit apartment complex beyond that provided by Fire District 7, Deputy Chief Messer
4 responded on January 7, 2021⁵ that he had “nothing else to include.” Petitioners argue this
5 “clearly indicates that SRFR ratified the previous submission.”⁶

6 The county later asked Snohomish Regional Fire and Rescue to comment specifically on the
7 proposal at hand—the 196-unit townhouse project—not the previous proposal of 360
8 apartments.⁷ Snohomish Regional Fire and Rescue provided detailed comments, none of which
9 can reasonably be read to incorporate or refer to the prior comments of Fire District 7’s Fire
10 Marshal.⁸ One can reasonably infer from the regional fire authority did not ratify or incorporate
11 comments made by a predecessor agency about a much different proposal. The Hearing
12 Examiner evaluated the comments by the fire services and by the public and expressly
13 addressed the issue in the decision.⁹

14 The petitioners disagree with the Hearing Examiner’s evaluation and weighing of the evidence.
15 Disagreement is not sufficient basis for reconsideration.

16 **PEDESTRIAN REFUGE ISLAND**

17 Petitioners dispute condition 43(c) to the extent that the Hearing Examiner urged Public Works
18 and PDS to require a design consistent with best practices for pedestrian refuge islands.
19 Petitioners contend this gives the county a “free pass on liability.”¹⁰ This, too, is merely a
20 disagreement with evaluation of the record and the language of the condition. The Hearing
21 Examiner expects the county’s subject matter experts in traffic engineering and road
22 construction to require a design consistent with what they determine to be best engineering
23 practices.

24 **TRAFFIC IMPACT ANALYSIS**

25 Petitioners erroneously argue they could not have objected to the Lennar Northwest’s traffic
26 study until after the Hearing Examiner issued the decision.¹¹ Lennar Northwest’s transportation

⁵ Ex. I.115, PDF p. 5 and Ex. I.70, PDF p. 8.

⁶ P.1, p. 3.

⁷ Petitioners mistake SEPA alternatives analysis for a proposal. Alternative B, for 224 townhouses, was not the proposal, but an alternative for purposes of environmental comparison. Alternative A, for 360 apartments, was the proposal and preferred alternative. Ex. L.3.

⁸ Ex. H.5.

⁹ Decision, 9:23-10:4.

¹⁰ Ex. P.1, PDF p. 5.

¹¹ Ex. P.1, PDF p. 5.

1 impact analysis¹² dated May 2023 was available for months before the open record hearing.
2 Petitioners had ample time to review and object to it.

3 **INADEQUATE ROAD CONDITION**

4 Petitioners appear to contend that Paradise Lake Road has an “inadequate road condition,”
5 which is a defined term of art in county code.¹³ An inadequate road condition refers to the
6 physical characteristics of the road (e.g., alignment or sight obstruction), not traffic congestion.

7 The county studied whether an inadequate road condition existed from the eastern edge of
8 WSDOT’s right of way near 91st Ave. SE/Paradise Lake Road southeast to the county line.¹⁴ The
9 study concluded that the segment did not meet the criteria to find an inadequate road
10 condition. Petitioners dispute the county’s conclusion and disagree that the county does not
11 have authority to declare an inadequate road condition on WSDOT roads. Their disagreement is
12 not a basis for reconsideration.

13 Petitioners offer no legal authority that gives the county any authority or jurisdiction over
14 WSDOT roads. Petitioners’ disagreement with the county’s conclusion is not a basis for
15 reconsideration.¹⁵

16 **STATE ENVIRONMENTAL POLICY ACT (SEPA)**

17 Petitioners appear to argue that the proposal is not exempt from a SEPA threshold
18 determination:

19 This project is pretty much a ghetto housing project in the middle of nowhere
20 – none of it qualifies as affordable housing, and there is no infrastructure to
21 support it. This project (whether it be 360 apartments, 220 townhomes or the
22 “new and improved” 196 townhomes) had a Determination of Significance.
23 Ms. Wetzel clearly stated in her testimony that this is not “a horse of a
24 different color,” but simply the same horse with a different bridle and saddle.
25 Allowing this project to skirt the SEPA exemption requirements for public
26 safety cannot be permitted.

27 Ex. P.1, p. 6. The state legislature exempted this type of development (infill in urban growth
28 area) from the need for a SEPA threshold determination. The Hearing Examiner lacks the ability

¹² Ex. C.1.

¹³ Ex. P.1, PDF pp. 8 *et seq.* Inadequate Road Condition is defined at SCC 30.911.020 (2003).

¹⁴ Ex. H.8, PDF p. 5.

¹⁵ SCC 30.66b.210(3) (2003) does not apply because the department of Public Works investigated whether an inadequate road condition exists.

1 to countermand a state statute. Petitioners' disagreement with the statutory exemption is not
2 a basis for reconsideration.

3 **REQUEST FOR REOPENING OF RECORD**

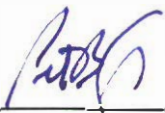
4 Petitioners ask the Hearing Examiner to reopen the record for limited purposes. They are
5 mistaken in their believe that "Hearing Examiner's Rules of Procedure are silent as to
6 reopening the record for limited purposes . . ."16 The rules explicitly address reopening of the
7 record:

8 After closing the record the Examiner may re-open the hearing for good cause
9 shown at any time prior to the issuance of a decision or a decision on
10 reconsideration. The Examiner at any time may re-open the hearing if she/he
11 becomes aware that the decision was based on fraudulent evidence,
12 misrepresentation, or other misconduct by a Party of Record; or for any
13 similar reason which would require reopening the hearing in the interest of
14 justice.

15 H. Ex. R. of Proc. 6.3(a) (2023). The Hearing Examiner does not find good cause to reopen the
16 record.

17 It is therefore ORDERED that the petitions for reconsideration be and hereby are denied.17

18 DATED this 21st day of March, 2024.

19 
20 _____
21 Peter B. Camp
Snohomish County Hearing Examiner

22 **EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

23 **RECONSIDERATION**

24 Further motions for reconsideration will not be considered because county code allows only
25 one period to petition for reconsideration. SCC 30.72.065(5) (2013).

16 Ex. P.1, p. 1.

17 SCC 30.72.065(4)(a) (2013).

1 **APPEAL**

2 An appeal to the County Council may be filed by any aggrieved party of record **on or before**
3 **April 4, 2024**. If the reconsideration process of SCC 30.72.065 has been invoked, no appeal may
4 be filed until the reconsideration petition has been decided by the Hearing Examiner. An
5 aggrieved party may file an appeal directly to the County Council without first filing a petition
6 for reconsideration. If a petition for reconsideration is filed, issues subsequently raised by that
7 party on appeal to the County Council shall be limited to those issues raised in the petition for
8 reconsideration.

9 Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with
10 the Department of Planning and Development Services, 2nd Floor, County Administration-East
11 Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S 604, 3000
12 Rockefeller Avenue, Everett, WA 98201), and shall be accompanied by a filing fee in the
13 amount of five hundred dollars (\$500.00) for each appeal filed. A county department does not
14 need to pay the filing fee. The filing fee shall be refunded in any case where an appeal is
15 summarily dismissed in whole without hearing under SCC 30.72.075.

16 Appeals may be accepted electronically by the Planning and Development Services Department
17 and paid for by credit card over the phone as follows:

- 18 1. Scan the original manually signed (handwritten) copy of the appeal document;
- 19 2. Send your appeal as an email attachment to epermittech@snoco.org. Please include your
20 phone number where you can be reliably reached.
- 21 3. Staff will call you to collect your credit card information and process your payment.
- 22 4. Mail the original to Snohomish County PDS, 3000 Rockefeller M/S 604, Everett, WA 98201.

23 An appeal must contain the following items in order to be complete: (a) a detailed statement
24 of the grounds for appeal; (b) a detailed statement of the facts upon which the appeal is based,
25 including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony;
26 (c) written arguments in support of the appeal, including all legal arguments on which the
27 appeal is based; (d) the name, mailing address and daytime telephone number of each
28 appellant or appellant's representative, together with the signature of at least one of the
29 appellants or the appellant's representative; and (d) the required filing fee. SCC 30.72.080(1).

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

- 31 (a) The decision exceeded the Hearing Examiner's jurisdiction;
- 32 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- 33 (c) The Hearing Examiner committed an error of law; or
- 34 (d) The Hearing Examiner's findings, conclusions, or conditions are not supported by substantial
35 evidence in the record.

1 SCC 30.72.080(2). Appeals will be processed and considered by the County Council pursuant to
2 the provisions of chapter 30.72 SCC. Please include the county file number in any
3 correspondence regarding the case.

4 Staff Distribution:

5 Department of Planning and Development Services: Joshua Machen, AICP

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**NOTIFICATION REQUEST POST-DECISION
(Not POR)**

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Ian Christenson
Lynn Williams
Kattie Cabe
Kristen Gillisse Howe
Karen Yakovich
Peter Tiersma
Roger Hill
Amber Hazelip

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