

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: October 20, 2005

PLAT/PROJECT NAME: *EAU CLAIRE CONDOMINIUMS*

APPLICANT/
LANDOWNER: Osiris, LLC

FILE NO.: 04 100026

TYPE OF REQUEST: REZONE of 1.7 acres from Residential-8400 (R-8400) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located at 15222 44th Avenue W, Lynnwood, WA

ACREAGE: 1.7 acres

ZONING: CURRENT: R-8400
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Density Medium Residential (6-12 du/ac)
Subarea Plan: Paine Field
Subarea Plan Designation: Urban (4-6 du/ac)

UTILITIES:

Water: Alderwood Water and Wastewater District
Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve
Public Works: No recommendation at this time

INTRODUCTION

The applicant filed the Master Application on January 5, 2004. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on September 28, 2005 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 9, 10 and 11)

A SEPA determination was made on September 29, 2005. (Exhibit 8) No appeal was filed.

The Examiner held an open record hearing on October 5, 2005, the 93rd day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on October 5, 2005 at 9:00 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Barry Constant, representing the applicant appeared, and stated that he agrees with the PDS staff report. He indicated that the traffic issues will be dealt with by the Department of Public Works (DPW).
3. Mr. Erik Olson, PDS, indicated that he had nothing further to add to his departmental report.
4. No one appeared in opposition to the request.

The hearing concluded at 9:07 a.m.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. 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. The request is for a rezone of 1.7 acres from R-8400 to LDMR. The site borders on 152nd Street SW and 44th Avenue W.
4. A small Category 3 wetland is located on the west end of the site.
5. While the time requirement for processing has elapsed some time ago, the applicant will accept the decision if filed within 15 days.

6. The zoning for the surrounding areas is predominantly R-8400 and there is some condominium development to the north and on the east side of 44th Avenue. The southeast side is zoned LDMR.
7. Two letters were received that expressed concerns about traffic impacts. However, no one appeared to speak and the traffic impacts will be determined at the time of development by the DPW.
8. Chapter 30.42A covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) The proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

9. There are no mitigation requirements required for parks, schools or roads and the DPW has no comments or objections but will provide their input to any later plat approval.
10. Public water and sewer service will be available for this development as well as electrical power.
11. The subject property is designated Urban Medium Density Residential (UMDR: 6-12 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Medium Density Residential designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones." The Examiner finds the requested rezone to be consistent with the General Policy Plan's Urban Medium Density Residential designation of the property.
12. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
13. Since this request involves rezoning only, any details or conditions which would normally come from DPW will be done at the time of administrative plat approval and are not required here.
14. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
15. Exhibit 6 is an aerial photograph which very clearly shows the property itself and the surrounding area and its compatibility in this area.
16. 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 therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The request is for a rezone and, therefore, must be consistent with the GMACP; GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) LDMR designation of the property and meets the required regulatory codes as to density, design and development standards.
3. The request would allow for the development of LDMR units.
4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. The request should be approved as submitted.
6. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a Rezone from R-8400 to Low Density Multiple Residential (LDMR) for this property is hereby APPROVED.

Decision issued this 20th day of October, 2005.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **October 31, 2005**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved Party of Record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a Petition for Reconsideration but may file an appeal directly to the County Council. If a Petition for Reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the Petition for Reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **November 3, 2005** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: Erik Olson

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.