

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 21, 2005

PLAT/PROJECT NAME: *GREENBROOK*

APPLICANT/
LANDOWNER: John and Janna Rima

FILE NO.: 04 116782

TYPE OF REQUEST: REZONE from Residential-7200 (R-7200) to Low Density Multiple Residential (LDMR) and Official Site Plan approval for 70 single-family dwellings, roads and a parking area

DECISION (SUMMARY): APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The project is located at 14511 Jefferson Way, Lynnwood, WA

ACREAGE: 8.02 acres

ZONING: CURRENT: R-7200
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential (6-12 du/ac)
Subarea Plan: Paine Field
Subarea Plan Designation: High Urban (6-9 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 subject to conditions
Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on May 10, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on November 29, 2005 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 12, 13 and 14)

A SEPA determination was made on September 9, 2005. (Exhibit 11) No appeal was filed.

The Examiner held an open record hearing on December 6, 2005, the 106th 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 December 6, 2005 at 11:00 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. Brian Holtzclaw and Cher Anderson, representing the applicant appeared. Mr. Holtzclaw stated that he had no objection to the conditions and agreed with the PDS staff report.
3. Mr. Paul Lichter, PDS, appeared and Mr. Mark Brown, DPW also appeared. Mr. Brown gave a detailed breakdown of DPW's request under Exhibit 28.
4. No one appeared in opposition to the request.

The hearing concluded at 11:10 a.m.

NOTE: Audio tapes of this hearing 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 proposal is for a rezone from R-7200 to LDMR and for a site plan of 70 single-family detached condominium dwellings.

4. The adjacent zoning is primarily R-7200 with a scattering of LDMR zoning in the vicinity and the primary land use in the area being single-family residential.
5. No issues were raised by parties in the area and no one appeared in opposition to the request.
6. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 for each new single-family home.
7. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions. (See Pages 3-5, Exhibit 26)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. The wetlands states that there are two Category 3 wetlands and associated Type 4 stream. PDS has reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with the Critical Area Regulations (CAR) and Chapter 30.62 SCC.
10. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
11. The Snohomish Health District did not recommend approval. Subsequent to the hearing a letter was submitted by PDS which did indicate Health District approval.
12. Public water and sewer service will be available for this development as well as electrical power.
13. 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." PDS finds the requested rezone to be consistent with the General Policy Plan's Urban Medium Density Residential designation of the property.

The 70 units proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

14. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

15. 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.

16. 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.
17. The aerial photograph (Exhibit 9) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
18. 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. One condition was added requiring Health District approval.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
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 will allow for the development of single-family detached condominium dwellings, thereby providing for more living units in this area of the county which is consistent with the development which is there generally.
6. The request should be approved subject to compliance by the applicant with the following Conditions:
 - A. The development site plan received by PDS on November 15, 2005 (Exhibit 27) shall be the Official Site Plan and approved configuration. SCC 30.42B.220 governs changes to the Official Site Plan

- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. A final mitigation plan based on the *Critical Areas Study and Buffer Mitigation Plan* prepared by The Jay Group dated May 11, 2005 (Exhibit #4) shall be submitted for review and approval during the construction review phase of this project.
 - iii. The final wetland mitigation plan shall be completely implemented.
 - iv. Mitigation fees to Mukilteo School District #6 and Snohomish County Parks and Recreation shall be paid prior to the issuance of building permits.
 - v. Traffic impact fees shall be paid prior to the issuance of building permits.
- C. Prior to proceeding, Health District approval must first be secured.

Nothing in this permit/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.

7. 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-7200 to LDMR, along with Official Site Plan approval for the development of 70 detached single-family residential units, is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 21st day of December, 2005.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **January 3, 2006**. 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 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 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. 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 **January 4, 2006** 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is 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 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 Chapter 30.72 SCC. Please include the county file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Paul Lichter
Department of Public Works: Mark Brown

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.