

**REPORT and DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: November 17, 2006

APPLICANT/  
LANDOWNER: Tyler Simmonds

FILE NO.: 05 119738

TYPE OF REQUEST: REZONE of .72 acres from Residential-9600 (R-9600) to  
Residential-7200 (R-7200)

DECISION (SUMMARY): DENIED

**BASIC INFORMATION**

GENERAL LOCATION: 12727 Maplewood Avenue, Edmonds, WA

ACREAGE: .72 acres

ZONING: CURRENT: R-9600  
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:  
General Policy Plan Designation: Urban Low Density Residential

UTILITIES:  
Water: Alderwood Water & Wastewater District  
Sewage: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Mukilteo

FIRE DISTRICT: No. 8

**SELECTED AGENCY RECOMMENDATIONS:**

Department of:  
Planning and Development Services: Approve  
Public Works: Information submitted is not adequate to make a favorable  
recommendation for this proposal

## **INTRODUCTION**

The applicant filed the Master Application on April 21, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on November 2, 2006.

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 of non-significance was made on August 9, 2006. (Exhibit 11) No appeal was filed.

The Examiner held an open record hearing on November 1, 2006. The original hearing date was August 29, 2006 which would have been the 131<sup>st</sup> 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 November 1, 2006 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 had a general idea of the particular request involved. A site visit by the Examiner was made the next day.
2. One witness appeared in opposition to the request.

The hearing concluded at 9:40 a.m.

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

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS:**

1. Tyler Simmonds (Applicant) seeks to rezone a .72 acre site at 12727 Maplewood Avenue from R-9600 to R-7200. His plan is to apply for a short plat of the site to divide it into four single-family lots utilizing lot size averaging. The existing residence would remain.
2. The site is in the Wind and Tide subdivision, which has a covenant limiting minimum lot sizes to 20,000 square feet. Homes to the north of the site are set back from Maplewood Avenue. The Simmonds' residence is located closer to the road, probably due to topography of the site.
3. Considerable opposition to the proposed rezone was received by PDS. The objections to the rezone were based upon the restrictive covenant, possible unstable soils, and traffic congestion. Maplewood Avenue at this location is near the top of a steep grade, and traffic from an adjacent street (128<sup>th</sup> Avenue SW) converges at this location and dead ends at Maplewood Avenue. A private park is located nearby to the north, at the intersection of Maplewood Avenue with Scenic.

4. A rezone application for property immediately to the south of the site was approved by the Deputy Hearing Examiner on February 10, 2006. The rezone was conditionally affirmed on appeal to the County Council on May 24, 2006. That property was rezoned from Urban Residential-8400 to Low Density Multiple Residential and a building site plan for 29 single-family, detached condominiums was also approved (*Timberwood Ridge*).
5. The subject property is designated for Urban Low Density Residential (ULDR: 4-6 du/ac) on the future land use map. The R-7200 zone is one of the implementing zones for this designation.
6. Elbert Esparza, PDS and Jesse Jerrell, for the applicant, advised the Examiner that the Wind and Tide Association had settled their opposition to the rezone “out of court.” Ron Brown, an attorney who lives nearby at 6626 128<sup>th</sup> Street SW, testified that he was unaware of any such settlement. Mr. Brown argued that in addition to being a violation of the Wind and Tide covenants, that the rezone would permit development that would not be compatible with an established single-family community. He also testified that adding a new driveway for four residences at this location would be unsafe and worsen an already congested area. Maplewood Avenue makes a hairpin turn up a steep hill just to the south. Testimony about unstable soils was not convincing. There was no traffic study for the proposal.
7. 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.
8. Any Conclusion of Law in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

### **CONCLUSIONS:**

1. The Examiner having fully reviewed the PDS staff report, hereby incorporates said staff report into this Report and Decision as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request.
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) ULDR designation of the property and meets the required regulatory codes as to density, design and development standards.
3. The County is not required to enforce private covenants, and is free to rezone property to a zone which would permit violations of the covenants. Here, however, the covenant is part of an areawide restriction which establishes an estate-like character to the neighborhood. The County should not lightly permit a property in such a community to develop in a manner contrary to the established pattern. It was not established to the Examiner’s satisfaction that the Wind and Tide Association had abandoned its opposition to the rezone. The property here is the southern anchor of the Wind and Tide Community, and a rezone to permit four residences on one lot would be incompatible with this large lot single-family neighborhood
4. The request to rezone the property from R-9600 to R-7200 should be denied.
5. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

**DECISION:**

The request for a Rezone from R-9600 to R-7200 for this property is hereby DENIED.

Decision issued this 17<sup>th</sup> day of November, 2006.

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Gordon F. Crandall, Hearing Examiner Pro Tem

**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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **NOVEMBER 27, 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 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **DECEMBER 1, 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 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: Elbert Esparza/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.