

# REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: March 9, 2006

PLAT/PROJECT NAME: *JOHNSON REZONE & PRD*

APPLICANT/  
LANDOWNER: H. Lee Johnson

FILE NO.: 05 124467

TYPE OF REQUEST: Rezone from Residential-9600 to Residential-7200 and approval of a Planned Residential Development and short plat of nine lots

DECISION (SUMMARY): Requests APPROVED

## BASIC INFORMATION

GENERAL LOCATION: The property is located at 5202 116<sup>th</sup> Street SE, Everett

ACREAGE: 1.39 acres

NUMBER OF LOTS: 9

OPEN SPACE: 11,671 square feet

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

### COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)  
Subarea Plan: North Creek  
Subarea Plan Designation: Rural (.4-1 du/ac)

### UTILITIES:

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

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 1

### SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions  
Public Works: No recommendation at this time

## **INTRODUCTION**

The applicant filed the Master Application on September 8, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on February 16, 2006 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 17, 18 and 19)

A SEPA determination was made on January 17, 2006. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on February 22, 2006, the 93<sup>rd</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 February 22, 2006 at 10:03 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. George Newman, representing the applicant appeared and stated that the subdivision is to be approved administratively. He spoke to the request and the justification of the rezone.
3. Mr. Paul Lichter, PDS, submitted a supplemental staff report, Exhibit 32, to correct some minor discrepancies.
4. No one appeared in opposition to the request.

The hearing concluded at 10:20 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. There were no public comments on this matter.
4. The request is for approval of a rezone on 1.39 acres from R-9600 to R-7200 in order to administratively short plat the site into nine single-family building lots.
5. The adjacent zoning is PRD-9600, to the west R-7200 to the south and R-9600 to the north and east with the adjacent uses being primarily single-family dwellings.
6. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the ULDR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
7. 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 the short plat approval.
8. The PDS staff has submitted a supplemental staff report. (Exhibit 32)
9. While the property will be approved as an administrative short plat, the supplemental staff report lists the requirements for a planned residential development under Chapter 30.42B SCC and these requirements are set forth in the supplemental staff report and approved by the Examiner.
10. 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.
11. 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.

12. The proposal has been evaluated by PDS for compliance with the Planned Residential Development provisions of Chapter 30.42B SCC. This proposal is consistent with these provisions.

13. 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.
14. The aerial photograph (Exhibit 12) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
15. 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 Department of Public Works has not issued a recommendation at this time.
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 for a rezone is to allow the development of nine lots to be administratively approved. This would provide for single-family homes in an area which is a rapidly growing and attractive part of the county.
6. The request should be approved subject to compliance by the applicant with the following Conditions:

**CONDITIONS:**

- A. The PRD Site Plan received by PDS on September 8, 2005 (Exhibit 3A-3I) shall be the PRD official site plan and approved configuration. SCC 30.42B.220 governs changes to the PRD site plan.
- B. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- C. 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 detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 3H and in conformance with all required landscape standards for perimeter, streetscape, and open space treatments, and shall include a tree retention plan.

- iii. PRD covenants, deeds, and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30,.42B.250.

Nothing in this permit approval excuses the applicant, owner, lessee, agent, successor, or assigns from compliance with 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 Residential-9600 to Residential-7200 and PRD official site plan are hereby APPROVED.

Decision issued this 9<sup>th</sup> day of March, 2006.

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Robert J. Backstein, Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **March 20, 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 **March 23, 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.

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### Staff Distribution:

Department of Planning and Development Services: Paul Lichter  
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.