

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

DATE OF DECISION: October 25, 2006

PLAT/PROJECT NAME: *MANOR OAKS*

APPLICANT/
LANDOWNER: DCK, LLC

FILE NO.: 05 127278 LU

TYPE OF REQUEST: REZONE from Residential-7200 (R-7200) to Low Density Multiple Residential (LDMR) and official site plan approval for the future development of seven new single-family detached units in addition to an existing single-family unit

DECISION (SUMMARY): Requests **APPROVED** subject to preconditions and conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 13128 Admiralty Way, Everett, WA

ACREAGE: 1.0 acre

DENSITY: 8 du/ac (gross)
9.2 du/ac (net)

ZONING: CURRENT: R-7200
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban High Density Residential

UTILITIES:

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

SCHOOL DISTRICT: Mukilteo

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approve subject to conditions
Public Works (DPW): Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on March 10, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on October 5, 2006 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 19, 20 & 21)

A SEPA determination was made on August 8, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on October 10, 2006, the 99th 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 10, 2006 at 3:12 p.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. Ms. Emily Fuller, Insight Engineering, appeared and stated that she agrees with the PDS staff report and recommended conditions.
3. Mr. Scott Whitcutt, PDS, was present.
4. Questions were raised as to the posting notice (Exhibit 21) not being signed and the applicant, who posted the property, signed the proper affidavit.
5. No one appeared in opposition to the request.

The hearing concluded at 3:17 p.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 the 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 request is to rezone a one acre piece of property from R-7200 to LDMR with official site plan approval for the future construction of seven new single-family detached units in addition to retaining an existing single-family detached unit.
4. Property to the north and east is currently zoned R-7200 and developed with single-family residences. Property to the west is zoned General Commercial, though developed with a mix of residential and commercial uses. The property on the south is zoned LDMR and is under construction for multiple single-family units on a single lot.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1244.49 for each new single-family home.
6. 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 3-6, Exhibit 35)
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. The site has minor wetlands adjacent to the right-of-way frontage on Avondale Road. PDS has reviewed the Critical Areas Report and Mitigation Plan (Exhibit 9) and determined that the project complies with the critical areas regulations.
9. 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).
10. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Any existing on-site septic systems shall be abandoned. Any existing septic systems should be abandoned.
11. Public water and sewer service will be available for this development as well as electrical power.

12. The subject property is designated Urban Medium Density Residential (6-12 du/acres) 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 "allows high density residential land uses such as townhouses and apartments generally near other high intensity land uses. Land in this category may be developed up to a maximum density of 12 dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, MR, and PRD-MR zones." PDS finds the requested rezone to be consistent with the General Policy Plan's Urban Medium Density Residential designation of the property.
13. The proposed LDMR rezone with Official Site Plan will meet zoning code requirements for bulk regulations and other zoning code requirements. This project has been determined to meet the decision criteria applicable to LDMR zoning, including consistency with the comprehensive plan and bearing a substantial relationship to the public health, safety, and welfare indicated in the subject chapter.
14. 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.

15. 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.
16. The aerial photograph (Exhibit 12) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
17. 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 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 would allow development of seven single-family detached residential units in an area that is changing and has mixed uses.
6. The request should be approved subject to compliance by the applicant with the following Preconditions and Conditions:

PRECONDITIONS

- A. A record of developer's 30.66B SCC mitigation obligations shall have been recorded with the County Auditor. [30.66B.070 SCC]
- B. Two feet of additional right-of-way shall be deeded to Snohomish County, parallel and adjoining to the existing right-of-way along the parcel's frontage on Avondale Way Road. [SCC 30.66B.177]

CONDITIONS

- A. The official site plans received by PDS on July 3, 2006 (Exhibit 14 and 16A and 16B) shall be 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. The developer shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the *Critical Areas Report and Mitigation Plan* prepared by The Jay Group, Inc. dated 3/6/06 (Exhibit 9) shall be approved during the construction review phase of this project.
 - iv. Construction plans shall be approved for associated Avondale Way public right-of-way improvements.
- C. The following mitigation fees shall be paid prior to building permit issuance of individual single-family structures:
 - i. The developer shall pay the County \$1,244.49 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC.

- ii. School impact mitigation fees for the Mukilteo School District No. 6, to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, shall be collected prior to individual single-family building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for the existing lot and assigned to the existing Unit 1.
- iii. Chapter 30.66B SCC requires mitigation payments in the amounts shown below for each single-family residential building permit. Such mitigation fees shall be paid per unit, prior to issuance of each single-family residential building permit:

\$2555.19/unit for mitigation of impacts on county roads paid to the county,

\$681.75/unit for transportation demand management paid to the county.

D. Prior to final inspection of the first newly constructed single-family unit:

- i. A temporary public easement shall be placed on the Avondale Way entrance to the proposed development for use as a public turnaround.
- ii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection of the approved Final Wetland Mitigation Plan by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The developer may use other permanent methods and materials provided they are first approved by the county.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- iii. The final wetland mitigation plan shall be completely implemented.
- iv. The developer shall construct per approved plans, and the county shall accept, all public right-of-way improvements approved for Avondale Way.

E. In conformity with applicable standards and timing requirements:

- i. Landscaping shall be implemented consistent with the approved landscape plan (Exhibit 16A and 16B).
- ii. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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 construction of seven new single-family detached units in addition to retaining one existing single-family detached unit is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 25th day of October, 2006.

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 **NOVEMBER 6, 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 **NOVEMBER 8, 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: Scott Whitcutt
Department of Public Works: Andrew Smith

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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than OCTOBER 25, 2007.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
