

# REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: November 17, 2006

PLAT/PROJECT NAME: *84<sup>th</sup> AVENUE W LDMR REZONE*

APPLICANT/  
LANDOWNER: S & S Joint Venture

FILE NO.: 06 101069

TYPE OF REQUEST: REZONE of .69 acres from Residential-8400 (R-8400) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): APPROVE

## BASIC INFORMATION

GENERAL LOCATION: The property is located at 23010 84<sup>th</sup> Avenue W, Edmonds, WA

ACREAGE: 0.72

ZONING: CURRENT: R-8400  
PROPOSED: LDMR

### COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential

### UTILITIES:

Water: Olympic View Water and Sewer District  
Sewage: Olympic View Water and Sewer District

SCHOOL DISTRICT: Edmonds

FIRE DISTRICT: No. 15

### SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services: Approve subject to conditions  
Public Works: No recommendation

## **INTRODUCTION**

The applicant filed the Master Application on March 22, 2006. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 11, 12 and 13)

A SEPA determination of non-significance was made on September 14, 2006. (Exhibit 10) No appeal was filed.

The Examiner held an open record hearing on October 31, 2006, the 83rd 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 31, 2006 at 1:00 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and therefore had a general idea of the particular request involved.

The hearing concluded at 1:05 p.m.

**NOTE:** Audio tapes of this hearing are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS:**

1. S & S Joint Venture, LLC (Applicant) seeks to rezone a .72 acre site at 23010 84<sup>th</sup> Avenue W, near Edmonds, from R-8400 to LDMR. The applicant proposes to construct a six-unit, single-family residential "airspace condominium" on the site. A boundary line adjustment was recently approved to provide applicant with the needed lot configuration. The site is currently undeveloped.
2. Surrounding uses are zoned R-8400 and developed with single-family residences and a church.
3. The subject property is designated for Urban Medium Density Residential land uses and is located in an Urban Growth Area. The LDMR zone is one of the implementing zones for this land use designation.
4. Any Conclusions of Law in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**CONCLUSIONS of LAW:**

1. A request for a site-specific rezone is a Type 2 application which is decided by the Hearing Examiner. Chapter 30.72 SCC. The Hearing Examiner conducts a public hearing after notice is published, posted and mailed in accordance with SCC 30.70.045. The Hearing Examiner's decision on an application for a site specific rezone is final, subject to appeal to the County Council.
2. The Hearing Examiner may approve a rezone only when all of 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.
3. The PDS staff concludes that the rezone criteria are satisfied, and observes that when a proposed rezone conforms to the applicable comprehensive plan, it bears a substantial relationship to the public health, safety, morals and general welfare. The comprehensive plan is the county's most direct expression of public policy in the areas of land use.
4. The Examiner concurs with the PDS staff. The application for rezone should be approved.
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 is hereby APPROVED.

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 the case.

Staff Distribution:

Department of Planning and Development Services: Michael Dobesh

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.