

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 8, 2006

PLAT/PROJECT NAME: *Dierck Short Plat Rezone*

APPLICANT/
LANDOWNER: David M. Dierck

FILE NO.: 06 129527 LU

TYPE OF REQUEST: Rezone of a .35 acre from Residential-9,600 (R-9,600) to Residential-7,200 (R-7,200)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 4212 83rd Avenue NE, Everett, Washington.

ACREAGE: .35 acre

ZONING: CURRENT: R-9,600
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/acre)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: City of Marysville

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

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 July 20, 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 15, 16 and 17)

A SEPA determination was made on November 1, 2006. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on November 21, 2006, the 56th 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 21, 2006 at 3:00 p.m.

1. The Examiner had read the PDS staff report and reviewed the file.
2. The applicant, David Dierck was represented by Ry McDuffy of Land Resolutions. Snohomish County was represented by Elbert Esparza of the Department of Planning and Development Services.
3. The hearing concluded at 3:06 p.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:

Based on all the evidence of record, the following findings of fact are entered.

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 Policy Act (SEPA) evaluation with its recommendation and conditions. That this report is hereby adopted by the Examiner as if set forth in full herein.
3. David Dierck (applicant) seeks to rezone a .35 acre tract at 4212 83rd Avenue NE, Everett, from R-9,600 to R-7,200. By a separate proposal, the applicant seeks to subdivide the tract by a short plat into two single-family lots for residential purposes. The short plat will be considered by the land use division. The only proposal before the Examiner is the request to rezone the property.

4. There has been no public comment on this proposal.
5. The site is surrounded on all sides by residential zoning and residential uses are found on three sides.
6. There are no critical areas on or within 100 feet of this site.
7. The Hearing Examiner can condition or deny a rezone if there is substantial evidence in the record of the need to do so in the interest of the public health, safety and welfare. However, none of the assertions listed above achieves that evidentiary level in this record at this stage.
8. There are no mitigation requirements required for parks, schools or roads and the DPW has no comments or objections but will provide its input during the short plat approval process.
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water, sewer service and electrical power will be available for this development.
11. 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.
12. 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.
13. Any Conclusion of Law in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

CONCLUSIONS of LAW:

Based on the findings of fact entered above, the following conclusions of law are entered.

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 adopted by the Examiner as a conclusion as if set forth in full herein. There are no changes to the recommendations of the staff report.
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. 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.
4. 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.
5. PDS staff concludes that the proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards; that adequate public services exist to serve the proposal; and, if approved, the proposal would make adequate provisions for the public health, safety and general welfare. The Examiner concurs. The application should be approved.
6. 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. Because no substantial evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
7. The application to rezone the property as requested should be approved.
8. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request to rezone a .35 acre tract at 4212 83rd Avenue NE, Everett, Washington, from Residential-9,600 to Residential-7,200 is hereby **APPROVED**.

Decision issued this 8th day of December, 2006.

Gordon 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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **DECEMBER 18, 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, 2nd 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 22, 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: Elbert Esparza

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.
