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**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**DEVELOPER'S INVESTMENT GROUP, INC.** ) **FILE NO. 06 101573 LU**  
 )  
Rezone from Residential-9,600 (R-9,600) to )  
Low Density Multiple Residential )

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DATE OF DECISION: March 29, 2007

PLAT/PROJECT NAME: *Eden's Garden*

DECISION (SUMMARY): Rezone from R-9,600 to Low Density Multiple Residential is APPROVED.

**BASIC INFORMATION**

GENERAL LOCATION: This project is located at 2712 Gibson Road, Everett, Washington.

ACREAGE: 3.23 acres

ZONING: CURRENT: R-9,600  
PROPOSED: LDMR

UTILITIES:  
Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo No. 6

FIRE DISTRICT: No. 1

## **INTRODUCTION**

The applicant filed the Master Application on March 14, 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 13, 14 and 15)

A SEPA determination was made on February 1, 2007. (Exhibit 12) No appeal was filed.

The Examiner had scheduled an open record hearing for March 14, 2007, the 102<sup>nd</sup> day of the 120-day decision making period. The hearing was continued on the record to February 16, 2007 due to a failure to post notice. At the continued session, witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

## **PUBLIC HEARING**

The public hearing commenced on March 14, 2007 at 1:01 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, Developer's Investment Group, Inc., was represented by Jesse Jarrell of Western Engineers, Inc. Snohomish County was represented by Scott Whitcutt of the Department of Planning and Development Services. No member of the general public participated in this matter.
3. No member of the general public appeared at the hearing. One citizen, Will Engstren, submitted a pre-hearing letter. (Exhibit 18) Mr. Engstren points out that there were three instances involving cars and children in the vicinity in the summer of 2006. He believes that residential growth in the area has already reached densities causing safety issues and urges delay of further development and, at least, speed bumps and sidewalks be required. (See Findings below.)

The hearing concluded at 1:06 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 OF FACT**

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 applicant, Developer's Investment Group, Inc. filed an application requesting approval of a rezone of a 3.23-acre parcel from R-9,600 to LDMR. No critical area (steep slope, wetland, or stream) is on or near the site. If the rezone is approved, the applicant's intent is to apply for administrative site plan approval of a 25-lot development of detached single-family homes, of which two are pre-existing.
3. Adjacent zoning to the north and west is designated as LDMR as is being so developed. Adjacent property to the south is zoned PRD-7,200 and developed as single-family residences. Property adjacent to the east is zoned R-9,600 and developed with single-family residences. The general area is transitioning from the previous single-family zoning to LDMR zoning.
4. Vicinity resident Will Engstren's concerns are summarized under "Public Hearing" above. Access to the proposed development will be via existing 28<sup>th</sup> Place West. The 23 new homes will add an additional 220 vehicle trips per average weekday to that street. Staff analysis of the capacity of vicinity streets to carry the additional traffic will be made during the site plan review rather than at the rezone stage unless a preponderance of the evidence of record in this proceeding convinces the Hearing Examiner that such analysis is warranted at the rezone stage. The concerns of Mr. Engstren do not reach that level of persuasion here but he should raise his concerns further at the site plan phase of this process.
5. No evidence in this record demonstrates any reason why the Hearing Examiner should condition or deny this application in the interest of the public health, safety or welfare.
6. There is no mitigation required for parks, schools or roads and the DPW has no comments or objections but will provide its input during the site plan approval process.
7. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
8. Public water, sewer service and electrical power will be available for this development.
9. The property is designated Urban Medium Density Residential (UMDR 6-12 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 UMDR 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 6-12 du/ac and one of the implementing zones is the LDMR zone which is the case here.
10. The request is consistent with Section 30.70.100 SCC which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
11. Any finding of fact in this decision which should be deemed a conclusion 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 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 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) UMDR designation of the property and meets the required regulatory codes as to density, design and development standards.
3. A rezone must also comply with SCC 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no substantial evidence was submitted of non-compliance with the requirements of Chapter 30.42A, the application is presumed to meet those requirements.
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.

It is the conclusion of the Examiner that the request meets these requirements generally and should be approved.

5. The request should be approved as submitted.
6. Any conclusion in this 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 for a rezone from Residential-9,600 to Low Density Multiple Residential for this property is hereby **APPROVED**.

Decision issued this 29<sup>th</sup> day of March, 2007.

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Ed Good, Deputy Hearing Examiner

## 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 **APRIL 9, 2007**. 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 **APRIL 12, 2007** 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.

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Staff Distribution:

Department of Planning and Development Services: Scott Whitcutt

<p>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.</p>
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