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REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

DATE OF DECISION: April 4, 2007

PLAT/PROJECT NAME: *OPPERMAN ESTATES*

APPLICANT/
LANDOWNER: Mustach Development, Inc.

FILE NO.: 06 130595 LU

TYPE OF REQUEST: Rezone from Residential-9600 (R-9600) to Residential-7200
(R-7200)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 1320 172nd Street SW, Lynnwood, WA

ACREAGE: 1.41 acres

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

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

UTILITIES:

Water/Sewer: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Edmonds

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve

INTRODUCTION

The applicant filed the Master Application on October 4, 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 of nonsignificance was made on February 16, 2007. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on March 20, 2007, the 50th 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 March 20, 2007 at 1:00 p.m.

1. The Examiner had read the PDS staff report, reviewed the file and viewed the area.
2. 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:

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. This report is hereby adopted by the Examiner as if set forth in full herein.
3. 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. Applicant proposed to secure a short plat from PDS for seven single-family lots and one duplex lot.
4. 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.

5. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
6. Public water, sewer service and electrical power will be available for this development.
7. 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.
8. Any Finding of Fact 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. 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.

4. Staff concludes that the proposal is consistent with the rezone criteria and the Examiner concurs. The proposal is consistent with the comprehensive plan, and by implementing the plan the proposal advances the public health, safety and welfare. Minimum zoning criteria can be satisfied on this site.
5. The application to rezone the property as requested should be approved.
6. 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** the property from R-9600 to R-7200 is hereby **APPROVED**.

Decision issued this 4th day of April, 2007.

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 **April 16, 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, 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 **April 30, 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.

Staff Distribution:

Department of Planning and Development Services: Stacey Abbott

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.
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