

INTRODUCTION

The applicant filed the Master Application on February 27, 2007. (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 17, 18 and 19)

A SEPA determination was made on July 11, 2007. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on September 11, 2007, the 89th day of the 120-day decision making period.

PUBLIC HEARING

The public hearing commenced on September 11, 2007 at 2:02 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, John Cole, was represented by Andrew Lofstedt of Alpha Subdivision Pros, Inc. Snohomish County was represented by Elbert Esparza of the Department of Planning and Development Services.
3. Residents of three vicinity households submitted pre-hearing documents expressing opposition or concern: Kirk Benson (Exhibit 25), Karl and Cheryl Eriksen (Exhibit 24) and Kurt and Tracy Heck (Exhibit 23). The only member of the general public who appeared at the hearing and testified was the above-mentioned Cheryl Ericksen.
4. The hearing concluded at 2:50 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, John Cole, filed an application requesting approval of a rezone of one acre (.91 acre) from R-8,400 to LDMR. The proposal is to place six dwellings on site, one of which already exists. Administrative review of the site plan (Exhibit 16) has been occurring during the rezone process. The site plan is based on LDMR regulations in effect at the time of filing, which preceded the adoption of amended regulations effective June 4, 2007.

3. No critical area (steep slope, wetland, or stream) is on or near the site. The subject site and the surrounding community are zoned R-9,600 and R-8,400 but there have been several rezones to LDMR in the vicinity, one of which is directly across the street from the subject site and now under construction.
4. Vicinity residents Cheryl and Karl Eriksen and Kurt and Tracy Heck are immediate neighbors of one another and of the subject site. Cheryl Erickson testified to support the written evidence earlier submitted by the two households. Both sets of neighbors support the six-house proposal as depicted in the site plan (Exhibit 16) but are concerned that the requested LDMR zoning would allow amendments of the site plan to provide up to nine townhomes or 12 multi-family dwellings or up to 18 senior apartments with only a five-foot setback from the boundary of their back yards. Neighbor Kirk Benson (Exhibit 25) disagrees: he urges denial of the requested LDMR rezone as too dense outside of a city. He asserts that such density will cause problems with traffic, stormwater runoff and sanitary sewer overloads.
5. Andrew Lofstedt represents the proponent. Mr. Lofstedt asserts that the proposed rezone to LDMR meets all applicable decisional criteria for a rezone, implements the Growth Management Act and the County Comprehensive Plan by providing re-development and in-fill instead of sprawl and is compatible with the vicinity's transition to the density proposed here. He notes that any further intensification of density on the subject site would require a new application and would be subject to the County Code provisions effective June 4, 2007 applicable to single-family detached units. He expresses willingness to have the rezone conditioned upon adherence to the concept of no more than six dwellings in general conformity with the site plan revised April 30, 2007 (Exhibit 16). He assured Cheryl Eriksen that the concept for the site's development as reflected in Exhibit 16 is for two-story dwellings, not two-story over a garage.
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 short plat 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 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 zone.
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.
2. The request is for a rezone and, therefore, must be consistent with the GMACP and GMA based county codes. 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.
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.
4. The Hearing Examiner's decision on a rezone application is a Type 2 decision based on (1) a report by the County staff and a file assembled by that staff and (2) evidence received through an open record public hearing. The burden of proof is on the applicant to demonstrate by a preponderance of the evidence that the proposed rezone meets the two applicable rezone decisional criteria set out at SCC 30.42A.100: (1) that the proposed rezone is consistent with the Comprehensive Plan and (2) that the proposed rezone bears a substantial relationship to the public health, safety and welfare. The Hearing Examiner's decision on those criteria is the final County action unless appealed to the County Council. (SCC 30.72.020 -.025)
 5. The request is for a site-specific rezone and, therefore, must be consistent with the GMA Comprehensive Plan and Snohomish County Code regulatory provisions which implement that plan. The request for LDNR zoning here is consistent with the type and character of land use permitted on the project site by the General Policy Plan (GPP) ULDR designation of the property. However, in addition to being consistent with the map designation, the proposal must also be consistent with relevant Plan policies such as (but not limited to) Land Use Policy 1.A.4 concerning infrastructure capacity, Land Use Policy 2.A.3 concerning critical areas, and Housing Policy 2.A.1 concerning preservation of the character of stable residential neighborhoods. (See County Council Motion No. 07-447.) In fact, the General Policy Plan provides at page LU-15 that the County will broaden the variety of housing types in traditional single-family and multi-family neighborhoods:

"...while respecting the vitality and character of established residential neighborhoods A mix of housing types with a range of densities will be encouraged throughout UGA's, as long as they are carefully sited, well designed, and sensitively integrated into existing communities." (Emphasis supplied.)

6. As noted above, the instant proposal's consistency with the Comprehensive Plan is only one of the two applicable criteria set out at SCC 30.42A.100 which must be met before a rezone can be approved. A rezone must also comply with the second criterion: i.e., the rezone must bear a substantial relationship to the public health, safety and welfare. The bold-quoted language above is an expression of the second of the two rezone criteria. Stated in the converse, the quoted language provides that until it is determined that a proposed rezone's housing types are carefully sited, well designed, and sensitively integrated into an existing community, the proposed rezone cannot be found to bear a substantial relationship to the public health, safety and welfare. That burden of proof which must support that determination cannot be met without actual consideration of site-specific facts. A conclusory statement that a proposed rezone meets the criteria is no more acceptable than would be a conclusory statement that the proposed rezone fails to meet the criteria. The departmental staff and, in turn, the Hearing Examiner, must "show your work" and rationale in concluding whether or not a proposed rezone meets or does not meet the applicable criteria.

7. The requirement to actually consider the applicable criteria, particularly when relevant citizen concerns are expressed, is mandated by the County Council's Amended Ordinance No. 07-022 effective June 4, 2007, which at page 2 repeats the above-quoted Comprehensive Plan provision encouraging a mix of housing types with a range of densities only if "*carefully sited, well designed, and sensitively integrated into existing communities...*" The County Council reinforced that requirement to "show your work" in its Motion No. 07-447 of August 8, 2007 remanding a rezone application on appeal (Brookstone Investments, LLC, 06-135148) for failure to have adequately evaluated all project-level factors concerning the two criteria discussed above herein.

8. Based on a preponderance of the evidence of record, the applicant has met the burden of proof in showing that the proposed six dwellings permitted by a rezone to LDMR is consistent with the policies of the Comprehensive Plan and not merely consistent with the map designation. Specifically, the applicant's commitment to a two-story height impact as perceived from abutting properties softens the potential intrusion into adjacent back-yard privacy and helps compensate for the allowed but minimal five-foot setback. Any attempted amendment of that concept would have to meet the more stringent requirements of the single family detached unit code language effective June 4, 2007. A condition is imposed to bind the rezone approval to that development concept of the site plan at Exhibit 16.

9. Subject to the condition noted above, the development permitted by the requested rezone to LDMR will (as required by Comprehensive Plan page LU-15) respect:

"...the vitality and character of established residential neighborhoods [by being] carefully sited, well designed, and sensitively integrated into existing communities."

10. For all of the above reasons, the application bears a substantial relationship to the public health, safety and welfare and should be approved.

11. 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-8,400 to Low Density Multiple Residential for this property is **CONDITIONALLY APPROVED** subject to the following stipulation:

Development of the subject site shall adhere to the six-dwelling concept shown at Exhibit 16 as the site plan to be given effect in the as-built, completed project except as the site plan may have to be modified in engineering detail only.

Decision issued this 10th day of October, 2007.

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, 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 **OCTOBER 22, 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 **OCTOBER 24, 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: Elbert Esparza

<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>
