

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: June 11, 2007

PLAT/PROJECT NAME: **64TH AVENUE LDMR**

APPLICANT/
LANDOWNER: Brookstone Investments, LLC

FILE NO.: 06 135148 LU

TYPE OF REQUEST: Rezone from Residential-8400 (R-8400) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): **DENIED**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 17425 64th Avenue W, Lynnwood, WA

ACREAGE: .67

ZONING: CURRENT: R-8400
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential (6-12-du/ac)

UTILITIES:

Water: Alderwood Water and Wastewater District
Sewage: City of Lynnwood

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 January 2, 2007. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on May 28, 2007 in the morning.

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 nonsignificance was made on May 3, 2007. (Exhibit 10) No appeal was filed.

The Examiner held an open record hearing on May 29, 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 May 29, 2007 at 1:00 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved. Roxanne Pilkenton summarized the staff recommendation and Brian Kalab appeared for the applicant.
2. Rebecca O'Reilly, Lori Badgley, Keith Gustafson, Steven Saunders, Chris and Ellen Scanzon, Rico O'Reilly and Michelle Saunders, all residents on 64th Avenue West, testified in opposition to the proposed rezone.
3. Ms. Pilkenton and Mr. Kalab argued that the rezone should be approved because the area is designated for Urban Medium Density Residential uses, and the LDMR zone is one of the implementing zones for this designation. They cite the decision of the Snohomish County Council in the *Timberwood Ridge* appeal which concluded that:

“In general, conformity of a rezone to the applicable comprehensive plan is tantamount to its bearing a substantial relationship to the public welfare, since the comprehensive plan is the most direct expression of public policy in the topical area of land use.”

4. O'Reilly and the others opposed to the rezone application cited various reasons for their opposition, but can be summarized to include:
 - Storm water concerns. Increased impervious surfaces and loss of trees would make existing flooding worse.
 - Parking on 64th Avenue W. makes the narrow road difficult to maneuver for residents, visitors and emergency vehicles.
 - Loss of privacy. Seven units on one lot will move the buildings closer to the property lines.
 - Safety of children walking in a street without sidewalks

- Change of character of neighborhood
- Effect of precedent. If this is approved, anyone on this street could do the same thing.

5. The city of Lynnwood expressed its opposition to the proposal. The site is in an island of county jurisdiction surrounded by Lynnwood, and is within Lynnwood’s municipal urban growth area. The City’s opposition is summarized in a letter to the County dated February 27, 2007:

“The City’s objections to this rezone reach well beyond the narrow bounds of the Environmental Checklist. LDMR developments have the potential to disrupt neighborhoods by allowing densities much higher than that currently experienced by nearby residents. The current county planning process does not provide the level of careful neighborhood planning or infrastructure design to support these higher densities. If the city is to eventually annex these areas, as envisioned by the Growth Management Act, development regulations will need to be put in place that respect the City’s responsibilities to area residents. Without sanitary sewer, these high density developments cannot be approved. It would be inappropriate for the county to rezone these areas to LDMR knowing of the city’s policy.”

6. Written opposition to the proposal is found in Exhibits 16-32, 38 and 43-46.

The hearing concluded at 1:48 p.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of these hearings are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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 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 incorporated herein by the Examiner as if set forth in full herein.
3. The request is for a rezone from R-8400 to LDMR. The current zoning would permit three dwelling units on the site. Applicant proposes to construct seven dwelling units.
4. The site and immediately surrounding properties are zoned R-8400.
5. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
6. Public water and sewer service will be available for this development as well as electrical power. Applicant has obtained a Sewer Availability letter from the City of Lynnwood.

7. Exhibit 8 is an aerial photograph which shows the property itself and the surrounding area.
8. Any Conclusion of Law in this Report and Decision, which is deemed to be a Finding of Fact, is hereby adopted as such.

CONCLUSIONS:

1. A rezone is a Type 2 decision made by the Hearing Examiner based on a report from PDS and information received in an open record hearing. The Hearing Examiner's decision is final, subject to appeal to the County Council. SCC 30.72.020-.030.
2. 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.
(Chapter 30.42A SCC)

Chapters 30.31A-F have no application to this residential zone.

3. The first prong of the rezone criteria is satisfied. The proposed rezone from R-8400 to LDMR is consistent with the comprehensive plan. The LDMR zone is one of the implementing zones for this land use designation.
4. The second prong of the rezone criteria asks whether the proposal bears a substantial relationship to the public health, safety and welfare. Previous decisions of the County Council have expressed the conclusion that if a proposal is consistent with the comprehensive plan, that this is tantamount its bearing a substantial relationship to the public welfare. This is error in the Examiner's opinion.
5. The criteria for approval of a rezone require a favorable answer to two questions:
 - A. Is it consistent with the comprehensive plan?
 - B. Does it bear a substantial relationship to the public health, safety and welfare?

Both questions must be answered in the affirmative, and the questions are not the same. In designating areas of the County into various categories, the County uses a broad brush to establish a cohesive land use scheme for the County. Site-specific inquiry is not possible when this is done. Thus, when a rezone is requested, the Examiner must not only look to the comprehensive plan, but also to the individual characteristics of the site and its surroundings. This is where the second question comes in. It cannot be assumed in all cases that consistency with the comprehensive plan satisfies the second criteria. The analysis must focus on the specific site which has not previously been done.

6. The Examiner concludes that the proposed rezone is consistent with the comprehensive plan, but that it would not bear a substantial relationship to the public health, safety and welfare, for the following reasons:

- A. The site is an island of County jurisdiction surrounded by the City of Lynnwood. As part of Lynnwood's Urban Growth Area, it is anticipated that it will someday be annexed to Lynnwood. The City of Lynnwood has expressed its opposition to the rezone in a persuasive memorandum. (Exhibit 38)
 - B. The proposed rezone is totally out of character with its surroundings. All of the homes on the street are single-family residences on large lots. The access street is a dead end street, with no sidewalks, and children use the street as access to schools. More impervious surface and fewer trees will worsen the storm water flooding now experienced in the area. Additional on-street parking from six additional residences will clog the already narrow street, making emergency vehicle access difficult.
7. The request to rezone the property from R-8400 to LDMR should be denied.
8. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a Rezone from R-8400 to Low Density Multiple Residential for this property is hereby DENIED.

Decision issued this 11th day of June, 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 **June 21, 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 **June 28, 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 this case.

Staff Distribution:

Department of Planning and Development Services: Roxanne Pilkenton

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.