

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

DATE OF DECISION: October 2, 2008

PLAT/PROJECT NAME: VOLK REZONE

APPLICANT/  
LANDOWNER: JASON & PEGGY VOLK

FILE NO.: 05 118364 LU

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

DECISION (SUMMARY): **APPROVED**

**BASIC INFORMATION**

GENERAL LOCATION: The subject property is located at 20722 39<sup>th</sup> Avenue SE, Bothell, WA

ACREAGE: 1.36 acres

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

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (ULDR)

UTILITIES:

Water: Alderwood Water and Wastewater District  
Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Northshore #417

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services: Approve

## INTRODUCTION

The applicant filed the Revised Master Application on July 18, 2007. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on September 23, 2008, in the afternoon.

The Department of Planning and Development Services (PDS) and applicant gave proper public notice of the open record hearing as required by the county code. (Exhibits 6A, 6B and 6C)

A SEPA determination was made on August 1, 2008. (Exhibit 5B) No appeal was filed.

The Examiner held an open record hearing on September 24, 2008, the 114<sup>th</sup> 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 September 24, 2008 at 9:01 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Ed Caine, Planner from PDS, appeared and testified under oath. He presented the staff report and answered questions from the Examiner. He testified that since this matter was a rezone and that the short plat was being handled administratively, that certain project-specific materials related to the administrative short plat were not included in the staff report. In response to questions from the Examiner he testified that he was not aware of any impediments to the opening of 37<sup>th</sup> Ave. SE as a county road to provide access to the subject parcel. He further testified that PDS would ensure proper county road access would be required to the site from 37<sup>th</sup> Ave. SE rather than from the current private access easement leading to 39<sup>th</sup> Ave. SE as part of the administrative short plat process. He explained how the properties to the west of the subject parcel would access 37<sup>th</sup> Ave. SE without the eastern private easement.
3. Barry Constant, the applicants' agent, appeared and testified under oath. He reviewed the project and agreed with the staff report. He testified that the project's proposal would be in harmony with the existing neighborhood and consistent with the Snohomish County Comprehensive Plan and the General Policy Plan (GPP).
4. No one appeared in opposition to the request. James Hoeper, a neighbor to the proposed project, appeared and testified in support of the rezone application. He said that since the property would be accessed from 37<sup>th</sup> Ave. SE rather than from the current private access easement leading to 39<sup>th</sup> Ave. SE, his property would be improved. The current private access easement runs through the backyards of several homes, including his. Extinguishing the easement would return the property to abutting homeowners and give them more privacy. The easement also crosses a foot path. It will be safer to have cars and pedestrians separated.

The hearing concluded at 9:27 a.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 Protection Act (SEPA) evaluation with its recommendation and conditions.
3. The request is for a rezone from R-9600 to R-7200. A short plat application for the parcel is being handled administratively by PDS. According to the Master Permit Application (Exhibit 1A1) the applicant is proposing to create lots for five additional single-family residences. Testimony at the public hearing was that the lots are to be served by an extension of 37<sup>th</sup> Ave. SE into the parcel terminating as a cul-de-sac complying with emergency vehicle requirements. The Examiner has no jurisdiction over the approval of the short plat application.
4. The site contains an existing-single family residence. The yard is landscaped. There are no critical areas on site.
5. To the north is a Bonneville Power Administration right-of-way. The remaining adjacent properties are single-family residential. To the east is the plat of Tsonga Stands (00-105014-SD) which is zoned R-7200, to the south is the plat of Windsor Estates (95-109067-SD) which is zoned R-7200, and to the immediate west are two lots zoned R-9600 and then the city limits of the City of Bothell with residential lots. In the neighborhood there are many newer homes on smaller lots and a few older homes on larger lots. There is single-family residential construction underway in the neighborhood.
6. Several issues of concern were raised by the public by means of e-mails to Ed Caine of PDS. (Exhibits 9K, 9L, 9P and 9W) Two of these concerns were for answers to questions about what would be done with the current access easement. Said questions were answered by Mr. Caine. One commentator asked to be made a party of record. The final comments dealt with the immediate opening of 37<sup>th</sup> Ave. SE during the construction process. Four properties use the access easement as their only access to their properties: the Volks (the subject property for this development), Lot 1 of Evergreen Highlands, and two parcels located west of the above parcels. Access to all of the properties needs to be maintained throughout the construction and final short plat phases. The new portion of public road will not become dedicated to the County until recordation of the plat. The lots need to maintain a safe and legal access until the new public road is dedicated.
7. PDS expressed concern about inclusion of project-specific information as part of the record for consideration of a rezone application in reliance upon the recent decision in Brookstone Investments v. Snohomish County, Superior Court Cause Number 08-2-01579-1, July 16, 2008. However, as that decision also states, "it is certainly appropriate for it (the county council) to have considered the type of development that the requested zoning could entail and the impact

of such development on the surrounding neighborhood. Such are the types of considerations local jurisdictions with expertise are routinely called upon to make.” Consequently, the Examiner has reviewed this application and the exhibits in the file in light of the quoted language.

8. The applicant has submitted the required documents for a rezone. Testimony at the open record public hearing was that the applicant also submitted additional documentation to PDS relating to the administrative short plat application.
9. The staff report (Exhibit 20) indicates that the PDS administrative short plat application approval process will consider and require compliance with conditions, the following factors: parks mitigation, school impact, traffic mitigation and road design standards, drainage and grading, and critical areas. PDS traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, EDDS and appropriate policies and procedures. As these factors are not part of the rezone requirements the Examiner merely notes that they will be addressed in the administrative short plat approval process.
10. Chapter 30.42A SCC 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.

11. Consistency with the comprehensive plan is measured by several factors, one of which is density. The subject property is designated Urban Low Density Residential (ULDR) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation "...allows mostly detached housing developments on larger lot sizes. Implementing zones: R-7,200, PRD-7,200, R-8,400, PRD-8,400, R-9,600, PRD-9,600, and WFB. Except within the Lake Stevens, UGA, areas containing critical areas that are large in scope, with a high rank order value, and are complex in structure and function, the implementing zone shall be R-9,600." (page LU-89 of the GPP, effective April 4, 2006) Thus, the requested rezone is consistent with the General Policy Plan's Urban Low Density Residential designation of the property. The six (6) units proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2. The gross site area is 59,435 square feet (1.36 acres). The six (6) units are consistent with the Urban Low Density Residential (ULDR: 4-6 du/ac) designation.
12. Consistency with the comprehensive plan is also measured against the GPP. The Population and Employment section of the GPP requires that growth be directed primarily to the urban areas (Objective PE 1.A, page PE-4) that have existing or planned public facility and service capabilities to accommodate growth (PE Policy 1.A.2., page PE-4). The subsequent short

subdivision development has obtained a concurrency determination regarding the road system and will contain conditions for access. The project will be served by public water and sewer. The project will provide adequate service capabilities, and, therefore, meets the criteria of the Population and Employment section.

13. The Urban Development Patterns (LU-15) and Goal LU-2 (LU-16) of the Land Use section of the GPP, is intended to improve the efficiency of urban residential land utilization and to require a minimum net density of 4-6 dwelling units per acre. The existing neighborhoods to the south and to the east contain lots designed to comply with R-7200 zoning. The two lots to the west do not comply with the current standard of 4-6 dwelling units per acre. The city limits of the City of Bothell are immediately west of the two larger lots, with lots similar in size to those found to the south and to the east of the subject property. LU Policies 2.A.1 and 2.A.3 (LU-16) require densities of 4-6 du/acre. The project will result in a net density of 5.62 du/acre, which satisfies the density requirement.
14. The Housing section of the GPP requires efficient infill development in Urban Growth Areas (HO Policy 1.D.3., page HO-5). The rezone is a necessary component of the development, which is an infill development within an established neighborhood.
15. The physical attributes of lots within the neighborhood will not be changed by the proposed rezone. Smaller lots and higher densities are consistent with existing conditions to the south and to the east. The gross lot yield for the subject property (59,435 square feet, which equals 1.36 acres) with a zoning of R-9600 is six units with an average lot size of 9,906 square feet. However, right-of-way dedication for the extension of 37<sup>th</sup> Ave. SE will remove 12,931 square feet from the area that is available in lot size averaging calculations. After the right-of-way dedication, 46,504 square feet is available on the subject property. The net lot yield with R-9600 zoning would be four lots. If the rezone to R-7200 is approved, the lot yield will increase to six lots, with lot size averaging calculations yielding lots of 7,750 square feet.
16. Objective HO 2.A (page HO-6) is intended to promote opportunities for all county residents to reside in safe and decent neighborhoods. HO Policy 2.A.1 requires that the character of stable residential neighborhoods should be preserved through selective and innovative land use measures while HO Policy 2.B.1 requires that the county shall encourage a variety of housing types and densities in residential neighborhoods (page HO-6). The current proposal preserves the character of the neighborhood which is composed of single-family residences, while at the same time provides for smaller lot sizes in comparison to some of the older residential properties nearby which are on larger sized lots.
17. The second element for consideration in a rezone application is whether the proposal bears a substantial relationship to the public health, safety, and welfare. This application for the proposed rezone is concurrent with the application for a short subdivision. Review of the land development proposal has been made for compliance with the relevant codes, policies, and standards of Snohomish County. PDS determined that the project, as conditioned, will satisfy those requirements, including a concurrency determination for access routes to and from the development, an evaluation of the road and access routes to comply with the relevant EDDS standards and SCC 30.66B, evaluation of the adequacy of stormwater and drainage system, evaluation of critical areas, adherence to the short subdivision codes, compliance with the fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to insure that adequate provision has been made for the public health, safety, and welfare of the citizens. PDS has determined that the proposed project, as it would be conditioned, complies with the relevant provisions. Although evaluation of emergency vehicle access and fire flow is not

required for a rezone application, an evaluation of these safety considerations is a mechanism to insure that the health, safety, and welfare of the citizenry are being addressed. The County Fire Marshall of Snohomish County conducted an internal review of the proposed short plat and determined that the administrative short plat application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access. Access to the site from 37<sup>th</sup> Ave. SE will allow the closure of the current access easement leading to 39<sup>th</sup> Ave. SE. This will be in the public health, safety and welfare by allowing easier access the property by emergency vehicles and by removing cars from driving on the walking path which crosses the easement. The Examiner adopts as a finding the determination of PDS that there have been adequate provisions for the public health, safety and welfare.

18. The third element for consideration in a rezone application is whether the minimum zoning criteria in SCC 30.31A-F are met. The proposed site is located within a residential neighborhood. The proposed rezone is to remain a residential zone within the Urban Low Density Residential designated area. Therefore, the zones specified in SCC 30.31A-F are not applicable to the proposal.
19. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
20. Exhibit 4C is an aerial photograph which very clearly shows the property itself and the surrounding area and its compatibility in this area. The compatibility with nearby zoning is clearly shown on Exhibit 4B.
21. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

## **CONCLUSIONS:**

1. The Examiner has jurisdiction to hear this matter and render this decision.
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. As found above, 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. The request would allow for a rezone from R-9600 to R-7200 which is allowed in the ULDR designation.
4. The request is for a rezone and therefore must comply with Chapter 30.42A SCC. This is a site-specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A SCC, the evidence is presumed to meet these requirements.
5. The request should be approved as submitted.
6. 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 9600 to R 7200 for this property is hereby APPROVED.

Decision issued this 2<sup>nd</sup> day of October, 2008.

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James A. Densley, 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, 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 **October 13, 2008**. 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 **October 16, 2008** 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: Ed Caine

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.