

FOR OFFICE USE ONLY:
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REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: February 5, 2008

PLAT/PROJECT NAME: *CASSIDY'S PLACE TWO*

APPLICANT/
LANDOWNER: M. Danard Group Inc.

FILE NO.: 06 126090 LU

TYPE OF REQUEST: Rezone from Residential-7200 (R-7200) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 2 112th Street SW, Everett, WA

ACREAGE: .45 acres

ZONING: CURRENT: R-7200
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential

UTILITIES:

Water: City of Everett

Sewage: City of Everett

SCHOOL DISTRICT: Mukilteo School District No. 6

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve

INTRODUCTION

The public hearing commenced on January 15, 2007 at 3:04 p.m.

1. David Radabaugh, Senior Planner, appeared on behalf of PDS and gave an overview of the project and answered questions from the Examiner.
2. Wendy Downer appeared on behalf of the applicant.
3. No one appeared in opposition to the request.

The hearing concluded at 3:37 p.m.

NOTE: For a complete record, an electronic recording of this hearing is available through the Office of the Hearing Examiner.

FINDINGS OF FACT

1. All exhibits and witnesses included on the Master Exhibit and Witness List were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. State Environmental Policy Act Compliance. A Determination of Nonsignificance (DNS) was issued November 9, 2007. Exhibit 14. The DNS was not appealed.
3. Rezone Request: The request before the Examiner is for a rezone from R-7200 to LDMR. Exhibit 2. The applicant requests approval of a rezone from Residential-7200 (R-7200) to Low Density Multiple Residential (LDMR) with an associated administrative site plan approval for a 5-unit residential development on a 20,700 square foot site.
4. Site description: The subject property is a rectangular shaped parcel with approximate dimensions of 208 feet by 92 feet. The site contains an existing single-family structure and outbuilding. The structures on the site are in very poor condition. The site also contains a notable amount of debris. Two vehicles appear to be parked or abandoned on-site. Yard areas on-site contain a lawn and a minimal amount of additional landscaping. The site also contains a functioning stormwater detention facility that accepts water from other properties to the west of the subject property.

5. Adjacent uses: Property to the west of the subject property is zoned R-7200 and contains single family residences on short platted lots. Property to the north of the subject property is zoned LDMR and contains several condominiumized duplexes called the Cassidy Place Condominiums. Property to the east of the subject property is within the City of Everett. The City of Everett zoning is R-1 (Single family detached low density) and R-2 (Single family detached medium density). The property to the south of the subject property is zoned LDMR and is part of the Meridian Village Mobile Park containing mostly double-wide mobile homes.
6. Transportation: The development is situated upon 112th Street SW. The staff report contains the following information on the development's compliance with county transportation requirements, which the Examiner incorporates herein for a better understanding of the transportation impacts of the higher density development at this site:

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

1. *Road System Capacity [SCC 30.66B.310]*

The impact fee for this proposal is based on the new average daily trips (ADT) generated by single family residences, which is 9.57. This rate comes from the 6th Edition of the ITE Trip Generation Report (code 210). As indicated above the number of new units that will be created is 4. The development will generate 38.28 new ADT and has a road system capacity impact fee of \$10,220.76 (\$2,644.15/unit) based on \$267.00/ADT.

2. *Concurrency [SCC 30.66B.120]*

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing the best operating condition, and level-of-service F the worst.

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with Public Works' final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

The development has been deemed concurrent on the following basis:

Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160:
The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: Arterial Unit ID# 202 and 204. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160 (2) (a), the development is determined concurrent. The development generates 3.00 a.m. peak-hour trips and 4.04 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

3. *Inadequate Road Condition (IRC) [SCC 30.66B.210]*

The subject proposal will not impact any IRC locations identified at this time within TSA D with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

4. *Frontage Improvements [SCC 30.66B.410]*

The subject property fronts Meridian Avenue. Meridian Avenue S. is unopened City of Everett right-of-way.

5. *Access and Circulation [SCC 30.66B.420]*

Access is proposed from Meridian Avenue via driveways directly off of the public road. The applicant proposes to improve the right-of-way to a 20-foot wide paved road from 112th Street SW. By definition, the driveways would have to meet EDDS requirements related to commercial driveway standards including width and access point spacing required by 2-050.

6. *Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]*

Meridian Avenue is designated as a non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. However, the right-of-way is under Everett's jurisdiction.

7. *State Highway Impacts [SCC 30.66B.710]*

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

Comments dated July 31, 2006 have been received from WSDOT indicating that the project would not impact state highways, and they do not request any traffic mitigation. A new e-mail message was received June 5, 2007 from WSDOT indicating that their comments have not changed even though 2 units have been added to the development.

8. *Other Streets and Roads [SCC 30.66B.720]*

Public Works will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 30.61.230 between the county and the other agency. There are no local jurisdictions that have an interlocal agreement with the County for traffic mitigation; therefore the provisions of this section of code do not apply to this project.

9. *Transportation Demand Management (TDM) [SCC 30.66B.630]*

All new developments in the urban area shall provide TDM. Sufficient TDM shall be provided to indicate the potential for removing a minimum of five percent of a development's p.m. PHT from the road system. This requirement shall be met by site design requirements provided under SCC 30.66B.630 or SCC 30.66B.630, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.645. [SCC 30.66B.650].

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500.00. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500.00 times the required trip reduction percentage times, the development's peak hour trip generation.

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 4.04 new PM peak hour trips x \$1,500.00, which equals \$303.00. A written offer for payment of that amount has been received.

Exhibit 31.

7. Environmental Impacts of Higher Density.

A. Critical Areas.

There are no critical areas on or within 100 feet of the project site.

B. Grading and Drainage.

According to the staff report, grading quantities are anticipated to be approximately 448 cubic yards of cut and 215 cubic yards of fill, primarily for road, drainage facilities, and home site construction. Water quality measures will be in place during construction in accordance with standard Department of Ecology requirements for small parcel minimum requirements. See Exhibit 12 and 13. Stormwater runoff will be captured and routed to a detention pipes within the City of Everett right-of-way in Meridian Avenue Exhibit 13, Section 5. The drainage detention design must also be approved by the City of Everett. Exhibit 31 at 5.

8. Parks and Schools Impacts of Higher Density.

A. Parks.

The staff report contains the following information on the development's compliance with county parks mitigation requirements:

The proposal is within Park District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential

unit, to be paid either prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.

Exhibit 31 at 3.

B. Schools.

SCC 30.66C.100 requires payment of school impact fees by all developments as a condition of approval. The fee is calculated in accordance with a formula established in SCC 30.66C.045. SCC 30.91D.220 defines “development” as “any residential construction or expansion of a building structure or use of land or any other change of use of a building, structure, or land that creates additional dwelling units.”

The staff report contains the following information on the development’s compliance with county school mitigation requirements:

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Mukilteo School District No. 6, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot.

Exhibit 31 at 5.

9. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Medium Density Residential (UMDR: 6-12 DU/Ac) 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 Medium Density Residential designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones.” GPP at LU-89. At the hearing, staff testified that 5 units was the maximum number of units that could be achieved on this parcel with the LDMR zoning.

10. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. *Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); *see Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The county’s regulations are a direct expression of the criteria expressed by case law.
3. 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.¹
4. In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan. RCW 36.70.040. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447 *A Motion Vacating and Remanding the Hearing Examiner’s Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) Back to the Examiner to Supplement the Record at 3* (August 8, 2007), “The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.” The Examiner interprets this language, as well as the law applicable to rezones, to mean that **the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies.**
 5. In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan. RCW 36.70.040. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447 *A Motion Vacating and Remanding the Hearing Examiner’s Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) Back to the Examiner to Supplement the Record at 3* (August 8, 2007), “The Comprehensive Plan is the most direct expression of public policy in the

¹ This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.

area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.” The Examiner interprets this language, as well as the law applicable to rezones, to mean that **the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies.**

6. This rezone is a request to up-zone a property in the Urban Medium Density Residential (UMDR) Designation from R-7200 to LDMR to allow 5 units on this site. Although it is clear that this request fits within the UDMR designation (which allows up to 12 units per acre), as stated above, the analysis of consistency must go well beyond the designation and identify how the project is consistent with the policies in the plan.
7. The Land Use Element of the General Policy Plan (GPP) introduces the way in which Urban Growth Areas are planned for and how densities are to be determined:

The GMA requires that urban growth areas (UGAs) be designated through the county’s plan. UGAs are to include areas and densities sufficient to permit the urban growth that is projected to occur in the county over the next twenty years. Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas.

Planning for growth in this way accomplishes two GMA goals: 1) the efficient provision and utilization of public facilities and services, including public transportation; and 2) reduced conversion of undeveloped land into sprawling, low-density development.

General Policy Plan at LU-1.

This rezone application invokes consideration most directly of Goal LU 2 and its policies. The introduction to that Goal states:

To promote efficient utilization of land within unincorporated UGAs, the county will encourage well-designed, more pedestrian-friendly urban development patterns with a greater mix of uses and a more efficient, creative use of land. By improving land use efficiency in UGAs, several GMA objectives can be accomplished:

- reduced dependence on the automobile;
- increased support for public transportation;
- improved air quality;
- increased choice of housing types;
- improved efficiency of infrastructure provision and usage; and
- reduced consumption of rural lands.

To improve the efficiency of urban residential land utilization, planning within UGAs and development regulations will ensure that future residential subdivisions will achieve a minimum net density of 4 to 6 dwelling units per acre except in areas within or near critical areas that are large in scope, with a high rank order value, and are complex in structure and function. In addition, the county will provide for higher density and mixed use housing types around and within centers and along major transportation corridors; encourage infill and intensification of areas at existing residential densities; and also broaden the variety of housing types within both 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 UGAs, as long as they are carefully sited, well designed, and sensitively integrated into existing communities.

General Policy Plan at LU-15 (emphasis added).

Goal LU 2 of the GPP requires that the County “[e]stablish development patterns that use urban land more efficiently”, although Objective LU 2.A qualifies that statement by requiring the County to “[i]ncrease residential densities within UGAs by concentrating and intensifying development in **appropriate** locations.” GPP at LU-16 (emphasis added).

Specific policies under Goal LU 2 that are relevant to this development are:

- 2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.
- 2.A.4 Any UGA shall provide opportunities for a mix of affordable housing types (e.g. small lot detached, townhouses, duplex, triplex, 6 to 8 unit apartment and small group housing units) within medium density residential areas.
- 2.A.5 Medium and high density residential development (including elderly and disabled housing) shall be encouraged to locate, where possible, within walking distance of transit access or designated transit corridors, medical facilities, urban centers, parks, and recreational amenities.

8. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the Council in the adoption of the proposed plan and provide the Examiner a reasonable basis on which to analyze urban rezone proposals.

A. Is this area already characterized by urban growth that has adequate existing facility and service capacities to serve such development for the following types of public facilities and services? Please demonstrate. (See LU-1)

- i. Streets, roads and highways (including but not limited local access and circulation, arterial systems and road systems capacity, concurrency, state highway impacts);
- ii. Sidewalks;
- iii. Street and road lighting systems;
- iv. Traffic signals;
- v. Domestic water systems;
- vi. Sanitary sewer systems;
- vii. Public parks and recreational facilities, or useable open space, common areas, or other recreational facilities within the development ;
- viii. Storm and sanitary sewer disposal system;
- ix. Fire and police protection suppression;
- x. Law enforcement;
- xi. Public health;
- xii. Education; and
- xiii. Other services.²

**B. Will the rezone help to establish development patterns that use urban land more efficiently? How? (See Goal LU-2)
Does the development concentrate and intensify development at an appropriate location? Why? (Objective LU-2.A)**

- i. **Is the development carefully sited?**
 - (a) Critical areas/shorelines.
 - (i) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
 - (ii) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (iii) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.³
 - (b) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities? **(Policy LU 2.A.5)**
 - (c) How will the development made possible by the requested rezone tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation? **(Page LU-15)**
- ii. **Is the rezone proposal/development sensitively integrated into the existing community? (See LU-15)**

² Taken from the GMA definitions of public facilities and services. RCW 36.70A.030(12) &(13).

³ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

- (a) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas? **(LU-15, Policy 2.A.4)**
 - (b) Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? **(Policy LU 2.A.4)**
 - (c) Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? **(See Policy I.C.2)**
- iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)**

- (a) Even if density is at a higher level are efforts made to have the character fit into the existing community? If so, what is the character of the existing community and how will the development maintain it? **(See LU-15)**
- (b) How specifically will the building design integrate into the existing neighborhood? Are structures of a size, height, mass, and separation to be consistent with vicinity homes and the surrounding neighborhood? Describe in detail. Will the development be at the same elevation as the rest of the existing neighborhood? How will the elevation affect the perception of the development? **(LU-15)**
- (c) If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(See Policy HO 2.A.4)**
- (d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using features such as landscaping, fencing, setbacks, or other design features to soften or eliminate those impacts. **(LU-15)**
- (e) Will the development be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation? Has the opinion of both the County Fire Marshall and any local Fire District been placed in the record? **(LU-15)**
- (f) Is the public health, safety and welfare adequately provided for (examples are safe pedestrian access, safe place for children to wait for school bus, adequate off street parking so that a fire truck can access development)? **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

9. Applying this test to the 146th Street LDMR project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

- A. The area is already characterized by urban growth such that it has adequate existing public facilities and services to serve the development for the following types of facilities and services, as demonstrated below:

- i. Streets, roads and highways. The Examiner relies on Finding of Fact 6 in part to conclude that the development is adequately served by existing streets, roads and highways. There does not appear to be any major transportation issues or concurrency problems in the area. The development is located near a minor arterial that is not in arrears at present. There appear to be no local circulation issues.
- ii. Sidewalks. There are no sidewalks at present. It is unknown whether the City of Everett will require sidewalks as a part of the opening of Meridian Avenue.
- iii. Street and road lighting system. It is unknown to the Examiner whether street lights exist on 112th Street SW.
- iv. Traffic signals. It is unknown to the Examiner whether traffic signaling is adequate in the area.
- v. Water systems. Water will be provided by City of Everett and the file contains a preliminary certificate of water availability. Exhibit 26.
- vi. Sanitary Sewer Systems. Sewer will be provided by City of Everett and the file contains a preliminary certificate of sewer availability. Exhibit 26.
- vii. Park and recreational facilities. As stated in Finding of Fact 7.A., the developer will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. *See* Snohomish County Parks Plan at page 41. This criteria, however, addresses existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the county. Two parks are located within one mile of the property, including Thorton A. Sullivan Park (Silver Lake Park) and McCollum Park. The Parks Plan was not altogether clear that levels of service had been adopted for every type of park, although Objective CF 7.C of the GPP states, related to parks, “[m]onitor and maintain minimum LOS standards, as defined in the Comprehensive Park and Recreation Plan and the CIP, through adequate CIP funding.”
- viii. Storm and sanitary sewer disposal system: Stormwater disposal systems are provided by the City of Everett.
- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Fire District 1 has made specific comments to the plan review, including requesting marking of hydrants on plans, providing for an approved emergency vehicle turnaround in the development or, alternately, applying for relief for the requirement by sprinkling the entire development, providing a no-parking fire lane, and providing each building with an individual address. Exhibit 24. Police protection is provided by the Snohomish County Sheriff.
- x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit 25.
- xi. Education: The site is served by the Mukilteo School District. Exhibit 21.
- xii. Other services: The Examiner is not aware of any other services that are available that should be discussed in the decision.

- B. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A.
- C. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A. The Examiner's conclusion relies on the following analysis:
- i. The development is carefully sited.
 - (a) There are no critical areas or shorelines on the site or within close proximity to the site. **(Policy LU 2.A.3)**⁴
 - (b) The rezone or development is proposed in an area that is within walking distance of transit access. The nearest transit is 5 ½ blocks from the site at 7th and 112th Street SW, which is approximately ½ mile. **(Policy LU 2.A.5)**
 - (c) The development made possible by the requested rezone probably may tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation. It is .8 miles from SR 99, a major transportation corridor with express buses to points north and south; and one mile to a major park and ride center on the Interstate 5 transportation corridor. **(Policy LU 2.A.5)(Page LU-15)**
 - ii. The rezone proposal is adequately integrated into the neighborhood.(See LU-15)
 - (a) Character of the Existing Neighborhood. The neighborhood is primarily comprised of single-family and duplex homes, but also has a number of mobile home parks. There is a large mobile home to the south of this site zoned LDMR. The quality and age of the housing in the neighborhood varies significantly. While much of the frontage on 112th Street contains residential development, pockets of small commercial development and a church front the street. Property adjacent and to the east of the proposed development is within the City of Everett and is zoned R2, a single family residential development. The redevelopment of this site at a higher density will encourage a more efficient use of urban land. **(LU-15, Policy HO 2.B.1)**
 - (b) Allowing for a Mix of Housing Types. The proposed development is for duplex housing. **(Policy HO 2.B.1)** Because the area is already a mixture of single and duplex development, the proposed development will continue this pattern.
 - (c) City Comments. This area is adjacent to the City of Everett. The City of Everett has required that an unopened portion of Meridian Avenue (which is within the City) that fronts the project and extends to 112th Street needs to be opened and improved to the City's development standards before

⁴ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

any of the development can be occupied. In addition, drainage into the City system must meet with the City's approval. (See Policy I.C.2)

- iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)
- (a) Density of Surrounding Neighborhood and How the Development Will Help Maintain Existing Character. The proposed density fits well into this neighborhood, which can be fairly characterized as a transitioning neighborhood. The proposed development is a classic example of infill development. (See Policy HO 2.A.1)
 - (b) Integration of Building Design into the Existing Neighborhood. The staff report indicates that the buildings proposed are generally similar in scale to other residential buildings in the neighborhood. The development will be at the same elevation as the rest of the neighborhood, as the existing parcel is extremely flat. The elevation should not affect the perception of the development negatively in any way. (See Policy HO 2.A.1; LU-15)
 - (c) Other Selective and Innovative Land Use Measures Used to Preserve the Character of the Existing Neighborhood. The Examiner is not aware of any "selective and innovative land use measures" that will be used to preserve the character of the stable residential neighborhood. (See Policy HO 2.A.4) In this case, this policy is not applicable because the Examiner would not characterize this neighborhood as a "stable residential neighborhood".
 - (d) Mitigation of Negative Impacts through Landscaping, Fencing and other Design Features. The developer will be providing some landscaping along the portion of the project facing Meridian Avenue, which will help mitigate any negative effect of higher density. Exhibit 31 at 8. (Policy HO 2.A.1)
 - (e) Adequate Fire and Medical Emergency Access. The development appears to be designed to provide for adequate fire and medical emergency access. The Fire Marshal's Office has approved a request from the applicant to install sprinkler systems in each of the residential units and a hammerhead turn-around for emergency vehicles in lieu of a cul-de-sac. The Fire Marshal has also provided a list of construction requirements including those for fire flow, fire hydrants, and fire lanes. (LU-15)
 - (f) Adequate Provision for Public Health, Safety and Welfare. The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. (See LU-15) (See also discussion of public health, safety and welfare criteria, below).

10. The other criteria in SCC 30. 42A.100 is whether the proposal bears a substantial relationship the public health, safety, and welfare. See SCC 30.42A.100(2). Returning to Council Motion 07-447 the Council clarified the proper role of the Examiner in reviewing this criteria:

Although consistency with the Comprehensive Plan is a significant factor in determining whether a proposed rezone bears a substantial relationship to the public health, safety and welfare, in some cases, there may be other factors

outside the Comprehensive Plan policies that may be relevant to that issue and which may be considered. If there are such factors apparent from the application documents or otherwise known to PDS, they must be identified and discussed both in the written PDS staff report and by the Examiner in his decision. The written PDS staff report and the Examiner's decision should specify if any of these other factors are related to the rezone or should be considered at the project level with the specific development proposal being made. PDS staff is not required to anticipate opposition or to consider factors or issues outside of the Comprehensive Plan or not required by the Snohomish County Code. However, this does not limit the Hearing Examiner's ability to consider testimony at the public hearing concerning whether the proposed rezone bears a substantial relationship to the public health, safety and welfare.

Motion 07-447 at 3.

The Examiner interprets this language to mean that most of the time, analysis of whether the rezone is consistent with the Comprehensive Plan should suffice for review of a rezone proposal because in most cases, analysis of the comprehensive plan policies is analysis of whether the proposal bears a substantial relationship to the public health, safety and welfare. However, the Examiner and PDS may use this second criteria to analyze other issues of concern that may be raised outside of the scope of the Comprehensive Plan.

11. In this case, the Examiner concludes there are no issues of concern that warrant analysis under SCC 30.42B.100(2). No issues of concern were identified in the PDS staff report (*See* Exhibit 30) and no one except the applicant and PDS staff testified at the hearing. The Examiner identified no issues of concern in reviewing the file.
12. Since this request involves rezoning only, any details or conditions which would normally appear as conditions of the development in the Examiner's decision will be issued as a part of the administrative plan approval by PDS.
13. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
14. 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-7200 to LDMR for this property is granted.

Decision issued this 5th day of February, 2008.

Barbara. Dykes, 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 **February 15, 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, 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 **February 29, 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: Michael Dobesh

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.

