

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

DATE OF DECISION: March 24, 2008

PLAT/PROJECT NAME: *Belle Meadows Estates*

APPLICANT/
LANDOWNER: Builders Investment Group

FILE NO.: 06 129336 LU

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

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The project site is located at 1128 143rd Street SW, Lynnwood, Washington.

ACREAGE: 3 acres

ZONING: CURRENT: R-7200
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Alderwood Sewer and Water District
Sewage: Alderwood Sewer and Water District

SCHOOL DISTRICT: Mukilteo School District

FIRE DISTRICT: Fire District No. 1/Station No. 23

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve

Public Works: Approve

INTRODUCTION

The applicant filed the Master Application on February 23, 2007. *See* Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on March 10, 2008 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by SCC 30.72.030(4). *See* Exhibits 16 (mailing), 17 (publication) and 18 (posting).

A SEPA determination was made on January 23, 2008. *See* Exhibit 17. No appeal was filed.

The Examiner held an open record hearing on March 11, 2008, the 74th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on March 11, 2008 at 2:06 p.m.

1. Scott Whitcutt, Senior Planner, appeared on behalf of PDS and gave an overview of the project and answered questions from the Examiner.
2. David Gibson appeared on behalf of the applicant, Belle Meadows Estates, LLC.
3. No one appeared in opposition to the request.

The hearing concluded at 2:27 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 January 23, 2008. Exhibit 17. The DNS was not appealed.
3. Rezone Request: The request before the Examiner is for a rezone from R-7200 to LDMR. Exhibit 1. The applicant is requesting an administrative site plan approval from PDS, which PDS staff has included in the file for the Examiner's reference. The administrative site plan approval and grading permit proposes a development of a 33 single-family unit community comprised of 27 new detached single-family units, two existing single-family detached units, one new duplex and one existing duplex structure, and associated stormwater detention/water quality, drive aisles, parking area, and landscape features. The Examiner has no jurisdiction over approval of the site plan. The Examiner does appreciate the information and the visual reference as it is crucial in deciding the issues in the rezone.
4. Site description: The subject site is an "L" shaped property extending south from 143rd St. SW. The overall site has been previously developed with three existing single-family structures and one existing duplex structure on four lots. The site has been previously cleared for existing residences, yard space, and driveways. Exhibit 35.
5. Adjacent uses: Adjacent properties to the west and east are zoned R-7,200. Adjacent property to the south and southwest is currently zoned LDMR. Properties in close proximity to the northwest and northeast are zoned LDMR and MR respectively. Properties to the south of 148th St. SW are also zoned MR and LDMR, creating a multi-family zoned corridor along Ash Way. These multi-family zoned properties are experiencing a gradual redevelopment transition from traditional single-family lots into multiple residential units on single sites. This transition reflects the intended higher density infill as the Southwest County UGA experiences redevelopment under provisions of the State Growth Management Act (GMA). Exhibits 35 and 36.
6. Transportation: The development is situated upon 143rd 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 higher density development at this site:

This development proposal is subject to the requirements of the amended version of Chapter 30.66B SCC that became effective February 1, 2006. The following comments pertain to the proposed development plan reviewed concurrently with the rezone application:

1. Road System Impact Fee [SCC 30.66B.310]

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 258.39 new average daily trips (ADT) and has a road system impact fee of \$68,990.13 (\$2,378.97/SFR) based on \$267/ADT, the current fee rate for residential developments inside the urban growth area, for TSA D. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Single Family Detached Residences

ITE Land Use Code: 210

Applicable Measurement Unit (ITE Independent Variable): Number of SFRs

Number of applicable measurement units for this development: 27

Trip Generation Calculations:

Trip Generation Based on Average Rates

New average daily trips = 27 X 9.57 = 258.39 ADT

New PM peak-hour trips = 27 X 1.01 = 27.27 PM PHT

New AM peak-hour trips = 27 X 0.75 = 20.25 AM PHT

2. Concurrency [SCC 30.66B.120]

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of April 2, 2007. The expiration date of the concurrency determination is six years from this date. Consistent with DPW rule 4225.070 the point in time for which the concurrency analysis is based (the concurrency vesting date) is February 23, 2007[this is typically the initial submittal date].

The development has been deemed concurrent on the following basis:

X Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: 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 20.25 a.m. peak-hour trips and 27.27 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]

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

X The subject development proposal will not impact any IRC locations identified 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]*

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

As per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage on 143rd St SW and consist of:

X Asphalt concrete pavement consisting of 23 feet width from roadway centerline to the face of curb

X Cement concrete curb and gutter

X Planter strip with a width of 5 feet

X Cement concrete sidewalk with a width of 7 feet [depending on type of development]

143rd St SW, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

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

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Proposed driveway entrance must conform to EDDS Plate 2-025.

Intersection Sight Distance (ISD) to the right from the proposed main access is 350 feet. EDDS requires 390 feet for access onto a road with posted speed of 35 mph. The applicant has submitted an EDDS deviation request to allow the ISD to the right of 350 feet. On June 9, 2007 the County Engineer reviewed and approved the applicant's deviation request. The deviation request was approved because the Stopping sight Distance (SSD) requirement of 340 feet is available at the proposed access location; therefore the safety requirement is met. An ISD of 350 feet will not result in a significant disruption of traffic flow on 143rd Street SW. All other sight distance requirements are met for the proposed access point.

6. *Right-of-Way Requirements [SCC 30.66B.510, SCC 30.66B.520]*

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving this development, 143rd St SW, is designated as a non-arterial on the County's Arterial Circulation Map. This normally requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Due to the requirement for a 7 foot sidewalk, in addition to 23 feet of pavement from the right-of-way centerline to the face of curb and a 5 foot planter, 37 feet is required. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way centerline. Therefore, the development is required to deed 7 feet of additional right-of-way. This is adequately shown on the site plan received by PDS on December 13, 2007.

143rd St SW is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for the right-of-way deeded that is more than 30 feet from centerline is not applicable.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055 the applicant has submitted a written offer dated February 23, 2007, of \$0.00 to WSDOT.

In comments dated October 18, 2007, WDOT has stated that no State traffic mitigation is required of the applicant for the revised site plan received by PDS on September 12, 2007, which proposed the same number of units as the site plan received by PDS on December 13, 2007.

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions.

There are no city jurisdictions that have an ILA with the County that will be impacted by new trips from the subject development.

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

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five (5) percent of the development's P.M. peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, 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.620 and SCC 30.66B.625.

Since a TDM plan was not submitted with the initial application a cash payment is required. The trip reduction percentage for this development is 5 percent. The TDM obligation for this development is therefore equivalent to 5 % of the 27.27 new PM peak hour trips x \$1,500.00 which equals \$2,045.25 (\$70.53 / SFR). An acceptable, revised TDM offer, dated December 13, 2007, of \$2,045.25 has been submitted by the applicant.

Exhibit 35.

7. Environmental Impacts of Higher Density.

A. Grading, drainage, and critical areas.

There are no critical areas on or within 100 feet of the project. According to the staff report, grading quantities are anticipated to be approximately 307 cubic yards of cut and 1800 yards of fill, primarily for road, drainage facilities, and home site construction. Standard water quality measures will be in place during construction in accordance with a Temporary Erosion and Sedimentation Control Plan. Exhibit 35 at 7; *see also* Exhibit 16.

Storm water will be collected to the underground detention tank, discharging through a multi-orifice control manhole. The design is intended to limit outflow from the site to the allowable rates established for major developments, limiting runoff to predevelopment conditions. Runoff from the site will be treated using a Contech Stormwater Solutions cartridge filter catch basin system that meets or exceeds performance criteria established under Washington State Department of Ecology guidelines (1992). Numerous standard erosion control Best Management Practices will be employed to prevent sediment laden water from leaving the site or entering Critical Areas. Surface Water Management indicated no known drainage or flooding problems downstream that this project might impact. No drainage problems from this development are anticipated. The property owner(s) have signed a standard county Drainage Facility Maintenance Covenant, thereby agreeing to maintain the drainage system in perpetuity, and granting the county the right to enter the property for purposes of inspection. Exhibit 35.

Planning and Development Services (Engineering) has reviewed the concept and construction documents provided offered, and has concluded this project will meet the requirements of the UDC with regards to drainage and grading, both conceptually and for construction, and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Exhibit 35 at 7; *see also* Exhibit 16.

B. Parks and schools impacts.

1. Parks. The staff report contains the following information on the development's compliance with county parks mitigation requirements which the Examiner incorporates herein for a better understanding of the parks impacts of the higher density development at this site:

The proposed development will be subject to Chapter 30.66A SCC, for impacts to Nakeeta Park District No. 307. Impact mitigation regulations currently require payment of \$1,244.49 per each new single-family/duplex residential unit, to be paid prior to building permit issuance for each unit. Payment consistent with Chapter 30.66A will be deemed acceptable mitigation for future parks and recreation impacts in accordance with county policies as well as regulatory provisions. Such payment is deemed acceptable mitigation for future impacts to Park District No. 307.

Exhibit 35 at 8-9.

2. Schools. The staff report states the following regarding mitigation of impacts to schools that are a result of the development.

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. 06, 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 to unit 1, 18, 21, and 22 for the 4 existing lots being combined in the single-site redevelopment.

PDS shall include a condition of administrative site plan and project approval that requires impact mitigation fees consistent with Chapter 30.66C SCC.

Exhibit 35 at 11. 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.”

8. 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.

9. Health and Safety Issues.

A. Compliance with Fire Code and Safety Issues. The Fire District has no objections to the proposal, subject to the provisions of hydrants, paved roads, and street addressing of proposed units, according to a letter from the District. Exhibit 27. The staff report goes into detail about the various requirements of the Fire District and the Fire Marshall’s Office:

Chapter 30.53A SCC was modified by the adoption of Amended Ordinance 07-087 on September 5, 2007, effective September 21, 2007. This application was taken in February 23, 2007 and is therefore subject to that version of Chapter 30.53A SCC in effect prior to September 21, 2007.

The private drive aisle shown on the administrative site plan map meets the minimum requirements of Chapter 30.53A.150 and the UFC for width and slope and turn around radii for the cull de sac. Fire hydrants are required per SCC 30.53A.300. The location and spacing of the hydrants is approved as indicated on the site plan sheet SP1 and the sewer & water plan sheet C1. The required fire flow for the fire hydrants is 1000 gpm at 20 psi for a 2 hour duration. Necessary fire flow will be verified prior to combustible construction. In the event the required fire flow cannot be provided, a condition will be added to future building permit conditions that shall require the new dwellings in the LDMR to be provided with NFPA 13-D fire suppression systems.

Per section 901.4.4 of the UFC the new dwellings shall be provided with approved address numbers placed in a position that is plainly legible and visible from the street or road fronting the property. The numbers shall contrast with their background.

Per section 901.4.2 of the UFC fire apparatus access shall not be obstructed in any manner including the parking of vehicles. You shall provide signage stating "NO PARKING – FIRE LANE" to ensure access availability as indicated on the site plan. A condition of future residential development will require that an enforcement plan be put in place for the towing of vehicles prior to residential occupancy.

Future administrative site plan and prescriptive conditions of construction approvals will assure primary life safety elements are incorporated into overall site amenities bearing a substantial relationship to the public health, safety and welfare.

Exhibit 35 at 6. The Examiner concludes that health and safety concerns related to the fire code are met.

B. Pedestrian Facilities. Pedestrian walkways will be provided as required by county code, SCC 30.66B.410. The applicant will be providing internal walkways and walkway installation along 143rd St SW. Exhibit 31. School children will be picked up by the school bus at Ash Way and 143rd Street SW. Exhibit 25B.

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. 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 10 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.
6. 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.

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

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.

7. 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)**

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

- (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)**
- (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)**

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.

- (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).

8. Applying this test to the Belle Meadows Estates 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.
- ii. Sidewalks. The applicant will be providing adequate pedestrian facilities as a part of the development proposal. *See* Exhibit 31 and Finding of Fact 9B.
- iii. Street and road lighting system. It is unknown whether adequate street lighting exists in the area.
- iv. Traffic signals. There is no analysis in the record regarding the adequacy of the traffic signals in the area.
- v. Water systems. Water will be provided by Alderwood Sewer and Water District and the file contains a preliminary certificate of water availability. Exhibit 27.
- vi. Sanitary Sewer Systems. Sewer will be provided by Alderwood Sewer and Water District and the file contains a preliminary certificate of sewer availability. Exhibit 27.
- vii. Park and recreational facilities. As stated in Finding of Fact 7.B., 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. These 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. The Examiner can determine, based on a map located on the County Parks and Recreation Department website, that there are a number of county parks in the vicinity of the development, including Martha Lake Park, Meadowdale Park, Picnic Point Park, Possession

Point Park, Nakeeta Beach Park, Hemlock Acres Park, and McCollum Park. In the future, the Examiner would like to hear from parks planners whether the parks level of service is met for citizens in each particular proposed development and how that may be determined at the planning level. 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 Snohomish County through right-of-way on 143rd Street SW. Exhibit 33 at 6.
 - ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Fire District 1 has made no objections to the proposal, subject to specific comments to the plan review, elaborated in Finding 9.A. Police protection is provided by the Snohomish County Sheriff’s Department.
 - x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit 28.
 - xi. Education: The site is served by the Mukilteo School District. Exhibit 25B.
 - xii. Other services: There is sufficient electrical system capacity for the proposal, according to a letter from the Snohomish County PUD No. 1, dated June 8, 2007. Exhibit 29.
- 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.
- 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 subject property is near to I-5, which is a designated transit corridor, and within walking distance, less than one mile to the bus transit center at 128th Street SW and a little over a mile to the transit center at 164th Street SW. There are designated urban centers at 128th Street SW and I-5, directly north of the development, and 164th Street SW and I-5, directly south of the development. GPP at LU-18 As stated above in conclusion 5, there are multiple parks in the vicinity. See Exhibit 31. **(Policy LU 2.A.5)**
 - (c) The development made possible by the requested rezone may tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation because it is within walking or biking distance of urban services and facilities that will serve the proposal, which will promote those forms of transportation in place of automobiles. The proposed road widening along 143rd Street SW includes extra width to accommodate a

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.

future bicycle lane. The proximity of the property to bus transit stations will encourage commuting by buses or carpools instead of using single occupancy vehicles. *See* Exhibit 31. **(Page LU-15)**

- ii. The rezone proposal is adequately integrated into the neighborhood.(See LU-15)
 - (a) The Examiner characterizes the neighborhood as changing. It appears that the single family uses are slowly but surely getting bought out and infill is occurring. Exhibit 36 is a zoning map which very clearly shows the property itself and the changing nature of the surrounding area. Given the mix of zoning densities already existing in the area, and the ability of the road system to handle it, this level of density appears 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) The proposal will help provide a mix of affordable housing types, such as small lot detached units. This type of housing helps minimize the need for land, but providing a large number of houses. The cost of the development per unit is reduced, resulting in a more cost effective and affordable type of housing. **(Policy LU 2.A.4)**
 - (c) This area is characterized on the Municipal Urban Growth Areas Map as a “Gap Area Not Claimed by Any City” *See* Map 3 of the GPP. There are no substantive city comments in the record. **(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) The proposed density is one that is not inconsistent with other densities in this changing area. Although dense, landscaping is provided in the front along with a sidewalk, and the densest part of the development is away from the street. The Examiner concludes that adequate efforts have been made to design the development to minimize the visual impacts of the development. *See* Exhibit 33. **(See LU-15)**
 - (b) The applicant indicates the building design will be consistent with that of more recent LDMR developments in the area. As stated above, the character of the neighborhood overall is changing. The proposed building height is two stories with a maximum 35 feet height. The development will be at the same elevation as the rest of the neighborhood, and the lot is relatively flat. The elevation should not affect the perception of the development negatively in any way. **(LU-15)**
 - (c) 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) The applicant is making effective and intelligent use of good site design and landscaping to mitigate what otherwise could be negative impacts of the higher density. The development has a very small visual outlook onto 143rd Street NW; only two homes abut the street, and one is an existing home. The development will otherwise be fenced, minimizing the impact on neighboring lots. *See* Exhibit 14A. **(LU-15)**
- (e) The development appears to 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. The fire code requirements, as stated above in Finding of Fact 9A, and provides guidance to PDS for requirements for the site plan review. **(LU-15)**
- (f) The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. There appears to be adequate pedestrian access on 143rd St SW to Ash Way, a safe place for children to wait for a school bus and adequate fire access has or will be provided as a condition of the development. *See* Finding of Fact 9, above. (*See LU-15*) (*See also discussion of public health, safety and welfare criteria, below*).

9. 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.

10. 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.
11. 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.
12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
13. 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 21st day of March 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 **MARCH 31, 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 **APRIL 4, 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: Paul Lichter

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.