

FOR OFFICE USE ONLY:  
DB ID: 569479

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

DATE OF DECISION: March 24, 2008

PLAT/PROJECT NAME: ***LOUTSIS AK VRANJIN***

APPLICANT/  
LANDOWNER: Blagoje Vranjin  
4923 211th St SE  
Bothell, WA 98021

FILE NO.: 06-130106-000-00-LU

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

DECISION (SUMMARY): APPROVED

### BASIC INFORMATION

GENERAL LOCATION: The site is located in the NE ¼ of the SE ¼ of Section 26, Township 28 North, Range 4 East, W.M. The site address is 1509 128<sup>th</sup> Street SW, Everett, WA 98204

ACREAGE: .44 acres

ZONING: CURRENT: R-7200  
PROPOSED: MR

### COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban High Density Residential

### UTILITIES:

Water: Alderwood Water & Sewer District  
Sewage: Alderwood Water & Sewer District

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 March 18, 2008 at 11:00 a.m.

1. The Hearing Examiner announced that he had reviewed the staff report and other exhibits which were part of the file and listed on the Master Exhibit List and had conducted a site visit on March 17, 2008.
2. Barry Constant, Western Engineers, appeared on behalf of the applicant and gave an overview of the project and answered questions from the Examiner.
3. Paul Lichter, Senior Planner, appeared on behalf of PDS and presented the staff report.
4. No one appeared in opposition to the request.

The hearing concluded at 11:17 a.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. PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 22, 2008 (Exhibit 12). The DNS was not appealed.
3. Rezone Request: The request before the Examiner is for a rezone from R-7200 to MR. (Exhibit 1.) The applicant requests approval of a rezone from Residential-7200 (R-7200) to Multiple Residential (MR) with an associated administrative site plan approval for a 7-unit residential development on a .44 acre site. An existing single-family dwelling will remain on the site and is included in the total number of units. The site plan also includes provisions for a private road with a hammerhead turnaround, a tot lot and walking path on the north end of the property, landscaping around the hammerhead, frontage improvements and landscaping along 128<sup>th</sup> SW, and a stormwater detention system.
4. Site description: The rectangular site is essentially flat and contains an existing single-family dwelling and shed. The existing dwelling will be incorporated into the proposed site plan and will be one of the seven dwellings planned for this site. There is a mixture of evergreen and deciduous trees, shrubs, and assorted grasses on the site. The site provides habitat for a mixture of common urban birds and animals. The site will be landscaped at the time of development.

5. Adjacent uses: Adjacent zoning is a tapestry of PRD-7200, LDMR, R-7200, Planned Community Business (PCB), and Multiple Residential (MR). The adjacent uses are primarily single-family and multiple-family residences. In addition, a mixture of commercial and light industrial uses is located within a ¼ mile of this site. Schools, sidewalks, public transit and shopping are available within ¼ - ½ mile of this site. The neighborhood is home for a diversity of races, ethnicities, and income levels.
6. Transportation: The development is situated upon 128th Street SW. The PDS 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 development will generate 76.56 new average daily trips (ADT) and has a road system impact fee of \$20,441.52 (\$2,271.28/SFR unit) 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.

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

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

Development generating 50 or fewer peak-hour trips in a 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 the trip distribution the subject development will 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 6.00 a.m. peak-hour trips and 8.08 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 development proposal will not impact any IRC locations identified within TSA D with three or more p.m. peak hour trips, nor will it create any. Therefore, 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 128<sup>th</sup> Street SW and consist of:

- Widen asphalt concrete pavement to match curb line of adjacent property to the east of the Homesight Airport Road Site LDMR. (PFN 00-109523)
- Cement concrete curb and gutter
- Planter strip with a width of 5 feet
- Cement concrete sidewalk with a width of 7 feet

The administrative site plan received December 11, 2006, must be revised to show 7 foot sidewalks as specified in the SCC 30.66B Presubmittal Conference Review Form signed by the applicant/representative on September 7, 2006.

The road, 128<sup>th</sup> Street 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.

- Access to the subject property is proposed from a 25 foot wide commercial driveway directly off 128<sup>th</sup> Street SW.
- The proposed access must be constructed per EDDS Chapter 2 and EDDS Standard Drawings 2-025 and 2-070.
- The County accepts the proposed layout.

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

128<sup>th</sup> Street SW 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. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, additional right-of-way is not required.

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

This development is not subject to SEPA and thus is not subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

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

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 five percent. The TDM obligation for this development is therefore equivalent to 5% of the 8.08 new PM peak hour trips x \$1,500.00 which equals \$606.00 (\$67.33/lot). A revised written offer for payment of this TDM obligation was received by the County on December 11, 2006. A signed copy of the revised TDM offer must be submitted by the applicant.

7. Parks Mitigation (Chapter 30.66A SCC): The proposal is within Nakeeta Beach 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 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 25
8. School Mitigation (Chapter 30.66C SCC) 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 unit (Unit 4). PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

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

9. Drainage and Grading (Chapters 30.63A and 30.63B SCC) PDS (Engineering) has reviewed the concept offered 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. Grading quantities are anticipated to be approximately 200 cubic yards of cut and 350 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences

and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

Streambank Erosion Control: 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.

Water Quality Treatment: 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).

Erosion Control: Numerous standard erosion control Best Management Practices will be employed to prevent sediment laden water from leaving the site or entering Critical Areas.

Downstream: Surface Water Management indicated no known drainage or flooding problems downstream that this project might impact. No drainage problems from this development are anticipated.

Maintenance and Operations: The property owner(s) are required to sign 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.

Based upon the documents provided to PDS, the Examiner finds this project meets the requirements set forth in the UDC with regard to drainage and grading.

10. Uniform Fire Code (Chapter 30.53A SCC and (UFC) 1997 edition): 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 September 10, 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. Fire hydrants are required per SCC 30.53A.300. The location and spacing of the hydrants is approved as indicated on the site plan (Exhibit 10) and the utility plan (Exhibit 3f). The required fire flow for the fire hydrants is 1000 gpm at 20 psi for a 2 hour duration. Prior to construction of combustible materials, the developer shall provide a final certificate of water availability indicating that all hydrants have been installed, charged, and are operational. All units shall be provided with NFPA 13-D systems due to an access road that exceeds 150 feet in length with a hammerhead turnaround in lieu of a cul-de-sac.

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. Signage shall be installed 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 that primary life safety elements are incorporated into overall site amenities bearing a substantial relationship to the public health, safety and welfare.

11. Critical Areas Regulations (Chapter 30.62 SCC)

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

12. GMA Comprehensive Plan (General Policy Plan, GPP)

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Facilities Plan; and the Comprehensive Parks & Recreation Plan. On November 27, 1996, effective December 12, 1996, the Council adopted Amended Ordinances 96-074, and 96-071 which amended the map and text of the Snohomish County GMA Comprehensive Plan, and adopted an area-wide rezone within the Urban Growth Areas of the county respectively. This application was complete on December 11, 2006 after the effective date of Amended Ordinances 96-074 and 96-071. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on December 12, 1996, as revised through the completeness date of the application.

The subject property is designated Urban High Density Residential 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 UHDR designation “allows high density residential land uses such as townhouses and apartments generally near other high intensity land uses. Land in this category may be developed up to a maximum density of 24 dwelling units per acre. Implementing zones include the MR, PRD-MR, LDMR, and PRD-LDMR zones.” PDS finds the requested rezone to be consistent with the General Policy Plan’s UHDR designation of the property.

The seven (7) units proposed are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2.

PDS has reviewed and analyzed the rezone request for purposes of assisting in establishing consistency of the request with the GMA Comprehensive Plan and for establishing that the proposal bears a substantial relationship to the public health, safety and welfare.

The current GPP, effective February 1, 2006, (page LU-15) encourages: broadening the variety and mix of housing types in traditional single-family and multi-family neighborhoods, while respecting the vitality and character of established residential neighborhoods, and that such encouragement will be tied to a mix of housing types being “carefully sited, well designed, and sensitively integrated into existing communities.”

The rezone request and administrative site plan are consistent with the “Urban Development Patterns” statement for encouraging and broadening the mix of urban housing types, promoting more efficient utilization of land within UGAs and reducing consumption of rural lands.

The rezone request will implement as well as encourage a variety of mix of urban housing types in traditional single-family and multi-family neighborhoods.

The Examiner thus finds that implementing the rezone request will broaden the availability of a variety of future housing types tied to GMA adopted development regulations and therefore bears a substantial relationship to the public health, safety and welfare.

The Examiner finds that the applicability of specific comprehensive plan policies to a development application is also limited by the *Citizens v. Mt. Vernon* (133 Wn. 2d 861) decision. Today's GMA adopted development regulations are in place and will sufficiently address future development activity.

The Examiner finds that the preceding discussion is particularly applicable to the following key Comprehensive Plan Element Goals, Objectives and Policies that might be considered relevant to the rezone request:

Land Use Goal LU 2 - "Establish development patterns that use urban land more efficiently"

Land Use Objective LU 2.A - "Increase residential densities within UGAs by concentrating and intensifying development in appropriate locations"

LU Policy 2.A.4 - "Any UGA shall provide opportunities for a mix of affordable housing types... within medium density residential areas."

Housing Opportunity Objective HO1.B - "Ensure that a broad range of housing types is available in **urban and** rural areas."

Capital Facilities Policy CF 7.1 - "The County shall utilize impact fees as authorized under the GMA to help fund the cost of parkland and facilities expansion and as required to serve new development."

Natural Environment Objective NE 1.A - "Balance the protection of the natural environment with economic growth, housing needs and the protection of property rights."

Natural Environment Objective NE 1.B - "Accommodate population growth in a manner that maintains and protects elements of the natural environment."

The Examiner finds that current GMA adopted regulations, governing future site development will implement such Goals, Objectives, and Policies development as reviewed and analyzed under the subject request, bears a substantial relationship to the public health, safety and welfare.

13. Zoning (Chapter 30.2 SCC)

The subject rezone meets minimum provisions of bulk regulations. The proposed development plan provides for building orientations, a central access drive aisle, required parking per dwelling, and landscaping amenities that buffer the frontage along 128<sup>th</sup> Street SW.

14. Rezones (Chapter 30.42A SCC)

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.

The Examiner makes the following findings pursuant to the requirement of SCC Chapter 30.24.:

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. The minimum zoning criteria found in Chapters 30.31A through 30.31F are met.



15. 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.<sup>1</sup>
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 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

---

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

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 re-zone a property in the Urban Medium Density Residential (UMDR) Designation from R-7200 to MR to allow 7 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.<sup>2</sup>

---

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

- 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.<sup>3</sup>
  - (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)**
  - (d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using

<sup>3</sup> 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.

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 Loutsis ak Vranjin 128<sup>th</sup> Street MR 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 128<sup>th</sup> 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 the Alderwood Water and Sewer District.
- vi. Sanitary Sewer Systems. Sewer will be provided by the Alderwood Water and Sewer District.
- vii. Park and recreational facilities. As stated in Finding of Fact 7, the developer will pay park mitigation fees as a part of the development proposal.
- viii. Storm and sanitary sewer disposal system: Stormwater disposal systems are described in Exhibit 6.
- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Police protection is provided by the Snohomish County Sheriff.
- x. Public health: Public health issues are addressed by the Snohomish Health District.
- xi. Education: The site is served by the Mukilteo School District. Exhibit 20.
- 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)**<sup>4</sup>
  - (b) The rezone site is located close to schools and ½ mile of shopping and public transportation. The site is served by sidewalks in the immediate vicinity. The site has close access to commercial and industrial employment, and is within ½ mile of both the I-5 Interstate and State Highway #99. (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. It is ½ mile from SR 99, a major transportation corridor with express buses to points north and south. **(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. Land use in this area is transitioning from low density, single-family residential to the medium to high urban densities envisioned in the county’s Future Land Use Map. 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 single-family housing. **(Policy HO 2.B.1)** Because the area is already a mixture of single and town house development, the proposed development will continue this pattern.
- 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 proposed development plan provides for building orientations, a

---

<sup>4</sup> 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.

central access drive aisle, required parking per dwelling, and landscaping amenities that buffer the frontage along 128<sup>th</sup> Street SW. (**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. (**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 25) 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 MR for this property is granted.

Decision issued this 24<sup>th</sup> day of March, 2008.

\_\_\_\_\_  
James Densley, Hearing Examiner Pro Tem

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
---

The Decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more Parties of Record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

### Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **APRIL 3, 2008**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A Petition for Reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.



## Appeal

An appeal to the County Council may be filed by any aggrieved Party of Record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a Petition for Reconsideration but may file an appeal directly to the County Council. If a Petition for Reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the Petition for Reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 7, 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.