

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

DATE OF DECISION: August 6, 2008
PLAT/PROJECT NAME: **Hubbard Road MR**
APPLICANT/
LANDOWNER: Shawn Loutsis
FILE NO.: 07 100471 LU
TYPE OF REQUEST: **REZONE** from Residential-8400 (R-8,400) to Multiple Residential (MR)
DECISION (SUMMARY): The rezone request is **GRANTED**.

BASIC INFORMATION

GENERAL LOCATION: The project site is located at 223 Hubbard Road, Lynnwood, WA

ACREAGE: .51 acres

ZONING: CURRENT: R-8,400
PROPOSED: Multiple Residential (MR)

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban High Density Residential

UTILITIES:

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

SCHOOL DISTRICT: Edmonds School District No. 15

FIRE DISTRICT: Snohomish County Fire District No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve

INTRODUCTION

The applicant filed the Master Application on May 21, 2007. (Exhibit 1A)

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). (Exhibits 6A, 6B, and 6C).

The Examiner held an open record hearing on June 12, 2008, the 113th 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 June 12, 2008 at approximately 11:00 a.m.

1. Michael Dobesh, Senior Planner, and Duane Overholser appeared on behalf of PDS and gave an overview of the rezone request and answered questions from the Examiner.
2. John Rubenkönig of Petersen Consulting Engineers and Shawn Loutsis, property owner, appeared on behalf of the applicant.
3. No one appeared in opposition to the request.

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 Non-Significance (DNS) was made on April 15, 2008. (Exhibits 5A and 5B). No appeal was filed.
3. Rezone Request: The applicant requests a rezone of a 0.51 acre site from R-8400 to MR, along with an administrative site plan approval and grading permit for the future development of a 10-unit residential development consisting of three duplex structures and four single-unit detached structures. There is one existing house on site that will be removed.

According to Chapter 30.71 SCC, the approval of the administrative site plan and grading permit are Type 1 approvals, which are made by PDS. Those permit approvals are not before the Examiner in this decision.

The rezone application has a vesting date of June 18, 2007, but needed additional information for continuing project review. PDS accepted a resubmittal on November 21, 2007, and again determined on December 20, 2007, that additional information was required, because the Snohomish Health District had not yet granted approval for the project. A subsequent resubmittal, including a recommendation of approval from the Health District, was received on

March 20, 2008, and deemed sufficient for further review, issuance of a SEPA Threshold Determination and scheduling of a public hearing.

4. Site description: The property is rectangular in shape, with its longer axis running in an east-west direction, and is predominately flat. The property is currently developed with one single-family residence, associated detached-garage, asphalt driveway, fencing and ornamental landscaping. The existing structures are proposed to be removed.
5. Adjacent uses: The surrounding properties in the vicinity are zoned R-7,200, R-8,400, R-9,600, and MR. The majority of the properties are small to medium size lots developed with single-family residential structures. There are a few larger lots located to the northeast of the subject site, which are also developed with residential structures. There are two multi-family residential developments proposed within 150-300 feet from the subject site on Logan Road. One is *Logan Road*, PFN 07-101932, which proposes 15 single-family residential structures on 1.46 acres, and was granted a rezone to MR. Construction has not yet commenced on this project. The other development is *Northwood Ridge*, PFN 06-125824, which proposed 18 units on 1.35 acres, and was also granted a rezone to MR. Site construction has been completed for this project, but permits for the residential structures have yet to be issued. Also, currently under construction is the plat *Fox Creek* (PFN 05-120111), a 120-lot Planned Residential Development (PRD).
6. Issues of Concern: One letter of concern was received subsequent to the notice of hearing being mailed and published (Exhibit 9). The concerns relate to the volume of residential development in recent years, density, drainage and adequate fire protection. PDS has not identified any other issues of concern related to the subject rezone.
7. Fire Safety. As noted above, a letter was received from nearby residents (Fred and Dorothy Tobin) stating their concerns about the project. (Exhibit 9) In particular, they ask about whether high density development would result in a fire hazard. The proposed rezone request and development application were reviewed by the Fire Marshall's Office, which stated that the proposals, as designed, were consistent with the provisions of the Fire Code, subject to the imposition of certain conditions. At the public hearing, the Applicant stated that the units will have fire sprinkler systems installed in them.

Those conditions are relevant to the administrative site plan approval, which is not before the Hearing Examiner. However, considering the question posed by Mr. and Mrs. Tobin, the Fire Marshall's response leads the Hearing Examiner to conclude that the approval of a rezone to MR for this property will not lead to an increased risk of harm to the public or nearby residents from fire.

8. Rezone -- Criteria for Approval. Under SCC 30.42A.100, the hearing examiner may approve a rezone only when all the following decision criteria are met: (a) The proposal is consistent with the comprehensive plan; (b) The proposal bears a substantial relationship to the public health, safety, and welfare; and (c) Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

9. The rezone proposal is consistent with the Comprehensive Plan.

- A. The GMA requires consistency between the County's development regulations and Comprehensive Plan [RCW 36.70.040]. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the GMACP's Future Land Use Map. The rezone must meet the goals of the GPP as well.
- B. The subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on February 1, 2006, as amended up through the application's vesting date of June 18, 2007.
- C. PDS stated that the requested rezone is consistent with the General Policy Plan's (GPP) Urban High Density Residential designation of the property. (Exhibit 20)
- D. The subject rezone and future development proposal is for a 10-unit detached single-family residential development resulting in a density of 19 dwelling units per acre, which is within the density range described in the County's Comprehensive Plan.
- E. The Land Use Element of the General Policy Plan (GPP) introduces the way in which Urban Growth Areas (UGA) are planned for and how densities are to be determined:

The GMA requires that UGAs be designated through the County's [Comprehensive] 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 UGAs.

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.

Snohomish County's GMACP, General Policy Plan at LU-1.

- F. 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.

- G. 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*.” (Emphasis added); GPP at LU-16.
- H. The Examiner finds the test of what is an “appropriate location” to turn on three criteria, which are found in the policies of LU-2 and in HO-2A.1. They include: (i) the careful siting of the development to minimize impacts to environmentally sensitive areas and to urban infrastructure; (ii) the integration of the infill project into the neighborhood and nearby cities that may annex; and (iii) ensuring that design of the project itself does minimize impacts on the character of the residential neighborhood area.

- i. The Careful Siting of the Development to Minimize Impacts to Environmentally Sensitive Areas and to Urban Infrastructure.

1.1 There are no critical areas present on this site. The PDS Engineering Section provided analysis of the proposed development, including the construction plans (Exhibits 2B1-2B12) and the Full Drainage Report (Exhibit 3A), which address the urban infrastructure issues. The project is considered to be a major development activity, as defined by SCC 30.63A.120(2), in that more than 5,000 square feet of new impervious surface is being created. As proposed, PDS has determined that the project will meet the requirements of SCC 30.63A.200. The complete details of the Engineering Section’s analysis is set forth in Exhibit 20.

1.2 In a letter received from Fred and Dorothy Tobin dated April 15, 2008 (Exhibit 9), issues of concern were raised relating to increased runoff generated by the proposed project. PDS reviewed these drainage concerns and found that after the project is constructed with the required drainage system, storm water runoff generated by the proposed development will not exceed the amount of stormwater runoff generated from the existing condition – and will in fact be less. It is not anticipated that any negative drainage impacts will be created by this project. Accordingly, the Hearing Examiner finds that the development will not impact environmentally sensitive areas and has been designed to minimize, if not improve, off-site drainage impacts and impacts to the urban infrastructure in the area.

ii. The integration of the infill project into the neighborhood and nearby cities that may annex

2.1 The subject property is designated *Urban High Density Residential* (UHDR: 12-24 DU/Acre) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). According to the GPP, the Urban High Density Residential 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.”

2.2 The current “mix” of housing types existing in the vicinity consist of a mix of older and newly constructed single-family residences on small to medium size lots, small lot Planned Residential Development (Fox Creek PFN 05-120111) and detached single-family residences and duplex structures on a single building “site” (Northwood Ridge PFN 06-125824). Some of the newer developments are currently under construction. The proposed development will provide fencing around the sides and rear of the site, and a ten-foot landscape buffer along the property’s frontage. The proposed development activity consisting of single-family detached and duplex structures is consistent with the residential character of the existing neighborhood, and adds to the overall mix of housing/ownership types already existing and being constructed in the vicinity, as well as those types of development anticipated and encouraged within the County’s Comprehensive Plan.

PDS agrees, stating that the proposed rezone and proposed future development plan is 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 proposed development plan will implement as well as encourage the variety of a mix of urban housing types in traditional single-family, transitioning single-family, and/or established multi-family neighborhoods; and the proposed development activities conform to GMA adopted development regulations. (Exhibit 20)

As such, the Hearing Examiner finds that the proposed development and rezone will integrate with the existing and newly developing neighborhood and nearby cities that may annex the subject property.

3 Ensuring that design of the project itself does minimize impacts on the character of the residential neighborhood area.

3.1 The proposed development will be further integrated into the site by limiting the size and scale of the homes, and an extensive landscaping plan has been proposed, which will provide screening and aesthetic elements. The project improves public safety in the area by providing a widened public road (Hubbard Road) along the frontage of the subject property, by providing a new sidewalk with curb, gutters and a storm drainage system and street trees. (Exhibit 1D).

Based on the foregoing, the Hearing Examiner finds that the requested rezone is consistent with the adopted comprehensive plan. The granting of this rezone will further the County's Comprehensive Plan and establishes development patterns that use urban land more efficiently by concentrating and intensifying development in an appropriate location. (Objective LU-2.A).

10. The rezone bears a substantial relationship to the public health, safety, and welfare.

In order to approve the requested rezone, the Hearing Examiner must also find that it bears a substantial relationship to the public health, safety and welfare. This is established by ensuring that (i) the proposed change will meet the provisions of the County Code; and (ii) that all impacts associated with the proposed rezone can be avoided or appropriately mitigated through the imposition of approval conditions.

Here, the proposed future development plans submitted for the multi-family residential project has been shown by the PDS Staff Report (Exhibit 20) to meet the County's GMA development regulations relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation and critical areas protection.

Specific analysis of the proposed development plan, as well as the subject rezone, included impacts associated with traffic, storm drainage, parks and recreation, public schools, and zoning code provisions addressing compatibility with surrounding properties (bulk regulations and landscape buffers). Future approval of construction permits, consistent with such evaluation and administrative site plan approval will substantiate GMA code compliance prior to permit issuance. Such approvals will sufficiently mitigate for all future impacts associated with development patterns, site design and sensitively integrating site development into the immediate community.

PDS review and analysis of the rezone, administrative site plan proposal, and expected future development activity finds that current GMA adopted development regulations governing future site development activity will implement such Goals, Objectives, and Policies of the Comprehensive Plan. As such, PDS concluded that the rezone bears a substantial relationship to the public health, safety and welfare.

The Hearing Examiner agrees. Based on the entire record, the Hearing Examiner finds that there are no impacts associated with the rezone that cannot be avoided or appropriately mitigated through the application of the County's development regulations, and through the imposition of conditions of approval by PDS through the administrative site plan approval process. Therefore, the Hearing Examiner finds that the requested rezone implements public policy and bears a substantial relationship to the public health, safety and welfare.

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

The provisions of Chapters 30.31A through 30.31F SCC are not applicable to the present rezone and development application.

12. 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 the proposed rezone implements the 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).
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 establishes the criteria which the hearing examiner must follow in considering a rezone. These include finding that: (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 change the zoning from R-8,400 to MR.
6. The Hearing Examiner concludes that the Applicant has demonstrated that the requested rezone is consistent with, and implements, the Comprehensive Plan and bears a substantial relationship to the public health, safety and welfare, as described further in the Findings of Fact.
7. All issues of concern raised by citizens that were identified in the PDS staff report (See Exhibit 9) have been adequately addressed by the Applicant and PDS. The Examiner identified no additional issues of concern in reviewing the file.
8. The request for a rezone was based upon the information and impacts identified in the SEPA Checklist and DNS issued on April 2, 2008. (Exhibits 5A and 5B)
9. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

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

DECISION

The request for a **REZONE** from 8,400 to Multiple Residential (MR) for the subject property is **GRANTED**.

Decision issued this 6th day of August, 2008.

Millie M. Judge, Hearing Examiner Pro Tem

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before (10 days) or **AUGUST 18, 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 (14 days) or **AUGUST 20, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Michael Dobesh

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.