

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

DATE OF DECISION: April 24, 2008

PLAT/PROJECT NAME: Center II LDMR

APPLICANT/
LANDOWNER: Joe Sellers, LB Enterprises
8005 8th ST SE
Everett, WA 98205

FILE NO.: 07-101060-000-00-LU

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

DECISION (SUMMARY): Approved

BASIC INFORMATION

GENERAL LOCATION: The property is located at 821 Center Rd. Everett, Snohomish County, Washington. Tax parcel number is 003738-003-010-04

ACREAGE: .46

ZONING: CURRENT: R-7200
PROPOSED: MR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: High Density Residential

School District: Mukilteo School District No. 6

Fire District: No. 1

Water Source: Alderwood Water and Wastewater District

Sewer Service: Alderwood Water and Wastewater District

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services: Approve

INTRODUCTION

The applicant filed the Master Application on April 17, 2007. (Exhibit 1)

The Deputy Hearing Examiner (Examiner) Ed Good made a site familiarization visit on February 16, 2008 in the afternoon

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 11, 12 and 13)

A SEPA determination was made on January 9, 2008. (Exhibit 10) No appeal was filed.

The Examiner, Ed Good held an open record hearing on February 19, 2008, the 109th 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 February 19, 2008 at 9:04 a.m.

1. The Examiner, Ed Good, indicated that he had read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Paul Lichter, PDS appeared and testified under oath. He presented the county staff report.
3. Ron Rich, applicant's agent, appeared and testified under oath. He described the proposal.
4. No one appeared in opposition to the request.
5. By consent of the applicant filed March 19, 2008, Examiner Pro Tem James Densley listened to the audio recording of the record, reviewed the file and made a decision on this matter.

The hearing concluded at 9:30 a.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of these hearings are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein. Exhibits 25 and 26 were admitted during the hearing and are also part of the file and were considered by the Examiner.
2. Nature of Request:: The applicant is requesting approval of a rezone from R-7200 to MR and an Administrative Site Plan approval for the construction of one triplex and two duplexes, for a total of 7 dwelling units on a .46 acre site. The site plan also includes provisions for a private drive with a hammerhead turnaround, two guest parking stalls, parking area landscaping, stormwater detention, frontage improvements, and landscaping along Center Road.
3. Site Description: The site contains an existing single-family dwelling, shed, and garage which will be removed when the property is developed. There are a few trees, shrubs, and assorted grasses on the site. The site is essentially flat, with only a slight increase in elevation to the north.
4. Adjacent zoning: The adjacent zoning is a tapestry of R-7200, PRD-7200, PRD-9600, LDMR, PRD-LDMR, and MR. Adjacent uses are primarily a mixture of single-family and multi-family housing. The neighborhood is clearly transitioning from older, single-family dwellings to greater densities with multi-family apartments, apartment communities, and townhouses. Schools, sidewalks, public transit, and shopping are available within ¼ mile of this site. The neighborhood is home for people of diverse races, ethnicities, and income levels.
5. Park Mitigation: The proposal is within Nakeeta Beach Park District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$491.05 per each new residential unit, to be paid prior to building permit issuance for each unit. Even though the proposed site plan does not include on-site provisions for recreation or open space, such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies and, therefore, will bear a substantial relationship to the public health, safety, and welfare.

6. Traffic:

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

The development will generate 57.42 new average daily trips (ADT) and has a road system impact fee of \$15,331.14 (\$2,190.16/unit distributed over 7 units) based on \$267/ADT, the current fee rate for residential developments inside the Urban Growth Area (UGA), 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]

PDS evaluated the subject development concurrency under the provisions of SCC 30.66B.120 and found that the project is concurrent as of May 13, 2007. The expiration date of the concurrency determination is six years from this date. The Examiner adopts PDS's finding of concurrency.

The subject development is located in TSA D, which, as of the date of submittal, had the following arterial units in arrears: *Arterial units 202 and 204*. Based on peak-hour trip distributions, the subject development WILL NOT add three (3) or more peak-hour trips to any arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 4.50 a.m. peak-hour trips and 6.06 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.

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.

The following improvement measures have been modified or waived through the EDDS deviation process as of the date of this memorandum:

1. A deviation for a 5 foot sidewalk has been approved.
2. A deviation to reduce the access to 30 feet wide has been approved.

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

- Asphalt concrete pavement consisting of 18 feet width from roadway centerline to the face of a 6 inch curb
- Cement concrete curb and gutter
- Planter strip with a width of 5 feet
- Cement concrete sidewalk with a width of 5 feet

Center Road, 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 the issuance of building permits, 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]

Access into the site is by a commercial drive isle to be approved by fire marshal with the access from the county road to meet the commercial access point design within the EDDS.

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

The road serving this development, Center Road, is designated as a Collector Arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Currently, 20 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to deed 15 feet of additional right-of-way. This is adequately shown on the development site plan.

This road, Center Road 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 dedicated/deeded that is more than 30 feet from centerline is/is not applicable.

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

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 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required and has been received. The applicant has offered to provide the mitigation measures for impacts on state highways as follows: Payment of \$2,067.12 based on the standard rate of \$36/ADT

WSDOT was provided notice of application for this project and an opportunity to comment. WSDOT agreed to the mitigation measures proposed by the applicant. The proposed mitigation measures are reasonably related to the impacts of the development.

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

There are not any 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]

Since a TDM plan was not submitted with the initial application a cash payment is required. This is indicated on the presubmittal review conference form signed by the County and the applicant's representative on February 14, 2007. The trip reduction percentage for this development is 5 percent. The TDM obligation for this development is therefore equivalent to 5% of the 6.06 new PM peak hour trips x \$1,500.00 which equals \$454.50 (\$64.93/unit). A written offer for payment of this TDM obligation was submitted on November 30, 2007.

7. School Impact: Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Mukilteo School District No. 6, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot.

8. Critical Areas: No critical areas are known to exist on or near the site.

9. Drainage and Grading: PDS (Engineering) reviewed the concept offered and recommends 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 125 cubic yards of cut and 100 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. Stormwater detention will be provided as part of final construction plans. This decision adopts the recommendation of PDS.

10. Comprehensive Plan Compliance: This application was complete on May 30, 2007. On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to UGAs and adopted area-wide rezones within the UGAs of the county respectively. The subject property is designated Urban High Density Residential (12-24 du/acres) on the GPP Future Land Use map, and is located within a UGA. It is not located within a mapped Growth Phasing Overlay. 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. An implementing zone includes the MR zone. The requested rezone is consistent with the GPP's Urban High Density Residential 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.

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 mix of urban housing types in traditional single-family and multi-family neighborhoods.

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 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 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."

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.

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.

10. Zoning: This request for a change of zoning from R-7200 to MR is consistent with the GPP Future Land Use Map designation of Urban High Density Residential in this area. The MR zone is an implementing zone for the Urban High Density Residential designation. Adequate public services, including parks, schools, sewer/water, public transit, fire and police protection, and public power exist, or are in the planning stages, to serve the potential increase in residential density that would result from this rezone request.
11. Rezone considerations: 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.

REQUIRED FINDINGS

- (1) The proposal is consistent with the Comprehensive Plan. The Comprehensive Plan designation is Urban High Density Residential. This designation supports a rezone to MR which would ensure density is increased, meeting the goals of the Comprehensive Plan and Growth Management Act, while preserving the single and multi-family character of the area. The area itself is transitioning from exclusively single-family uses

to multiple family dwellings and detached single-family structures on multiple family zoned lots.

- (2) Staff review found that adequate public utilities exist to serve any future proposed new single-family detached or multi-family structures. Future development proposals will have to provide parks, school and traffic mitigation fees and construct frontage improvements which will meet county code requirements increasing public safety. Any future development proposals will be required to meet county code requirements for structure layout and siting, safe vehicular and pedestrian traffic, along with the recommended conditions, during the development review, which will make adequate provisions for the public health, safety and general welfare.
- (3) Not applicable to this request.
- (4) The area in which this rezone is located is characterized by increasing urban growth and has adequate existing facilities and service capacity. 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 rezone site is located within three blocks of schools and ¼ mile of shopping and public transportation. The site is served by other urban amenities including sidewalks and street lighting. The site has close access to commercial and industrial employment, and is within ¼ mile of both the I-5 Interstate and State Highway #9.

- 12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
- 13. No public comments were received regarding this application.
- 14. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

- 1. The Examiner has jurisdiction to hear this matter and render a decision thereon.
- 2. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
- 3. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site-specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
- 4. Adequate public services exist to serve the existing single-family residential structure; no development plans have been submitted for review at this time.
- 5. The request should be approved as submitted.
- 6. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a **REZONE** from Residential- 7200 to Multiple Residential for this property is hereby **APPROVED**.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 24th day of April, 2008.

James Densley, Hearing Examiner Pro Tem

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 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 **MAY 5, 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 **MAY 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.