

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

DATE OF DECISION: March 18, 2008

PLAT/PROJECT NAME: *Elm Road/Ash Way LDMR*

APPLICANT/
LANDOWNER: Builders Investment Group
FILE NO.: 07 103181 LU

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

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The project site is located at 14431 Ash Way, Lynnwood, WA

ACREAGE: 2.8

ZONING: CURRENT: R-7200
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

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

SCHOOL DISTRICT: Mukilteo School District

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

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve

Public Works: Approve

INTRODUCTION

The applicant filed the Master Application on May 24, 2007. *See* Exhibit 1.

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

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

A SEPA determination was made on January 4, 2008. *See* Exhibit 14. No appeal was filed.

The Examiner held an open record hearing on March 12, 2008, the 88th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on March 12, 2008 at 10:11 a.m.

1. Elbert Esparza, Senior Planner, appeared on behalf of PDS and gave an overview of the project and answered questions from the Examiner.
2. Ken Williams appeared on behalf of the applicant, Builders Investment Group.
3. No one appeared in opposition to the request.

The hearing concluded at 10:32 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. A Determination of Nonsignificance (DNS) was issued January 1, 2008. Exhibit 14. The DNS was not appealed.
3. Rezone Request: The request before the Examiner is for a rezone from R-7200 to LDMR. Exhibit 1. The applicant is requesting an administrative site plan approval from PDS, which PDS staff has included in the file for the Examiner's reference. The applicant proposes 28 new single family homes as a part of the site plan and the removal of 4 existing homes. The Examiner has no jurisdiction over approval of the site plan. The Examiner does appreciate the information and the visual reference as it is crucial in deciding the issues in the rezone.
4. Site description: The project area is approximately 2.8 acres in size, with urban typical trees and vegetation found on residential home sites, and contains no critical areas. The parcels have been developed with four houses, sheds and gravel driveways which will be removed. The project parcels are within walking distance, .75 miles (north and south) of 2 transit stations; Ash Way and Mariner Park and Ride Stations. Exhibit 32.
5. Adjacent uses: The site is a plot of land located between Ash Way and a concrete barrier which lessens visual and auditory impacts of Interstate 5, which is the land use directly behind the property to the east. On the south side of the lot 146th Street SW dead ends, and across 146th is a recently approved project known as the 146th Street LDMR. Other parcels surrounding the site are a combination of R-7200 and LDMR zoning districts with a number of existing and under construction single family detached unit (SFDU) projects. The area has been transitioning from single family home lots to SFDUs located on one lot held in common ownership, commonly called "condominiums ownership". Exhibit 32; testimony at hearing.
6. Transportation: The development is situated upon Ash Way, a collector arterial. The staff report contains the following information on the development's compliance with county transportation requirements, which the Examiner incorporates herein for a better understanding of the transportation impacts of the higher density development at this site:

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

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

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 24 new units, which is 9.57 ADT/unit. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 224.68 new ADT and has a road system capacity impact fee of \$61,324.56, based on \$267.00/ADT. This impact fee must be paid proportionately, prior to the issuance of each building permit.

The ADT has been calculated as follows: 28 single-family units – 4 existing homes = 24 units x 9.57 ADT/unit = 224.68 ADT

The PM PHT has been calculated as follows: 24 units x 1.01 PM PHT/unit = 24.24

The AM PHT has been calculated as follows: 24 units x 0.75 AM PHT/unit = 18.00

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

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works has made a preliminary determination that:

X *the development is concurrent as of June 29, 2007, and has a concurrency vesting date of May 24, 2007.*

A record of developer obligations documenting the concurrency determination will be prepared by DPW in accordance with the provisions of SCC 30.66B.070. The expiration date of the concurrency determination will be six years from June 29, 2007.

This preliminary concurrency determination is contingent upon the application being deemed complete by PDS.

X *Small or Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160: The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: units 202 and 204. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160 (2) (a); the development is determined concurrent. The subject development generates 18.00 a.m. peak-hour trips and 24.24 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]*

An IRC evaluation was requested for the intersection of 146th Street SW and Ash Way since there are several new developments proposed in that area, and Ash Way has a significant vertical curve at that point. The subject property proposes an access off of 146th Street, and there is also another development proposed located on the northeast quadrant of the intersection with 28 units. The completed evaluation resulted in a determination that this intersection is not now and will not become an IRC as a result of this development. This determination was made on October 2, 2007.

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

The subject property frontage is located along Ash Way and along 146th Street SW. For Ash Way, urban standard frontage improvements are required, consisting of 23 feet of pavement from the right-of-way centerline, vertical curb, 5-foot planter and 7-foot sidewalk.

For 146th Street SW, urban standard frontage improvements are required, consisting of 18 feet of pavement from the right-of-way centerline, vertical curb, 5-foot planter and 7-foot sidewalk. Please note that a minimum of 20 feet of pavement is required to be in place prior to occupancy of the buildings. The applicant submitted an EDDS deviation to request that the public road improvements for 146th Street SW end at the proposed access into the development, and a second deviation request was submitted for a 5-foot wide sidewalk along the property frontage with 146th Street instead of a 7-foot sidewalk. Both requests were approved because 5-foot wide sidewalks are sufficient to serve the number of residents proposed for the development and the proposed development opposite on 146th Street (PFN 07 103181 LU). There will be no other

pedestrian use on the road since it is a permanent dead end road and will not serve any properties beyond the subject development.

Construction of those improvements is required prior to any occupancy of the development.

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

Access is proposed from Ash Way via a commercial driveway and a from a second access point on 146th Street SW. The commercial drive aisle connects through between Ash Way and 146th Street SW. That proposal is acceptable since there is sufficient frontage on two roads, and there is adequate stopping and intersection sight distance from the access on Ash Way, and it appears that there is adequate sight distance from 146th Street at Ash Way as well. The plans for the proposed development on the south side of 146th Street SW (146th Street LDMR, 07-101587), show a commercial driveway aligned directly across from the driveway for this development, which would be required. The two driveways must be aligned directly across from each other so that traffic conflicts do not occur.

There is a LDMR development across the street on Ash Way (Knott's Landing, PFN 06-129839) from the subject development that has two commercial driveways on Ash Way that may be located within the 150-foot minimum access point spacing specified by EDDS 2-050. The plans were revised to show the Ash Way driveway aligned directly across from the Knott's Landing driveway, which is the best solution.

An IRC evaluation was requested for the 146th Street SW/Ash Way intersection due to the configuration of the Ash Way at that location, and the number of new trips from proposed developments in the area. The completed evaluation resulted in a determination that this intersection is not now and will not become an IRC as a result of this development. The IRC evaluation included processing of a left turn warrant for the intersection of 146th Street and Ash Way, and it was found that left turn lanes (all turning movements) were "Not Warranted".

146th Street SW is not on the DPW's list of County-maintained roads but has a 60-foot width of dedicated right-of-way; so it is considered to be unopened right-of-way. It is currently serving two single family residences that will both be removed and replaced with a development on each side of the road. The County Traffic Engineer has determined that the road must be widened to 18 feet on each side of the right-of-way centerline to provide for parking on each side of the road due to the density of the proposed housing. A parking lane on each side of the road would allow a 20-foot wide travel way to be maintained for emergency vehicle access to the commercial driveways. Even though it appears that the north side of the road will be completed by the Elm Road/Ash Way LDMR proposed development; a minimum of 20 feet of pavement is required on 146th Street prior to occupancy of the subject development.

DPW initially required a cul-de-sac at the end of 146th Street SW. EDDS 3-10 specifies that a permanent road end for all roads longer than 150 feet is a cul-de-sac with a minimum paved radius of 40 feet. A deviation request was submitted to ask that the improvements to 146th Street end at the proposed access into the development, and the request was approved. As a result, 146th Street is 150 feet or less in length, so no cul-de-sac is required.

There was a concern initially that a vehicle turning left onto 146th Street from southbound Ash Way would not have the minimum required stopping sight distance to be able to see an approaching vehicle traveling north on Ash Way around the corner, or conversely that the

approaching vehicle would have sufficient stopping sight distance to see a vehicle turning left at 146th Street. A sight distance analysis was submitted by the applicant's engineer for this review showing that there is sufficient sight distance for that situation; the line of sight falls within the existing right-of-way, and is clear of vegetation.

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

Ash Way 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. 30 feet of right-of-way presently exists on the development's side of the right-of-way. Since EDDS specifies that a 7-foot sidewalk is required for a multi-residential development, and Ash Way is on the bicycle facility map as requiring bicycle lanes, additional property is needed to accommodate the improvements (a total of 37 feet of right-of-way). Therefore, 7 feet of additional right-of-way is required, which has been shown on the plans.

146th Street SW is designated as (unopened right-of-way) 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. 30 feet of right-of-way presently exists on the development's side of the right-of-way. Normally a 7-foot sidewalk is required by EDDS for a multi-residential development, and since 18 feet of pavement widening is required on each side of the right-of-way centerline; additional property would be needed to accommodate the improvements (a total of 31.5 feet of right-of-way). A deviation request was approved for a 5-foot sidewalk on 146th Street, so additional right-of-way is not needed.

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

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

The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at

$$229.68 \text{ ADT} \times \$36.00/\text{ADT} = \$8,268.48$$

The March 23, 2007 traffic study by Gibson Traffic Consultants indicates that no WSDOT project on the Exhibit C list is impacted by 3 or more trips from the proposed development; therefore no impact fee is required. A copy of an offer to pay WSDOT \$0.00 was included with the application. Comments dated September 4, 2007 have been received from WSDOT indicating agreement with the traffic study, and no traffic mitigation was requested. WSDOT did request that the applicant submit a hydraulic study and TESC Plans so WSDOT can review and approve the stormwater discharge to the I-5 right-of-way.

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

There are no other jurisdictions that have an interlocal agreement with the county that will be significantly impacted by the subject development.

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

All new developments in the urban area shall provide transportation demand management measures. Sufficient transportation demand management measures shall be provided to indicate the potential for removing a minimum of five (5) percent of a 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 30.66B.625.

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500 times the required trip reduction percentage times the development's peak hour trip generation. [SCC 30.66B.615]

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 24.24 new PM peak hour trips x \$1,500.00, which equals \$1,818.00. A written offer for payment of this TDM obligation has been received for that amount.

Exhibit 32, pages 3-6.

7. Environmental Impacts of Higher Density.

A. Grading, drainage, and critical areas.

There are no critical areas on or within 100 feet of the project. According to the staff report, grading quantities are anticipated to be approximately 1000 cubic yards of cut and 4000 yards of fill, primarily for road, drainage facilities, and home site construction. Standard water quality measures will be in place during construction in accordance with a Temporary Erosion and Sedimentation Control Plan. Exhibit 30 at 7; *see also* Exhibit 15A.

The applicant proposes 28 new single family homes and associated access driveways. An underground concrete storm water detention vault will store runoff modeled by Santa Barbara Urban Hydrograph method, upsized by the required 30 percent safety factor. A standard control manhole will release runoff at peak rates no greater than allowed under the county's performance criteria. Water quality treatment requirements are to be met by a storm filter manholes properly sized to treat at least the 6 month design storm, thereby meeting code requirements.

No apparent drainage enters upstream of the site. Based upon downstream analyses of nearby projects, and as determined by the design engineer, there are no known drainage problems within ¼ mile downstream of the site. PDS staff has no knowledge of any complaints or concerns received from any neighbors regarding this proposed development. The proposed drainage system will discharge to an existing conveyance system within the Interstate 5 right-of-way, as reviewed and approved by WSDOT. *See* Exhibit 33 at 6.

Planning and Development Services (Engineering) has reviewed the concept and construction documents provided offered, and has concluded this project will meet the requirements of the UDC with regards to drainage and grading, both conceptually and for construction, and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Exhibit 32 at 7; *see also* Exhibit 9.

B. Parks and schools impacts.

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

The proposal is within Park District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid 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 32 at 3.

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

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Mukilteo School District No. 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 4 existing units. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

Exhibit 32 at 6. SCC 30.66C.100 requires payment of school impact fees by all developments as a condition of approval. The fee is calculated in accordance with a formula established in SCC 30.66C.045. SCC 30.91D.220 defines "development" as "any residential construction or expansion of a building structure or use of land or any other change of use of a building, structure, or land that creates additional dwelling units."

8. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Medium Density Residential (UMDR: 6-12 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Medium Density Residential designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones." GPP at LU-89.

9. Health and Safety Issues.

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

The roads shown on the site plan meet the minimum requirements of Chapter 30.53A and the UFC for width and slope and turning radii. A cul-de-sac turnaround is not required where the roads end at units 1 & 9 because they do not exceed 150 feet in length from the intersections.

Fire hydrants are required per SCC 30.53A.300. The location of the proposed fire hydrant on the site plan and the water and sewer plan meets minimum spacing requirements of SCC 30.53A.320. The required fire flow for the fire hydrant is 1000 gpm at 20 psi for a 2 hour duration it shall be verified prior construction of any dwelling that the fire hydrant has been installed charged and operational with the required fire flow. In the event the required fire flow cannot be provided, a condition shall be added to the condo lot memo that requires the new dwellings in the LDMR to be provided with NFPA 13-D fire suppression systems.

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

Per SCC 30.53A.150 subsection 902.2.3 and UFC 901.4.2 Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering.

Exhibit 32 at 7. The Examiner concludes that health and safety concerns related to the fire code are met.

B. Pedestrian Facilities. Pedestrian walkways will be provided as required by county code, SCC 30.66B.410. Road widening along the property frontages, on Ash Way and 146th Street SW (Elm Road), will provide curb and gutter, with a seven-foot sidewalk along Ash Way and a five-foot sidewalk along Elm Road, with a five foot planter strip separating the sidewalks from the curbs in accordance with the EDDS, Section 3-04 and Standard Drawings 3-050 and 3-065. A walkway system of concrete curb, gutter and sidewalks and widened asphalt also exists along the opposite side of Ash Way all the way from 164th Street SW northerly to the subject property and beyond to 134th Street SW, and continuing northwesterly toward Odyssey Elementary School. Elementary and middle school children will be picked up at Ash Way and 146th Street SW, while high school students will be picked up at Ash Way and 147th Street SW. Exhibit 33 at 9-10.

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

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. *Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); *see Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The county's regulations are a direct expression of the criteria expressed by case law.
3. Chapter 30.42A SCC covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) The proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.¹

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

4. In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan. RCW 36.70.040. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447 *A Motion Vacating and Remanding the Hearing Examiner’s Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) Back to the Examiner to Supplement the Record at 3* (August 8, 2007), “The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.” The Examiner interprets this language, as well as the law applicable to rezones, to mean that **the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies.**
5. This rezone is a request to up-zone a property in the Urban Medium Density Residential (UMDR) Designation from R-7200 to LDMR to allow 10 units on this site. Although it is clear that this request fits within the UDMR designation (which allows up to 12 units per acre), as stated above, the analysis of consistency must go well beyond the designation and identify how the project is consistent with the policies in the plan.
6. The Land Use Element of the General Policy Plan (GPP) introduces the way in which Urban Growth Areas are planned for and how densities are to be determined:

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

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

General Policy Plan at LU-1.

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

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

- reduced dependence on the automobile;

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

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

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

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

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

- 2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.
 - 2.A.4 Any UGA shall provide opportunities for a mix of affordable housing types (e.g. small lot detached, townhouses, duplex, triplex, 6 to 8 unit apartment and small group housing units) within medium density residential areas.
 - 2.A.5 Medium and high density residential development (including elderly and disabled housing) shall be encouraged to locate, where possible, within walking distance of transit access or designated transit corridors, medical facilities, urban centers, parks, and recreational amenities.
7. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the Council in the adoption of the proposed plan and provide the Examiner a reasonable basis on which to analyze urban rezone proposals.

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

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

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

i. Is the development carefully sited?

- (a) Critical areas/shorelines.
 - (i) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
 - (ii) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (iii) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.³
- (b) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities? **(Policy LU 2.A.5)**

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

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

- (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 features such as landscaping, fencing, setbacks, or other design features to soften or eliminate those impacts. **(LU-15)**
 - (e) Will the development be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation? Has the opinion of both the County Fire Marshall and any local Fire District been placed in the record? **(LU-15)**
 - (f) Is the public health, safety and welfare adequately provided for (examples are safe pedestrian access, safe place for children to wait for school bus, adequate off street parking so that a fire truck can access development)? **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

8. Applying this test to the 146th Street LDMR project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:
- A. The area is already characterized by urban growth such that it has adequate existing public facilities and services to serve the development for the following types of facilities and services, as demonstrated below:
- i. Streets, roads and highways. The Examiner relies on Finding of Fact 6 in part to conclude that the development is adequately served by existing streets, roads and highways.
 - ii. Sidewalks. The applicant will be providing adequate pedestrian facilities as a part of the development proposal. See Finding of Fact 9B.
 - iii. Street and road lighting system. Street and road lighting systems currently exist along Ash Way, in the vicinity of the property and north of the property up to 134th Street SW, consistent with EDDS Section 7-02. Exhibit 33 at 6.
 - iv. Traffic signals. Traffic signals are located south of the property at Ash Way at the entrance to the existing Ash Way Park-and-Ride bus transit station, and at 164th Street SW. The County's analysis of the proposal does not indicate that any new signals are warranted for this proposal, according to SCC 30.66B.165 and EDDS Section 7-03.
 - v. Water systems. Water will be provided by Alderwood Sewer and Water District and the file contains a preliminary certificate of water availability. Exhibit 24.
 - vi. Sanitary Sewer Systems. Sewer will be provided by Alderwood Sewer and Water District and the file contains a preliminary certificate of sewer availability. Exhibit 24.
 - vii. Park and recreational facilities. As stated in Finding of Fact 7.B., the developer will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. See Snohomish County Parks Plan at page 41. These criteria, however, addresses existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the county. The Examiner can determine, based on a map located on the County Parks and Recreation Department website, that there are a number of county parks in the vicinity of the development, including Martha Lake Park, Meadowdale Park, Picnic Point Park, Possession Point Park, Nakeeta Beach Park, Hemlock Acres Park, and McCollum Park. In the future, the Examiner would like to hear from parks planners whether the parks level of service is met for citizens in each particular proposed development and how that may be determined at the planning level. The Parks Plan was not altogether clear that levels of service had been adopted for every type of park, although Objective CF 7.C of the GPP states, related to parks, "[m]onitor and maintain minimum LOS standards, as defined in the Comprehensive Park and Recreation Plan and the CIP, through adequate CIP funding."
 - viii. Storm and sanitary sewer disposal system: Stormwater disposal systems are provided by the State of Washington through right-of-way on I-5. Exhibit 33 at 6.

- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Fire District 1 has made no objections to the proposal, subject to specific comments to the plan review, elaborated in Finding 9.A. Police protection is provided by the Snohomish County Sheriff's Department. Exhibit 33.
 - x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit 26.
 - xi. Education: The site is served by the Mukilteo School District. Exhibit 28.
 - xii. Other services: There is sufficient electrical system capacity for the proposal, according to a letter from the Snohomish County PUD No. 1, dated June 8, 2007. Exhibit 27. Other common urban utilities such as telephone service, cable television service, natural gas service and garbage service are available. Exhibit 33.
- B. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A.
- i. The development is carefully sited.
 - (a) There are no critical areas or shorelines on the site or within close proximity to the site. (Policy LU 2.A.3)⁴
 - (b) The rezone or development is proposed in an area that is within walking distance of transit access. The subject property is adjacent to I-5, which is a designated transit corridor, and within walking distance, of approximately one mile from the bus transit centers at 128th Street SW and 164th Street SW. It is seven blocks from a bus stop at a Park and Ride lot. There are designated urban centers at 128th Street SW and I-5, directly north of the development, and 164th Street SW and I-5, directly south of the development. GPP at LU-18 As stated above in conclusion 5, there are multiple parks in the vicinity. See Exhibit 33. **(Policy LU 2.A.5)**
 - (c) The development made possible by the requested rezone may tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation because it is within walking or biking distance of urban services and facilities that will serve the proposal, which will promote those forms of transportation in place of automobiles. The proposed road widening along Ash Way includes extra width to accommodate a future bicycle lane. The proximity of the property to bus transit stations will encourage commuting by buses or carpools instead of using single occupancy vehicles. See Exhibit 33. **(Page LU-15)**

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

- ii. The rezone proposal is adequately integrated into the neighborhood.(See LU-15)
 - (a) The Examiner characterizes the neighborhood as changing. It appears that the single family uses are slowly but surely getting bought out and infill is occurring. Exhibit 8 is an aerial photograph which very clearly shows the property itself and the changing nature of the surrounding area. In the immediate vicinity, an LDMR development already exists on one side, and another new development is in process on the other side. Given the mix of uses already existing in the area, and the ability of the road system to handle it, this level of density appears appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas. **(LU-15, Policy 2.A.4)**
 - (b) The proposal will help provide a mix of affordable housing types, such as small lot detached units. This type of housing helps minimize the need for land, but providing a large number of houses. The cost of the development per unit is reduced, resulting in a more cost effective and affordable type of housing. Exhibit 33. **(Policy LU 2.A.4)**
 - (c) This area is characterized on the Municipal Urban Growth Areas Map as a “Gap Area Not Claimed by Any City” *See* Map 3 of the GPP. There are no city comments in the record. **(See Policy I.C.2)**

- iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)
 - (a) The proposed density of this development is 10.1 units per acre. This density is one that is not inconsistent with other densities in this changing area. Although dense, landscaping is provided in the front along with a sidewalk, and the densest part of the development back up to the I-5 concrete barrier, such that the visual impact is lessened from the street. The Examiner concludes that adequate efforts have been made to design the development to minimize the visual impacts of the development. *See* Exhibit 33. **(See LU-15)**
 - (b) The applicant indicates the building design will be consistent with that of more recent LDMR developments in the area. As stated above, the character of the neighborhood overall is changing. The proposed building envelopes are about 1200 square feet, and the proposed building height is two stories with a maximum 35 feet height. The development will be at the same elevation as the rest of the neighborhood, as the lot is extremely flat. The elevation should not affect the perception of the development negatively in any way. **(LU-15)**
 - (c) The Examiner is not aware of any “selective and innovative land use measures” that will be used to preserve the character of the stable residential neighborhood. **(See Policy HO 2.A.4)** In this case, this policy is not applicable because the Examiner would not characterize this neighborhood as a “stable residential neighborhood”.

- (d) As the Examiner indicated above in Conclusion 6(b)(i), the developer is making effective and intelligent use of good site design and landscaping to mitigate what otherwise could be negative impacts of the higher density. **(LU-15)**
- (e) The development appears to be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation. The opinion of the local Fire District appears in the record at Exhibit 27, as stated above, and provides guidance to PDS for requirements for the site plan review. **(LU-15)**
- (f) The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. There appears to be adequate pedestrian access to Ash Way, a safe place for children to wait for a school bus, and adequate fire access has or will be provided as a condition of the development. *See* Finding of Fact 9, above. **(See LU-15)** (*See* also discussion of public health, safety and welfare criteria, below).

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

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

Motion 07-447 at 3.

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

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

DECISION

The request for a Rezone from R-7200 to LDMR for this property is granted.

Decision issued this 20th day of March 2008.

Barbara. Dykes, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **MARCH 31, 2008**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.”** [SCC 30.72.065]

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved Party of Record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a Petition for Reconsideration but may file an appeal directly to the County Council. If a Petition for Reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the Petition for Reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 3, 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.