

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

DATE OF DECISION: April 7, 2008

PLAT/PROJECT NAME: Sahagun Property

APPLICANT/
LANDOWNER: Salvador Sahagun
24204 23rd AVE SE
Bothell, WA 98201

FILE NO.: 07-103700-000-00-LU

TYPE OF REQUEST: Rezone from R-9600 to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): Approved

BASIC INFORMATION

GENERAL LOCATION: The property is Located in the SE ¼ of Section 27, Township 28 North, Range 4 East, W.M., Snohomish County. The site address is 2815 Russell Way, Lynnwood, WA.

ACREAGE: .45

ZONING: CURRENT: R-9,600
PROPOSED: Low Density Multiple Residential (LDMR)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential

School District: Mukilteo School District No. 6

Fire District: Fire District No. 1

Water Source: Alderwood Sewer and Water District

Sewer Service: Alderwood Sewer and Water

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services: Approve

INTRODUCTION

The applicant filed the Master Application on May 30, 2007. (Exhibit 1)

The Deputy Hearing Examiner (Examiner) Ed Good made a site familiarization visit on January 21, 2008 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 10, 11 and 12)

A SEPA determination was made on December 17, 2007. (Exhibit 9) No appeal was filed.

The Examiner, Ed Good held an open record hearing on January 29, 2008, the 132nd 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 January 29, 2008 at 9:09 a.m.

1. The Examiner, Ed Good, indicated that he has 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, planner from Snohomish County Department of Planning and Development Services, appeared and testified under oath. He presented the county staff report.
3. David Wu, 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 20, 2008, Examiner Pro Tem James Densley listened to the record, reviewed the file and made a decision on this matter.

The hearing concluded at 9:40 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.
2. Nature of Request: The applicant is requesting approval of a rezone from R-9600 to Low Density Multiple Residential (LDMR) for a .45 acre site. There is no specific development plan accompanying this request, but given the size of the property, the maximum allowable future density would be four dwelling units.
3. Site Description: The site is generally flat to rolling, and the maximum slope is less than 15%. The site contains a mixture of grasses, and there are no trees on the site. There are no threatened or endangered species known to be on or near the site, and the site provides habitat for small animals typical to the urban setting, e.g. squirrels, mice, etc. There is an existing older dwelling on the site, and it will be demolished when the property is eventually developed.
4. Adjacent zoning: The neighborhood around the proposal is a mixture of LDMR, PRD 7200, and PRD 9600. Adjacent uses are primarily single-family residences or vacant properties. There is new construction of LDMR neighborhoods across the street and in the immediate area of this proposal. The site is also within two blocks of shopping and light industrial activity. Clearly, this is a neighborhood in transition, e.g. it is evolving as a revitalized urban neighborhood.
5. Park Mitigation: The project will comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 for each new single-family residential unit.
6. Traffic: PDS Traffic shall review any future development proposals for compliance with Title 13 and Chapter 30.66B of the Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. No concurrency determinations, traffic mitigation fees, and/or road improvements apply at this time.

PDS shall also make findings regarding pedestrian safety and safe walking conditions for school children that may reside in any future development of this property.
7. School Impact: 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. However, school mitigation fees do not apply at this time, since no development is proposed as part of this rezone.
8. Critical Areas: No critical areas are known to exist on or near the site.
9. 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 Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively. The subject property is designated Urban Medium Density Residential (6-12 du/acres) 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 "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 12 dwelling units per acre. An implementing zone includes the LDMR zone. The examiner finds the requested rezone to be consistent with the General Policy Plan's Urban Medium Density Residential designation of the property.

PDS reviewed and analyzed the rezone request for purposes of assisting in establishing consistency of the request with the GMA Comprehensive Plan and for establishing that the proposal bears a substantial relationship to the public health, safety and welfare. The Examiner agrees with this analysis and so finds.

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

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

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

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

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

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

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

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

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

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

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

PDS review and analysis of the rezone request found that current GMA adopted regulations, governing future site development will implement such Goals, Objectives, and Policies development as reviewed and analyzed under the subject request, bears a substantial relationship to the public health, safety and welfare. The Examiner agrees with the analysis of PDS and so finds that the project implements the GMA.

10. Zoning: This request for a change of zoning from R-9600 to LDMR is consistent with the GPP Future Land Use Map designation of Urban Medium Density Residential (6-12 du/acre) in this area. The LDMR zone is an implementing zone for the Urban Medium 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.

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 LU-1.

Goal LU 2 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.

In summary, the area in which this rezone is located is characterized by increasing urban growth that has adequate existing facilities and service capacity. Land use in this area is also transitioning from low density, single-family residential to the medium urban densities envisioned in the county's Future Land Use Map. The rezone site is located with two blocks of shopping and public transportation, has close access to commercial and industrial employment, and is within two blocks of two state highways.

12. Public water and sewer service will be available for this development as well as electrical power.
13. Since this request involves rezoning only, any details or conditions which would normally come from DPW will be done at the time of administrative plat approval and are not required here.
14. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
15. Public comments included concerns regarding parking and open spaces. Testimony presented in the hearing indicated that the project will be subject to amendments in the Snohomish County Code which will provide for additional open space surrounding each unit. The applicant's agent testified that a landscaping expert will provide guidance which will be followed prior to any development on the site. The agent also testified that parking as required by the code will be provided by the project.
16. 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 and adequate provisions for the public health, safety and general welfare exist to serve the proposal.
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 R- 9600 to Low Density Multiple Residential (LDMR) for this property is hereby APPROVED.

Decision issued this 7th 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 **APRIL 17, 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 21, 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.