

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

DATE OF DECISION: April 4, 2008

PROJECT NAME: **ALDERWOOD ACRES LDMR**

APPLICANT/
LANDOWNER: SCI Realty Investments LLC

FILE NO: 07-104061-000-00-LU

REQUEST: Rezone of 1.7 acres from R-7200 to LDMR
(Low Density Multiple Residential)

DECISION: APPROVE

BASIC INFORMATION

GENERAL LOCATION: 13614 Ash Way, within a portion of Section 36,
Township 28 North, Range 4 East, W.M.

ACREAGE: 1.7

ZONING: CURRENT: R-7200
PROPOSED: LDMR

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

UTILITIES:
Water/Sewer: Alderwood Water District

SCHOOL DISTRICT: Mukilteo School District No. 6

FIRE DISTRICT: No. 1

PROCEDURE

The applicant filed the Master Permit Application on May 23, 2007.

The environmental and regulatory analysis for the subject rezone included the applicant's concurrent request for future grading and administrative site plan approval to construct 17 new single-family detached residences in addition to retaining one of two existing single-family homes.

The rezone application and concurrent grading request were deemed complete as of the date of submittal for regulatory purposes.

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued by the County on June 18, 2007. The DNS was not appealed.

The Examiner held an open record public hearing on September 12, 2007. The County was represented by Scott Whitcutt, Planner. David Waite represented the Applicant. No member of the general public attended. Witnesses were sworn, testimony was presented and exhibits were entered.

On October 17, 2007, the Examiner issued a decision denying the rezone request.

On October 29, 2007, Petitions for Reconsideration were filed on behalf of the applicant. Subsequently, the Examiner asked for written comments from interested parties and then on December 11, 2007, the Examiner reopened the record for further engineering study to be generated and presented on the subject of storm drainage.

When the record was reopened, the October 17, 2007 decision was vacated in anticipation of the issuance of a new decision following submission of a supplemental staff report and a further hearing on reconsideration to be held on January 8, 2008.

PUBLIC HEARING ON RECONSIDERATION

The public hearing commenced on January 8, 2008, at 3:39 p.m.

1. Representing PDS was Scott Whitcutt, Planner.
2. Representing the Applicant was Mark Flury, Principal Engineer, Flury-Wyrick & Associates, Inc.
3. No members of the general public were in attendance.

The hearing concluded at 4:11 p.m.

NOTE: For a complete record, an electronic recording of this hearing is available through the Office of the Hearing Examiner.

FINDINGS OF FACT

A. RECONSIDERATION

1. The Examiner's initial denial of the rezone derived from his analysis of project level facts involved in the concurrent grading and site plan approval requests. In particular, he was concerned with storm drainage questions raised by the owner of abutting property at the southwest corner of the subject site.

2. The citizen comments in general reflect a concern for the cumulative effect of denser development in the vicinity and a perception that drainage facilities are becoming overloaded with adverse impacts downstream toward Lake Stickney
3. The Examiner concluded that the record was insufficient on the question of the downstream additive effect of stormwater from the subject property when combined with stormwater from upstream in the drainage. In reopening the record he also expressed an interest in more historical information on storm water problems in the area surrounding Lake Stickney.
4. The subject site is comprised of one drainage basin which is tributary to Lake Stickney. There is no history of drainage complaints in this particular basin downstream of the site.
5. Ash Way runs north-south along the eastern boundary of the subject site. To the west and southwest, separated by a tier of lots, is Lake Stickney Drive. Lake Stickney itself is further to the west.
6. Stormwater from the site drains downslope to the west and exits from the low point at the west side of the property to a pasture on adjacent property and to a creek located along the south property line. This creek ultimately discharges to a roadside ditch along Lake Stickney Drive. Further downstream this ditch receives the runoff collected from the Ash Way right-of-way. This point is the confluence of two drainages. The combined flow is conveyed under Lake Stickney Drive by means of a 24 inch diameter culvert.
7. If the applicant's project goes forward, on-site stormwater management facilities are designed to prevent post-development flows off the site from being worse than they are under pre-development conditions. Detention will be provided by a detention wet pond sized according to current County requirements, which include a 30% factor of safety applied to the volume. The wet pond will be constructed in glacial till soils which are practically impervious to stormwater infiltration. Runoff from the developed areas will be collected and conveyed to the proposed pond through a series of pipes and catch basins. The stormwater will be detained, treated and ultimately metered out through a level spreader at the low point on the west side of the property.
8. Supplemental analysis provided in response to the re-opening of the record showed that the drainage in which the subject property lies comprises only about 10.3 acres. The ditch along Lake Stickney Drive which collects the runoff from this area can adequately convey about 24 cubic feet per second (cfs). The 100-year flow rate for this 10.3 acre area is 4.77 cfs.
9. The site's drainage basin plus the Ash Way right-of-way basin, mentioned above, combine to drain approximately 71 acres. The 24-inch culvert under Lake Stickney Road has the capacity to convey approximately 20.89 cfs. The 100-year Flow rate for the 71 acres is about 18.43 cfs.
10. Pictures and measurements above, at and below the 24-inch culvert were during the runoff from the record-breaking storm of December 2007 which caused widespread flooding throughout western Washington. No flooding of the

downstream corridor involved here was observed. Indeed, the photos visually demonstrate that the 24-inch culvert had obvious additional capacity even at the height of the runoff. At the same time, the flow in the ditch which drains the 10.3 acre drainage to which the subject site contributes was nowhere near capacity.

11. Testimony at the reconsideration hearing noted that the subject property constitutes a fraction of one percent of the Lake Stickney basin.
12. The County Staff reviewed the supplemental information provided and also conducted an independent site visit on December 20, 2007. The Staff concurs with the supplemental report and reiterates its original recommendation for approval of the rezone.
13. Based on the showing made on reconsideration, the Examiner finds that the stormwater system in the immediate area is adequate to handle anticipated runoff and that the contribution from the subject property, if developed as proposed, is unlikely to add stormflows that adversely affect that capacity.

B. REZONE REQUEST

14. Request. The applicant is request a rezone for 1.7 acres site from R-7,200 to LDMR.
15. Site and Vicinity. The site is a rectangular property sloping east to west from frontage on Ash Way. It is currently is developed with two single-family residences. The site is surrounded by R-7,200 zoning and single-family residential uses. Properties to the north, east and south have a mixture of LDMR and MR zoning consistent with the area's Comprehensive Plan zoning designation. The neighborhood evidences the ongoing urban transition between single-family and multi-unit development.
16. Rezone Criteria. In determining whether a rezone should be approved, the rezone proposal must meet the applicable decisional criteria set forth in SCC 30.42.100. The criteria are: (1) a proposal must be consistent with the GMA Comprehensive Plan; (2) the proposal must bear a substantial relationship to the public health, safety and welfare; (3) where applicable, the minimum zoning criteria in Chapters 30.31A through 30.31F SCC must be met. Criterion 3 is not applicable to the LDMR rezone or proposed future development activity associated with the subject site.
17. Consistency with Comprehensive Plan and Public Health, Safety and Welfare. The Staff Report contains the following discussion on the proposal's compliance with the applicable approval criteria. The Examiner concurs with this analysis and adopts the same.

PDS review and analysis of the rezone finds that: the LDMR rezone proposal is consistent with the General Policy Plan (GPP) Future Land Use Map (FLUM) Urban Medium Density Residential (UMDR) designation of the property; LDMR is an implementing zone for a UMDR designation; and implementation of the GPP bears a substantial relationship to the public health, safety and

welfare; and, that failure to approve the implementing rezone would be inconsistent with such a relationship.

In addition, PDS review and analysis of the concurrent multi-unit development activities proposed under the requested rezone finds that both the requested rezone and proposed development activity is consistent with the type and character of land use permitted; and, the future development activities proposed can meet the implementing GMA regulatory codes governing density, design, and development standards.

Thus, PDS review and analysis of the requested rezone, (as well as the concurrent request for approval of future development activities) finds that implementation of the GMA Comprehensive Plan UMDR designation, the type and character of land use permitted, and future multi-unity development associated with construction reviews, bears a substantial relationship to the public health, safety and welfare; and, that failure to approve the implementing rezone would be inconsistent with such a relationship.

Previous Examiner decisions have noted that 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.”

PDS finds that this “Urban Development Patterns” statement provides guidance in determining consistency of a rezone with the GPP by identifying areas of potential impacts tied to individual GPP elements and their goals, objectives and policies of the individual plan elements through construction reviews associated with development activity. Further, adopted GMA based development regulations assist in tying construction approvals to such implementation of the GPP.

PDS finds that the proposed rezone 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.

PDS finds that the proposed rezone will implement as well as encourage the variety of mix of urban housing types in traditional single-family and multi-family neighborhoods.

Concurrent PDS review and analysis of the proposed development activity associated with implementing the subject rezone will encourage and implement the variety of mix of urban

housing types in the general vicinity, including traditional single-family and infill of multi-family neighborhood development.

Concurrent PDS review and analysis of the proposed development activity associated with implementing the subject rezone and tied to GMA adopted development regulations assuring consistency with GPP goals, objectives, and policies will allow for the mix of housing types being “carefully sited, well designed, and sensitively integrated into existing communities.”

PDS thus finds that implementing the proposed rezone to broaden the availability of a variety of future housing types tied to GMA adopted development regulations addressing siting, design, and sensitivity within existing communities bears a substantial relationship to the public health, safety and welfare.

PDS finds that the subject rezone is a mechanism rather than a specific development activity for implementing GPP elements, goals, objectives and policies. Though SCC 30.42A.100 requires evaluation under the GPP when adopted development regulations do not exist, specific GMA adopted development regulations address specific design criteria including density, landscape buffering, storm water facilities, public utilities, critical areas protection, and impacts associated with transportation needs supersede as the implementing tool for meeting GPP goals, objectives and policies upon county adoption of specific GMA development regulations.

PDS review and analysis of a concurrent proposal for development activities associated with the subject rezone finds that such development activities can conform to GMA adopted development regulations. Specific analysis included impacts associated with traffic, storm drainage, parks and recreation, public schools, and zoning code provisions addressing compatibility with surrounding properties. Future approval of construction permits consistent with such evaluation will substantiate GMA code compliance prior to permit issuance. Such approvals will sufficiently mitigate for future impacts associated with development patterns, site design and sensitively integrating site development into the immediate community.

PDS 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 both the rezone and future development activity being in conformance with GMA policies.

PDS 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 specific citizen comments:

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."

Transportation Policy TR 1.C.2 - "Adequate access to and circulation within all developments shall be maintained for emergency service..."

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."

PDS review and analysis of the rezone and the concurrent proposal for development activity finds that current GMA adopted regulations, governing future site development activity, will implement such Goals, Objectives, and Policies and thus the specific development activity, as well as the rezone, bears a substantial relationship to the public health, safety and welfare.

18. Zoning. The Staff report contains the following discussion on zoning compliance. The Examiner concurs with this analysis and adopts the same.

(Chapter 30.2 and 30.42A.010 and 30.42A.100 SCC)

PDS review and analysis has determined the subject rezone meets the bulk regulations applicable to LDMR zoning. PDS finds that the subject rezone conforms to the comprehensive plan and bears a substantial relationship to the public health, safety, and welfare as indicated in GMA Comprehensive Plan findings.

Though the subject rezone is not considered a development activity, the purpose and applicability of 30.42A is to "establish the procedure and criteria for site-specific rezones." A rezone is "the mechanism to change the official zoning map and any applicable conditions tied to the zoning of a particular property." This chapter provision "applies to site specific rezone proposals that conform to the comprehensive plan" and thus applies to the subject rezone.

PDS review and analysis of the subject site, in relationship to the proposed rezone, discloses no site-specific issues preventing multi-unit development meeting GMA based regulatory codes applicable to potential multi-unit site development.

PDS recognizes the objections and concerns expressed in citizen comments. A summary of concerns include: fire access to future residential units; available on-site open space and recreation opportunities for future residents; future provisions for on-site parking; storm water detention facilities; scouring of existing ditches; and general urban growth infill within urban areas.

PDS review and analysis of applicable policies (indicated in this staff report) and GMA development regulations adopted to implement standards for future multi-unit development finds that adopted development regulations address potential impacts associated with future site development and that no site-specific development conditions are necessary for approving the subject rezone.

Though the subject rezone is not considered a development activity, PDS finds that preliminary review of the concurrent development activity proposal has established that: multi-unit development can be achieved on the subject property in conformance to GMA adopted construction regulations and standards; and that future construction approvals will document such code compliance prior to permit issuance.

19. Environmental Policy. PDS issued a Determination of Non-Significance (DNS) for the subject application on July 18, 2007. The DNS was not appealed.
20. Adopted Code Requirements. Though the subject rezone is not considered a development activity, the Staff reviewed the multi-unit development proposal for compliance with mitigation requirements for parks, traffic, and schools, and with drainage and grading regulations. Preliminary review showed that the development will be able to meet relevant regulations and that the regulatory provisions that apply will be adequate to mitigate future impacts associated with development. Again, the Examiner concurs with this analysis and adopts the same.
21. Any conclusion herein which may be deemed a finding 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. The burden is on the applicant to demonstrate to the Examiner that the proposed rezone both meets Comprehensive Plan policies, and bears a substantial relationship to the public health, safety and welfare. See SCC 30.42A.100.
3. The initial decision herein concluded that, for lack of sufficient information on likely drainage impacts, the applicant had not carried his burden to show that the proposal has a substantial relationship to the public health, safety and welfare.
4. The information, both written and oral, acquired in the reconsideration process supplied the preponderance of evidence necessary to carry the applicant's burden based on the entire record, the Examiner concludes that the proposal does bear a substantial relationship to the public health, safety and welfare.
5. The record also supports a conclusion that the proposed rezone is consistent with applicable Comprehensive Plan policies.
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

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

Decision issued this 4th day of April, 2008.

Wick Dufford, Hearing Examiner Pro Tempore

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 14, 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 18, 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 the case.

Staff Distribution:

Department of Planning and Development Services: Scott Whitcutt

<p>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.</p>
