

**DECISION OF THE SNOHOMISH
COUNTY HEARING EXAMINER PRO TEMPORE**

DATE OF DECISION: May 14, 2008
PROJECT NAME: **GIBSON ROAD LLC**
APPLICANT/OWNER: Gibson Road Group LLC
FILE NO: 08-100661-000-00-LU
TYPE OF REQUEST: **REZONE** from Residential-9600 (R-9600) to Low Density Multiple Residential (LDMR)
DECISION: **APPROVE**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 2430 Gibson Road, situated in Section 26, Township 28 North, Range 4 East, W.M.
ACREAGE: .99 acres
CONCURRENT SITE PLAN APPROVAL: 11 single-family detached units
CURRENT ZONING: R-9600
PROPOSED ZONING: LDMR

COMPREHENSIVE PLAN

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

UTILITIES

Water and Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo No. 6

FIRE DISTRICT: No. 1

PDS RECOMMENDATION: Approve

INTRODUCTION

The applicant filed the Master Application on January 23, 2008 (Exhibit 1). The application was determined to be complete as of the date of submittal.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by County Code (Exhibits 6A, 6B and 6C).

A Determination on Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on March 18, 2008. No appeal was filed.

The Examiner held an open record public hearing on April 30, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered. The decision here is based on the record made.

PUBLIC HEARING

The public hearing commenced on April 30, 2008 at 11:02 a.m.

1. The applicant was represented by Barry Constant, P.E., Western Engineers.
2. PDS was represented by Scott Whitcutt, Senior Planner.
3. There was no public testimony.

The hearing concluded at 11:12 a.m.

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

FINDINGS OF FACT

1. The master list of Exhibits is in the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. The PDS Staff Report has correctly analyzed the nature of the application, the application's consistency with adopted codes, policies and land use regulations. The Staff Report is hereby adopted by the Examiner as if set forth in full herein.
3. There have been no agency or public comments indicating concern over the subject rezone or the future development activity. There are no particular issues of concern regarding the future potential for multi-family development of the site.
4. The applicant seeks a rezone from R-9600 to Low Density Multiple Residential (LDMR). The applicant has also filed a concurrent SFDU Site Development Plan and grading permit for administrative approval. The plan calls for the development of 11 single-family detached units on a .99 acre site. The plan includes storm water detention, frontage improvements, and payment of appropriate impact fees. The development will probably be condominiumized.

5. The subject site is a generally square parcel that is flat with a small portion in the southwest corner having slopes of 19%. The site is undeveloped and covered with deciduous trees, shrubs and grass. There are no on-site or off-site critical areas associated with the property.
6. R-7,200 zoning and single-family residences lie adjacent to the southwest boundary of the site. R-9600 zoning and single-family residences exist adjacent to the northwestern site boundary. R-9600 zoning and single-family residences lie to the north. LMDR zoning for multi-unit development lies to the northeast across Gibson Road. General Commercial zoning and a mixture of commercial development and underdeveloped commercial sites lie to the east.
7. The subject property is designated Urban Medium Density Residential (6-12 du/ac) on the General Policy Plan (GPP) Future Land Use map and is located within an Urban Growth Area (UGA). Under 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."
8. LDMR, the proposed zone, is an implementing zone for land designated UMDR (6-12 du/ac) on the GPP Future Land Use map. The requested rezone is consistent with the adopted Comprehensive Plan site zoning designation.
9. In the context of the Growth Management Act, the inquiry for site-specific rezones goes beyond mere consistency with the map designation. The applicant supplied a detailed Comprehensive Plan Overview Letter, dated April 15, 2008, providing a breakdown of how the project meets applicable Comprehensive Plan policies (Exhibit 12). The letter outlines specific features of the proposed development and explains how the project will fit in with and contribute to adequate existing facilities in the area (LU-1). The discussion includes streets and highways, sidewalks, street and road lighting, traffic, water and sewer, open space and parks, storm water management, fire protection, law enforcement, school bus stops and public transit stops.
10. The applicant's April 25, 2008 letter also addresses consistency with the need for development patterns that use urban land more efficiently (LU-2) and consistency with concentration and intensity at an appropriate location (LU-2A.) The discussion shows how the rezone and project will allow the property to continue existing development patterns of the neighborhood. The surrounding properties range from R-9600 to General Commercial. As to density, the proposed LDMR zoning falls in the middle of this range.
11. Finally the applicant's letter argues that the rezone is sensitively integrated into the existing community (LU-15). The project will provide new single-family housing which will be consistent with the future planned development of adjacent residentially zoned property. The project design is intended to fit into the patterns of development nearby.
12. PDS and the Examiner concur that the rezone and proposed development will meet the policies of the Comprehensive Plan.

13. Moreover, detailed PDS review of the proposed site plan shows that the development can meet the bulk regulations applicable to LMDR zoning, that adequate provisions have been made for needed infrastructure, and that compliance will be achieved with all applicable development regulations of the UDC.
14. The Examiner finds that the rezone bears a substantial relationship to the public health, safety and welfare.
15. Since the request involves rezoning only, any details or conditions which would normally come from PDS or DPW will be done at the time of administrative site plan approval and are not required here.
16. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over this proceeding (Type 2).
2. The requirements of SEPA have been met.
3. Under SCC 30.42A.100, the Hearing Examiner may approve a rezone only when all of the following decision criteria are met:
 - a) The proposal is consistent with the Comprehensive Plan, and;
 - b) The proposal bears a substantial relationship to the public health, safety and welfare, and;
 - c) Where applicable, minimum zoning criteria found in Chapters 30.31A through F SCC are met.
4. The minimum zoning criteria found in Chapters 30.31A through F SCC are not applicable to this application.
5. The findings support a conclusion that the application is complies with the criteria of SCC 30.42A.100(a) and (b).
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The request for a **REZONE** from Residential-9600 (R-9600) to Low Density Multiple Residential (LDMR) for this property is hereby **APPROVED**.

Decision issued this 14th day of May, 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 **May 24, 2008**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved Party of Record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a Petition for Reconsideration but may file an appeal directly to the County Council. If a Petition for Reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the Petition for Reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **MAY 28, 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: Scott Whitcutt

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.