

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

DATE OF DECISION: October 9, 2008  
PROJECT NAME: **ELTINGE REZONE**  
APPLICANT/OWNER: Adam Eltinge  
FILE NO: 08-101904-000-00-LU  
TYPE OF REQUEST: **REZONE**  
DECISION: **APPROVE** Rezone

**BASIC INFORMATION**

PROJECT LOCATION: 509 Harvest Road, northwest of the intersection of Harvest Road and Winesap Road within Sec. 19, T27N, R5E. W.M.  
ACREAGE: 1.66 acres  
CURRENT ZONING: R-9,600  
PROPOSED ZONING: R-7,200  
COMPREHENSIVE PLAN  
General Policy Plan: Urban Low Density Residential (4-6 du/ac)  
SCHOOL DISTRICT: Northshore #417  
UTILITIES  
Water and Sewer: Alderwood Water and Wastewater District  
FIRE DISTRICT: No. 10  
PDS  
RECOMMENDATION: Approve

## **INTRODUCTION**

An application (06-133302-SP) was submitted on May 15, 2007, for a six-lot short plat. This was revised to a seven-lot short plat in a resubmittal dated February 26, 2008. A rezoning is needed to accommodate the additional lot. Therefore, a rezoning application was also submitted on February 26, 2008. The rezoning application was determined to be complete as of the date of submittal for regulatory purposes. A resubmittal was received on July 14, 2008.

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

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on August 7, 2008. No appeal was filed.

The Examiner held an open record hearing on September 17, 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 September 17, 2008, at 3:00 p.m.

1. The applicant was represented by Matthew Jones, P.E., of Core Design.
2. PDS was represented by Dorothy Crossman, Senior Planner.
3. There was no public testimony.

The hearing concluded at 3:08 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**

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 and 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. The proposal is for a rezoning from R-9,600 to R-7200 with a concurrent seven-lot short plat using lot size averaging. The short plat will be processed as an administrative decision and is dependent upon approval of the rezoning.

4. There was one comment letter from a member of the public, expressing concerns about access, risks from demolition of existing structures and the location of a boundary line. The applicant's consulting engineer responded to this comment letter and addressed the matters raised. He noted that access to Lots 3 and 6 will be through a shared driveway off of Winesap Road that is located on the south side of Lot 6. Access to the remaining lots will via a new private access road that will connect to Winesap at the approximate intersection with Harvest Road. He said the structures to be demolished are not adjacent to the commenter's property. However, some existing planters, concrete paths and an existing septic system will be removed from adjacent property using Best Management Practices with care taken to contain and properly dispose of debris. The request for a boundary line survey was forwarded to the property owner. PDS noted that the County requires the resolution of all encroachments prior to the recording of a final short plat and that all lot corners must be set by a licensed surveyor.
5. The subject 1.66 acre site is bordered by residences to the west and east, by Harvest Road to the south and by Winesap Road to the east. The northern portion of the property is encumbered by a 175-foot transmission line easement which will be used for open space and a portion of the private road. At present a single-family residence, detached garage, shared gravel driveway and miscellaneous structures (e.g., planter beds, decks) occupy the site. The residence and garage will remain on Lot 7; the other structures will be removed.
6. Water and sewer will be provided by the Alderwood Water and Wastewater District. Certificates of Water and Sewer Availability were received on March 14, 2008. Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project.
7. There are no critical areas located on or within 100 feet of the subject property.
8. The adjacent properties to the north and northwest are zoned Low Density Multiple Residential (LDMR) with single-family residential uses. Properties adjacent to the west, south, and east are zoned R-9.600 with existing residential uses.
9. PDS has determined the appropriate transportation impact fees to be paid and conditions specifying the proper amounts are to be set forth in the administrative approval. Concurrency standards are met. The proposal will not impact any inadequate road condition locations nor will it create any.
10. Full urban frontage improvements shall be required along the frontage on Harvest Road and on Winesap Road. On both roads these consist of:
  - (a) Pavement in an 18 foot width from roadway centerline to the face of the curb;
  - (b) Concrete curb and gutter;
  - (c) Five-foot-wide planter strip;
  - (d) Seven –foot-wide concrete sidewalk.

11. As noted, access to Lots 3 and 6 will be via private shared driveway off of Winesap Road. Access to Lots 1, 2, 4, 5, and 7 will be via a private road that meets with Winesap Road near its intersection with Harvest Road. Three existing adjacent lots will also use this private road. The private road is proposed to meet applicable road standards, including a 40-foot radius cul-de-sac at the road end. An EDDS deviation to reduce the width of the private road from 28 feet to 24 feet was approved. Curb and gutter will be installed. There will be a sidewalk on one side.
12. The rights-of-way along both Winesap and Harvest Roads currently have the required width and so no additional right-of-way will need to be dedicated.
13. Children from the proposed development will take the school bus from a stop at Winesap Road and 197<sup>th</sup> Street SE. After the construction of frontage improvements, adequate pedestrian facilities will exist to this bus stop location. No off-site pedestrian facilities will be required.
14. Appropriate impact fees will be required for parks and schools.
15. Approximately 25,000 square feet of new impervious surface is being created on the site. Stormwater will be collected and conveyed to a detention vault under the private road. (The detention facility is in a separate tract which also serves as the access and utility easement.) Releases from the detention vault will be through a control structure and conveyed to a storm filter vault for water quality treatment. From the filter, runoff will be routed to the existing conveyance system in the right-of-way which flows to a 12-inch diameter public stormwater conveyance system under Winesap Road and down Harvest Road.
16. The private road as proposed will meet the minimum Fire Code requirements for width, slope and turn-around radius. An existing fire hydrant is located approximately 65 feet northwest of the property on the eastern side of Winesap Road. A new fire hydrant will be provided within the private access road about 350 feet north of its intersection with Harvest Road.
17. The subject property is located within an Urban Growth Area (UGA), and is designated by the Comprehensive Plan as Urban Low Density Residential (ULDR – 4-6 du/ac). According to the General Policy Plan, ULDR “covers various sub-area plan designations which allow mostly detached housing developments on larger lot sizes.” The proposed R-7,200 zoning is an implementing zone for ULDR. The proposed project implements and is consistent with the Plan’s ULDR designation.
18. The rezone analysis in the application notes that the surrounding land is zoned either R-9,600 or LDMR and states that since “this project is right on the border of higher density zones, increasing the zoning to R-7200 will act as a natural buffer between the two zones.” The proposal will provide a transition that is compatible with the surrounding development.

19. The proposed rezone and proposed development plan are consistent with the “Urban Development Patterns” statement for encouraging and broadening the mix of urban housing types, promoting more efficient use of land within UGAs and, through infill, reducing the consumption of rural lands.
20. The Staff Report contains a thorough review of Comprehensive Plan goals and policies that will be carried out by the subject development. The Examiner adopts this discussion.
21. The Examiner concurs with Staff that the rezone is consistent with the Comprehensive Plan.
22. PDS has determined that the proposed development will meet the lot size requirements (including averaging provisions), bulk regulations, and other requirements for R-7,200 zoning. In addition, Staff review has concluded that the specific proposal will be consistent with all other applicable development regulations. The citizen concerns expressed in this file have been adequately addressed.
23. Accordingly the Examiner finds that the proposal bears a substantial relationship to the public health, safety, and welfare.
24. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONCLUSIONS OF LAW**

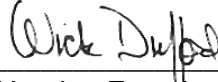
1. The Examiner has jurisdiction over this proceeding.
2. The requirements of SEPA have been met.
3. Under SCC 30.42A.100, the Hearing Examiner may approve a rezone only when all of the following criteria are met:
  - a) The proposal is consistent with the comprehensive plan.
  - b) The proposal bears a substantial relationship to the public health, safety and welfare; and
  - c) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F are met.
4. Based on the findings, the Examiner concludes that the proposal meets the relevant criteria for approval of a rezone. Chapters 30.31A through 30.31F do not apply.
5. Adequate public services are available to serve the proposal.
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## DECISION

The request for approval of a Rezone from R-9,600 to R-7,200 is **GRANTED**.

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

Decision issued this 9th day of October, 2008



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Wick Dufford, Hearing Examiner Pro Tempore

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **OCTOBER 20, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **OCTOBER 23, 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.

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Staff Distribution:

Department of Planning and Development Services: Dorothy Crossman

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.