

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: October 17, 2008

PLAT/PROJECT NAME: *Serene Way SFDU*

APPLICANT/
LANDOWNER: Al Ostman 22nd St. Townhouses LLC
P.O. BOX 2327
LYNNWOOD, WA 98036

FILE NO.: 08-106527 LU

TYPE OF REQUEST: Rezone from R-8,400 to LDMR

DECISION (SUMMARY): APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located at 3617 Serene Way, locating in Section 34, Township 28 North, Range 4 East, W.M., Snohomish County, Washington.

ACREAGE: .34 acres

ZONING: CURRENT: R-8,400
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo School District No. 6

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services: Approve

INTRODUCTION

The applicant filed the Mater Permit Application on June 30, 2008. (Exhibit A1)

The Hearing Examiner (Examiner) made a site familiarization visit on October 13, 2008 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits F1 through F3)

A SEPA determination was made on September 4, 2008. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on October 15, 2008, the 79th 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 October 15, 2008, at 1:05 p.m.

1. The Examiner 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. Scott Whitcutt and Paul Drago appeared on behalf of PDS and presented the staff report.
3. John Bissell, the applicant's agent, appeared and testified about the nature of the rezone request.
4. No one appeared in opposition to the request.

The hearing concluded at 1:40 p.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. The applicant has submitted application for rezoning a .34 acre property from R-8,400 to Low Density Multiple Residential (LDMR).

The applicant has also submitted concurrently administrative applications for: subsequent single-family detached unit site plan approval; and a grading permit for site preparation and construction of 3 single-family residences, 700 cubic yards of earthwork, storm water facilities allowing 8,262 square feet of impervious surface, landscaping, and parking area improvements. The concurrent development proposal has been used as a basis for establishing rezone consistency with the comprehensive plan as well as it bearing a substantial relationship to the public health, safety, and welfare. These administrative applications are processed by PDS.

3. The site is Lot 1 of SP 210-81. The site is a rectangular property extending northeast from its frontage on Serene Way and shares a common access drive with the adjacent northern Lot 2 of SP 210-81. The site is generally flat and has been previously developed with a single-family residence and yard area. Scattered overstory exists on northern and southern portions of the site (Aerial Photograph -Exhibit D3).
4. Adjacent property to the northwest, northeast, and southeast are currently zoned R-8,400. Property to the southwest, across Serene Way is similarly zoned. All such properties are developed as single-family residences. Sites in close proximity to the northeast and southwest have been rezoned to LDMR. The general area is beginning to see a transition to higher density development consistent with the UMDR designation of the General Policy Plan Future Land Use Map.

The aerial photograph in Exhibit I-1 accurately shows the subject parcel in relation to the neighborhood and the other recently rezoned parcels. The surrounding General Policy Plan designations in the vicinity are depicted on Exhibit I-2, and the surrounding zoning designations are depicted on Exhibit I-3. These show that the pleasant lakeside residential neighborhood around Lake Serene is sandwiched between two major roadway systems, Beverly Park Road on the west and SR 525, Mukilteo Speedway and SR 99 to the east. Especially to the east is a great deal of commercial development

5. Two citizen comments (e-mail Exhibits G-9 and G-10) express concerns regarding further development based on the character of the single-family residential neighborhood, impervious area and the Lake Serene watershed, and potential parking on public right-of-way. The applicant provided a response letter to address these concerns. (Exhibit A-4)

Testimony at the public hearing was that the structures which will be erected on the site will be detached single family residences rather than apartments. These will be in character with the existing single family residential neighborhood, even though the density will be greater. Regarding surface water concerns the applicant produced a full drainage report for the proposed development (Exhibit C-1) and a supplemental narrative regarding the stormwater pollution prevention plan (Exhibit C-2). These documents indicate that best available science methods in accordance with the DOE 2005 manual are being used for this project. These include using infiltration, a porous driveway, and rain garden vegetation in road ditches. Regarding parking concerns, the applicant is proposing two off street parking spots for each residence and a single visitor parking spot

6. The applicant has submitted the required documents for a rezone, however it was the applicant's choice to submit an official site plan (Exhibit B-1) along with the rezone request. The zoning code does not require one for the LDMR zone. Single-family residences are allowed as permitted uses in this LDMR zone and the request will satisfy minimum zoning code requirements relating to the number of dwelling units allowed on the lot (30.23.040(4), building setbacks, height and lot coverage (30.23.040(15) & 30.23.040(1)), landscaping (30.25) and parking (30.26).

7. Chapter 30.42A 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.

It is the finding of the Examiner that the request meets these requirements generally and should be approved. Element (3) is not applicable to the current application

8. As this decision is for rezone, only, there are no mitigation requirements for parks, schools or roads imposed herein. These matters will be addressed by PDS during the administrative process of site plan approval. However, the Examiner notes that the parcel is served by a paved county road and that there is a large complex of county roads and state highways surrounding the parcel. Schools and parks are in the vicinity to serve the parcel.
9. Public water and sewer service will be available for this development as well as electrical power.
10. The property is designated Urban Medium Density Residential (UMDR 6-12 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the UMDR designation covers various subarea plan designations which would allow town houses and apartments as well as attached or detached homes on small lots. Land in this category may be developed at a density of 6-12 du/ac and one of the implementing zones is the UMDR zone which is the case here. Testimony at the public hearing is that the current zoning of R-8,400 is not within the UMDR implementing zones. Hence, the proposed rezone complies with the comprehensive plan.

The current GPP discussion (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.” This “Urban Development Patterns” statement provides guidance in determining consistency of a proposed development plan with the GPP by identifying areas of potential impacts tied to individual GPP Elements and their goals, objectives and policies through preliminary construction reviews associated with development activity. Further, adopted GMA based development regulations assist in tying construction approvals to such implementation of the GPP.

Future site plan approval is a mechanism for implementing GPP elements, goals, objectives and policies. SCC 30.42A.100 requires evaluation of rezone proposals under the GPP when adopted development regulations do not exist. Specific GMA adopted development regulations do exist and address specific design criteria including density, landscape buffering, storm water facilities, public utilities, critical areas protection, and impacts associated with transportation needs. These supersede as the implementing tool for meeting GPP goals, objectives and policies upon county adoption of specific GMA development regulations.

Analysis by PDS in the staff report is of the proposed development plan, as well as the subject rezone, included impacts associated with traffic, storm drainage, parks and recreation, public schools, and zoning code provisions addressing compatibility with surrounding properties (bulk regulations and landscape buffers). Future approval of construction permits, consistent with such evaluation and administrative site plan approval 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 neighborhood community.

The preceding discussion is particularly applicable to the following key Comprehensive Plan Element Goals, Objectives and Policies that might be considered relevant to the specific site development plan:

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."

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."

Natural Environment Objective NE 1.C - "Protect and enhance natural watershed processes, wetlands, fish and wildlife habitat conservation areas, shorelines, and water resources with the long-term objective of protecting ecological function and values."

Natural Environment Policy NE 1.C2 - "The County shall continue to protect and enhance wetlands and fish and wildlife habitat conservation areas through the use of a variety of strategies..."

Natural Environment Objective NE 3.B - "Designate and protect fish and wildlife habitat conservation areas and wetlands pursuant to the Growth Management Act." (Including: NE Policies 3.B.1, 4, 5, and 10)

PDS review and analysis of the rezone and administrative site plan proposal found that current GMA adopted regulations, governing future site development activity, will implement the Council's approved zoning designation of the Comprehensive Plan and such Goals, Objectives, and Policies, and thus specific development activity, as reviewed and analyzed under the subject request, bears a substantial relationship to the public health, safety and welfare. The Examiner adopts the PDS analysis.

11. As described in the site plan, bulk zoning regulations are met.
12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
13. 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 this decision.
2. The request is for a rezone and, therefore, must be consistent with the GMACP; GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) LDMMR designation of the property and meets the required regulatory codes as to density, design and development standards.
3. The request would allow for a rezone from R-8,400 to LDMMR.
4. 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.
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-8,400 to LDMMR for this property is hereby APPROVED.

Decision issued this 17th day of October, 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 **OCTOBER 27, 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 **OCTOBER 31, 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.