

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: February 17, 2009

PLAT/PROJECT NAME: ***Rainier Real Estate Venture Rezone***

APPLICANT/
LANDOWNER: Rainier Real Estate Venture, LLC

FILE NO.: 07 114929 LU

TYPE OF REQUEST: Rezone from Residential-9600 (R-9600) to Residential-7200 (R-7200)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The project site is located at 16921 6th Avenue West, Lynnwood, Washington.

ACREAGE: 1.03 acres

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban Low Density Residential (6-12 du/acre)

UTILITIES:
Water: Alderwood Water and Wastewater District
Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds School District #15

FIRE DISTRICT: Fire District No. 1

SELECTED AGENCY RECOMMENDATIONS: Department of:
Planning and Development Services: Approve
Public Works: Approve

INTRODUCTION

The applicant filed the rezone application on December 19, 2007, and it was determined complete on January 16, 2008. See Exhibit A1; H.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by SCC 30.72.030(4). See Exhibits F1 (mailing), F2 (publication) and F3 (posting).

A SEPA determination was made on December 16, 2008. See Exhibit E2. No appeal was filed.

The Examiner held an open record hearing on February 4, 2009.

PUBLIC HEARING

The public hearing commenced on November 18, 2008 at 1:00 p.m.

1. Dorothy Crossman, Land Development Specialist, appeared on behalf of PDS and gave an overview of the proposal and answered questions from the Examiner.
2. Mark Flury appeared on behalf of the applicant.
3. No other witnesses appeared.

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

FINDINGS OF FACT

1. All exhibits and witnesses included on the Master Exhibit and Witness List were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. State Environmental Policy Act Compliance. A Determination of Nonsignificance (DNS) was issued December 16, 2008. Exhibit E2. The DNS was not appealed.
3. Rezone Request: The applicant is requesting a rezone from R-9600 to R-7200 with a concurrent 5-lot short plat of approximately 1.03 acres utilizing lot size averaging. The rezone is processed as a Type 2 application requiring a hearing examiner's decision. The short plat will be processed under Project File No. 07-114931SP as a Type 1 administrative decision and is dependent upon approval of the rezone. Water and sewer will be provided by Alderwood Water and Wastewater District.

PDS staff has included information pertaining to the short plat in the file for the Examiner's reference. In the new subdivision three of the lots have existing homes, and two new homes will be built. The Examiner has no jurisdiction over approval of the site plan. The Examiner does appreciate the information and the visual reference as it is crucial in deciding the issues in the rezone.

4. Site description: The subject property of approximately 1.03 acres is currently developed with a private road that provides access from 6th Avenue West to two single family residences to the east. A third single family residence takes access from 170th Place SW. The site is mainly cleared and landscaped with several stands of fir trees. The soils on site are Alderwood Urban Land Complex soils. The average slopes are approximately 2% to 8%. There are no critical areas on the site; however, Martha Lake Creek, a Type F stream, is within 150 feet of the southeastern corner of the subject property where access is proposed for Lot 4.
5. Adjacent uses: The adjacent properties to the east, west, and south are zoned R-9600 and contain single family uses. The adjacent property on the north contains a Snohomish County regional retention facility and is also zoned R-9600. The properties located to the southwest on the opposite side of 170th PI SW and on the west side of 6th Avenue West are zoned R-7200. Approximately 200 feet to the north, the properties are zoned Community Business and are developed with condominium and apartment complexes.
6. Transportation: The development is situated upon the corner of 6th Avenue West and 170th Place SW. The staff report (Exhibit H) contains the following information on the development's compliance with county transportation requirements, which the Examiner incorporates herein for a better understanding of the transportation impacts of the higher density development at this site:

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

1. Road System Capacity

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 19.14 new average daily trips (ADT) and has a road system impact fee of \$5,110.38 (\$2,555.19/SFR) based on \$267/ADT, the current fee rate for residential developments inside the urban growth area for TSA D. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance and will be included as a condition of approval within the administrative decision.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Single family detached units

ITE Land Use Code: 210

Applicable Measurement Unit (ITE Independent Variable): Number of SFRs. Number of applicable measurement units for this development: 2

Trip Generation Calculations:

Trip Generation Based on Average Rates

New average daily trips = 2 X 9.57 = 19.14 ADT

New PM peak-hour trips = 2 X 1.01 = 2.02 PM PHT

New AM peak-hour trips = 2 X 0.75 = 1.50 AM PHT

2. Concurrency [SCC 30.66B.120]

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of February 25, 2008. The expiration date of the concurrency determination is six years from this date. Consistent with DPW rule 4225.070, the point in time for which the concurrency analysis is based (the concurrency vesting date) is December 19, 2007

Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160 (2) (a). The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: Units 202 (Seattle Hill Road from Lowell Larimer Road to SR9) and 204 (35th Avenue SE from 168th Street SE to Seattle Hill Road). Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160 (2) (a) the development is determined concurrent. The development generates 1.50 a.m. peak-hour trips and 2.02 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips, in which case, the development would also have to be evaluated under SCC 30.66B.035.

3. Inadequate Road Condition (IRC) [SCC 30.66B.210]

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject development proposal will not impact any IRC locations identified within TSA D with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

4. Frontage Improvements [SCC 30.66B.410]

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

As per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage on 6th Avenue W consisting of pavement 18 feet in width from the right-of-way centerline to the face of curb,

As per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage on 170th Place SW consisting of pavement 18 feet in width from the right-of-way centerline to the face of curb,

A paved approach for access to Lot 4 will not be required prior to recording but will be required and shall be constructed through the building permit process. A condition will be imposed in the administrative decision that the following statement shall appear on the face of the recorded

short plat: "A paved approach for Lot 4 will be required through the access permit process at the time of building permit issuance."

6th Avenue W and 170th Place SW, on which the development's frontage improvements are required, are not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

As a condition of approval of the administrative short plat, construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

5. Access and Circulation [SCC 30.66B.420]

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

The applicant proposes to provide access to Lots 1, 2 and 3 by means of an existing 138-foot private road ending in a stub. This road intersects 6th Avenue W. The private road will be located in a 30-foot wide tract with a hammerhead turnaround and has a pavement width of 20 feet. Lots 2 and 3 will have access to the private road by means of a shared driveway. No sidewalks or cul-de-sac bulb are required. Lots 4 and 5 each will have direct access to 170th Place SW. All sight distance requirements are met at all access locations. DPW approves the layout as shown on the short plat submitted on October 23, 2008 (Exhibit B1).

6. Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving this development, 6th Avenue W, is designated as a non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is not required to dedicate additional right-of-way. This is adequately shown on the short plat.

The road serving this development, 170th Place SW, is designated as a non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is not required to dedicate additional right-of-way. This is adequately shown on the short plat.

7. State Highway Impacts [SCC 30.66B.710]

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This project will generate less than 3 peak hour trips; therefore, traffic mitigation to WSDOT is not required as indicated in the email received from WSDOT on January 2, 2008 (Exhibit G1).

8. Other Streets and Roads [SCC 30.66B.720]

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions.

The proposed development is subject to SEPA and thus is subject to interlocal agreements for impacts on city streets and is effected by the interlocal agreement (ILA) with the City of Mill Creek.

The City was provided notice of application for this project on December 19, 2007, and an opportunity to comment. No comments from the City of Mill Creek have been received; therefore, traffic mitigation to the City of Mill Creek is not required of the applicant.

9. Transportation Demand Management (TDM) [SCC 30.66B.630]

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five percent (5%) of the development's PM peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and SCC 30.66B.625.

Since a TDM plan was not submitted with the initial application a cash payment is required. The trip reduction percentage for this development is 5 percent. The TDM obligation for this development is therefore equivalent to 5% of the 2.02 new PM peak hour trips x \$1,500.00 which equals \$151.50 (\$75.75 per SFR). A written offer for payment of this TDM obligation was received by PDS on December 19, 2007, and will be imposed as a condition of approval in the administrative decision.

7. Environmental Impacts of Higher Density.

A. **Grading, drainage, and critical areas.**

There are no critical areas on the site; however, Martha Lake Creek, a Type F stream, is within 150 feet of the southeastern corner of the subject property where access is proposed for Lot 4. Martha Lake Creek flows south from Martha Lake, through the off-site wetland that lies approximately 150 feet northeast of the site where it is then culverted along the eastern property line and daylighted again to the south of 170th Place SW approximately 100 feet from the southeast property corner. Martha Lake Creek contains resident salmonids but is not known to contain anadromous fish. The riparian wetland off-site to the northeast is forested. Exhibit H at p.8. The applicant has proposed a minor buffer reduction in the southeast corner for access to proposed Lot 4 with an added buffer area on another portion of the site. This reduction area lies within 150 feet of Martha Lake Creek where it exits a culvert on the south side of 170th Place SW. The buffer addition area is slightly greater than 150 feet from the stream which lies off-site from the northeast corner of Lot 3; however, this area contains some Douglas fir trees which will be protected as Critical Area Protection Area (CAPA) and will act to connect vegetation with the existing forested Fish and Wildlife Habitat Conservation Area (F&WHCA) that exists off-site containing Martha Lake Creek and an associated wetland. A Critical Area Protection Area (CAPA) will be placed on Lot 3 for a total of 1,150 square feet as replacement buffer for the buffer impact reduction on Lot 4.

PDS has reviewed the Critical Areas Study (Exhibit C2) and Critical Area Map (Exhibit B4) and determined that the project complies with the critical areas regulations. The CAPA area intrusion, according to both PDS and the applicant's biologist, is of very low function and value; whereas they both agree that the replacement area has a much higher habitat value. Exhibit H at 8.

The Staff Report also reports on regarding on drainage and grading. Exhibit H at 7. The existing site hydrology consists of one drainage basin that drains southeast to Martha Creek. Roof and footing drains from the new home to be constructed on Lot 2 and Private Road Tract 100 will be tight lined to 6th Avenue W. The pipe then flows into a ditch that flows south and east along 170th Place SW into a proposed culvert that will flow to the east to an existing storm drainage conveyance system in 170th Place SW. Lot 4 will be provided with a bubble-up level spreader for stormwater runoff to provide infiltration. Water quality will be provided by a storm filter catch basin for runoff from the private road tract and by vegetated filter strips adjacent to existing and proposed driveways. No detention is required for this project because the new impervious area for the two lots and Tract 100 is less than 0.10 cubic feet per second flow rate associated with the 100-year return period storm. Downstream flooding concerns were reported by the Surface Water Management (SWM) division of DPW that related to unauthorized discharge involving downstream property owners. SWM has identified two downstream culverts that are in need of replacement. The applicant's engineer, Mark Flury, PE, has responded that these culverts are greater than ¼ mile from the site and are unrelated to this proposal. PDS concurs with the response.

Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 60 cubic yards of cut and 45 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

B. Parks and schools impacts.

1. Parks. The staff report (Exhibit H) contains the following information on the development's compliance with county parks mitigation requirements which the Examiner incorporates herein for a better understanding of the parks impacts of the higher density development at this site:

The proposal is within Nakeeta Park District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies and will be included as a condition of approval within the administrative short plat decision. A request for review packet on the proposed short plat was sent to Snohomish County Parks on December 19, 2007. No comments were received.

Exhibit H at 3.

2. Schools. The staff report states the following regarding mitigation of impacts to schools that are a result of the development:

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Edmonds School District No. 15 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 three existing lots, Lots 1, 3, and 5. A condition of approval will be included within the administrative decision to comply with the requirements of Chapter 30.66C SCC.

Exhibit H at 7.

8. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) 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 Low Density Residential designation "allows mostly detached housing developments on larger lot sizes. Implementing zones: R-7,200, PRD-7,200, R-8,400, PRD-8,400, R-9,600, PRD-9,600 and WFB." GPP at LU-89.
9. Health and Safety Issues.
 - A. Compliance with Fire Code and Safety Issues. The project has been evaluated and PDS determined the preliminary short plat was in compliance with the access and fire hydrant specifications contained in SCC 30.53A. Access to Lots 1, 2 and 3 is proposed from 6th Avenue W via an existing private road 138 feet in length. The private road will be located in a 30-foot wide tract, Tract 100, with a hammerhead turnaround and has a pavement width of 20 feet.

Lots 2 and 3 will have access to the private road by means of a shared driveway easement over Lot 3. Proposed Lots 4 and 5 will access from 170th Place SW. A fire hydrant is located on the west side of 6th Avenue West slightly north of its intersection with the private road. A second fire hydrant is located on the south side of 170th Place SW, southeast of the southeast corner of the short plat. The two existing fire hydrants meet the minimum spacing requirements per SCC 30.53A.516 (a).

A request for review packet on the proposed short plat was sent to Fire District No. 1 on December 19, 2007. No comments were received.

B. Pedestrian Facilities [RCW 58.17.110] The staff report contains the following information regarding pedestrian facilities to be provided to allow for safe walking conditions for school children:

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject short subdivision. Comments from the Edmonds School District dated February 14, 2008 indicate elementary school children from the development will be picked up at the intersection of 6th Avenue W and 170th St SW. Middle and high school children will be picked up at 16924 6th Avenue W. As a condition of approval of the short plat, the applicant shall provide a continuous 7-foot paved walkway delineated by a 10 inch white stripe, from the southwest corner of the private road tract, south along 6th Avenue W and east along 170th Place SW to the southwest corner of Lot 5.

Exhibit H at 6.

10. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, 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. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. *Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); see *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The county's regulations are a direct expression of the criteria expressed by case law.
3. Chapter 30.42A SCC 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.¹

- 4. In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan. RCW 36.70.040. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447 *A Motion Vacating and Remanding the Hearing Examiner’s Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) Back to the Examiner to Supplement the Record at 3* (August 8, 2007), “The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.” The Examiner interprets this language, as well as the law applicable to rezones, to mean that the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies.
- 5. This rezone is a request to up-zone these properties in the Urban Low Density Residential (ULDR) Designation from R- to R-7200 to allow a total of 5 units on 1.03 acre site. Although it is clear that this request fits within the ULDR designation (which allows up to 6 units per acre), as stated above, the analysis of consistency must go beyond the designation and identify how the project is consistent with the policies in the plan.
- 6. 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 at LU-1.

This rezone application invokes consideration most directly of Goal LU 2 and its policies. The introduction to that Goal states:

To promote efficient utilization of land within unincorporated UGAs, the county will encourage well-designed, more pedestrian-friendly urban development patterns

¹ This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.

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.

To improve the efficiency of urban residential land utilization, planning within UGAs and development regulations will ensure that future residential subdivisions will achieve a minimum net density of 4 to 6 dwelling units per acre except in areas within or near critical areas that are large in scope, with a high rank order value, and are complex in structure and function. In addition, the county will provide for higher density and mixed use housing types around and within centers and along major transportation corridors; encourage infill and intensification of areas at existing residential densities; and also broaden the variety of housing types within both traditional single family and multi-family neighborhoods while respecting the vitality and character of established residential neighborhoods. A mix of housing types with a range of densities will be encouraged throughout UGAs, as long as they are carefully sited, well designed, and sensitively integrated into existing communities.

General Policy Plan at LU-15.

Goal LU 2 of the GPP requires that the County “[e]stablish development patterns that use urban land more efficiently”, although Objective LU 2.A qualifies that statement by requiring the County to “[i]ncrease residential densities within UGAs by concentrating and intensifying development in appropriate locations.” GPP at LU-16 (emphasis added). The urban low density residential designation allows mostly detached housing developments on larger lot sizes. GPP at LU-89.

Specific policies under Goal LU 2 that are relevant to this development are:

2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.

7. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the Council in the adoption of the proposed plan and provide the Examiner a reasonable basis on which to analyze urban rezone proposals.

A. Is this area already characterized by urban growth that has adequate existing facility and service capacities to serve such development for the following types of public facilities and services? Please demonstrate. (See LU-1)

- i. Streets, roads and highways (including but not limited local access and circulation, arterial systems and road systems capacity, concurrency, state highway impacts);

- ii. Sidewalks;
- iii. Street and road lighting systems;
- iv. Traffic signals;
- v. Domestic water systems;
- vi. Sanitary sewer systems;
- vii. Public parks and recreational facilities, or useable open space, common areas, or other recreational facilities within the development ;
- viii. Storm and sanitary sewer disposal system;
- ix. Fire and police protection suppression;
- x. Law enforcement;
- xi. Public health;
- xii. Education; and
- xiii. Other services.²

B. Will the rezone help to establish development patterns that use urban land more efficiently? How? (See Goal LU-2)

Does the development concentrate and intensify development at an appropriate location? Why? (Objective LU-2.A)

i. Is the development carefully sited?

- (a) Critical areas/shorelines.
 - (i) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
 - (ii) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (iii) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.³
- (b) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities? **(Policy LU 2.A.5)**
- (c). How will the development made possible by the requested rezone tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation? **(Page LU-15)**

ii. Is the rezone proposal/development sensitively integrated into the existing community? (See LU-15)

- (a) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas? **(LU-15, Policy 2.A.4)**
- (b) Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? **(Policy LU 2.A.4)**

² Taken from the GMA definitions of public facilities and services. RCW 36.70A.030(12) &(13).

³ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

- (c) Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? **(See Policy I.C.2)**

iii. **If known at the time of submittal of the rezone, is the development well designed? (See LU-15)**

- (a) Even if density is at a higher level are efforts made to have the character fit into the existing community? If so, what is the character of the existing community and how will the development maintain it? **(See LU-15)**
- (b) How specifically will the building design integrate into the existing neighborhood? Are structures of a size, height, mass, and separation to be consistent with vicinity homes and the surrounding neighborhood? Describe in detail. Will the development be at the same elevation as the rest of the existing neighborhood? How will the elevation affect the perception of the development? **(LU-15)**
- (c) If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(See Policy HO 2.A.4)**
- (d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using features such as landscaping, fencing, setbacks, or other design features to soften or eliminate those impacts. **(LU-15)**
- (e) Will the development be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation? Has the opinion of both the County Fire Marshall and any local Fire District been placed in the record? **(LU-15)**
- (f) Is the public health, safety and welfare adequately provided for (examples are safe pedestrian access, safe place for children to wait for school bus, adequate off street parking so that a fire truck can access development)? **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

8. Applying this test to the Rainer Real Estate Venture project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

A. The area is already characterized by urban growth such that it has adequate existing public facilities and services to serve the development for the following types of facilities and services, as demonstrated below:

- i. Streets, roads and highways. The Examiner relies on Finding of Fact 6 in part to conclude that the development is adequately served by existing streets, roads and highways.
- ii. Sidewalks. The applicant will be providing adequate pedestrian facilities as a part of the development proposal. Finding 9B.
- iii. Street and road lighting system. It is unknown whether street and road lighting systems currently exist along 6th Avenue West and 170th Place SW; they are not currently required by the county code or administrative rules as a requirement for approval of this project.

- iv. Traffic signals. There are no traffic signals in the vicinity. The County's analysis of the proposal does not indicate that any new signals are warranted for this proposal, according to SCC 30.66B.165 and EDDS Section 7-03.
 - v. Water systems. Water will be provided by Alderwood Water and Wastewater District and the file contains a preliminary certificate of water availability. Exhibit G4 and G5.
 - vi. Sanitary Sewer Systems. Sewer will be provided by Alderwood Water and Wastewater District and the file contains a preliminary certificate of sewer availability. Exhibit G4 and G5.
 - vii. Park and recreational facilities. As stated in Finding of Fact 7.B., the developer will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. See Snohomish County Parks Plan at page 41. These criteria, however, addresses existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the county. The Examiner can determine, based on a map located on the County Parks and Recreation Department website, that there are a number of county parks in the vicinity of the development, including Logan County Park, Brierwood Park and Hilltop Elementary, all of which are within one mile of the site. Regional parks in the area are Lord Hill Park, Silver Creek Park , Rhody Ridge Arboretum, Picnic Point Park, and Forsgren Park. . In the future, the Examiner would like to hear from parks planners whether the parks level of service is met for citizens in each particular proposed development and how that may be determined at the planning level. The Parks Plan was not altogether clear that levels of service had been adopted for every type of park, although Objective CF 7.C of the GPP states, related to parks, "[m]onitor and maintain minimum LOS standards, as defined in the Comprehensive Park and Recreation Plan and the CIP, through adequate CIP funding."
 - viii. Storm and sanitary sewer disposal system: A stormwater disposal system is provided as indicated in Finding of Fact 7A.
 - ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Fire District 1 has made no comments to the proposal; see Finding 9A. The Fire Marshall's Office in PDS approved the proposal. Police protection is provided by the Snohomish County Sheriff's Department.
 - x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit 2.
 - xi. Education: The site is served by the Edmonds School District No. 15. Exhibit G6.
 - xii. Other services: There is sufficient electrical system capacity for the proposal, according to a letter from the Snohomish County PUD No. 1, dated January 8, 2008. Exhibit G3.
- B. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A.
- i. The development is carefully sited.

- (a) There are no critical areas or shorelines on the site or within close proximity to the site. (Policy LU 2.A.3) ⁴ There are critical areas adjacent to the site, however, and mitigation of impacts to a nonfunctional buffer area is being proposed by preserving an existing stand of Douglas Fir trees on site and widening an existing wetland buffer.
 - (b) The rezone or development is proposed in an area that is within walking distance of transit access for those who are fit. The closest bus stop for the site is currently located at the intersection of 6th Avenue West and 164th Street SW, approximately .4 miles from the site. The subject property is also near a major transit corridor, I-5, which is ¼ mile down 164th Street from the intersection with 6th Avenue West. There are park and ride lots at the intersection there, as well as shopping opportunities nearby. As stated above in conclusion 8, there are multiple parks in the vicinity. See Exhibit 33. **(Policy LU 2.A.5)**
 - (c) The development made possible by the requested rezone may tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation because it is within walking or biking distance of urban services and facilities that will serve the proposal, which will promote those forms of transportation in place of automobiles. The proximity of the property to park and ride lots will encourage commuting by buses or carpools instead of using single occupancy vehicles. **(Page LU-15)**
- ii. The rezone proposal is adequately integrated into the neighborhood.(See LU-15)
- (a) The Examiner characterizes the neighborhood as actively changing. It appears that many of the lower density uses have been bought out and infill is occurring. Exhibit D3 is an aerial photograph which very clearly shows the property itself and the changing nature of the surrounding area. In the immediate vicinity, an R-7200 development already exists on one side, what appears to be a forested parcel on the other side is actually another new development is in process on the other side. While there are a few lots that remain R-9600, most of the area is already zoned R- 7200 or even higher. This zoning designation will help fulfill the GPP goal of providing efficient use of the county's infill area. **(LU-15, Policy 2.A.4)**
 - (b) The proposal will help provide a mix of affordable housing types, such as smaller lot detached units. This type of housing helps provide a desirable type of housing to the public, but on a smaller lot than the traditional R-9600 lot. The cost of the development per unit is reduced, resulting in a more cost effective and affordable type of housing. Exhibit A2. **(Policy LU 2.A.4)**
 - (c) There are no city comments in the record. **(See Policy I.C.2)**
- iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)
- (a) The proposed density of this development is 5.6 units per acre (net). This density is one that is not inconsistent with other densities in this changing

⁴ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

area. Since this development is on a private road and the new houses will not be visible from the street, there is no issue regarding visual impact from the street. See Exhibit B4. **(See LU-15)**

- (b) The applicant indicates the building design will be consistent with old and new development in the neighborhood. Exhibit A2. **(LU-15)**
- (c) The Examiner is not aware of any "selective and innovative land use measures" that will be used to preserve the character of the stable residential neighborhood. **(See Policy HO 2.A.4)** In this case, this policy is not applicable because the Examiner would not characterize this neighborhood as a "stable residential neighborhood".
- (d) There do not appear to be any significant negative visual impacts from the addition of the two homes in this area that been brought to the attention of the Examiner. **(LU-15)**
- (e) The development appears to be designed to provide for adequate fire and medical emergency access through the provision of adequate turnaround as approved by the Department of Public Works and the Fire Marshall. Exhibit H; Exhibit B1. **(LU-15)**
- (f) The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. There appears to be adequate pedestrian facilities. Finding of Fact 9B.

9. The other criteria in SCC 30. 42A.100 is whether the proposal bears a substantial relationship the public health, safety, and welfare. See SCC 30.42A.100(2). Returning to Council Motion 07-447 the Council clarified the proper role of the Examiner in reviewing this criteria:

Although consistency with the Comprehensive Plan is a significant factor in determining whether a proposed rezone bears a substantial relationship to the public health, safety and welfare, in some cases, there may be other factors outside the Comprehensive Plan policies that may be relevant to that issue and which may be considered. If there are such factors apparent from the application documents or otherwise known to PDS, they must be identified and discussed both in the written PDS staff report and by the Examiner in his decision. The written PDS staff report and the Examiner's decision should specify if any of these other factors are related to the rezone or should be considered at the project level with the specific development proposal being made. PDS staff is not required to anticipate opposition or to consider factors or issues outside of the Comprehensive Plan or not required by the Snohomish County Code. However, this does not limit the Hearing Examiner's ability to consider testimony at the public hearing concerning whether the proposed rezone bears a substantial relationship to the public health, safety and welfare.

Motion 07-447 at 3.

The Examiner interprets this language to mean that most of the time, analysis of whether the rezone is consistent with the Comprehensive Plan should suffice for review of a rezone proposal because in most cases, analysis of the comprehensive plan policies is analysis of whether the proposal bears a substantial relationship to the public health, safety and welfare. However, the Examiner and PDS may use this second criteria to analyze other issues of concern that may be raised outside of the scope of the Comprehensive Plan.

10. In this case, the Examiner concludes there are no issues of concern that warrant analysis under SCC 30.42B.100(2). No issues of concern were identified in the PDS staff report (See Exhibit 30) and no one except the applicant and PDS staff testified at the hearing. The Examiner identified no issues of concern in reviewing the file.
11. Since this request involves rezoning only, any details or conditions which would normally appear as conditions of the development in the Examiner's decision will be issued as a part of the administrative plan approval by PDS.
12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
13. 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 R-7200 for this property is granted.

Decision issued this 17th day of February 2009.

Barbara Dykes, Hearing Examiner

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 **FEBRUARY 27, 2009**. 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, Robert J. Drewel Building (Admin-East), 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **MARCH 3, 2009** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); for each appeal filed; provided that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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: 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.