

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: November 3, 2010

PROJECT NAME: ***Becker Rezone***

APPLICANT/  
LANDOWNER: Richard Becker

FILE NO.: 07-107961LU

TYPE OF REQUEST: **REZONE** from Residential-9600 (R-9600) to Low Density  
Multiple Residential (LDMR)

DECISION (SUMMARY): The rezone request is **GRANTED**.

**BASIC INFORMATION**

GENERAL LOCATION: The project site is located at 11609 Marino Avenue, Everett, Washington.

ACREAGE: .36 acres

ZONING: CURRENT: R-9600  
PROPOSED: Low Density Multiple Residential (LDMR)

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

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

SCHOOL DISTRICT: Mukilteo School District

FIRE DISTRICT: Snohomish County Fire District No. 1

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



## **INTRODUCTION**

The applicant filed a master permit application on June 28, 2007. (Exhibit A1) It appears from the record and Staff Report that PDS inadvertently failed to reassign the application for review during several staff transitions from 2007 to 2009. *Id.*

The public hearing was scheduled by PDS on September 15, 2010. 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). (Exhibits E1, E2 and E3)

The Examiner held an open record hearing on October 28, 2010, which was the 1,099<sup>th</sup> 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 28, 2010 at approximately 10:00 a.m.

1. Monica McLaughlin, Senior Planner, appeared on behalf of PDS and gave an overview of the rezone request and answered questions from the Examiner.
2. Terry Ostergaard, Project Manager, Alpha Subdivision Pro's Inc., appeared on behalf of the applicant.
3. No one appeared in opposition to the request.

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

## **FINDINGS, CONCLUSIONS AND RECOMMENDATION**

### **FINDINGS OF FACT**

Based on a preponderance of the evidence of record, the following Findings of Fact are entered:

1. All exhibits included on the Master Exhibit List were entered into evidence, along with the testimony of witnesses. All of the evidence in the record was considered by the Examiner in reaching this decision.
2. State Environmental Policy Act Compliance. A Determination of Non-Significance (DNS) was made on September 15, 2010. (Exhibits D1 and D2) No comments were received and no appeal was filed.

3. Rezone Request: The applicant requests a rezone of a .36 acre site from R-9600 to Low Density Multiple Residential (LDMR). No land development permit is included with the rezone request. The rezone application has a vesting date of June 28, 2007.
4. Site description: The site is rectangular in shape, aligned in the east-west direction and gently slopes down toward the northeast. A single-family home and outbuildings occupy the site. The property is vegetated with lawn and a few ornamental trees in the front of the house. There is a wetland extending from an off-site property at the northeast and southeast sides of the property. (See PDS File No. 06-102728 LU) (Exhibit G).
5. Adjacent uses: The property is located southeast of Paine Field, between the major travel corridors of Beverly Park Road and Airport Road. The surrounding neighborhood is a mixture of commercial, business park developments and older single-family homes in between. The surrounding properties in the vicinity are zoned R-9600 and LDMR. However, the area is clearly in transition to higher densities, consistent with the Comprehensive Plan. The zoning maps show that the property is virtually surrounded by LDMR zoning and abutted by Business Park (BP) zoning, with the exception of two parcels to the north. (Exhibits B1 and C2) Several properties in the vicinity have been recently redeveloped into higher density single-family condominiums (e.g., Marino Drive Estates SFDU). Additionally, future business park development is anticipated along Center Road, which is just west of the project site, consistent with the existing BP zoning.
6. Issues of Concern: The County received no letters of concern. There are no issues of concern that were raised by PDS or other reviewing agencies. (Exhibits G, F1)
7. Rezone -- Criteria for Approval. Under SCC 30.42A.100, the hearing examiner may approve a rezone only when all the following decision 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 SCC are met.
8. The rezone proposal is consistent with the Comprehensive Plan.
  - A. The GMA requires consistency between the County's development regulations and Comprehensive Plan [RCW 36.70.040]. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the GMACP's Future Land Use Map. The rezone must meet the goals of the GPP as well.
  - B. The subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on February 1, 2006, as amended up through the application's vesting date of June 28, 2007.

- C. PDS stated that the requested rezone is consistent with the General Policy Plan’s Urban Medium Density Residential designation of the property. LDMR is an implementing zone for the Comprehensive Plan’s UMDR designation. (Exhibit G)
- D. 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 [Comprehensive] 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 UGAs.

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.

Snohomish County’s GMACP, General Policy Plan at LU-1.

- E. This rezone application invokes consideration most directly of Goal LU 2 and its policies. 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.*” (Emphasis added); GPP at LU-16. The Examiner finds the test of what is an “appropriate location” to turn on three criteria, which are found in the policies of LU-2 and in HO-2A.1. They include: (i) the careful siting of the development to minimize impacts to environmentally sensitive areas and to urban infrastructure; (ii) the integration of the infill project into the neighborhood and nearby cities that may annex; and (iii) ensuring that design of the project minimizes impacts on the character of the residential neighborhood area. The Examiner addresses the first two elements of the test. The third element is inapplicable to the present rezone request because no development proposal is included at this time. The Examiner hereby adopts by this reference the applicant’s narrative in support of the rezone request (Exhibit A2) and incorporates it herein as if set forth in full.

- (1) The Careful Siting of the Development to Minimize Impacts to Environmentally Sensitive Areas and to Urban Infrastructure.

There is a critical area present on a portion of the site. The development plans for a neighboring parcel revealed that there is a Category 3 wetland extending from their property onto the subject property as described above. However, no development has been proposed at this time. All future development applications will be reviewed under the current critical areas regulations to ensure that the wetland is protected and impacts to it are avoided or mitigated sufficiently. Accordingly, the Hearing Examiner finds that the rezone will not impact environmentally sensitive areas and future development will be required to submit a design that avoids impacts to the Category 3 wetland.

(2) The integration of the infill project into the neighborhood and nearby cities that may annex it.

The subject property is designated *Urban Medium Density Residential* (UMDR: 6-12 du/acre) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). According to the GPP, the Urban Medium Density Residential designation "...allows a combination of detached homes on small lots, townhouses and apartments in low density, multi-family residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones." (Exhibit G)

The rezone is consistent with the residential character of the existing neighborhood, and the new zoning designation will add to the overall mix of housing/ownership types already existing and being constructed in the vicinity, as well as those types of development anticipated and encouraged within the County's Comprehensive Plan. PDS agrees, stating that the rezone to LDMR would allow a theoretical density on the site of up to 4 dwelling units. They state that the increased density would not be out of character with the neighborhood, which is already a mix of low and medium density housing and commercial/industrial development. (Exhibit G)

As such, the Hearing Examiner finds that the proposed development and rezone will integrate with the existing and newly developing neighborhood and nearby cities that may annex the subject property.

9. The rezone bears a substantial relationship to the public health, safety, and welfare.

In order to approve the requested rezone, the Hearing Examiner must also find that it bears a substantial relationship to the public health, safety and welfare. This is established by ensuring that (i) the proposed change will meet the provisions of the County Code; and (ii) that all impacts associated with the proposed rezone can be avoided or appropriately mitigated through the imposition of approval conditions.

Here, the proposed rezone does not include plans for future development. In the future, any development proposal will be independently reviewed to determine whether it meets the County Code. The Examiner finds, however, that the impacts associated with the housing types that may be developed

under the new LDMR zone can be adequately mitigated through the imposition of approval conditions pursuant to the authority found in the Snohomish County Code and/or through the exercise of SEPA substantive authority, where needed.

Therefore, the Hearing Examiner finds that the requested rezone implements public policy and bears a substantial relationship to the public health, safety and welfare.

10. The minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

The provisions of Chapters 30.31A through 30.31F SCC are not applicable to the present rezone.<sup>1</sup>

11. 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 the proposed rezone implements the 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).
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 establishes the criteria which the hearing examiner must follow in considering a rezone. These include finding that: (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.
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*

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<sup>1</sup> This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays, which are not present in the case.

*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 change the zoning from R-9,600 to LDMR.
6. The Hearing Examiner concludes that the Applicant has demonstrated that the requested rezone is consistent with, and implements, the Comprehensive Plan and bears a substantial relationship to the public health, safety and welfare, as described further in the Findings of Fact.
7. The request for a rezone was based upon the information and impacts identified in the SEPA Checklist and DNS issued on September 15, 2010. (Exhibit D2)
8. 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-9,600 to Low Density Multiple Residential (LDMR) for the subject property is **GRANTED**.

Decision issued this 3<sup>rd</sup> day of November, 2010.

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Millie M. Judge, Hearing Examiner

<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 Snohomish 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) within 10 days or by **November 15, 2010**. 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, 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 **November 17, 2010** 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: Monica McLaughlin

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.