

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: May 21, 2010

PLAT/PROJECT NAME: **OZEGOVIC REZONE**

APPLICANT/
LANDOWNER: Alen and Rezija Ozegovic

FILE NO.: 09 108886 LU

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

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: 703 Bing Road, Lynnwood, WA 98036

ACREAGE: .31 acres

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

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban Low Density Residential (4-6 du/acre)

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

SCHOOL DISTRICT: Edmonds No. 15

FIRE DISTRICT: No. 1

Department of Planning and Development Service Recommendation: Approve

INTRODUCTION

The applicant filed the rezone application on December 18, 2009, and it was determined complete on that date. See Exhibit A1; I.

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 E1 (mailing), E2 (publication) and E3 (posting).

A SEPA threshold determination of nonsignificance was made on February 22, 2010. See Exhibit D2. No appeal was filed.

The Examiner held an open record hearing on May 13, 2010.

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 March 12, 2010. (Exhibit D2) The DNS was not appealed.
3. Rezone Request: The applicant is requesting a rezone from R-9600 to R-7200. The rezone is processed as a Type 2 application requiring a hearing examiner's decision. No other application for development has been made. As of the hearing date, 118 days of the 120-day review period will have elapsed.
4. Site description: The site is relatively flat and developed with a single-family residence. The yard is landscaped. There are no critical areas on site or within 300 feet of the site. The site is approximately 13,584 square feet in area.

No future land division is possible for the lot as the square footage is too small to create two lots. The rezone, if approved, will allow for a duplex unit to be located on the lot.

5. Adjacent uses: The vicinity of the subject property is developed for residential purposes. Immediately adjacent to the parcel are properties zoned R-7200, R-9600, and MR. Within 500 feet of the property are areas with additional zoning of PRD-7200, PRD-9600, and LDMR.
6. Public Comment in the Record: No issues of concern were identified by PDS. Two public comments were received. One comment asked for information (Exhibit G.1) but failed to provide a mailing

address, and is not listed as a party of record. The other comment, from Mr. Ken Williams, requested to become a party of record, but did not provide any additional comments. The letter from Mr. Williams is included in the file, but is not included as an exhibit because no comments were provided.

7. 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.
8. 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

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

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 this property in the Urban Low Density Residential (ULDR) Designation from R-9600 to R-7200 to allow a duplex on the .31 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 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 foundation on which to analyze urban rezone proposals to determine whether they meet Goal LU 2 and Objective 2, providing efficient development urban development patterns in appropriate locations and other related ‘GPP policies’. **Note: This test has been revised in light of the Council’s Motion 08-217.**

- A. **Is the area proposed for rezoning already characterized by urban growth? Explain. (Goal LU 2; Objective LU 2)**

B. Does the area proposed for rezoning already have adequate existing facility and service capacities to serve more intense development for the following types of public facilities and services? Please demonstrate. (See Goal LU 2; Objective LU 2)

- 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

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

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

- (1) Critical areas/shorelines.
 - (a) 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)**
 - (b) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (c) 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
- (2) 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 (in medium density areas)? **(Policy LU 2.A.5)**

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.

(3) 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? **(Policy 2.A.4)**

- E. **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)(H.O.2.B.1)**
- F. **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? (Policy I.C.2)**
- G. **If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? (Policy HO 2.A.4)**
- H. **Does the development encourage the integration of a variety of dwelling types and intensities in residential neighborhoods? (Policy H.O. 2.B.4)**

8. Applying this test to the Ozegovic Rezone, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

- A. **The area is already characterized by urban growth.** The area is already characterized by urban growth in various zoning categories that comprise the Urban Low Density and Urban Medium Density Residential Designation. The neighborhood has a mixture of R-9,600, R-7,200, LDMR, MR, and PRD 9,600 zoning.
- B. **The area proposed for rezoning has adequate existing facility and service capacities to serve more intensive development:**
 - i. Streets, roads and highways. The parcel is served by Bing Road, a residential road with adequate capacity to serve the development. (Testimony at Open Record Hearing; Exhibit B1).
 - ii. Sidewalks. This area has some sidewalks already because urban development has already occurred in this area. The applicant may be providing adequate pedestrian facilities as a part of a future development proposal. (Testimony at Open Record Hearing; Exhibit I)
 - iii. Street and road lighting system. It is unknown whether streetlights exist on Bing Road; they are not currently required by the county code or administrative rules as a requirement for approval of this project.
 - iv. Traffic signals. Unknown.
 - v. Water systems. Water will be provided by Alderwood Water and Wastewater District.
 - vi. Sanitary Sewer Systems. Sewer lines will be extended and provided by Alderwood Water and Wastewater District.
 - vii. Park and recreational facilities: The applicant will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community

parcs 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 North Creek Park, Silver Creek Park, Rhody Ridge Arboretum, McCollum Park, Willis Tucker Park, Martha Lake Park, Meadowdale Park, Lord Hill Park, Logan Park, Forsgren Park, and Picnic Point 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 will be required as part of the administrative subdivision proposal pursuant to Chapter 30.63B SCC.
- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Police protection is provided by the Snohomish County Sheriff’s Department.
- x. Public health: Public health issues are addressed by the Snohomish Health District
- xi. Education: The site is served by the Edmonds School District No.15.
- xii. Other services: Electrical service will be provided by the Snohomish County PUD No. 1.

C. **How will the rezone help to establish development patterns that use urban land more efficiently? (See Goal LU-2)** 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. There is no current predominant pattern in the area. The rezone to R-7200 of this small parcel is not incompatible with the changes occurring elsewhere in the neighborhood and will provide tools for more efficient infill in the future.

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

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. There are no critical areas or shorelines on the site, nor are there any other sensitive areas that would warrant larger zoning classification. (Policy LU 2.A.3)⁴

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

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.

F. 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)(H.O.2.B.1)

This is a low density area, not a medium density area. (Policy LU 2.A.4)(H.O.2.B.1)

G. 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? (Policy I.C.2)

This development is close to Lynnwood. It did not comment on the record regarding the rezone. (See Policy I.C.2)

H. If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? (Policy HO 2.A.4)

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).

I. Does the development encourage the integration of a variety of dwelling types and intensities in residential neighborhoods? (Policy H.O. 2.B.4)

This provision is not applicable, since no development is currently proposed.

J. Under Objective TR 1.C it is incumbent upon the Examiner to ensure that all rezones adequately provide for maintenance of the arterial roadway system.

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.

Objective TR1.C states: Establish access and on-site circulation standards to maintain the safety and integrity of the arterial roadway system. **Are there access and on-site circulation issues addressed by the policies under Objective TR 1.C or TR 1.D that should be addressed in the rezoning process?** No. Access and circulation is addressed as part of a development proposal.

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 criterion:

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 criterion 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 I) 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 any site approval that may be issued in the future 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 21st day of May 2010.



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 **JUNE 1, 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, 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 **JUNE 4, 2010** 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: Ed Caine

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.