

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: December 2, 2010

PLAT/PROJECT NAME: **KAZEN REZONE**

APPLICANT/
LANDOWNER: Rick and Anne Kazen
907 200th Street NE, Arlington, WA 98223

FILE NO.: 10-104386 LU

TYPE OF REQUEST: **REZONE** from Residential-7200 (R-7200) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: 30 & 100 119th Street SE, and 33 120th Street SE, Everett, Washington in Section 25,
Township 28 North, Range 4 East, W.M., Snohomish County, Washington

ACREAGE: .98 acres

ZONING: CURRENT: R-7200
PROPOSED: LDMR

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

UTILITIES:
Water: Silver Lake Water and Sewer District
Sewer: Silver Lake Water and Sewer District

SCHOOL DISTRICT: Mukilteo School District

FIRE DISTRICT: Fire District No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve

INTRODUCTION

The applicant filed the rezone application on June 16, 2010, and it was determined to be complete on the date of submittal. (See Exhibit A1;) 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, E2, E3). The Examiner held an open record hearing on November 17, 2010. At the public hearing, Monica McLaughlin appeared on behalf of PDS. Robert Nearing and Curt Johnson appeared on behalf of the applicant. No members of the public appeared or testified.

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

Based upon a preponderance of the evidence in the record, the following Findings of Fact, Conclusions of Law and Decision are entered:

FINDINGS OF FACT

1. The information contained in the introductory paragraphs of this decision is incorporated herein as if set forth in full. All exhibits and witnesses included on the Master Exhibit and Witness List, as well as the testimony received at the public hearing, comprises the record herein which was considered by the Examiner in reaching this decision.
2. State Environmental Policy Act Compliance. A SEPA threshold Determination of Nonsignificance (DNS) was made on October 4, 2010. (See Exhibit E2) No appeal was filed.
3. Rezone Request: The applicant is requesting a rezone from R-7200 to LDMR on .98 acres consisting of three tax parcels. The rezone is requested to facilitate further development of the site in the future.
4. Site description: The project site is made up of three rectangular shaped lots located in the plat of Silver Acres No. 7. The lots are each approximately 0.33 acres. Lots 42 and 43 are located along 119th Street, and Lot 34 is located along 120th Street. Each of the three lots is developed with duplex structures. The property is vegetated primarily with lawn, with some ornamental landscaping.
5. Adjacent uses. The subject neighborhood, located between I-5 and 4th Avenue West, is primarily a mixture of low and medium density residential development, with Mariner High School centrally located within. Some of the larger lots nearby have been redeveloped with higher density single-family condominium developments. Specifically, the surrounding neighborhood is developed with primarily small lot condo style development to the northwest, a mix of duplex, single-family and mobile home units to the north, a small lot short plat and PRD-MR development and a PRD 7,200 mobile home park to the southeast, small short plat lots and small condo style development, a mix of duplex, single-family

and mobile home to the west and a mixture of mobile home and duplex units on small and medium sized lots to the east.

6. Public Comment in the Record. PDS received no comment from any members of the public about the proposed rezone. (Exhibit J).
7. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Medium Density Residential (ULDR: 6-12 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 Medium Density Residential designation covers various sub-area plan designations which allow 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 12 du/ac. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones.
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

4. The proposal is consistent with the comprehensive plan. 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, “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 Medium Density Residential (UMDR) Designation from R-9600 to LDMR to allow a total of four additional dwelling units on a .98 acre site. Although it is clear that this request fits within the UMDR designation (which allows up to 12 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. With regard to the Kazen Rezone, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

The area is already characterized by urban growth. The increased density would implement the comprehensive plan by facilitating the accommodation of new population growth into urban areas per the directive of the state Growth Management Act. The neighborhood is located near shopping, schools and transit. Public water and sewer is available to service any future development. The rezone would not be out of character with the neighborhood, which is already a mixture of low and medium density housing types and commercial development.

When detailed construction plans are submitted for any future site development, the project will be reviewed for compliance with county GMA development regulations (which are required to implement the policies in the comprehensive plan) relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation, critical areas protection, compliance with fire and emergency access requirements, and provision of adequate potable water and sewage disposal.

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

The intent of the Snohomish County codes, policies, and standards is to ensure that adequate provision has been made for the public health, safety, and welfare of the citizens. 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 LDMR 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. There are no critical areas or shorelines on the site, nor are there any other sensitive areas that would warrant larger zoning classification. The site is near a major transit corridor, I-5, which has major bus transit centers. There are numerous shopping opportunities in the area with Everett Mall, Alderwood Mall and other shopping centers nearby.

7. The proposal bears a substantial relationship to the public health, safety, and welfare

The proposal creates no issues of concern as shown in the PDS Staff Report (Exhibit J) and the exhibits in the record, including comments received from outside agencies. (See, e.g., Exhibits F1, F2, F3, F4 and F5) In this case, the Examiner concludes that the proposal bears a substantial relationship to the public health safety and welfare.

8. Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met. This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays, none of which exist in this case.

9. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.

10. 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-7200 to LDMR for this property is **GRANTED**.

Decision issued this 2nd day of December, 2010.

Millie Judge, 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 **DECEMBER 13, 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 **DECEMBER 16, 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: 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.