



**DECISION of the  
SNOHOMISH COUNTY HEARING EXAMINER**

**Millie Judge**  
Hearing Examiner

M/S 405  
3000 Rockefeller Ave.  
Everett, WA 98201

(425) 388-3538  
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DECISION DATE: October 17, 2011

PLAT/PROJECT NAME: **RICHARD LUCE REZONE**

APPLICANT/  
LANDOWNER: Richard Luce  
222 219<sup>th</sup> Place SW  
Bothell, WA 98021

FILE NO.: 09-101369 LU

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

DECISION (SUMMARY): **GRANTED**

LOCATION: 1320 Logan Road, Lynnwood, WA 98036

TAX PARCELS: 003730-027-006-023

CURRENT ZONING: R-9600

PROPOSED ZONING: R-7200

Comprehensive Plan: Rural Residential-5 (1 du/5 acres)

School District: Edmonds School District No. 15

Fire District: Snohomish County Fire District No. 1

PDS STAFF  
RECOMMENDATION: Approve subject to conditions

This matter having come before the Hearing Examiner on October 6, 2011, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

### **I. FINDINGS OF FACT**

#### **A. INTRODUCTION**

1. **The Record.** The official record for this proceeding consists of the exhibits entered into evidence (Exhibits A.1 through K.1), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

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

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.
3. **Public Hearing.** The Hearing Examiner held an open record hearing on October 6, 2011. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Ed Caine appeared and testified on behalf of the Snohomish County Department of Planning and Development Services (PDS). Rick Luce and Ron Reed, architect, appeared on behalf of the Applicant. No members of the public attended. At the start of the public hearing, the Hearing Examiner made a disclosure under the Appearance of Fairness Doctrine that she is an elected Commissioner of Snohomish County Fire District No. 1 and stated that she had not discussed the case with anyone at the District and believed she could be fair and impartial in the proceeding. She offered the parties an opportunity to challenge her for cause. The parties stated that they had no challenges and were willing to proceed.
4. **Public Notice.** Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5). (Exhibits F1, F2, and F3)

#### **B. BACKGROUND INFORMATION**

5. **Regulatory Review.** A complete application was submitted to PDS on March 12, 2009. The application was deemed complete and the 120-day clock started on April 9, 2009. The Applicant made several re-submittals in response to PDS review comments between March, 2009 and July 19, 2011. As of the hearing date, 91 days of the 120-day period had expired.
6. **Application Request.** The Applicant is requesting a rezone from R-9600 to R-7200 of a .83 acre parcel. The Applicant is proposing a 3-lot administrative short plat, which is concurrently reviewed and approved by PDS, subject to approval of the rezone.
7. **Site description.** The property is wedge-shaped and slopes from north to east, with the western portion of the site developed with a duplex and a detention pond. The eastern portion of the site is forested.
8. **Adjacent uses.** Adjacent properties to the north and east are developed as single-family residences and zoned R-9600. Adjacent lands to the south are zone PRD-9600, with single

family residences on lots that are comparable to R-7200 zoning. The adjacent property to the west is developed as a ball field and park, and is zoned R-8400. Within 500 feet to the southeast of the subject property land is zoned R-7200.

9. State Environmental Policy Act (SEPA) Compliance. Based on the SEPA Checklist submitted by the Applicant on July 19, 2011 (Exhibit E.1), PDS issued a Determination of Nonsignificance (DNS) for the subject application on August 17, 2011 (Exhibit E.2). The DNS was not appealed. Accordingly, the requirements of SEPA have been met.
10. Issues of Concern
  - A. Public Agency Review: No issues of concern were raised by either public agencies or through the County's internal technical reviews.
  - B. Citizen Comments: Only one public comment was received, raising concerns about the proposed 3-lot short plat and the changes in vegetation and potential stormwater runoff from the development. (Exhibit I.1) The Hearing Examiner notes that the subject property is inside the Urban Growth Area (UGA) and development is therefore anticipated within the surrounding area. PDS stated in its Staff Recommendation that the development will be required to meet the County's design standards and drainage regulations, which will address runoff issues. (Exhibit J)

### **C. COMPLIANCE WITH CODES AND POLICIES**

11. Rezone Approval Criteria. The proposed application must meet the requirements of Chapter 30.42A SCC which covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provide that 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. The Examiner considers each criterion in turn.

- A. The proposal is consistent with the comprehensive plan.

The GMACP was adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. It includes the General Policy Plan (GPP), the Transportation Element, the Capital Facilities Plan, the Comprehensive Park & Recreation Plan and the Future Land Use Map (FLUM). The General Policy Plan has been revised since its initial adoption by a number of amendments.

The subject application has been evaluated for consistency with the latest version of the GMACP. The subject property is designated "Urban Low Density Residential (ULDR) on the FLUM. The proposed project seeks to rezone the property from R-9600 to R-7200.

The Staff Recommendation and Applicant prepared detailed analyses of the applicable Population and Employment, Land Use, and Housing policies set forth in

the GPP as those policies relate to the proposed rezone application. (Exhibits A.3 and J) The PDS analysis relating to the consistency of the requested rezone with the GMACP is set forth in Exhibit J at pages 6-7. Having reviewed the GMACP, and the PDS and Applicant analyses relating to whether the proposed rezone is consistent with the GMACP, the Hearing Examiner concurs with said analyses and hereby adopts and incorporates by this reference Exhibits A.3 and J herein, as if set forth in full. Accordingly, the Hearing Examiner finds that the proposed rezone is consistent with and mandated by the County's adopted GMACP.

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

The current proposal does not include any new development or construction. However, the scale and character of any future development will provide slightly more density than the current zoning. This will be offset, however, by the fact that any future development proposals will be subject to compliance with the County's development regulations, including provisions relating to transportation and road impacts, drainage and land disturbing activities, 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. Accordingly, the Examiner finds that the proposed rezone bears a substantial relationship to the public health, safety and welfare.

C. Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

The Hearing Examiner finds that the Applicant is not requesting any of the zones listed in Ch. 30.31 SCC and, as such, the minimum zoning criteria in Ch. 30.31A through F SCC is not applicable to this rezone request.

12. The Hearing Examiner finds that the requirements of Chapter 30.42A.100 are satisfied by the present application and the rezone should be approved.
13. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

## **II. 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. See, *Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The county's regulations are consistent with the criteria expressed in case law.

3. Chapter 30.42A SCC covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. As noted above, 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.<sup>1</sup>

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. Based upon the analysis set forth in the Findings of Fact, above, the Examiner concludes that the Applicant has met this burden of proof. The proposed rezone is both consistent with the land use designation and the Land Use Element of the General Policy Plan.

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

Based on the analysis set forth in the Findings of Fact, the Examiner concludes that the proposal bears a substantial relationship to the public health safety and welfare.

6. Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

This Examiner concludes that Ch. 30.31 SCC 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.

7. The request for a rezone was based upon the information set forth in the entire record, as well as the impacts disclosed in the SEPA Checklist and DNS.
8. The Examiner concludes that the rezone should be approved.
9. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact, is hereby adopted as such.

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<sup>1</sup> This criterion is not applicable in this case. SCC 30.42A.100(3) only applies to performance standard zones, resource land zones, and overlay zones, none of which are present here.

### III. DECISION

The requested **REZONE** from R-9600 to R-7200 on the subject property is **GRANTED**.

Dated this 17th day of October, 2011.



Millie M. 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before OCTOBER 27, 2011**. 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 **within 14 days from the date of this decision**. 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 at the Public Assistance Counter of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before OCTOBER 31, 2011**, 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 the 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.

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