



Snohomish County

Hearing Examiner's Office

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**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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DATE OF DECISION: **May 6, 2011**

PLAT/PROJECT NAME: Mustach Short Plat I

APPLICANT/
LANDOWNER: John & Julie Mustach
PO Box 12176
Mill Creek, WA 98082

FILE NO.: 10-106051-LU¹

TYPE OF REQUEST: Rezone from R-9600 to R-7200

DECISION (SUMMARY): **Approved**

BASIC INFORMATION

LOCATION: 10025 - 33rd Avenue SE, Everett 98208

ACREAGE: .46 acres

NUMBER OF LOTS (Proposed): 2

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

COMPREHENSIVE PLAN DESIGNATION: Urban Low Density Residential

SCHOOL DISTRICT: Everett School District No. 2

FIRE DISTRICT: Snohomish County Fire District No. 1

WATER AND SEWER: Silver Lake Water District

PDS RECOMMEDATION: Approve

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

¹ Former Decision under File No. 07-113116.
10106051.docx

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

FINDINGS OF FACT

1. **Regulatory Review and Vesting.** A complete application was submitted to Planning and Development Services (PDS) for a rezone and 2-lot short plat on August 17, 2010. (Exhibit A.1) It was subsequently resubmitted on February 25, 2011. As of the hearing date, 122 days of the 120-day period had expired.
2. **Public Hearing.** A public hearing on the rezone only was held on April 19, 2011. The short plat application will be administratively reviewed by PDS pursuant to SCC 30.71.020. Appearing for the applicant was John Mustach. Ed Caine appeared and testified on behalf of PDS. No members of the public appeared or testified at the hearing.
3. **The Record.** All of the Exhibits shown on the master list of exhibits were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. The entire record was considered by the Examiner in reaching this decision.
4. **Public Notice and SEPA Compliance.** The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. No SEPA appeal was filed. (Exhibits E.1, E.2, F.1, F.2 and F.3)
5. **Applicant's Proposal:** The applicant is requesting a rezone from R-9,600 to R-7,200 and preliminary approval of a 2-lot single-family residential subdivision on one parcel totaling .46 acres inside the UGA on the east side of 33rd Avenue SE, approximately 150-feet south of its intersection with 100th Street SE in south Snohomish County.
6. **Issues of Concern:**
 - A. **Agency Comments.** No issues of concern were raised during agency reviews.
 - B. **Citizen Comments.** No citizen comments were received on the proposed rezone.
7. **Site Description.** The subject property is a .46 acre site, with slopes ranging from 2 to 8 percent and stormwater draining towards 33rd Avenue SE. As proposed by the applicant, the existing duplex will remain, and the detached garage to the north will be removed. The site is covered with lawn, some trees and shrubs. There are no critical areas on the site or within 300 feet of the property boundaries. The parcel is located on 33rd Avenue SE, a short cul-de-sac which has larger size lots on the east side and smaller sized lots on the west. All lots are developed with either single-family residences or duplexes. There is established landscaping along the cul-de-sac.
8. **Adjacent Uses.** The surrounding area is transitioning from older, large lots to more compact housing as envisioned by the Growth Management Act (Ch. 36.70A RCW) as infill and re-development occurs within the Urban Growth Area (UGA). This type of development within the UGA is consistent with the County's GMA Comprehensive Plan. The properties adjacent to the site are zoned R-9600 to the north, south and west. The properties adjacent to the eastern boundary are zoned R-7200. The zoning and development in the vicinity is shown on Exhibits D.1, D.2 and D.3. The property is immediately adjacent to the City of Everett boundary. Within the City limits, many properties have higher densities. Testimony presented at the hearing was

that the neighborhood of the cul-de-sac is a mixture of single-family residences and duplexes. Some of the homes are owner occupied and some are rentals. There is an existing mix of housing choices on 33rd Avenue SE.

9. General Policy Plan Designation. Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Plans; and the Comprehensive Park & Recreation Plan. 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 GMA Comprehensive Plan as revised through the completeness date of the application.

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." Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.

10. With approval of the rezone, this project will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, provided that lot size averaging is applied and that the deviations described in the PDS Staff Report are approved. The proposal is consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.
11. Any Finding of Fact in this Decision which should be deemed a Conclusion is hereby adopted as such.

Based on the findings of fact entered above, the following conclusions of law are entered.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction to consider the requested rezone pursuant to Chapter 2.02 SCC and SCC 30.72.020.
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.²

4. Consistency 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 *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. Here, the Hearing Examiner concludes that the Applicant has met this showing.
5. This rezone is a request to rezone from R-9600 to R-7200 utilizing lot size averaging followed by an administrative short plat to two parcels.
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 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.

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:

² This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.

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.

(Emphasis added), 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.

7. Goal and Objective LU-2 focus on establishing development patterns that use urban land more efficiently by concentrating and intensifying development at appropriate locations. (Objective LU-2.A) The Examiner finds the test of what is “appropriate” is a case-by-case determination, based on the facts of each application. Consideration should be given to the careful siting of the development to minimize impacts to environmentally sensitive areas and to urban infrastructure; as well as to provide integration of the infill project into the neighborhood and nearby cities that may annex.³ Applying this test to the Mustach rezone, the Examiner concludes that the rezone from R-9,600 to R-7,200 will use urban land more efficiently in an appropriate area. The area is already characterized by urban growth such that it has adequate existing public facilities and services. There are no critical areas or shorelines on the site or within close proximity to the site. (GPP LU 2.A.3) The rezone proposal is adequately integrated into the neighborhood. (GPP LU-15) The neighborhood along 33rd Ave SE is comprised of single-family homes and duplexes. There is a mix of zoning in the vicinity of the site, including R-7200, PRD-7200, and R-9600. The densities specified within the adjacent limits of the City of Everett are higher than R-9,600. Similar to other areas within the UGA across South Snohomish County, the surrounding area here is currently in transition. Older, larger lots are being redeveloped into more dense single-family neighborhood patterns. Approving this rezone is consistent with this trend and is what is envisioned by the Comprehensive Plan, even if it is different from the past pattern of large-lot

³ Where a development project is also considered by the Hearing Examiner along with a rezone, the Examiner should also consider whether the design of the project itself does minimize impacts on the character of the residential neighborhood area.

residential housing tracts. If no lots were ever rezoned to higher densities within the previously developed UGA, the goals of the GMA and Comprehensive Plan would never be achieved. Finally, the R-7200 zoning designation will allow for duplexes, mobile homes and single-family homes, achieving the goals of GPP HO 2.B.1.

8. Substantial relationship to the public health, safety, and welfare. The other criterion in SCC 30.42A.100(2) is whether the proposal bears a substantial relationship to the public health, safety, and welfare. In this case, the Examiner concludes that it does. No issues of concern were identified in the PDS staff report. The Examiner's review of the record identified no public health and safety issues of concern. PDS will review the proposed 2-lot short plat and issue its administrative determination as to whether it meets the County's development regulations. Those issues are not before the Examiner. SEPA review resulted in a DNS and there were no appeals. Based on the entire record, the approval of the rezone bears a substantial relationship to the public health, safety, and welfare.
9. The Examiner concludes that the applicant has met its burden of proof to show that the rezone meets the requirements of Chapter 30.41C SCC. The Examiner further concludes that the requested rezone from R-9,600 to R-7,200 should be approved.
10. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following final decision and order:

The application for a **REZONE** of the subject property from **R-9,600 to R-7,200** is **GRANTED**.

Decision issued this 6th day of May, 2011.


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 **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, 2nd 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 MAY 16, 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 with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before MAY 20, 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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10-106051-LU MUSTACH SP I
HRG: 4/19/2011

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