



DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

Gordon Sivley
Hearing Examiner

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

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DATE OF DECISION: April 5, 2013

PLAT/PROJECT NAME: **Lewis Project Rezone**

APPLICANT/
LANDOWNER: Mike Walsh
Terrene Homes
520 6th Street South
Kirkland, WA 98033

FILE NO.: 12-107186 LU

TYPE OF REQUEST: **REZONE** from R-9600 to R-7200

DECISION (SUMMARY): **GRANTED**

BASIC INFORMATION

GENERAL LOCATION: 3625 220th Street SE, Bothell, WA 98021

TAX PARCEL NO. 270528-002-051-00

ACREAGE: 1.89 acres

ZONING: CURRENT: Residential-9600 (R-9600)
PROPOSED: Residential-7200 (R-7200)

COMPREHENSIVE PLAN DESIGNATION: Urban Low Density Residential (ULDR)

UTILITIES:

Water: Alderwood Water and Wastewater District
Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Northshore School District No. 417

FIRE DISTRICT: Snohomish County Fire Protection District No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve

BACKGROUND INFORMATION

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through G), 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 and the Hearing Log are available at the Hearing Examiner's Office.
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. A public hearing was held on March 27, 2013. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notices of the application and public hearing were issued according to the provisions of SCC 30.70.050. (Exhibits E.1, E.2 and E.3)

FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter.

1. Applicant's Request. The Applicant is requesting a rezone from R-9600 to R-7200 for an administrative 7-lot short plat (12-100839-000-00-SP) that will utilize lot size averaging and be subject to Urban Residential Design Standards. The rezone is required for the proposed short plat to meet lot size averaging standards, as the average lot size is 8,701 square feet. The short plat is an administrative decision, and is pending until a decision is made on the rezone proposal.
2. Site description. The site is currently occupied by one single-family residence. The site is located south of Palm Creek and north of 220th Street, and two properties east of 35th Ave SE, the County's boundary with the City of Bothell. The site has a slope in the northwest corner toward Palm Creek, which is a non-fish-bearing seasonal stream (Type Ns). The remainder of the site, above this slope, is relatively flat with slopes at 6% or less. Water and sewer service on the site will be provided by the Alderwood Water and Wastewater District.
3. Adjacent uses. The site is surrounded by single-family residential development, and is just east of the County's border with the City of Bothell (Exhibit C.2). Skyview Junior High School (City of Bothell) is located approximately ¼ mile to the northwest. The immediately adjacent properties to the north, west, and south are zoned R-9600, although the majority of properties to the north and south are zoned R-7200 or R-7200 (PRD). The adjacent property to the east is zoned R-7200 (PRD), with properties further to the east zoned R-7200. Properties further to the west within the City of Bothell are zoned R-9600.
4. Project Chronology. The rezone application was originally submitted to Planning and Development Services (PDS) on August 28, 2012, after it was determined that a rezone would be needed to allow for the proposed lot size averaging in the associated administrative 7-lot short plat. The 120-day clock started on this date and stopped on September 11, 2012 when a

review packet for the rezone and short plat was provided to the Applicant's contact. A resubmittal of the application was received on January 21, 2013. As of the hearing date, 79 days of the 120-day review period will have elapsed.

5. State Environmental Policy Act Compliance. A SEPA threshold Determination of Nonsignificance (DNS) was made on February 24, 2013. (Exhibit D.2) Notice of the decision was made according to the County's regulations. (Exhibits E.1, E.2, and E.3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
6. Issues of Concern. The County received one public comment on the rezone application during the Notice of Application period, in which the commenter (Gene Grieve) stated his support for the project and his belief that it was consistent with the housing needs within the neighborhood and the Southwest Urban Growth Area (Exhibit F.1). Mr. Grieve did express concerns about road improvements, particularly at the intersection of 220th Street SE and 39th Avenue SE. Road and traffic impacts of the proposed development will be considered in the review of the short plat associated with the current rezone proposal.
7. Rezone Criteria. 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 provide that the hearing examiner may approve a rezone only when all the following 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. The Examiner considers each criterion in turn.

A. The proposal is consistent with the comprehensive plan.

- (i) 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. The subject application has been evaluated for consistency with the latest version of the GMACP. The subject property is designated "Urban Low Density Residential" on the Future Land Use Map.
- (ii) The Applicant prepared a detailed analysis of the consistency of the requested rezone with the GMACP. (Exhibit A.2) The PDS analysis relating to the consistency of the requested rezone with the GMACP is set forth in Exhibit G at pages 4 through 6. Having reviewed the GMACP, and the PDS and Applicant analyses relating to whether the proposed rezone is consistent with the GMACP, the Examiner concurs with said analyses and hereby adopts and incorporates by this reference Exhibits A.2 and H herein, as if set forth in full. Accordingly, the

Examiner finds that the proposed rezone is consistent with the County's adopted GMACP.

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

The current rezone proposal does not authorize any new development or construction. When the associated short subdivision proposal and 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. 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. 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 Examiner finds that the Applicant is not requesting any of the zones listed in Chapter 30.31 SCC and, as such, the minimum zoning criteria in Chapters 30.31A through 30.31F SCC are not applicable to this rezone request.

8. The Hearing Examiner finds that the requirements of Chapter 30.42A.100 are satisfied by the present application and the rezone should be approved.
9. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, 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. 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. The proposal is consistent with the comprehensive plan.

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 also with the Land Use Element of the General Policy Plan.

4. 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.

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

This Examiner concludes that Chapter 30.31 SCC is not applicable in this case as that chapter only applies to performance standard zones, resource land zones, and overlays, none of which exist in this case.

6. The Examiner concludes that the rezone should be approved.

7. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The requested **REZONE** from Residential-9600 to Residential-7200 for the subject property is **GRANTED**.

Decision issued this 5th day of April, 2013.


Gordon Sivley, 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 April 15, 2013**. 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 has been 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 April 19, 2013**, 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: David Levitan

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.

PARTY OF RECORDS REGISTER
12-107186-LU LEWIS SHORT PLAT
HG: 3/27/2012 @ 11:00 AM

12-107186-LU

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