



**DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

**Gordon Sivley**  
Hearing Examiner

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

(425) 388-3538  
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DATE OF DECISION: August 28, 2013

PLAT/PROJECT NAME: **Phillips Rezone**

APPLICANT/  
LANDOWNER: Donna Phillips  
2360 Salty Shore Way  
Poulsbo, WA 98370

FILE NO.: 13-102871-LU

TYPE OF REQUEST: **REZONE** from R-8400 to LDMR

DECISION (SUMMARY): **GRANTED**

**BASIC INFORMATION**

GENERAL LOCATION: 7622 – 222<sup>nd</sup> Street SW, Edmonds, WA

TAX PARCEL NO. 005011-000-006-00

ACREAGE: 0.42 acres

ZONING: CURRENT: Residential-8400  
PROPOSED: Low Density Multiple Residential (LDMR)

COMPREHENSIVE PLAN DESIGNATION: Urban Medium Density Residential (UMDR)

PDS STAFF RECOMMENDATION: Approve

**A. BACKGROUND INFORMATION**

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through I.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 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 August 21, 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) Notice was concurrently given concerning the SEPA Threshold Determination as required by the County Code.

## **B. 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-8400 to LDMR (Low Density Multiple Residential) for an 18,180 square foot (0.42 acre) lot. The site is a 60 foot by 300 foot lot in a developed, single-family residential neighborhood near Edmonds. The lot is currently vacant with frontage on 222<sup>nd</sup> Street SW. The Applicant also owns two parcels adjacent to the east, zoned Multiple Residential.
2. Site description. The site is a level, rectangular parcel known as Lot 6 of Luschen's Tracts located at 7632 – 222<sup>nd</sup> Street SW near Edmonds. The site contains lawn and some trees and scrubs and is vacant of structures. The site extends south about 300 feet from 222<sup>nd</sup> Street with approximately 60 feet of frontage on the street.
3. Adjacent uses. Surrounding uses are all single-family residential houses on individual lots in an older, established residential neighborhood. The zoning of the properties immediately to the north and west is R-8400, a single-family residential zone. Zoning of the properties to the east is Multiple Residential, a multi-family residential zone allowing one dwelling unit per 2000 square feet of land area. The property immediately to the south is in the city limits of Edmonds and is developed with a residential subdivision and the city limits of Edmonds lie 300 feet to the east and 700 feet to the north of this site. The Highway 99 commercial corridor lies about 700 feet to the east.
4. Project Chronology. The rezone application was originally submitted to PDS on September 26, 2012 and was determined to be complete as of the date of submittal for regulatory purposes. A resubmittal of the application was received on February 13, 2013. As of the hearing date, 114 days of the 120-day review period will have elapsed. The Applicant was notified that the decision will be rendered outside of 120 day review period.
5. State Environmental Policy Act Compliance. A SEPA threshold Determination of Nonsignificance (DNS) was made on July 21, 2013. (Exhibit D.2). Notice of the decision was made according to the County's regulations. (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

Numerous letters of comment and opposition were received in response to this application. The comments center on compatibility with the existing neighborhood, increased traffic from increased density, and drainage. (Exhibits G.1 through G.6)

7. Rezone Criteria. The Applicant seeks a rezone of the site from R-8400 to LDMR pursuant to Chapter 30.42A SCC. In order to grant a rezone, the Hearing Examiner must find that (1) the proposal is consistent with the comprehensive plan; (2) that the proposal bears a substantial relationship to the public health, safety and welfare; (3) the proposal will not increase the density on any site where any significant trees were removed after January 7, 2009 and within six years prior to the date of application; and (4) where applicable, that minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

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 Medium Density Residential" on the Future Land Use Map.

(ii) The PDS analysis relating to the consistency of the requested rezone with the GMACP is set forth in Exhibit H at pages 3 through 8. The Applicant also prepared and analysis of GMACP consistency. (Exhibit A.2). 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 the analyses in Exhibits H and A.2 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 Applicant or her successor proposes an actual change in use of the site, it 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. The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009, and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3).

There is no evidence that any significant trees were removed from the site proposed for the rezone after January 7, 2009 or within six years of the submittal date.

D. 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. Citizen Concerns. This proposal is a rezone only, no development is proposed. Under the current zoning of this site and the zoning of the adjacent properties under the same ownership, the amount of land area is estimated to support potentially 15 residential units. With the proposed zoning change, 17 units could potentially be allowed. The character of the development on the rezone site would be substantially different from existing land uses; multi-family versus single-family development. However, the County Council made the policy choice that this area should develop at higher densities than those which currently exist when the Comprehensive Plan revisions were adopted in 2005 which designated the site Urban Medium Density Residential. Snohomish County development regulations concerning traffic and drainage will address impacts from future development. Multi-family development in this location is compatible with the planned, future land use in this area, as determined by the County Council in the adopted GMA Comprehensive Plan.
9. The Examiner finds that the requirements of Chapter 30.42A.100 are satisfied by the present application and the rezone should be approved.
10. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

### C. 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 (a) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (b) 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. The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009, and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3).

Based upon the Findings of Fact set forth above, the Examiner concludes that the proposal satisfied this requirement.

6. 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.

7. The Examiner concludes that the rezone should be approved.
8. 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 8400 to Low Density Multiple Residential for the subject property is **GRANTED**.

Decision issued this 28<sup>th</sup> day of August, 2013.

  
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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 calendar 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 September 9, 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]. The petitioner should file with the Office of the Hearing Examiner an affidavit of mailing or other proof of service at the time the petition for reconsideration is filed.

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, 2<sup>nd</sup> 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 September 11, 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.

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Staff Distribution:

Department of Planning and Development Services: Robert Pemberton

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  
13-102871-LU PHILLIPS REZONE  
HEARING: 8/21/13  
TIME: 10:00 AM

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CITY OF LYNNWOOD  
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