



DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

Hearing Examiner's Office

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Gordon Sivley
Hearing Examiner

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3000 Rockefeller Ave.
Everett, WA 98201

(425) 388-3538
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DATE OF DECISION: September 12, 2013

PLAT/PROJECT NAME: **Bing Road Rezone**

APPLICANT: Mike Mietzner
Mietzner Brothers Properties, LLC
11611 Airport Rd Suite B1
Everett, WA 98204

FILE NO.: 13-106261 LU

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

DECISION (SUMMARY): **GRANTED**

BASIC INFORMATION

GENERAL LOCATION: 725 Bing Road, Lynnwood, WA

TAX PARCEL NO. 004732-000-001-00

ACREAGE: 1.11 acres

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

COMPREHENSIVE PLAN DESIGNATION: Urban Low Density Residential (ULDR)

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 F), 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 September 11, 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 adoption of 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-9600 to R-7200 for a 1.11 acre site. The Applicant intends to submit an application for a short subdivision following a decision on this rezone proposal.
2. Site description. The subject site is currently occupied by a single-family residence and accessory structures, and is accessed off Bing Road in the unincorporated Lynnwood area. The site is L-shaped and is relatively flat. The yard consists of lawn and several large trees along the perimeter of the northern portion of the site.
3. Adjacent uses. The site is in an area of single-family residences, including a recent PRD-9600 subdivision to the north. Zoning in the surrounding areas include R-9600, R-7200, PRD-9600 (to the north), LDMR (to the southwest), and MR (to the southeast), as illustrated in Exhibit C.2. Commercial zones are located approximately 1,250 feet to the east and Interstate 405 is located approximately 600 feet to the southwest.
4. Project Chronology. The rezone application was originally submitted to the Department of Planning and Development Services (PDS) on June 18, 2013, and was determined to be complete as of the date of submittal for regulatory purposes. As of the hearing date, 83 days of the 120-day review period had elapsed.
5. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) for the previous rezone application (07-107108-000-00-LU) on April 15, 2009 (Exhibit D.2), which also involved a proposal to rezone the subject site from R-9600 to R-7200. That DNS was not appealed. PDS determined that the current proposal does not include any potentially adverse environmental impacts that were not analyzed during the SEPA review and threshold determination for the previous proposal. Therefore, PDS adopted the previously issued DNS (Exhibit D.1), consistent with the provisions of WAC 197-11-600(4), WAC 197-11-630, and WAC 197-11-965. The DNS adoption form was sent to all agencies included in the original DNS distribution list and notice of the adoption was provided along with the notice of the rezone approval hearing. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.

6. Rezone Criteria. The Applicant seeks a rezone of the site from R-9600 to R-7200 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 (GMA), 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 PDS analysis relating to the consistency of the requested rezone with the GMACP is set forth in Exhibit F at Pages 4 through 6. The Applicant also prepared an 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 F 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 owners or their 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 and the owners submitted an affidavit attesting that no such tree removal occurred. (Exhibit A.3)

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.

7. The Examiner finds that the requirements of Chapter 30.42A.100 are satisfied by the present application and the rezone should be approved.
8. 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 satisfies this requirement.

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

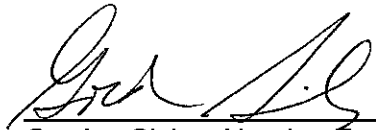
This Examiner concludes that Chapter 30.31 SCC is not applicable in this case as that chapter only applies to performance standard zones, resource land zones, and overlays, none of which exist in this case.

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-9600 to Residential-7200 for the subject property is **GRANTED**.

Decision issued this 12th day of September, 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 calendar 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 September 23, 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 is discovered which could not reasonably have been produced at the open record hearing and which is material to the decision; 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 September 26, 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: 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
13-106261-REZO BING ROAD
REZONE
HEARING: 9/11/2013
TIME: 9:00 AM

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