

DECISION OF THE SNOHOMISH COUNTY HEARING EXAMINER PRO TEMPORE

DATE OF DECISION: October 7, 2008

PROJECT NAME: ***KINGS CORNER PHASE II***

APPLICANT/OWNER: The McNaughton Group

FILE NO: 06-102331-001-00-LU

TYPE OF REQUEST: **REZONE** from Residential-7,200 (R-7,200) to Low Density Multiple Residential (LDMR)

DECISION: **APPROVE**

BASIC INFORMATION

PROJECT LOCATION: 17615 35th Avenue SE. within Sec. 9, T27N, R5E. W.M.

ACREAGE: 4.86 acres

CURRENT ZONING: R-7,200

PROPOSED ZONING: LDMR

COMPREHENSIVE PLAN
General Policy Plan: Urban Medium Density Residential (6-12 du/ac)

SCHOOL DISTRICT: Everett

UTILITIES
Water and Sewer: Silver Lake Water and Sewer District

FIRE DISTRICT: NO. 7

PDS
RECOMMENDATION: Approve

INTRODUCTION

The applicant filed the Master Application on March 17, 2006. The application was determined to be complete for regulatory purposes as of the date of submittal. A revised rezone application was filed on September 27, 2007, combining the rezone with an administrative site plan and grading permit application. This application was determined to be complete for regulatory purposes as of the date of submittal. A resubmittal was received on June 24, 2008.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by County Code. (Exhibits 6A, 6B and 6C)

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on July 30, 2008. No appeal was filed. (Exhibit 5B)

The Examiner held an open record hearing on September 17, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered. The decision here is based on the record made.

PUBLIC HEARING

The public hearing commenced on September 17, 2008, at 1:00 p.m.

1. The applicant was represented by Brian Holtzclaw, Attorney for the McNaughton Group.
2. PDS was represented by Scott Whitcutt, Planner.
3. There was no public testimony.

The hearing concluded at 1:17 p.m.

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

FINDINGS OF FACT

1. The master list of exhibits is in the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. The PDS Staff Report has correctly analyzed the nature of the application and the application's consistency with adopted codes, policies and land use regulations. The Staff Report is hereby adopted by the Examiner as if set forth in full herein.

3. There have been no general public comments indicating concern over the subject rezone. The Muckleshoot Tribe submitted questions about the development proposal and critical areas to which the applicant responded.
4. The site at 17615 35th Ave SE is within an Urban Growth Area (UGA). The rezone property was created by recordation of a Boundary Line Adjustment, following revision of the Sommerwood preliminary plat approval (PFN 04116395-SD).
5. The 4.86 acre site is a trapezoidal area extending east from 35th Avenue SE. The property is currently developed with a single-family residence, associated yard and access drive. The land has flat to rolling contours. There are scattered trees. Tambark Creek, a Type 3 stream supporting Coho salmon, a portion of a large Category 2 wetland, and a part of a smaller Category 3 wetland are on and within 100 feet of the subject property.
6. The applicant is requesting a rezone from R-7,200 to LDMR. The applicant has also applied for an administrative site plan approval and grading permit for development of 21.71 acres (including the rezone parcel) for a total of 161 residential units comprised of 153 multi-family units configured in triplex or greater and eight single-family units configured in duplex units. The application includes associated stormwater detention/water quality, drive aisles, parking area, and landscape features.
7. The rezone proposal is for a portion of the McNaughton Group's project called King's Corner. The subject area was once designated as LDMR but then rezoned to R-7,200 for inclusion in the Sommerwood project. Now the property has been removed from Sommerwood (with Hearing Examiner approval) and the developer wants these 4.6 acres to go back to LDMR to be included in Kings Corner. Of the total 161 units proposed for King's Corner, 29 units are proposed within the boundaries of the rezone site.
8. The property adjacent to the north is zoned R-9,600 and is within Tambark Creek Park. Property to the east is zoned R-7,200 and has preliminary plat approval for the plat of Sommerwood. Property adjacent to the south is zoned LDMR and MR and comprises the portion of the overall properties being combined under the proposed rezone, administrative site plan and grading permit applications. To the west across 35th Avenue W, the property is zoned LDMR. This property is currently developed with four single-family residences but is proposed for a "LDMR" single-family detached development (PFN 06-103915-LU).
9. PDS has determined the appropriate transportation impact fees to be paid and conditions specifying the proper amounts are to be set forth in the administrative approval. Concurrency standards will be met with the fulfillment of specified traffic improvement conditions. The proposal will not impact any inadequate road condition locations nor will it create any.
10. Urban frontage improvements shall be required along the frontage on 35th Avenue SE and consist of adding 23 feet of pavement to the face of a six-inch vertical curb, installation of a five-foot planter and construction of a seven-foot sidewalk.

11. Access to Kings Corner will be at three points on 35th Avenue SE with internal access to the buildings supplied by a drive aisle approved to meet fire code specifications. No public roads are proposed or required.
12. A segment of the larger Kings Corner property area that is in wetlands abuts on 180th Street SE to the south. Both 35th Avenue SE land and 180th Street SE are minor arterials requiring 40 feet of right-of-way on each side of the centerline. 30 feet of right-of-way currently exists on the development's side of both of these right-of-ways. Thus, 10 feet of additional right-of-way will be required to be deeded along these streets.
13. Children from the proposed development will be provided with school bus service by Everett School District #2. The proposed frontage improvements will provide safe walking conditions for school children to the bus stops. No offsite pedestrian facilities will be required.
14. Appropriate impact fees will be required for parks and schools.
15. The 21.71 acre development site will have a single stormwater management system involving the collection of runoff in the drive aisles where it will be directed to catch basins and then piped to an underground detention vault. Either a 120-foot biofiltration swale or a storm filter vault will be used for water quality treatment. In either case, treatment will meet County requirements. Discharge from the detention and water quality treatment system will be to the wetlands via a level spreader. Hydration of the wetlands at other locations may be supplemented by foundation drainage collected at the dwelling units along the perimeter of the wetlands. PDS concludes that the project will meet the drainage and grading requirements set forth in the County Code.
16. Critical areas will in general be avoided. An evaluation of the information submitted with the proposed site development plan coupled with an on-site investigation has determined that critical areas were accurately flagged in the filed, properly typed, categorized and depicted on plan documents submitted for review. With achievable conditions, PDS concludes that the project can comply with the County's Critical Area Regulations.
17. The private drive aisles proposed meet the minimum Fire Code requirements for width, slope and turn radii. Fire hydrants are required and their location and spacing must be approved prior to construction approvals. Fire flow availability must also be verified prior to construction. If fire flow cannot be provided, sprinklers will be required.
18. The Silver Lake Water and Sewer District as provided preliminary water and sewer availability certificates (Exhibit 22) for the subject rezone and development plan.
19. The subject 4.6 acre area is designated by the Comprehensive Plan as Urban Medium Density Residential (UMDR). According to the General Policy Plan, this designation "allows high density residential land uses such as townhouses and apartments generally near other high intensity land uses." Land in this category

may be developed up to a maximum density of 12 dwelling units per acre. The 29 units proposed for the 4.6 acres rezone site represent approximately 3/5 of the maximum allowed units for the specific site.

20. The proposed rezone and proposed development plan are consistent with the "Urban Development Patterns" statement for encouraging and broadening the mix of urban housing types, promoting more efficient use of land within UGAs and using infill to reduce the consumption of rural lands. The subject neighborhood is in transition. The proposal will be compatible with the trend of development in the vicinity.
21. The proposed LDMR zoning is an implementing zone for the UMDR designation. The proposed project implements and is consistent with this designation. The proposed zoning merely reinstates zoning that has been legislatively approved by the County Council.
22. The Staff Report contains a thorough review of Comprehensive Plan goals and policies that will be carried out by the subject development. The Examiner adopts this discussion.
23. The Examiner concurs with Staff that the rezone is consistent with the Comprehensive Plan.
24. PDS has determined that the proposed development will meet the bulk and setback regulations applicable to LDMR zoning. In addition, Staff review has concluded that the specific proposal will be consistent with all other applicable development regulations.
25. Accordingly the Examiner finds that the proposal bears a substantial relationship to the public health, safety, and welfare.
26. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over this proceeding.
2. The requirements of SEPA have been met.
3. Under SCC 30.42A.100, the Hearing Examiner may approve a rezone only when all of 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 are met.

4. Based on the findings, the Examiner concludes that the proposal meets the relevant criteria for approval of a rezone. Chapters 30.31A through 30.31F do not apply.
5. Adequate public services are available to serve the proposal.
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The request for approval of a Rezone from R-7,200 to LDMR is **GRANTED**.

Nothing in this approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 7th day of October, 2008



Wick Dufford, Hearing Examiner Pro Tempore

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. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **OCTOBER 17, 2008**. 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. 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 #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **OCTOBER 21, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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: Scott Whitcutt

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.