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REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: March 18, 2008

PLAT/PROJECT NAME: *Cascade Crest*

APPLICANT/
LANDOWNER: Robert Nehring

FILE NO.: 06 104246 LU

TYPE OF REQUEST: Rezone from Residential-7200 (R-7200) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: The project site is located 9 91st Avenue SE, Everett, Washington.

ACREAGE: 1.47 acres

ZONING: CURRENT: R-7200
 PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential (6-12 du/acre)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve
Public Works: Approve

INTRODUCTION

The applicant filed the Master Application on January 23, 2007. *See* Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on March 10, 2007 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by SCC 30.72.030(4). *See* Exhibits 26 (mailing), 27 (publication) and 28 (posting).

A SEPA determination was made on June 7, 2007. *See* Exhibit 9. No appeal was filed.

PUBLIC HEARING

The public hearing commenced on March 11, 2008 at 3:03 p.m.

1. Scott Whitcutt, Senior Planner, appeared on behalf of PDS and gave an overview of the project and answered questions from the Examiner.
2. William B. Foster, Attorney, appeared on behalf of the applicant, Robert Nehring.
3. No one appeared in opposition to the request.

The hearing concluded at 3:38 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. All exhibits and witnesses included on the Master Exhibit and Witness List were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.

2. State Environmental Policy Act Compliance. A Determination of Nonsignificance (DNS) was issued June 7, 2007. Exhibit 9. The DNS was not appealed.
3. Rezone Request: The request before the Examiner is for a rezone from R-7200 to LDMR. Exhibit 1. The applicant is requesting an administrative site plan from PDS, which PDS staff has included in the file for the Examiner's reference. The Examiner has no jurisdiction over approval of the site plan. The Examiner does appreciate the information and the visual reference as it is crucial in deciding the issues in the rezone.
4. Site description: The site is a rectangular 4-lot short plat extending west to east from its frontage on 91st Ave SE.
5. Adjacent uses: MR zoning exists adjacent to the north and east. R-7200 zoning exists adjacent to the south and west of 91st Ave SE. Surrounding uses are single-family to the south, east, north, and west. Multi-family residential use lies to the northeast. The general area is experiencing multi-family rezoning consistent with the comprehensive plan.
6. Transportation: The development is situated upon 91st Avenue SE. On remand, the applicant submitted evidence indicating that the proposed development will generate less than 50 PM peak hour trips and is therefore not required to perform arterial level of service calculations unless it impacts an arterial unit in arrears with three PM peak-hour trips. Exhibit 30 at 6. The applicant's traffic evidence, which is un rebutted in the record, indicates that the development will not cause such an impact. *Id.* The applicant also submitted the following comments from county staff Mark Brown, the engineer who reviewed the project for traffic concerns:

A concurrency determination was issued, which indicates that according to the code there is sufficient capacity on the County arterial system for the traffic from the proposed development as well as two adjoining projects with file numbers 06 104240 and 06 104250. Both of the latter developments have been issued concurrency. County code allows for the level of service on arterials to operate at a LOS of "E" inside the UGA. Neither the subject development nor either of the two neighboring developments will impact an arterial unit in TSA "B" operating below the accepted standard below the accepted standard with more than three directional peak hour trips. Because of this it has been determined the existing infrastructure will accommodate the proposed developments.

With respect to the proposed interior access road, Mr. Brown stated:

All three developments will access the same private road. The design of the private road as well as its access to 91st Avenue SE has been approved by the County Engineer. Location, spacing, width, sight distance and improvement standard were considered in this determination.

Exhibit 30 at 6-7. Although there were some e-mails by nearby residents that complained about traffic conditions, the Examiner must rely on the un-rebutted evidence submitted by the traffic expert in this case.

7. Environmental Impacts of Higher Density.

A. Grading, drainage, and critical areas.

There are no critical areas on or within 100 feet of the project site. According to the staff report, grading quantities are anticipated to be approximately 2378 cubic yards of cut and 2378 yards of fill, primarily for road, drainage facilities, and home site construction. Exhibit 31. Standard water quality measures will be in place during construction in accordance with a Temporary Erosion and Sedimentation Control Plan. Exhibit 31. Stormwater detention will be provided by a vault system. Exhibit 31.

B. Parks and schools impacts.

1. Parks. The staff report contains the following information on the development's compliance with county parks' mitigation requirements which the Examiner incorporates herein for a better understanding of the parks' impacts of the higher density development at this site:

The proposed development will be subject to Chapter 30.66A SCC, for impacts to Centennial Park District No. 306. Impact mitigation regulations currently require payment of \$1,361.22 per each new single-family/duplex residential unit, to be paid prior to building permit issuance for each unit. Payment consistent with Chapter 30.66A will be deemed acceptable mitigation for future parks and recreation impacts in accordance with county policies as well as regulatory provisions. Such payment is deemed acceptable mitigation for future impacts to Park District No. 306.

Exhibit 30 at 6.

2. Schools. The staff report contains the following information on the development's compliance with county school mitigation requirements which the Examiner incorporates herein for a better understanding of the school impacts of the higher density development at this site:

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Lake Stevens School District No. 04, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given to unit 1, 2, 3, and 4 for the 4 existing lots being combined in the single-site redevelopment.

Exhibit 30 at 7. SCC 30.66C.100 requires payment of school impact fees by all developments as a condition of approval. The fee is calculated in accordance with a formula established in SCC 30.66C.045. SCC 30.91D.220 defines “development” as “any residential construction or expansion of a building structure or use of land or any other change of use of a building, structure, or land that creates additional dwelling units.”

8. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Medium Density Residential (UMDR: 6-12 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 Medium Density Residential designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones.” GPP at LU-89.
9. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, 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. *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.¹

4. 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.**
5. This rezone is a request to up-zone a property in the Urban Medium Density Residential (UMDR) Designation from R-7200 to LDMR to allow 10 units on this site. Although it is clear that this request fits within the UDMR designation (which allows up to 12 units per acre), as stated above, the analysis of consistency must go well beyond the designation and identify how the project is consistent with the policies in the plan.
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 urban growth areas.

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:

¹ 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.

General Policy Plan at LU-15 (emphasis added).

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 (emphasis added).

Specific policies under Goal LU 2 that are relevant to this development are:

- 2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.
- 2.A.4 Any UGA shall provide opportunities for a mix of affordable housing types (e.g. small lot detached, townhouses, duplex, triplex, 6 to 8 unit apartment and small group housing units) within medium density residential areas.
- 2.A.5 Medium and high density residential development (including elderly and disabled housing) shall be encouraged to locate, where possible, within walking distance of transit access or designated transit corridors, medical facilities, urban centers, parks, and recreational amenities.

7. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the Council in the adoption of the proposed plan and provide the Examiner a reasonable basis on which to analyze urban rezone proposals.

A. Is this area already characterized by urban growth that has adequate existing facility and service capacities to serve such development for the following types of public facilities and services? Please demonstrate. (See LU-1)

- i. Streets, roads and highways (including but not limited local access and circulation, arterial systems and road systems capacity, concurrency, state highway impacts);
- ii. Sidewalks;
- iii. Street and road lighting systems;
- iv. Traffic signals;
- v. Domestic water systems;
- vi. Sanitary sewer systems;
- vii. Public parks and recreational facilities, or useable open space, common areas, or other recreational facilities within the development ;
- viii. Storm and sanitary sewer disposal system;
- ix. Fire and police protection suppression;
- x. Law enforcement;
- xi. Public health;
- xii. Education; and
- xiii. Other services.²

B. Will the rezone help to establish development patterns that use urban land more efficiently? How? (See Goal LU-2)

Does the development concentrate and intensify development at an appropriate location? Why? (Objective LU-2.A)

i. Is the development carefully sited?

- (a) Critical areas/shorelines.
 - (i) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
 - (ii) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (iii) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies

² Taken from the GMA definitions of public facilities and services. RCW 36.70A.030(12) &(13).

with goals and policies of the Snohomish County Shoreline Master Program.³

- (b) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities? **(Policy LU 2.A.5)**
- (c) How will the development made possible by the requested rezone tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation? **(Page LU-15)**
- ii. **Is the rezone proposal/development sensitively integrated into the existing community? (See LU-15)**
 - (a) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas? **(LU-15, Policy 2.A.4)**
 - (b) Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? **(Policy LU 2.A.4)**
 - (c) Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? **(See Policy I.C.2)**
- iii. **If known at the time of submittal of the rezone, is the development well designed? (See LU-15)**
 - (a) Even if density is at a higher level are efforts made to have the character fit into the existing community? If so, what is the character of the existing community and how will the development maintain it? **(See LU-15)**
 - (b) How specifically will the building design integrate into the existing neighborhood? Are structures of a size, height, mass, and separation to be consistent with vicinity homes and the surrounding neighborhood? Describe in detail. Will the development be at the same elevation as the rest of the existing neighborhood? How will the elevation affect the perception of the development? **(LU-15)**
 - (c) If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(See Policy HO 2.A.4)**
 - (d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using features such as landscaping, fencing, setbacks, or other design features to soften or eliminate those impacts. **(LU-15)**
 - (e) Will the development be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest

³ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

parking, cul-de-sac radii, and building separation? Has the opinion of both the County Fire Marshall and any local Fire District been placed in the record? **(LU-15)**

- (f) Is the public health, safety and welfare adequately provided for (examples are safe pedestrian access, safe place for children to wait for school bus, adequate off street parking so that a fire truck can access development)? **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

8. Applying this test to the Cascade Crest project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:

A. The area is already characterized by urban growth such that it has adequate existing public facilities and services to serve the development for the following types of facilities and services, as demonstrated below:

- i. Streets, roads and highways. The Examiner relies on Finding of Fact 6 in part to conclude that the development is adequately served by existing streets, roads and highways. There appear to be no local circulation issues.
- ii. Sidewalks. There are no sidewalks at present, but the developer will be providing sidewalks as a part of the development proposal.
- iii. Street and road lighting system. Testimony at the hearing indicated that there is street lighting on 91st Avenue.
- iv. Traffic signals. It is unknown to the Examiner whether traffic signaling is adequate in the area.
- v. Water systems. Water will be provided by Snohomish County PUD No. 1 and the file contains a preliminary certificate of water availability. Exhibit 18.
- vi. Sanitary Sewer Systems. Sewer will be provided by the Lake Stevens Sewer District and the file contains a preliminary certificate of sewer availability. Exhibit 20.
- vii. Park and recreational facilities. As stated in Finding of Fact 7.B., the developer will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. *See* Snohomish County Parks Plan at page 41. This criteria, however, addresses existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the county. The Examiner can determine, based on a map located on the County Parks and Recreation Department website, that there are a number of county parks in the vicinity of the development, including Sunset Park, Wyatt Park, Spencer Island Park, Centennial Trail, Cavalero Hill Park, Catherine Creek Park, Lake Stevens Community Park, Boulder Park, and Lundeen Park. In the future, the Examiner would like to hear from Parks' planners whether the parks' level of service is met for citizens in each particular proposed development and how that may be determined at the planning level. The Parks Plan was not altogether clear that levels of service had been adopted for every type of park, although Objective CF 7.C of the GPP states, related to parks, "[m]onitor and maintain minimum LOS standards, as defined in

the Comprehensive Park and Recreation Plan and the CIP, through adequate CIP funding.”

- viii. Storm and sanitary sewer disposal system: Stormwater disposal systems are provided by Snohomish County right-of-way on 91st Avenue.
 - ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 8. Fire District 1 has made specific comments to the plan review, including requesting that the applicant insure proper fire department access, fire hydrant spacing and that fire hydrants are equipped with 4” storz adapters. Exhibit 21. Police protection is provided by the Snohomish County Sheriff.
 - x. Public health: Public health issues are addressed by the Snohomish Health District.
 - xi. Education: The site is served by the Lake Stevens School District. Exhibit 19.
 - xii. Other services: The Examiner is not aware of any other services that are available that should be discussed in the decision.
- B. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A.
- i. The development is carefully sited.
 - (a) There are no critical areas or shorelines on the site or within close proximity to the site. (Policy LU 2.A.3)⁴
 - (b) The rezone or development is proposed in an area that is within walking distance of transit access. There is bus service on 91st Avenue SE. GPP at LU-18 As stated above in conclusion 8.vii., there are multiple parks in the vicinity. **(Policy LU 2.A.5)**
 - (c) The development made possible by the requested rezone may tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation because it is on a bus route. **(Page LU-15)**
 - ii. The rezone proposal is adequately integrated into the neighborhood. (See LU-15)
 - (a) The Examiner characterizes the neighborhood as changing. It appears that the single family uses are slowly but surely getting bought out and infill is occurring. Exhibit 5 is an aerial photograph which very clearly shows the property itself and the changing nature of the surrounding area. In the immediate vicinity, an LDMR development already exists on one side, and another new development is in process on the other side. Given the mix of uses already existing in the area, and the ability of the road system to handle it, this level of density appears appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas. Even more revealing is Exhibit 4,

⁴ Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county’s GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

which is a zoning map showing the number of properties surrounding the parcel that are zoned LDMR. **(LU-15, Policy 2.A.4)**

- (b) The Examiner does not know whether the type of housing proposed could be characterized as “affordable”. There was no testimony concerning what is affordable in the market today. **(Policy LU 2.A.4)**
- (c) This area is within approximately one block of the border of the City of Lake Stevens. *See* Exhibit 4. There are no city comments in the record. **(See Policy I.C.2)**

iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)

- (a) There was testimony from the applicant that the units in the development would be constructed in a manner very similar to detached LDMR-type development near the proposed development. *See* Exhibit 33. **(See LU-15)**
- (b) Given the testimony that the building design will be similar to other LDMR-type development in the neighborhood, the Examiner concludes that this type of design will fit well in the neighborhood. As stated above, the character of the neighborhood overall is changing. Most of the new homes in the neighborhood are two-story and it is assumed the homes in this development will likely be the same. The development will be at the same elevation as the rest of the neighborhood, as the lot is extremely flat. The elevation should not affect the perception of the development negatively in any way. **(LU-15)**
- (c) The Examiner is not aware of any “selective and innovative land use measures” that will be used to preserve the character of the stable residential neighborhood. **(See Policy HO 2.A.4)** In this case, this policy is not applicable because the Examiner would not characterize this neighborhood as a “stable residential neighborhood”.
- (d) As the Examiner indicated above in Conclusion 6(b)(i), the developer is making effective and intelligent use of good site design and landscaping to mitigate what otherwise could be negative impacts of the higher density. **(LU-15)**
- (e) The development appears to be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation. The opinion of the local Fire District appears in the record at Exhibit 21, as stated above, and provides guidance to PDS for requirements for the site plan review. **(LU-15)**
- (f) The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. There appears to be adequate pedestrian access to 91st Avenue SE, a safe place for children to wait for a school bus, adequate off street parking and adequate fire access. **(See LU-15)** (*See* also discussion of public health, safety and welfare criteria, below).

9. The other criteria in SCC 30.42A.100 is whether the proposal bears a substantial relationship to the public health, safety, and welfare. *See* SCC 30.42A.100(2). Returning to Council Motion 07-447 the Council clarified the proper role of the Examiner in reviewing this criteria:

Although consistency with the Comprehensive Plan is a significant factor in determining whether a proposed rezone bears a substantial relationship to the public health, safety and welfare, in some cases, there may be other factors outside the Comprehensive Plan policies that may be relevant to that issue and which may be considered. If there are such factors apparent from the application documents or otherwise known to PDS, they must be identified and discussed both in the written PDS staff report and by the Examiner in his decision. The written PDS staff report and the Examiner's decision should specify if any of these other factors are related to the rezone or should be considered at the project level with the specific development proposal being made. PDS staff is not required to anticipate opposition or to consider factors or issues outside of the Comprehensive Plan or not required by the Snohomish County Code. However, this does not limit the Hearing Examiner's ability to consider testimony at the public hearing concerning whether the proposed rezone bears a substantial relationship to the public health, safety and welfare.

Motion 07-447 at 3.

The Examiner interprets this language to mean that most of the time, analysis of whether the rezone is consistent with the Comprehensive Plan should suffice for review of a rezone proposal because in most cases, analysis of the comprehensive plan policies is analysis of whether the proposal bears a substantial relationship to the public health, safety and welfare. However, the Examiner and PDS may use this second criteria to analyze other issues of concern that may be raised outside of the scope of the Comprehensive Plan.

10. In this case, the Examiner concludes there are no issues of concern that warrant analysis under SCC 30.42B.100(2). No issues of concern were identified in the PDS staff report (*See* Exhibit 30) and no one except the applicant and PDS staff testified at the hearing. The Examiner identified no issues of concern in reviewing the file.
11. Since this request involves rezoning only, any details or conditions which would normally appear as conditions of the development in the Examiner's decision will be issued as a part of the administrative plan approval by PDS.
12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
13. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The request for a Rezone from R-7200 to LDMR for this property is granted.

Decision issued this 18th day of March, 2008.

Barbara. Dykes, 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. 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 **MARCH 28, 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 **APRIL 1, 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 this case.

Staff Distribution:

Department of Planning and Development Services: Paul Lichter

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.