

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: April 4, 2008
PROJECT NAME: **GROOMS LDMR**
OWNER/APPLICANT: Gordon Grooms
FILE NO: 06-129672-000-00-LU
REQUEST: Rezone of 1.38 acres from R-9,600 to LDMR
DECISION (SUMMARY): APPROVE

BASIC INFORMATION

GENERAL LOCATION: 12226 Gibson Road within a portion of Section 27,
Township 28 North, Range 4 East, W.M.
ACREAGE: 1.38 acres
CURRENT ZONING: R-9,600
PROPOSED ZONING: LDMR (Low Density Multiple Residential)
COMPREHENSIVE PLAN:
General Policy Plan: Urban Medium Density Residential
UTILITIES:
Water and Sewer: Alderwood Water and Wastewater District
SCHOOL DISTRICT: Mukilteo Schools District No. 6
FIRE DISTRICT No. 1

INTRODUCTION

The rezone application was originally submitted to Planning and Development Services (PDS) on September 20, 2006, and was determined on October 18, 2006, to be complete as of the date of submittal but needing additional information for continuing project review. Resubmittal information was received on August 30, 2007 and deemed sufficient for purposes of issuing a SEPA threshold determination and scheduling the public hearing. The hearing was set for January 8, 2008.

The Deputy Hearing Examiner made a site familiarization visit on January 6, 2008.

PDS gave proper public notice of the open record hearing as required by County code. Exhibit 14 (Affidavit of Mailing); Exhibit 15 (Affidavit of Notification by Publication); Exhibit 16 (Posting Verification).

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on August 27, 2007. No appeal was filed.

The Deputy Examiner held an open record hearing on January 8, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered. Subsequently, with the applicant's consent, a pro tempore hearing examiner reviewed the audio CD of the hearing and rendered the decision herein.

PUBLIC HEARING

The public hearing commenced on January 8, 2008 at 1:02 p.m.

1. Representing PDS was Scott Whitcutt, Planner.
2. Representing the Applicant was Jesse Jarrell, Project Engineer, Western Engineers.
3. Present and testifying were Gordon Grooms, Applicant, and Jutta Cross, an abutting owner.

The hearing concluded at 2:08 p.m.

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

ISSUES OF CONCERN

There are no significant issues of concern regarding either the rezone or the proposed development. No citizen comments were received prior to hearing.

At the hearing Jutta Cross appeared and testified. She is the owner of neighboring property to the south, fronting on Gibson Road. She expressed concerns about changes in elevation due to grading. To her west, another development lowered the grade. She was advised that there will be no grade change as a result of the Applicant's proposal.

Ms. Cross maintains pure bred dogs on her property and is also worried about adequate fencing to keep them safe. She requested that the applicant build a strong fence along the property line between her and the proposed development. The Examiner said he felt a condition to this effect could be justified. Comprehensive Plan Land Use Goal 2 (establishment of development patterns that use urban land more efficiently) was mentioned as a basis. The developer had no objection. The subject fence would extend only along the Cross property boundary and would be a six-foot high solid wood fence.

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 DNS was issued on August 27, 2007. The DNS was not appealed.
3. Rezone Request: The applicant is requesting a 1.38 acre rezone from R-9600 to LDMR, an administrative site plan approval and a grading permit for the future development of a 15 single-family residential unit project. Fourteen new single-family detached units will be built. One existing single-family unit will remain.
4. Site Description: The subject property is a rectangular site extending west from its frontage on Gibson Road. The address is 12226 Gibson Road (sometimes also referred to as 30th Avenue West).
5. Adjacent Zoning and Uses: Adjacent properties to the north, northeast, and southeast are zoned R-9,600 and developed with single-family residences. Properties to the south and east are zoned PRD-7,200 and developed with single family homes. Property to the west is zoned Business Park (BP) through developed with older single family homes predating the County Paine Field Area-Wide Rezone (PFN: ZA 8310234). The general vicinity is experiencing rapid growth, transitioning to LDMR zoning and use. This is particularly evident along Gibson Road to the east.
6. Project Level Information: The project abuts Gibson Road, a “collector” arterial. The development will dedicate five feet of additional right-of-way along the project’s frontage. Frontage improvements will include 18 feet of asphalt (from the road’s centerline), vertical curb and gutter, a 5-foot planter and a 5-foot concrete sidewalk. There is an existing sidewalk on the east side of Gibson Road. The existing and proposed sidewalks will provide safe walking paths to bus stops for schoolchildren. The Alderwood Water and Wastewater District has issued preliminary certificates of water and sewer availability. A full stormwater drainage study has been professionally prepared and reviewed and approved by Staff. Stormwater will be detained and treated on site in large underground detention pipes. Releases will be to a drainage easement to the west.

Fire Marshal review has been conducted and verbal approval for the site plan has been received. There will be a hammerhead turnaround within the access road to accommodate emergency equipment. Each unit will be equipped with sprinklers.
7. Rezone Criteria. In determining whether a rezone should be approved, the rezone proposal must meet the applicable decisional criteria set forth in SCC 30.42.100. The criteria are (1) a proposal must be consistent with the GMA Comprehensive Plan; (2) the proposal must bear a substantial relationship to the public health, safety and welfare; (3) where applicable, the minimum zoning criteria in Chapters 30.31A through 30.31F must be met. Criterion 3 is not

applicable the LDMR rezone or proposed future development activity associated with the subject site.

8. Consistency with Comprehensive Plan and Public Health, Safety and Welfare. At the hearing the Applicant presented a revised analysis on how the project meets the Comprehensive Plan (Exhibit 28). There is a useful discuss there of how the rezone and proposed development will carry out the concept of Goal LU-2. The Examiner is persuaded that the proposal will continue the present trend of infill development in the neighborhood and will be consistent with the urban medium density contemplated. In addition, the Staff Report contains the following discussion of the proposal's compliance with applicable approval criteria. The Examiner concurs with this analysis and adopts the same.

*GMA Comprehensive Plan
(General Policy Plan, GPP)*

This rezone application was complete on September 20, 2006. On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively. The subject property is designated Urban Medium Density Residential (6-12 du/acres) 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 "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 subject rezone will implement one of the council approved zoning designations of the Comprehensive Plan.

PDS has reviewed and analyzed the subject rezone as well as a proposed development plan for purposes of assisting in establishing consistency of the rezone and future development with the GMA Comprehensive Plan and, in addition, for establishing that the subject rezone bears a substantial relationship to the public health, safety and welfare.

The current GPP, effective February 1, 2006, (page LU-15) encourages: broadening the variety and mix of housing types in traditional single-family and multi-family neighborhoods, while respecting the vitality and character of established residential neighborhoods, and that such encouragement will be tied to a mix of housing types being "carefully sited, well designed, and sensitively integrated into existing communities. PDS finds that this "Urban Development Patterns" statement provides guidance in determining consistency of a proposed development plan with the GPP by identifying areas of potential impacts tied to individual GPP Elements and their goals, objectives and policies through preliminary construction reviews associated with development activity.

Further, adopted GMA based development regulations assist in tying construction approvals to such implementation of the GPP.

Future site plan approval is a mechanism for implementing GPP elements, goals, objectives and policies. SCC 30.42A.100 requires evaluation of rezone proposals under the GPP when adopted development regulations do not exist. Specific GMA adopted development regulations do exist and address specific design criteria including density, landscape buffering, storm water facilities, public utilities, critical areas protection, and impacts associated with transportation needs. These supersede as the implementing tool for meeting GPP goals, objectives and policies upon county adoption of specific GMA development regulations.

Specific analysis of the proposed development plan as well as the subject rezone included impacts associated with traffic, storm drainage, parks and recreation, public schools, and zoning code provisions addressing compatibility with surrounding properties (bulk regulations and landscape buffers). Future approval of construction permits, consistent with such evaluation and administrative site plan approval will substantiate GMA code compliance prior to permit issuance. Such approvals will sufficiently mitigate for future impacts associated with development patterns, site design and sensitively integrating site development into the immediate community.

PDS finds that the preceding discussion is particularly applicable to the following key Comprehensive Plan Element Goals, Objectives and Policies that might be considered relevant to the specific site development plan:

Land Use Goal LU 2 - "Establish development patterns that use urban land more efficiently"

Land Use Objective LU 2.A - "Increase residential densities within UGAs by concentrating and intensifying development in appropriate locations"

LU Policy 2.A.4 - "Any UGA shall provide opportunities for a mix of affordable housing types... within medium density residential areas."

Housing Opportunity Objective HO1.B - "Ensure that a broad range of housing types is available in urban and rural areas."

Transportation Policy TR 1.C.2 - "Adequate access to and circulation within all developments shall be maintained for emergency service..."

Capital Facilities Policy CF 7.1 - "The County shall utilize impact fees as authorized under the GMA to help fund the cost of parkland and facilities expansion and as required to serve new development."

Natural Environment Objective NE 1.A - "Balance the protection of the natural environment with economic growth, housing needs and the protection of property rights."

Natural Environment Objective NE 1.B - "Accommodate population growth in a manner that maintains and protects elements of the natural environment."

Natural Environment Objective NE 1.C - "Protect and enhance natural watershed processes, wetlands, fish and wildlife habitat conservation areas, shorelines, and water resources with the long-term objective of protecting ecological function and values."

Natural Environment Policy NE 1.C2 - "The county shall continue to protect and enhance wetlands and fish and wildlife habitat conservation areas through the use of a variety of strategies..."

Natural Environment Objective NE 3.B - "Designate and protect fish and wildlife habitat conservation areas and wetlands pursuant to the Growth Management Act." (Including: NE Policies 3.B.1, 4, 5, and 10)

PDS review and analysis of the rezone and administrative site plan proposal finds that current GMA adopted regulations, governing future site development activity, will implement such Goals, Objectives, and Policies and thus specific development activity, as reviewed and analyzed under the subject request, bears a substantial relationship to the public health, safety and welfare.

9. Zoning. Based on review of the site plan, the development can meet the bulk regulations applicable to LDMR zoning. The proposal provides required landscape buffers and parking area landscape treatment. The proposal identifies building setbacks and building separations consistent with regulatory requirements.
10. Adopted Code Requirements. Though the subject rezone is not considered a development activity, the Staff reviewed the proposal for compliance with mitigation requirements for parks, traffic, and schools and with drainage and road design regulations. Preliminary review showed that the development will be able to meet relevant regulations, and that the regulatory provisions that apply will be adequate to mitigate future impacts associated with the development. Adequate public services exist to serve the proposal.
11. Any conclusion herein which may be deemed a finding 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. The requirements of SEPA have been met.
3. The record supports a conclusion that the proposal is consistent with the Comprehensive Plan and bears a substantial relationship to the public health, safety and welfare. See SCC 30.42A.100. Thus, the criteria for rezone approval have been met.
4. Rather than burden the rezone with a special condition, the Examiner requests that Staff impose a condition in the site plan approval, requiring the construction of a six-foot high solid wooden fence on the boundary between the project site and the Cross property to the south.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The request for a Rezone from R-9,600 to LDMR for the subject property is granted.

Decision issued this 4th day of April, 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 **APRIL 14, 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 18, 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

<p>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.</p>
