

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: May 29, 2008

PLAT/PROJECT NAME: Mustach Short Plat I

APPLICANT/
LANDOWNER: John & Julie Mustach
PO Box 12176
Mill Creek, WA 98082

FILE NO.: 07-113116-000-00-LU

TYPE OF REQUEST: Rezone from R-9600 to R-7200

DECISION (SUMMARY): Denied

BASIC INFORMATION

GENERAL LOCATION: This project is located at 10025 33rd Avenue SE, Everett, on the east side of 33rd Avenue SE approximately 150 feet south of its intersection with 100th Street SE, in Section 20, Township 28 North, Range 5 East, W.M., Snohomish County, Washington

ACREAGE: .46 acres

NUMBER OF LOTS (Proposed): 2

Current Zoning: R-9600 Proposed Zoning: R-7200

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban Low Density Residential

School District: Everett School District 2 Fire District: Fire District 01
Water Source: Silver Lake Water District Sewer Service: Silver Lake Water District

SELECTED AGENCY RECOMMENDATION:
Department of Planning and Development Services: Approve

INTRODUCTION

The applicant filed the Master Application on November 1, 2007. (Exhibit 1) It was subsequently resubmitted on February 20, 2008. (Exhibit 1B)

The Hearing Examiner made a site familiarization visit on May 12, 2008.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by SCC 30.72.030. (Exhibits 6 A, 6B and 6C)

A SEPA determination was made on April 10, 2008. (Exhibit 5B) No appeal was filed.

An earlier hearing on this matter was held on May 15, 2008, the 98th day of the 120 day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered.

PUBLIC HEARING

The public hearing commenced on May 15, 2008 at 9:03 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. Dorothy Crossman, PDS Land Development Specialist, appeared and presented the staff report. She gave an overview of the rezone request and answered questions from the Examiner.
3. Mark Flurry represented the applicant.
3. Also appearing and giving testimony under oath were Lorna Corrigan and John Mustach.

The hearing concluded at 10:02 a.m.

NOTE: For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

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 April 10, 2008. (Exhibit 5B) The DNS was not appealed.

3. Nature of Request. The applicant is requesting a rezone from R-9600 to R-7200 with a concurrent 2-lot short subdivision of .46 acres utilizing lot size averaging. The rezone is processed as a Type 2 application requiring a hearing examiner's decision. The short plat will be processed as a Type 1 administrative decision. Access will be provided by two driveways from 33rd Avenue SE.
4. Site Description. The subject property is a .46 acre site. With slopes ranging from 2 to 8%, the site drains towards 33rd Avenue SE. As proposed by the applicant, the existing duplex will remain, and the detached garage to the north will be removed. The site is covered with lawn, some trees and shrubs. There are no critical areas on the site or within 300 feet of the property boundaries. The parcel is located on 33rd Avenue SE, a short cul-de-sac which has larger size lots on the east side and smaller sized lots on the west. All lots are developed with either single-family residences or duplexes. There is established landscaping along the cul-de-sac.
5. Adjacent Uses. The properties adjacent to the site are zoned R-9600 to the north, south and west. The properties adjacent to the eastern boundary are zoned R-7200. The zoning in the vicinity is shown on Exhibit 4B. It is predominately R-9600, with some developments of R-7200, R-8400 and PRD-9600 nearby. The R-7200 neighborhood to the east is separated from the R-9600 parcels to the west by a solid wood board fence. The subject parcel's frontage and cul-de-sac access is entirely to R-9600 parcels. Testimony presented at the hearing was that the neighborhood of the cul-de-sac is a mixture of single-family residences and duplexes. Some of the homes are owner occupied and some are rentals. There is an existing mix of housing choices on 33rd Avenue SE. Many of the other residential developments in the vicinity of the subject site do not share the mix of housing choices found on 33rd Avenue SE, rather are solely single-family houses
6. Park Mitigation. The proposal is within Nakeeta Beach Park District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit.
7. Transportation.

1. Road System Capacity [SCC 30.66B.310]

The development will generate 9.57 average daily trips (ADT) and has a road system impact fee of \$2,555.19 (\$2,555.19/SFR) based on \$267/ADT, the current fee rate for residential developments outside the urban growth area, for TSA D. These figures do not include credit for on-site TDM measures.

2. Concurrency [SCC 30.66B.120]

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of December 6, 2007. The expiration date of the concurrency determination is six years from this date.

3. Inadequate Road Condition (IRC) [SCC 30.66B.210]

The subject development proposal will not impact any IRC locations identified within TSA D with three or more p.m. peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

4. Frontage Improvements [SCC 30.66B.410]

As per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage on 33rd Avenue SE consisting of pavement 14 feet in width from centerline of right of way to the face of curb, a curb and gutter, and a five-foot sidewalk.

Urban frontage improvements along the subject development's frontage on 33rd Avenue SE that consists of 14 feet of pavement, rolled curb and gutter, and a 5-foot sidewalk currently exist. PDS supported a deviation request from design standards to waive full urban frontage improvements along the subject development frontage on 33rd Avenue SE.

The deviation request to allow for the existing frontage to remain as is was approved on April 7, 2008 (Exhibit 7B).

5. Access and Circulation [SCC 30.66B.420]

33rd Avenue SE is a non-arterial with a posted speed limit of 25 mph. The existing stopping site distance and intersection site distance at the proposed site access intersection with 33rd Avenue SE are adequate.

Access to the existing duplex on Lot 2 is via an existing driveway from 33rd Avenue SE. Access to the proposed single-family residence on Lot 1 as shown on the preliminary short plat is via a driveway from 33rd Avenue SE.

The proposed access is acceptable to PDS.

6. Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]

Based on the deviation to the design standards approved on February 25, 2008 (Exhibit 7A), to waive five feet of right of way dedication along 33rd Avenue SE, no additional right-of-way is required. The approval was based on the fact that adequate road improvements exist along the subject parcel's frontage on 33rd Avenue SE.

7. State Highway Impacts [SCC 30.66B.710]

WSDOT reviewed this project and determined via an email sent to the PDS on November 9, 2007 that this development will not contribute three or more PM peak hour trips to any WSDOT project in TSA D (Exhibit 8A). Therefore, WSDOT does not request any traffic mitigation for state highways from the applicant.

8. Other Streets and Roads [SCC 30.66B.720]

There are no other jurisdictions that have an interlocal agreement with the county that will be significantly impacted by the subject development.

9. Transportation Demand Management (TDM) [SCC 30.66B.630]

A written offer for payment of the TDM obligation dated October 17, 2007 has been received by the PDS on November 1, 2007 (Exhibit 8G)

The payment of the \$75.75 TDM fee will be imposed as a condition of approval within the administrative decision of the short plat.

10. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Snohomish County submitted a form "School District Request for Review" to the Everett School District #2. The form, signed and dated December 3, 2007, was received by PDS on December 7, 2007 (Exhibit 8C).

The school district indicated that school children will walk to the bus stop, and that busses will pick up children within/adjacent to this project. The school district identified the intersection of 100th Street SE and 33rd Avenue SE as the bus stop location for Monroe Elementary, Eisenhower Middle, and Cascade High Schools.

Pedestrian facilities from the subject development to the intersection of 100th Street SE and 33rd Avenue SE currently exist. Therefore, off site pedestrian facilities are not required.

8. School Impact. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Everett School District No. 2, 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 for the one existing lot.

9. Drainage and Grading. The project proposes a reduction in overall impervious surfaces with the removal of the existing detached garage and asphalt parking/drive area for proposed Lot 1. This reduction is calculated to be 1,134 square feet per the Targeted Drainage Report submitted on February 20, 2008 (Exhibit 3A). The roof and footing drains will be connected to the existing conveyance system located in 33rd Avenue SE.

Planning and Development Services (Engineering) reviewed the concept offered and recommended approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. No grading will be required until home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

10. Critical Areas. There are no critical areas within 300 feet of the proposed rezone site.
11. General Policy Plan Designation. Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Plans; and the Comprehensive Park & Recreation Plan. The General Policy Plan has been revised since its initial adoption by a number of amendments. 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. This application was complete after the effective date of the Amended Ordinances. Therefore, the subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on February 1, 2006, and as revised through the completeness date of the application.

The subject property is designated Urban Low Density Residential (ULDR: 4-6 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 Low Density Residential designation, “allows mostly detached housing developments on larger lot sizes.” Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.

12. Density Calculations. The current density with a duplex consisting of two dwelling units on .46 acres is 4.34 dwelling units per acre (DU/Ac). The subject rezone and future development with an additional single-family residence is for a two lot short plat and rezone resulting in a density of 5.17 DU/Ac. The Examiner disagrees with the calculations of density provided by PDS at page 8 of the staff report.
13. With approval of the rezone, this project will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, *provided that lot size averaging is applied and that the deviations described above are authorized by PDS.* The proposal is consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2. However in the current situation the property also meets the lot size, bulk regulations, other zoning code requirements, and the density regulations without the necessity of resorting to lot size averaging or deviations.
14. Public Comments. One public comment letter was received from Neighbor Lorna Corrigan (Exhibit 9). The concerns raised included consistency with the goals and policies of the Comprehensive Plan, destruction of the character of the existing neighborhood, and lowering of surrounding property values. The letter also references a second rezone/short plat application (07-113123LU and 07-113124SP) by this applicant for his other lot at the end of the 33rd Avenue SE cul de sac. Another concern raised in the letter is the utilization of lot size averaging provisions to decrease setbacks. The applicant’s consultant, Mark Flury of Flury-Wrick and Associates, Inc., provided a report of a meeting between the applicant and Ms. Corrigan (Exhibit 10). Evidence produced at the public hearing showed that the meeting was actually between Ms. Corrigan and the applicant’s agent. Ms. Corrigan also disputed the recitations of her opinions as set out in the letter. PDS agreed with Mr. Flury’s letter’s conclusions. A second Public Comment letter was received from Neighbor Jeff Wilson (Exhibit 21). He considers the neighborhood to be built-out and feels that further subdivision would reduce property values with the smaller lot size. He is also concerned about additional traffic and standing water problems.
15. The Examiner’s response to the public comments is that such comments are sound and supported by the guidance provided in the county code and comprehensive plan. The examiner agrees that the neighborhood along 33rd Avenue SE currently contains a developed mix of housing options not found in the surrounding vicinity. It is a fully built-up, established, pleasant neighborhood with appropriate established landscaping, lot sizes and side yard set backs in which the proposed short plat resulting from the rezone would not be consistent. These findings will be discussed further in the conclusions below.
16. Any Finding of Fact in this Decision which should be deemed a Conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner has jurisdiction to hear this matter and render a decision thereon.

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 rezone from R-9600 to R-7200 utilizing lot size averaging followed by an administrative short plat to two parcels.
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 UGAs.

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.

¹ This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.

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:

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.

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.

7. Goal and Objective LU-2 focus on establishing development patterns that use urban land more efficiently by concentrating and intensifying development at appropriate locations. (Objective LU-2.A). The Examiner finds the test of what is “appropriate” to rely on three general areas of inquiry, which are found in the policies of LU-2 and in HO 2A.1. They have to do with careful siting of the development to minimize impacts to environmentally sensitive areas and to urban infrastructure; to provide integration of the infill project into the neighborhood and nearby cities that may annex, and ensuring that design of the project itself does minimize impacts on the character of the residential neighborhood area. They are laid out in outline form below:

- 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 with goals and policies of the Snohomish County Shoreline Master Program.²
 - (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 variety of housing types in neighborhoods? **(LU-15, Policy HO 2.B.1)**
 - (b) Does the rezone/development proposal help to provide a mix or variety of housing types, especially if the area is a medium density area? **(Policy LU 2.A.4, Policy HO 2.B.1)**
 - (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 Policy HO 2.A.1, 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 Policy HO 2.A.1, 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? Is there something that can be done to mitigate differences? **(Policy HO 2.A. 1, LU-15)**
 - (c) If applicable, what other selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(See Policy HO 2.A.1)**
 - (d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using

² 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.

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 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) (See also discussion of public health, safety and welfare criteria, below).
- (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 Mustach Short Plat I rezone 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 7 in part to conclude that the development is adequately served by existing streets, roads and highways. There does not appear to be any major transportation issues or concurrency problems in the area. There appear to be no local circulation issues. However, the proposed rezone requires two (2) deviations to road standards, i.e. allowing the frontage to remain as is and not requiring dedication of additional rights-of-way
- ii. Sidewalks. There are existing sidewalks along 33rd Ave SE. School children will use these sidewalks to get to the school bus stops. (Policy HO 2.A.4)
- iii. Street and road lighting system. It is unknown whether there are street lights on 33rd Ave SE.
- iv. Traffic signals. It is unknown to the Examiner whether traffic signaling is adequate in the area. The area appears to be experiencing some growth in housing/
- v. Water systems. Water will be provided by Silver Lake Water and Sewer District. (Exhibit 8B)
- vi. Sanitary Sewer Systems. Sewer will be provided by Silver Lake Water District.
- vii. Park and recreational facilities. As stated in Finding of Fact 6, 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 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 disposal system: The applicant proposes to connect the roof and footing drains from the new proposed home to the existing conveyance system located in 33rd Ave SE. (Exhibit 3A) This is the same system that is currently used by the subject parcel. The applicant concludes that the project will reduce the impervious surface on the site.
- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1.

- x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit 8F.
 - xi. Education: The site is served by the Everett School District. Exhibit 8C.
 - 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 not 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. There is a balancing of the policies as they apply to this rezone proposal. The Examiner’s conclusion relies on the following analysis:
- 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)**³
 - (b) The rezone or development is not proposed in an area that is within walking distance of transit access, but this policy applies more specifically to properties in the urban medium density residential designation. **(Policy LU 2.A.5)**
 - (c) The development made possible by the requested rezone probably will not tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation, but this policy applies specifically to properties in the Urban Medium Density Residential designation. **(Policy LU 2.A.5)(Page LU-15)**
 - ii. The rezone proposal is adequately integrated into the neighborhood. (See LU-15)
 - (a) Character of the Existing Neighborhood. The neighborhood along 33rd Ave SE is comprised of single-family homes and duplexes. There is a mix of zoning in the vicinity of the site, including R-7200, PRD-7200, and R-9600. As previously found, the predominant zoning is R-9600 in the area. In the immediate vicinity, there are both brand new homes on large and small lots and older homes on large and small lots. The current use of the lot is a duplex with two dwelling units. The redevelopment of this site at a higher density will not encourage a more efficient use of urban land; it is merely sliding a single family residence into a wide side yard setback. As previously found the existing neighborhood along the 33rd Ave. SE cul-de-sac is established with both duplexes and single family residences. The neighborhood landscaping is established with wider side yard setbacks. The proposed short plat will utilize lot size averaging rather than fitting in with the character of the existing neighborhood. The new lot will only be 46 feet wide while the lot with the duplex will be 102 feet wide. (Exhibit 2B) The side yard setbacks of the proposed house are not clearly shown on the exhibit but are assumed to be substantially thinner than those in the rest of the neighborhood based upon the narrow lot size. **(LU-15, Policy HO 2.B.1)**
 - (b) Allowing for a Mix of Housing Types. The R-7200 zoning designation will allow for duplexes, mobile homes and single-family homes. **(Policy HO 2.B.1)** However, the current use of the property is a duplex. The neighborhood on 33rd Ave. SE has approximately three duplexes and seven single family residences. Some are rental and some of owner occupied. This neighborhood on 33rd Ave SE currently supports more of a mix of housing than the surrounding area which is

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.

single family housing. Adding an additional single family house to the vicinity does not increase the mix of housing types

- iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)
- (a) Density of Surrounding Neighborhood and How the Development Will Help Maintain Existing Character. The proposed density fits poorly into this neighborhood, which can be fairly characterized as an established pleasant residential neighborhood. While there are a few pockets of higher density homes nearby, most are R-9600. The cul-de-sac is fully built and enjoys established landscaping. The current density of a duplex (two dwelling units) on .46 acres on the east side of 33rd Ave. SE is about the same as one dwelling unit on .25 acres on the west side. An additional residence on the east side will be out of character and of a higher density. **(See Policy HO 2.A.1)**
 - (b) Integration of Building Design into the Existing Neighborhood. The applicant states at Exhibit 10 that the builder may use comparable building methods as exist in the neighborhood. As previously found the overall veracity of the letter is questioned as it was admitted that the applicant did not conduct the visit with Ms. Corrigan as stated. There are no proposed covenants with the proposal which state construction methods or size of the home. Thus the Examiner is unable to conclude that the building design will integrate into the established, built-out neighborhood. Furthermore it appears that by the use of lot size averaging this proposed lot will have more narrow side yard setbacks than are currently found in along 33rd Ave. SE. If the current side setbacks are preserved the home will be much more narrow in shape than the other residences along the street. **(See Policy HO 2.A.1; LU-15)**
 - (c) Other Selective and Innovative Land Use Measures Used to Preserve the Character of the Existing Neighborhood. 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 important because the Examiner would characterize this neighborhood as a “stable residential neighborhood”.
 - (d) Mitigation of Negative Impacts through Landscaping, Fencing and other Design Features. The developer will use the current sidewalk along the frontage of the project 33rd Ave. SE. The applicant proposes to remove asphalt parking areas and a shop on the site. No other mitigation features are described by the applicant in Exhibit 1C or on the preliminary plat map Exhibit 2 B which will help mitigate any negative effect of higher density. **(Policy HO 2.A.1)**
 - (e) Adequate Fire and Medical Emergency Access. The neighborhood currently has adequate fire and medical emergency access
 - (f) Adequate Provision for Public Health, Safety and Welfare. 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 100th Street Road, a safe place for children to wait for a school bus, and adequate fire and medical emergency access.. **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

The applicant has also provided an analysis of comprehensive plan policies and justification for supporting the rezone as implementing the comprehensive plan. See Exhibit 1C. While this particular rezone has fairly minor impacts (the allowance of one additional building unit), the Examiner will always look at the salient factors from the comprehensive plan that support the rezone. As indicated in earlier decisions, the

analysis needs to focus on the type of urban infrastructure capabilities, the availability of urban services, and whether, even in this urban density designation, R-7200 zoning is appropriate in this location.

9. The Examiner concludes that the applicant not has demonstrated that the rezone will implement the comprehensive plan.
10. 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.

11. 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. Public testimony regarding drainage issues in the vicinity was not substantial enough to show that an additional single-family house would cause standing water problems on the street or basement flooding. (*See* Exhibit 3A) The Examiner identified no public health and safety issues of concern in reviewing the file.
12. 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.
13. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
14. 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 Residential-9600 to Residential-7200 for this property is DENIED.

ORDER issued this 29th day of May, 2008.

James A. Densley, Hearing Examiner Pro Tem

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, Robert Drewel Building (Admin-East Bldg), 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JUNE 9, 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 **JUNE 12, 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: Dorothy Crossman

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.