

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: April 30, 2009

PLAT/PROJECT NAME: ***Delap Bev-Ed LDMR***

APPLICANT/
LANDOWNER: Scott Delap Construction, Inc.
FILE NO.: 07 101930 LU

TYPE OF REQUEST: Rezone from Residential-8400 (R-8400) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): **APPROVED**

BASIC INFORMATION

GENERAL LOCATION: 13429 Beverly Park Road, Lynnwood, in Section 34, Township 28 North, Range 4 East, W.M., Snohomish County, Washington

ACREAGE: .46 acres

NET DENSITY: 10.2 du/ac

ZONING: CURRENT: R-8400
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Alderwood Sewer and Water District
Sewage: Alderwood Sewer and Water District

SCHOOL DISTRICT: Mukilteo No. 6
FIRE DISTRICT: Fire District No. 1

SELECTED AGENCY RECOMMENDATIONS:

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

INTRODUCTION

The applicant filed the rezone application on May 1, 2007, which was determined complete on June 26, 2007. (See Exhibit A1; H.)

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 F1 (mailing), F2 (publication) and F3 (posting).

A SEPA determination was made on February 11, 2009. See Exhibit E2. No appeal was filed.

The Examiner held an open record hearing on April 22, 2009. Witnesses were sworn, exhibits were entered and testimony was given.

PUBLIC HEARING

The public hearing commenced on April 22, 2009 at 1:00 p.m.

1. Roxanne Pilkenton, Land Development Specialist, appeared on behalf of PDS and gave an overview of the proposal and answered questions from the Examiner.
2. Steven Michael Smith appeared on behalf of the applicant.
3. No other witnesses appeared.

NOTE: To obtain a complete record of the proceedings, 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 February 11, 2009. (Exhibit E2) The DNS was not appealed.
3. Rezone Request: The applicant requests a rezone of a 0.46 acre site from R-8400 to LDMR. Included in the request is an official site plan intended to control the future development of a 4-unit residential development consisting of one existing and three proposed single-unit detached structures, landscaping and a storm drainage system. The request for the official site plan is administrative in nature under the jurisdiction of PDS and has been provided in the file to allow

the Hearing Examiner to understand the full nature of the proposal. 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 subject property consists of approximately 0.46 acres, rectangular in size with an approximate width of 100 feet and depth of 200 feet. Currently the site is occupied by an existing single family residence which is proposed to remain with the development of the site. There are no critical areas located on site or within 300 feet of the subject property. The site slopes from the east to west. The average slope across the site is approximately 3.7%.
5. Adjacent uses: The subject site is within the Southwest County Urban Growth Area (UGA) and is currently zoned R-8400. It should also be noted that the property lies within the Mukilteo Municipal UGA and is within an identified "area of interest" for potential future annexation by the City of Mukilteo. Adjacent properties to the north, south and east are approximately 0.25 and 0.50 acres in size and zoned R-8400. Nearby properties to the north, south and east are zoned R-7200. Properties to the west of the subject parcel are located within Mukilteo city limits. On June 6, 2007, a rezone to R-7200 and a 30-lot subdivision was approved by the Snohomish County Hearing Examiner on tax parcel 005706-002-010-00 that is located to the south of the subject property.
6. Transportation: The development is situated at 13429 Beverly Park Road. The PDS staff report (Exhibit H) contains the following information on the development's compliance with county transportation requirements, which the Examiner incorporates herein for a better understanding of the transportation impacts of the higher density development at this site:

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

1. Road System Capacity

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 28.71 average daily trips (ADT) and has a road system impact fee of \$7,665.57 (\$2,555.19/SFR) based on \$267/ADT, the current fee rate for residential developments inside the urban growth area, for TSA D. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category (ITE Description): Single – Family Detached Housing
 ITE Land Use Code: 210

	Calculations
ADT	$(3 \text{ New SFR}) \times (9.57 \text{ ADT/SFR}) = 28.71$
AM PHT	$(3 \text{ New SFR}) \times (0.75 \text{ AM PHT/SFR}) = 2.25$
PM PHT	$(3 \text{ New SFR}) \times (1.01 \text{ PM PHT/SFR}) = 3.03$

2. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing the best operating condition, and level-of-service F the worst.

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with Public Works' final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

The development has been deemed concurrent on the following basis: Small or medium-sized development in TSA with one or more arterial unit in arrears, SCC 30.66B.160. The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears; Unit #202 – Seattle Hill Road from 35th Avenue SE to SR 96/132nd Street SE, and Unit #204 – 35th Avenue SE from 168th Street SE to Seattle Hill Road. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 2.25 a.m. peak-hour trips and 3.03 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

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

The subject proposal will not impact any IRC locations identified at this time within TSA D with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that 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]

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

Beverly Park Road along the subject parcel's frontage is within the City of Mukilteo's right of way. The City indicated in correspondence dated 24 April 2007 that full frontage improvements along the subject parcel's frontage on Beverly Park Way currently exist. (Exhibit G7).

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

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Beverly Park Road is a minor collector arterial with a 35 mph posted speed limit.

Beverly Park Road along the subject development's frontage is under the jurisdiction of the City of Mukilteo. The applicant has been coordinating access to the subject development with the City's DPW. The City informed the applicant in correspondence dated 27 February 2007 (Exhibit G7) that the subject development's two existing driveway cuts that were installed by Snohomish County in the recent road improvements to Beverly Park Road are adequate.

Access to unit one is proposed through an existing 25-foot driveway. Access to unit two, three and four is proposed through an existing 20-foot driveway. Both driveways front Beverly Park Road. The existing stopping site distance and intersection site distance at the proposed site access intersection with Beverly Park Road are adequate.

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

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road servicing this development, Beverly Park Road, is under the jurisdiction of the City of Mukilteo. The City informed the applicant in correspondence dated 24 April 2007 (Exhibit G7) that additional right of way is not required.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

In the 07 May 2007 email (Exhibit G1) WSDOT states, "This development will not have a significant adverse traffic impact upon state highways. Therefore, WSDOT does not request

any traffic mitigation for state highways from the applicant. We have no other comments on this application.”

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions.

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]

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five percent (5%) of the development's PM peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and SCC 30.66B.625.

Since a TDM plan was not submitted with the initial application a cash payment is required. The trip reduction percentage for this development is 5 percent. The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to five percent x 3.03 new P.M. PHT x \$1,500/PHT = \$227.25 (\$75.75/SFR). A written offer for payment of this TDM obligation was received on 01 May 2007 (Exhibit A5).

7. Environmental Impacts of Higher Density.

A. Grading, drainage, and critical areas.

There are no critical areas on the site. With respect to drainage and grading, the PDS staff report states the following:

The site slopes from the east to west with the existing runoff directed to a 12 inch intake culvert near the midpoint of the site's westerly boundary. The average slope across the site is approximately 3.7%. Drainage runoff exiting the site enters the underground pipe system along the east side of Beverly Park Road and flows to the south. The off-site flows are further discussed in the drainage basis analysis of the Targeted Engineering and Drainage Report prepared by Robert L. Long, PE of Lovell-Sauerland & Associates (Exhibit C1).

The proposed drainage system is to collect drainage from roof downspouts, footing drains, driveway catch basins and area drains to a media filter vault for water quality treatment, and a storm water vault for detention. The detained and treated

storm water will then be discharged via gravity pipe flow to the conveyance system in Beverly Park Road.

The Snohomish County Drainage Needs Report identified no problems within the quarter mile downstream drainage path from the site. In addition, Surface Water Management had no comments regarding known flooding or drainage complaints in this area. Checking ArcGIS maps no indicators of onsite hydric soils, wetlands, known landslides, floodplain, steep slopes, geologic faults, geologic hazard areas or streams were found.

Planning and Development Services has reviewed the concept offered and is recommending approval of the project, subject to conditions which will be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be 1,000 cubic yards of cut and 500 cubic yards of fill, primarily for road, drainage facility, and construction of structures. Water quality would be controlled during construction silt fence barriers along the down-slope boundaries of the site's disturbance areas and temporary sediment traps/pond prior to run-off release for the site.

Exhibit H.

B. Parks and schools impacts.

1. Parks. The PDS staff report (Exhibit H) 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 park's impacts of the higher density development at this site:

Future residential development of the subject property will be subject to Chapter 30.66A SCC for impact to Park District No. 307, which currently requires payment of \$1,244.49 per each new residential unit, to be paid prior to building permit issuance for each structure. The actual fee paid will be based upon the fee schedule in effect at the time of building permit application. Such payment is considered acceptable mitigation for parks and recreation impacts in accordance with county policies.

Exhibit H at 3.

2. Schools. The PDS staff report states the following regarding mitigation of impacts to schools that are a result of the development.

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted 17 November 1997, which became effective 01 January 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 Mukilteo School District No. 06, 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 the one existing dwelling (noted as unit one on Exhibit B1).

The Mukilteo School District was sent a request-for-review soon after the application was submitted, and a copy of the DNS was also routed to the District. The request-for review was returned by the District as signed 16 May 2007 (Exhibit G6) and had the following comment, "Mitigation fees to be paid as per GMA Ordinance. Transportation comments will be mailed separately. Direct transportation questions to Transportation Manager, Denny Armstrong, at (425) 356-1258. PDS has not received comment from Denny Armstrong as of the date of this report.

Exhibit H at 5.

8. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Medium Density Residential on the GPP Future Land Use map, and is located within an UGA. It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Medium Density Residential designation "allows a combination of detached homes on small lots, townhouses, and apartments in medium density, multi-family residential developments." Implementing zones: LDMR, PRD-LDMR, Townhouse, R-7,200, PRD-7,200 and WFB." GPP at LU-89.

9. Health and Safety Issues.

A. Compliance with Fire Code and Safety Issues. The project has been evaluated by the Snohomish County Fire Marshall's Office which recommended approval of the site plan. It offered the following comments/conditions:

- The proposed fire hydrant is approved as indicated on the site plan. Prior to construction the developer shall provide this office with a final certificate of water availability stating that the required 1,000 gpm is available for a two-hour duration. The fire hydrant shall be provided with a 4" STORZ fitting. A blue street reflector on the hydrant side of the centerline shall be installed;
- Fire lane markings are approved as indicated on the site plan;
- Each building shall have individual building addresses. Street signage shall be posted prior to any occupancy as indicated on the site plan;
- Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53.150.

Exhibit H at 13. PDS has found the project to be in compliance with Chapter 30.53A SCC.

B. Pedestrian Facilities: Beverly Park Road currently has a sidewalk along the frontage of the property and down the street on both sides of the road. Although the development itself has no sidewalks, it is only a small cul-de-sac.

10. 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 these properties in the Urban Medium Density Residential (ULDR) Designation from R-7200 to LDMR to allow a total of 4 units on a .46 acre site. Although it is clear that this request fits within the UMDR designation (which allows up to 12 units per acre), as stated above, the analysis of consistency must go 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 UGAs 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.

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

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:

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 (emphasis added). The urban medium density residential designation allows a combination of detached homes on small lots, townhouses, and apartments in medium density, multi-family residential developments. GPP at LU-89.

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 foundation on which to analyze urban rezone proposals to determine whether they meet Goal LU 2 and Objective 2, providing efficient urban development patterns in appropriate locations and other related GPP policies.

- A. Is the area proposed for rezoning already characterized by urban growth? Explain. **(Goal LU 2; Objective LU 2)**
- B. Does the area proposed for rezoning already have adequate existing facility and service capacities to serve more intense development for the following types of public facilities and services? Please demonstrate. **(See Goal LU 2; Objective LU 2)**
 - 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
- C. How will the rezone help to establish development patterns that use urban land more efficiently? **(See Goal LU-2)**

² Taken from the GMA definitions of public facilities and services. RCW 36.70A.030(12) &(13).
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- D. Does the development concentrate and intensify development at an appropriate location? Why? **(Objective LU-2.A)**
- (1) Critical areas/shorelines.
 - (a) 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)**
 - (b) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
 - (c) 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.³
 - (2) 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)**
 - (3) 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? **(Policy 2.A.4)**
- E. 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)(H.O.2.B.1)**
- F. 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? **(Policy I.C.2)**
- G. If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(Policy HO 2.A.4)**
- H. Does the development encourage the integration of a variety of dwelling types and intensities in residential neighborhoods? **(Policy H.O. 2.B.4)**

8. Applying this test to the Delap Bev-Ed LDMMR project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:
- A. The area is already characterized by urban growth. The entire area is changing. There are areas of the larger neighborhood that have converted to LDMMR while other parts of the neighborhood remain in large lot existing single-family residential. Much of the area is older homes in need of renovation, making it ideal for redevelopment at a higher density. This particular parcel is well suited for higher density, being on a busy road and close to bus service.
 - B. 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.
 - ii. Sidewalks. Beverly Park Road already has sidewalks on both sides of the street. (Finding 9B)
 - iii. Street and road lighting system. It is unknown whether street and road lighting systems currently exist along Beverly Park Road; they are not currently required

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.

by the county code or administrative rules as a requirement for approval of this project.

- iv. Traffic signals. There are no traffic signals in the vicinity. The County's analysis of the proposal does not indicate that any new signals are warranted for this proposal, according to SCC 30.66B.165 and EDDS Section 7-03.
- v. Water systems. Water will be provided by Alderwood Water and Wastewater District. The file contains a preliminary certificate of water availability. (Exhibit G3)
- vi. Sanitary Sewer Systems. Sewer will be provided by Alderwood Water and Wastewater District. The file contains a preliminary certificate of sewer availability. (Exhibit G3)
- 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) These 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, the closest being Meadowdale County Park, but also including Logan County Park, Brierwood Park and Hilltop Elementary. Regional parks in the area are Lord Hill Park, Silver Creek Park , Rhody Ridge Arboretum, Picnic Point Park, and Forsgren Park.
- viii. Storm and sanitary sewer disposal system: A stormwater disposal system is provided as indicated in Finding of Fact 7A.
- ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. Fire District 1 has made no comments to the proposal. (See Finding 9A) The Snohomish County Fire Marshall's Office approved the proposal. Police protection is provided by the Snohomish County Sheriff's Department.
- x. Public health: Public health issues are addressed by the Snohomish Health District. (Exhibit G2)
- xi. Education: The site is served by the Mukilteo School District. (Exhibit G6)
- xii. Other services: There is sufficient electrical system capacity for the proposal, according to a letter from the Snohomish County PUD No. 1, dated May 8, 2007. (Exhibit G4)

C. 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. The current zoning of the area is R-8400. While some of the lots in the vicinity are divided at this size, which is a very low urban density under the county's GMA plan, many are at even lower densities. This neighborhood contains very old housing stock which could easily be redeveloped at higher density. With its proximity to transit corridors, this area is a good candidate for redevelopment. As always, this type of infill needs to be done well with appropriate development standards and infrastructure to create livable neighborhoods. This rezone will help further establish the continuing pattern of using land more efficiently in an area where it has not historically been used very efficiently.

- D. Does the development concentrate and intensify development at an appropriate location? Why? **(Objective LU-2.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. The closest bus stop for the site is currently located at the intersection of Beverly Park Road and Harbour Heights Drive which is approximately .02 miles from the subject property. Having public transit available within such close proximity will encourage less dependence on personal automobiles. The subject property is also located near major transit corridors, including Highway 99 and I-5, which have park and ride lots and shopping opportunities nearby. As stated above in Conclusion 8, 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 within walking or biking distance of urban services and facilities that will serve the proposal, which will promote those forms of transportation in place of automobiles. The proximity of the property to park and ride lots will encourage commuting by buses or carpools instead of using single occupancy vehicles. **(Page LU-15)**
 - ii. The rezone proposal is adequately integrated into the neighborhood. (See LU-15)
 - (a) The Examiner characterizes the neighborhood as actively changing. It appears that some of the lower density uses have been bought out and infill is occurring. This zoning designation will help fulfill the GPP goal of providing efficient use of the county's infill area. **(LU-15, Policy 2.A.4)**
 - (b) The proposal will help provide a mix of affordable housing types, such as smaller lot detached units. This type of housing helps provide a desirable type of housing to the public, but on a smaller lot than the traditional R-9600 lot. The cost of the development per unit is reduced, resulting in a more cost effective and affordable type of housing. (Exhibit A3) **(Policy LU 2.A.4)**
 - (c) There are no city comments in the record regarding the rezone. **(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) The proposed density of this development is 10.2 units per acre (net). This density is one that is not inconsistent with other densities in this changing area. The building design is expected to be conventional, two-story, stick-built construction. The homes will be similar to many of the newer homes in the area. (Exhibit A3) **(See LU-15)**
 - (b) The applicant indicates the building design will be consistent with new development in the neighborhood. (Exhibit A3) **(LU-15)**

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.

- (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) There do not appear to be any significant negative visual impacts from the addition of the two homes in this area that been brought to the attention of the Examiner. **(LU-15)**
- (e) The development appears to be designed to provide for adequate fire and medical emergency access through the provision of adequate turnaround as approved by the Department of Public Works and the Fire Marshall. (Exhibit H and Exhibit B1) **(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 facilities. (Finding of Fact 9B)

9. The other criteria in SCC 30. 42A.100 is whether the proposal bears a substantial relationship 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-9600 to LDMR for this property is **GRANTED**.

Decision issued this 30th day of April 2009.

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 **MAY 11, 2009**. 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 **MAY 14, 2009** 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: Roxanne Pilkenton

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.