

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

In the Matter of the Application of) File No. 08-107274 LU
)
Camwest Shelby Road Rezone) **Final Decision and Order**
) Granting Rezone
Rezone from R-8,400 to LDMR)

DATE OF DECISION: March 10, 2009
PLAT/PROJECT NAME: *Camwest Shelby Road Rezone*
APPLICANT/OWNER: Camwest, Inc.
FILE NO: 08-107274 LU
TYPE OF REQUEST: REZONE from Residential-8400 (R-8,400) to Low Density Multiple Residential (LDMR)
DECISION (SUMMARY): The rezone request is **GRANTED**.

BASIC INFORMATION

GENERAL LOCATION: The project site is located at 3812 Shelby Road, Lynnwood, WA
Section 18, Township 27 N, Range 5 E, W.M., Snohomish County, WA
ACREAGE: .50 acres
ZONING: CURRENT: R-8,400
PROPOSED: LDMR
COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban Medium Density Residential
UTILITIES:
Water: Alderwood Water and Wastewater District
Sewage: Alderwood Water and Wastewater District
SCHOOL DISTRICT: Mukilteo School District

FIRE DISTRICT: Snohomish County Fire District No. 1

SELECTED AGENCY RECOMMENDATIONS:

Planning and Development Services Department: Approve

Based on all of the evidence set forth in the record, the testimony of witnesses present at the public hearing, applicable laws and regulations, and being fully informed in the proceedings, the Hearing Examiner (Examiner) makes the following Findings of Fact, Conclusions of Law, Decision and Order:

INTRODUCTION

According to the Department of Planning and Development Services (PDS), the applicant filed a complete Master Permit Application on July 28, 2008, seeking a rezone of the subject property from R-8,400 to LDMR. (Exhibit A1) The applicant has not submitted a development proposal for the subject site.

Rezoning is considered Type 2 decisions under the County Code, subject to review and approval by the Examiner. (SCC 30.72.020(2)) An open record hearing before the Examiner must be held on the rezoning according to SCC 30.72.025. PDS gave proper public notice of the open record hearing by mailing, publishing and posting as required by SCC 30.72.030(4). (Exhibits E1, E2 and E3)

PUBLIC HEARING

The open record hearing was originally scheduled for December 18, 2008, on the 115th day of the 120-day decision-making period. However, due to a severe snow storm and the resulting unavailability of PDS staff, the hearing was continued by the Hearing Examiner's Office to February 18, 2009. The public hearing commenced at approximately 2:30 p.m. Witnesses were sworn, testimony was presented and exhibits were entered into evidence at the hearing.

1. Roxanne Pilkenton appeared and presented the staff recommendation for the project on behalf of PDS. Debbie Rothfus of Peak Engineering appeared on behalf of the Applicant. Finally, Sonya Wells, a neighbor owning a one-acre parcel next door to the subject property also appeared and testified about the rezoning. No other citizens were present at the public hearing.
2. Ms. Pilkenton presented an overview of the project noting that PDS believes that the proposed rezoning does help to establish a development pattern that uses land use more efficiently, and that the subject property is located near Lake Serene, within the MUGA, adjacent to the City of Mukilteo, in an area that has a mix of zoning types and densities (ranging from MR, PCB, CB, GC, R-8,400, WFB, LDMR and R-7,200) (See also, Exhibit B1 and C2).
3. This presentation was followed by the testimony of Ms. Rothfus, who presented specific information about the site, the rezoning, the current and future development potential/densities achievable under the existing and proposed zoning, and answered questions posed by the Examiner.
4. Finally, Sonya Wells testified about the proposed project and rezoning request. She stated her concerns about the rezoning and its impact on her residential and equestrian property, and especially her stand of trees which separates her land from the subject property. She also

raised concerns about the potential for stormwater runoff from any new development. Ms. Wells presented a letter (Exhibit G2) and a series of photographs of her property. (Exhibit G3-A through-J)

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

FINDINGS OF FACT

1. All exhibits and the testimony of witnesses included on the Master Exhibit and Witness List were entered into evidence and considered by the Examiner and are hereby incorporated herein by reference, as if set forth in full.
2. The Applicant is seeking a rezone for a 22,000 square feet (.50 acre) parcel in the Lake Serene area from R-8,400 to LDMR. However, because no development is proposed at this time, any future redevelopment of the property under the proposed new zoning will require the filing of a new development application, which will be subject to the laws and regulations in effect at that time.
3. State Environmental Policy Act Compliance (SEPA): The applicant completed a SEPA Checklist. (Exhibit D1) A threshold Determination of Non-Significance (DNS) was made on October 30, 2008. (Exhibit D2) Proper notice of the SEPA determination was issued by PDS. (See Exhibits D1, D2, D3, D4, D5 and D6). No SEPA appeal was filed.
4. Site description: The subject site consists of one 22,000 square foot parcel. It is located on the south side of Shelby Road, across the street from Lake Serene. The site contains one existing single-family residence and several outbuildings, including a shop and shed. (Exhibit F) No critical areas have been delineated on the site. Ms. Wells testified that the property contains a slope; however, the Applicant stated that their site review indicates that the slope is less than ten percent in grade.
5. Adjacent uses: The subject site is within the Mukilteo Municipal Urban Growth Area (MUGA) and has been identified as an area of interest for potential future annexation by the City of Mukilteo. (Exhibit G1) The site is surrounded by parcels on each side that are zoned R-8,400. Properties to the north of the site, lying on the north side of Shelby Road, have been recently rezoned to LDMR, consistent with the Urban Medium Density Residential (UMDR) designation established in the County's GMA Comprehensive Plan (GMACP) and Future Land Use Map (FLUM). The neighborhood shows evidence of an ongoing transition between a mix of development types, from single-family residential to multiple-family and other infill developments, including planned community businesses. (Exhibits A3, B1 and C2)

REZONE REQUEST

6. The applicant requests a rezone of .50-acre site from R-8,400 to LDMR. (Exhibit A1)
7. Under SCC 30.42A.100, the Examiner may approve a rezone only when all the following decision criteria are met: (a) The proposal is consistent with the comprehensive plan; (b) The proposal bears a substantial relationship to the public health, safety, and welfare; and (c) where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

8. In response to the proposed project, the County received only one comment letter from a citizen, Ms. Sonya Wells. (Exhibit G2) Although Ms. Wells testified at the hearing that she does not generally like LDMR developments, she acknowledged that the property was placed in the UGA long ago and she did not formally state her opposition to the rezone. However, Ms. Wells did express several concerns that shall be dealt with at the time of redevelopment, including the protection of her trees from disturbance and the prevention of new stormwater flows or groundwater seepage onto her residential and equestrian property.
9. Is the Proposed Rezone Consistent with the Comprehensive Plan? The Growth Management Act (Ch. 36.70A RCW) ("GMA") requires consistency between the County's development regulations and the GMACP. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the FLUM. The rezone must meet the goals of the General Policy Plan ("GPP"), as well. Here, the subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on February 1, 2006, as amended on June 20, 2008. The subject property is designated in the GMACP FLUM as Urban Medium Density Residential. The expected range of densities on lands within the UMDR designation is 6 to 12 dwelling units per acre, depending upon the specific implementing zone. The land is located within the urban growth area. The proposed zoning of LDMR is an implementing zone of the Comprehensive Plan's UMDR designation.
10. PDS and the applicant have each analyzed the applicable GPP policies and the FLUM and prepared narrative reports and have provided maps and aerial photographs that demonstrate how the proposed rezone is consistent with the GMACP. (See, Exhibits A2, A3, F, C1, C2, C3, and G1)
11. After reviewing the analyses prepared by PDS and Camwest, and having performed an independent analysis of the GMACP, the Examiner finds that the PDS Staff Recommendation (Exhibit F), the Camwest Analysis of the Proposed Urban Rezone for Camwest Shelby Road Rezone dated August 27, 2008 (Exhibit A3) and Camwest Addendum to Applicant's Analysis of the Proposed Urban Rezones (Exhibit G1) have appropriately considered and analyzed all of the relevant comprehensive plan policies set forth in the Snohomish County GMACP, and each Exhibit is incorporated herein by this reference as if set forth in full. The Examiner concurs with and adopts the analysis presented by PDS and Camwest.
12. Based on the foregoing, the Examiner finds that the requested rezone is consistent with the adopted comprehensive plan. The granting of this rezone will further the County's Comprehensive Plan and establishes development patterns that use urban land more efficiently by concentrating and intensifying development in an appropriate location. (GPP LU-2.A)
13. Does the rezone bear a substantial relationship to the public health, safety, and welfare? In order to approve the requested rezone, the Examiner must also find that it bears a substantial relationship to the public health, safety and welfare. This is established by ensuring that (i) the proposed change will meet the provisions of the County Code; and (ii) that all impacts associated with the proposed rezone can be avoided or appropriately mitigated through the imposition of approval conditions.
14. Here, the proposed future development plans are not yet known, because no redevelopment proposal has been submitted. However, the Examiner may consider the differences between the development potential of the site as currently zoned at R-8,400, and the site as proposed under an LDMR zone.

15. The mix of development types that may be constructed under current zoning are all single-family residential types. The subject property could be further subdivided under its present R-8,400 zoning. Ms. Pilkenton and Ms. Rothfus estimated that the site could be divided into three or four lots using such regulatory tools as a short plat or planned residential development. Duplexes could also be placed on the site.
16. The mix of development types that may be constructed under the proposed LDMR zone includes detached single-family residences ("zero-lot line" development), single-family residences, townhouses and apartments. Using the County's current development regulations, PDS staff and the Applicant estimate that the subject property could be further subdivided under the proposed LDMR zoning into approximately four or five single-family lots, given setbacks, drainage requirements and other applicable restrictions.
17. In terms of the appearance of any structures that could be built under the two different zones, most of the development standards that will apply are the same in either zone. However, there are a few minor differences that should be noted in terms of building height. Under the current zoning of R-8,400, single-family residences are restricted to a maximum building height of 25 feet. Under the new zoning of LDMR, the structures are restricted to a maximum building height of 35 feet.
18. Ms. Pilkenton testified at the public hearing that any proposed development in the future for this site will likely be required to meet the County's new urban development standards, which will help to ensure that any new residences are compatible with the surrounding neighborhoods and the mix of uses that are present. The Examiner takes official notice of the County's new Urban Residential Design Standards (URDS) which shall take effect at the end of March 2009. The new regulations include:
 - New height regulations to reduce impact of development on existing homes.
 - Incentives for using low impact development techniques to reduce runoff.
 - Regulations for compatibility with neighborhoods.
 - An extensive menu of optional design elements to improve the variety and appearance of new homes.
 - Requirements to reduce the visual impact of garages.
 - Standards for walkways, parking configuration, and lighting for apartments, townhouses and condominiums.
 - Requirements for recreational open space in large developments.
 - New requirements for landscaping, including tree retention and replacement.
 - Landscaping requirements.
 - Requirements for most utilities to be located underground.
 - Flexibility for autocourts, alleys and other ways to provide for walking and driving through developments.
 - Enhanced provisions for transit facilities.
 - Improved requirements for off-street parking.
 - Limiting townhouse density to 9 dwelling units per acre.
 - New regulations for cottage housing and other innovative developments

These standards will govern any future development of the site if an application is received after March 2009. Compliance with these and other development regulations set forth in Title 30 SCC, ensure that the concerns raised by Ms. Wells relating to the preservation and replacement of existing trees, and general concerns relating to the visual appearance of any new homes, will be adequately addressed.

19. Concerns about Impacts from Drainage and Grading: The existing surface water flow across the site has not yet been studied, since there is no pending development application. Ms. Wells testified that there are underground springs on her property and she is concerned that any grading will disturb the groundwater and surface water flows, causing her basement to become wet. The Examiner finds that the Snohomish County Code adequately provides for the review and regulation of any impacts associated with grading and construction on the site. (See, Chapters 30.63A, 30.63B, and 30.63C SCC)
20. Any Finding of Fact set forth herein that should be deemed to be a Conclusion of Law 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 the proposed rezone implements the 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).
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 establishes the criteria which the Examiner must follow in considering a rezone. These include finding that: (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 change the zoning from R-8,400 to LDMR.

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

6. The request for a rezone was based upon the information and impacts identified in the SEPA Checklist and DNS issued on October 30, 2008, as well as public comments received by the County. (Exhibits D1, D2, F, A3, G1, G2 and G3)
7. As to the first criteria for approval of a rezone, the Examiner concludes that the Applicant has demonstrated by a preponderance of the evidence that the requested rezone is consistent with, and implements, the Snohomish County GMA Comprehensive Plan policies. (See, Exhibits A3, F and G1)
8. As to the second criteria for approval of a rezone, the Examiner concludes that the proposed rezone to LDMR will result in only a modest change to the potential density that could be gained under the current R-8,400 zone, given the unique physical constraints of this building site. The Examiner further concludes that the site-specific concerns raised by a citizen are of a nature that can and will be addressed during the review of any proposed development of the site. The Examiner further concludes that the County's development regulations, including its newly adopted URDS, ensure that the redevelopment of this site will be designed in such a way that it will be visually compatible with the existing neighborhood and surrounding mix of developments.
9. Accordingly, based on the entire record and testimony received at the public hearing, the Examiner concludes that the applicant has proven by a preponderance of the evidence that the requested rezone bears a substantial relationship to the public health, safety and welfare and, therefore, should be approved.
10. Any Conclusion of Law set forth herein which should be deemed a Finding of Fact is hereby adopted as such.

DECISION

The request for a REZONE from Residential-8,400 to Low Density Multiple Residential (LDMR) for the subject property is **GRANTED**.

Decision issued this 10th day of March, 2009.

Millie M. Judge, 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 Hearing Examiner and Council Rules of Procedure.

Please note that the Office of the Hearing Examiner cannot provide you with legal advice. You are encouraged to consult with your attorney if you have questions or concerns about your legal rights and compliance with the procedures for reconsideration or appeal.

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 (10 days) or **March 20, 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 14 days from the date of this decision or March 24, 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.