

# DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: April 19, 2011

PLAT/PROJECT NAME: ***South Lake Stickney Drive SFDU Rezone***

APPLICANT/  
LANDOWNER: Pacific Land Consultants, Inc.  
13619 Mukilteo Speedway, Suite 352  
Lynnwood, WA 98037

FILE NO.: 08-109460 LU

TYPE OF REQUEST: **REZONE** from Waterfront Beach (WFB) and Residential 7,200 (R-7200) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): **APPROVED**

## BASIC INFORMATION

GENERAL LOCATION: 1914 South Lake Stickney Drive and 1916 South Lake Stickney Drive, Lynnwood, WA  
(located in Section 35, Township 28 North, Range 4 East, W.M., Snohomish County,  
WA

ACREAGE: 1.23 acres

ZONING: CURRENT: WFB and R-7200 (Split zone)  
PROPOSED: LDMR

### COMPREHENSIVE PLAN DESIGNATION:

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

### UTILITIES:

Water: Alderwood Water and Wastewater District  
Sewer: Silver Lake Water and Wastewater District

SCHOOL DISTRICT: Mukilteo School District

FIRE DISTRICT: Snohomish County Fire District No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve

## INTRODUCTION

The applicant filed the rezone application on October 13, 2008, and it was determined to be complete on the date of submittal. (See Exhibit A.1) The Department of Planning and Development Services (PDS) gave public notice of the open record hearing which was scheduled for March 10, 2011. However, on the date of the hearing, PDS informed the Examiner that posted notice for the public hearing was not accomplished far enough in advance of the public hearing as required by SCC 30.72.030(4).

Accordingly, the Examiner opened the public hearing to accommodate the citizens who had appeared and to take testimony of the parties and the public. The hearing was then continued to April 12, 2011, so that public notice could be accomplished as required by the County Code. As of the date of the hearing, 334 days of the 120 day review period will have elapsed. PDS reports that the 120-day time frame could not be met due to the unusually lengthened review times experienced by PDS due to staff reductions, heavy workloads and review team staffing changes. (Exhibit K) On April 12, 2011, the parties appeared; however, no additional members of the public attended or provided comments or testimony. (See, Exhibits E.1, E.2, F.1, F.2, F.3, M.1, M.2 and M.3)

Pursuant to the appearance of fairness doctrine, at the start of the open record hearing, the Hearing Examiner disclosed on the record that she is an elected member of the Board of Commissioners for Snohomish County Fire District No. 1, and that the subject application falls within the boundaries of the District. The Examiner noted that District 1 had not commented during the application process, and that she had not discussed the application with anyone at the District, and could be fair and impartial in considering the rezone application. The Examiner asked whether anyone wanted to challenge her ability to conduct the hearing. No one raised any objection and the hearing proceeded.

At the public hearing, Monica McLaughlin appeared on behalf of PDS along with Michael Dragoo, a drainage engineer within PDS. Michael Ryan, P.E., Director of Engineering, HBA Design Group, and John Bissell, JBA Consultants, appeared on behalf of the applicant. Dennis Nicholson, a neighboring property owner, also appeared and testified.

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

Based upon a preponderance of the evidence in the record, the following Findings of Fact, Conclusions of Law and Decision are entered:

## FINDINGS OF FACT

1. The information contained in the introductory paragraphs of this decision is incorporated herein as if set forth in full. All exhibits included on the Master Exhibit and Witness List, as well as the testimony

received at the public hearing was entered into evidence, comprises the record herein, and was considered by the Examiner in reaching this decision.

2. State Environmental Policy Act Compliance. A SEPA threshold Determination of Nonsignificance (DNS) was made on February 7, 2011. (See Exhibit L.3 and M.3) Although comments from the Nicholson family were received stating that the SEPA Checklist was inadequate and that an EIS should be required, no appeal was filed. Accordingly, SEPA compliance has been met.
3. Rezone Request. The applicant is requesting a rezone from WFB and R-7200 to LDMR on 1.23 acres consisting of three tax parcels. The rezone is requested to facilitate further development of the site in the future through an administrative site plan approval. If the rezone is approved, the administrative site plan will be considered by the PDS Director and is not before the Hearing Examiner in this rezone proceeding.
4. Site description. The irregularly-shaped site is comprised of three existing lots. A duplex is located on the northernmost lot (which is split zoned WFB and R-7200) and the other two lots (zoned R-7200) are vacant. The property lies on the west side of South Lake Stickney Drive, approximately 125 feet northwest of its intersection with 20<sup>th</sup> Place West. Lake Stickney is approximately 500 feet away to the northeast and Swamp Creek is situated approximately 200 feet west of the site. Approximately half of the subject property is forested, with blackberries covering the understory. The remainder of the site is vegetated with lawn and ornamental landscaping around the existing duplex and pasture grass located at the southwest corner of the property. A Category 3 wetland is located off-site near the northwest corner of the property. The topography of the site generally slopes down toward the northwest. County zoning maps showing that the property is within a flood hazard area have been determined to be in error. (Exhibit K)
5. Adjacent uses. Single-family residences are located adjacent to the north and southeast sides of the property and across the street to the northeast. Swamp Creek runs through vacant property lying to the west. Property to the north and east of the site is zoned WFB. Property to the west and southeast is zoned R-7200. In 2007, an adjacent property to the southwest was rezoned to LDMR (file number 06-132026 LU) in order to develop the vacant site with nine single-family detached units. It appears this project was started, but has been put on hold. (Exhibits D.1, D.2, D.3 and K)
6. Public Comment in the Record. PDS received comments from the Hayes and the Nicholson families about the proposed rezone. (Exhibit I.1, I.2, and I.3). Mr. Nicholson also testified at the public hearing. Concerns raised in the public comments related to (1) existing drainage and flooding problems with Lake Stickney and Swamp Creek and the potential for further localized flooding and erosion as a result of development and increased impervious surfaces; (2) objections to developing the property at a higher density resulting in loss of trees on the site, additional people living on the site, increased environmental impacts, potential impacts to wildlife in the area and the maps showing the property is in the floodplain; and (3) the proposed rezone and development that will follow will increase crime, traffic and construction impacts in the neighborhood. The applicant analyzed each of these concerns and provided a specific response to them in Exhibits J.1 and I.4. Additional responses were provided by PDS staff in Exhibit K. The Hearing Examiner has read each of the citizen comments, as well as those presented at the public hearing, and finds that the applicant has adequately addressed these concerns where they were found to exist.

7. Rezone Criteria. The subject is currently zoned WFB (Waterfront Beach) & R-7200 (Residential-7200 sq. ft.) and a rezone to LDMR (Low Density Multiple Residential) is requested. The applicant has submitted the necessary application documents required for a rezone as required per Chapter 30.42A SCC. 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 that 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. The Examiner considers each criterion in turn.

A. The proposal is consistent with the comprehensive plan.

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 Plan; and the Comprehensive Park & Recreation Plan. The General Policy Plan has been revised since its initial adoption by a number of amendments. 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 Medium Density Residential (UMDR: 6-12 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). According to the GPP, the Urban Medium Density Residential designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones." As noted above, the LDMR zone requested is an implementing zone within the Urban Medium Density Residential designation.

PDS and the applicant also analyzed other policies in the GPP related to the proposed rezone. In particular, they analyzed Land Use Goal LU 1 and LU 2 and their objectives, Housing Goals HO 1 and HO 2 and their objectives, Transportation Policies TR 1.C and TR1.D, as well as Utilities objective UT 2.A and its implementing policies (UT Policy 2.A.1 and 3.A.1). The PDS analysis relating to the consistency of the requested rezone with the GMACP is set forth in Exhibit K at pages 7 through 9. The Applicant's analysis is set forth in Exhibits A.2 and L.2. Having reviewed the GMACP, and the PDS and applicant analyses relating to whether the proposed rezone is consistent with the GMACP, the Hearing Examiner concurs with said analysis and adopts Exhibits K, A.2 and L.2 by this reference and incorporates them herein as if set forth in full. Accordingly, the Hearing Examiner finds that the proposed rezone is consistent with the County's adopted GMACP.

B. The proposal bears a substantial relationship to the public health, safety, and welfare.

This rezone is a request to up-zone these properties in the Urban Medium Density Residential (UMDR) Designation from WFB and R-7200 to LDMR to allow eight dwelling units on a 1.23 acre site, consisting of one existing duplex plus six new single-family residences. The maximum allowable number of dwelling units in the LDMR zone is 13. The applicant has made a provisional showing that it can conform future development of the site to the regulations set forth in Title 30 SCC. (See, Exhibits A.3, B.1, B.3, B.4, G.1, G.2, G.3, G.4, G.5, H.1, H.2, H.3, H.4, H.5, H.6, J, and K) Additionally, the sanitary septic system has been removed and sewer is now serving the subject property. The proposed grading plan for the property will add a berm to the northwest property line, helping to reduce existing drainage problems. (Exhibit L.1) Citizen concerns have been adequately addressed. The applicant is proposing to build less than the number of residential units than would be authorized under the current zoning of LDMR. In addition, the type of units that will be constructed are more in character with single-family homes found in the R-7200 zone. (Exhibit A.2) The resulting density that can be achieved if the rezone is approved is consistent with the GMACP, and the urban development goals of the Growth Management Act (GMA). The Examiner finds that the proposed rezone bears a substantial relationship to the public health, safety and welfare.

C. Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

The Hearing Examiner finds that the applicant is not requesting any of the zones listed in Ch. 30.31 SCC and, as such, the minimum zoning criteria in Ch. 30.31A through F SCC is not applicable to this rezone request.

8. 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.<sup>1</sup>

4. The proposal is consistent with the comprehensive plan. 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, “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. The Examiner concludes that the applicant has met this burden of proof.

This rezone is a request to up-zone these properties in the Urban Medium Density Residential (UMDR) Designation from WFB and R-7200 to LDMR to allow eight dwelling units on a 1.23 acre site, consisting of one existing duplex plus six new single family residences. The maximum allowable number of dwelling units in the LDMR zone is 13. Although it is clear that this request fits within the UMDR designation, the analysis of consistency must go beyond the designation and identify how the project is consistent with the policies in the plan. Here, the area is already characterized by urban growth. The increased density would implement the comprehensive plan by facilitating the accommodation of new population growth into urban areas per the directive of the state Growth Management Act. The neighborhood is located near shopping, schools and transit. Public water and sewer is available to service any future development. The rezone would not be out of character with the neighborhood, which is already a mixture of low and medium density housing types.

When detailed construction plans are submitted for any future site development, the project will be reviewed for compliance with county GMA development regulations (which are required to implement the policies in the comprehensive plan) relating to traffic, drainage, project density and zoning, landscaping, parks and school mitigation, critical areas protection, compliance with fire and emergency access requirements, and provision of adequate potable water and sewage disposal. As noted above,

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

the applicant has made a *prima facie* showing that it can achieve the requirements of Title 30 SCC in developing the subject property.

The intent of the Snohomish County codes, policies, and standards is to ensure that adequate provision has been made for the public health, safety, and welfare of the citizens. The Examiner concludes that the rezone will accomplish GPP Goals LU-1 and LU-2, 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 rezone to LDMR of the subject property is not incompatible with the changes occurring elsewhere in the neighborhood and will provide tools for more efficient infill in the future. The site is a near major transit corridors, including I-5 and Highway 99, which have major bus transit centers. There are numerous shopping opportunities in the area with Everett Mall, Alderwood Mall and other shopping centers nearby.

5. The proposal bears a substantial relationship to the public health, safety, and welfare

Based on the analysis set forth in the Findings of Fact, the Examiner concludes that the proposal bears a substantial relationship to the public health safety and welfare.

6. Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

This Examiner concludes that Ch. 30.31 SCC is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays, none of which exist in this case.

7. The request for a rezone was based upon the information set forth in the entire record, as well as the impacts disclosed in the SEPA Checklist and DNS.

8. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**DECISION**

The request for a **REZONE** from WFB/R-7200 to LDMR for this property is **GRANTED**.

Decision issued this 19<sup>th</sup> day of April, 2011.



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Millie Judge, 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 30.85 SCC and Ch. 36.70C RCW, and the Superior Court Civil Rules and Rules of Civil 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, 3000 Rockefeller Avenue, M/S #405, Everett WA 98201, on or before **APRIL 29, 2011**. There is no fee for filing a Petition for Reconsideration. **Reconsideration is filed under SCC 2.02.170 and requires that the petitioner for reconsideration “shall mail or otherwise provide a copy of the petition of reconsideration to all parties to the appeal on the date of filing.”**

The petition for reconsideration does not have to be in any special form but must:

- (a) 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;
- (b) Identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested;
- (c) State the relief requested; and,
- (d) 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; or
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 2.02.170. 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, 2<sup>nd</sup> 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 3, 2011** 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: Monica McLaughlin

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.