

**CITY OF SPOKANE VALLEY HEARING EXAMINER**

RE: Rezone from the R-3 Zoning District to the R-4 Zoning District;  
File No. REZ-01-12  
Applicant: Evergreen Fountains, LLC  
\_\_\_\_\_ )  
 )  
 )  
 )  
 )  
 )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND DECISION**

**I. SUMMARY OF DECISION**

**Hearing Matter:** Application requesting approval of a rezone from the R-3 zoning district to the R-4 zoning district, on 1.73 acres of land.

**Summary of Decision:** Approve application.

**II. FINDINGS OF FACT**

1. The application seeks approval of a site-specific zoning map amendment (rezone), to reclassify 1.73 acres of land from the Single-Family Residential (R-3) district to the Single-Family Residential Urban (R-4) district of the Spokane Valley Municipal Code (SVMC).
2. The site is located adjacent to the east side of Mamer Road, approximately 800 feet north of its intersection with Broadway Avenue; in Spokane Valley, Washington.
3. The site is referenced as County Assessor’s tax parcel nos. 45151.1208 and 45151.1601, which parcels are respectively addressed at 1102 N. Mamer Road and 1024 N. Mamer Road.
4. The applicant, and site owner, is Evergreen Fountains, LLC; which is addressed at c/o Gregory Arger, 1201 N. Evergreen Road, Spokane Valley, WA 99216.
5. On April 13, 2012, a complete application was submitted for the proposed rezone.
6. On May 25, 2012, the City Community Development Department issued a Determination of Nonsignificance (DNS) for the application. The DNS was not appealed.
7. On June 28, 2012, the Hearing Examiner conducted a public hearing on the application. The notice of hearing requirements were met for the application. The Examiner conducted a site visit on June 27, 2012.
8. The following persons testified at the public hearing:

Christina J. Janssen, Assistant Planner  
Spokane Valley Planning Division  
11707 E. Sprague Avenue, Suite 106  
Spokane Valley, WA 99206

Greg Arger and Prokey Arger  
300 N. Mullan Road  
Spokane Valley, WA 99206

Johnathan Gibbs  
1109 N. Mamer Road  
Spokane Valley, WA 99216

9. The Hearing Examiner heard the application pursuant to Chapters 17.80, 18.20 and 19.30 of the Spokane Valley Municipal Code (SVMC); and Appendix B (Hearing Examiner Scheduling Rules and Rules of Conduct) of the Uniform Development Code (UDC) portion of SVMC (SVMC Titles 17-24).
10. The Hearing Examiner takes notice of the SVMC, the City Comprehensive Plan, other applicable development regulations, and prior land use decisions in the vicinity.
11. The record includes the testimony submitted at the public hearing, the documents in the application file at the time of the public hearing, and the items taken notice of by the Hearing Examiner.
12. The site consists of two (2) adjoining parcels that are each rectangular in shape, relatively flat in topography, improved with single-family dwellings and outbuildings, and abut and access Mamer Road.
13. The site; the parcel of land lying directly north of the site; and neighboring land located to the south, west, southwest along Mamer Road, and northwest; are designated in the Low Density Residential category of the Comprehensive Plan, zoned R-3, and developed with single-family dwellings. The parcel lying directly north of the site is owned by the current site owner.
14. The two (2) parcels lying one (1) parcel north of the site, along Mamer Road, are designated in the Medium Density Residential category of the Comprehensive Plan; zoned Multifamily Medium Density Residential (MF-1); and developed with part of the Evergreen Fountains assisted living facility for seniors. Such facility is classified as a “convalescent home/nursing home” or “multifamily dwelling” under the zoning provisions of the SVMC.
15. The 3.3-acre parcel lying further to the north, between Mamer Road and Evergreen Road, is designated in the High Density Residential category of the Comprehensive Plan, zoned Multifamily High Density Residential (MF-2), and developed with the remainder of the Evergreen Fountains facility.
16. The land located along Evergreen Road to the north and south (south of Sinto Avenue); including the land lying directly east of the site, but excepting the portion of the Evergreen Fountains facility that fronts along Evergreen Road to the north; is designated in the Office category of the Comprehensive Plan, zoned Garden Office (GO), and developed with offices or medical/dental offices.
17. The land located at all corners of the intersection of Broadway Avenue and Evergreen Road to the south is designated in the Community Commercial category of the Comprehensive Plan, zoned Community Commercial (CC), and is developed with commercial retail and office uses.

18. The maps and aerial photo attached to the Staff Report erroneously show parcel 45151.1208, located directly north of the site, as part of the site; and erroneously exclude parcel 45151.1601, the southerly half of the site, from their depiction of the site.
19. The City Arterial Street Plan designates Evergreen Road as a Principal Arterial, and Broadway Avenue and Mission Avenue as Minor Arterials. Broadway Avenue is improved to a 3-lane section, and Evergreen Road is improved to a 5-lane section.
20. Mission Avenue passes over Evergreen Road approximately one-third (1/3) mile northeast of the site, but has a stub road connection to Evergreen Road along its east side. Interstate 90 is located a short distance north of Mission Avenue.
21. The only public comments submitted regarding the application were submitted by Johnathan Gibbs, who owns and resides on a .5-acre parcel located 250 feet northwest of the site, one (1) parcel west of Mamer Road. The parcel apparently accesses Mamer Road through a private driveway.
22. Johnathan Gibbs testified that he was appearing on behalf of himself; and on behalf of Scott Vanhees, who owns and resides on a 1.47-acre parcel that lies directly south of the Gibbs property, directly northwest of the site. Gibbs expressed concerns regarding the potential height of, and traffic generated by, housing developed by the applicant on the current site under the R-4 zoning district.
23. Greg Arger, representing the ownership of the Evergreen Fountains facility; and Gregory Arger, the director of the Evergreens Fountains facility, testified on behalf of the applicant at the hearing.
24. The Argers testified that the site would be developed for cottage homes, as part of the Evergreen Fountains facility; the cottage homes would have access to the remainder of the Evergreens Fountains facility, through the parcel lying directly north of the site owned by the facility; the cottages would not exceed two (2) stories in height, or the 35-foot maximum building height applicable in the R-4 district (and current R-3 district); and the cottages would be occupied by seniors, and generate relatively little increased traffic along Mamer Road. Johnathon Gibbs advised that such housing would appear to be acceptable development of the site.
25. The Staff Report sets forth relevant policies of the Comprehensive Plan for the application. The policy most relevant to the proposed rezone is Policy LUP-1.7; which states that zone changes should be allowed within the Low Density Residential category of the Comprehensive Plan when specific criteria are met. This may include substantial changes within the area, the availability of adequate facilities and public services, and consistency with residential densities in the vicinity of the rezone site.
26. SVMC 19.40.040 and SVMC 19.40.050 describe both the R-3 district and the R-4 district as low density residential development that is intended to preserve the character of existing development, subject to the dimensional standards of SVMC Chapter 19.40 that are respectively established for such districts.

27. The minimum lot size, width and depth in the R-3 district are respectively 7,500 square feet, 65 feet and 90 feet; and are respectively 6,000 square feet, 50 feet and 80 feet in the R-4 district. The maximum lot coverage in the R-3 district is 50%, and is 55% in the R-4 district. The minimum setbacks and maximum building height are the same in both districts.

28. The R-3 and R-4 districts each permit single-family and duplex dwellings. The R-4 district permits multi-family dwellings, townhouse dwellings, and certain institutional-type residential uses not permitted in the R-3 district.

29. The Staff Report recommended no conditions of approval for the rezone application; because there was no site development plan submitted with the application, and public agencies and City departments did not submit conditions of approval.

30. The environmental checklist submitted by the applicant, and the DNS issued by the Community Development Department, properly addressed the environmental impacts of the application.

31. The Staff Report properly analyzed the consistency of the application with the Comprehensive Plan, and the rezone criteria set forth in SVMC 19.30.030; except that it erroneously found that the site directly borders MF-1 zoning to the north. Such analysis, except for the erroneous finding, is hereby adopted as findings of fact herein.

32. The proposed rezone to the R-4 district meets the direct concurrency requirements for transportation, public sewer and water set forth in SVMC 22.20; because any development of the site proposed in such district must meet such requirements, the site is served by public sewer and water, and the application is exempt from transportation concurrency requirements because it was submitted without a site plan.

33. The proposed rezone is consistent with the Comprehensive Plan; bears a substantial relation to the public health, safety and welfare; is appropriate for reasonable development of the property; is adjacent and contiguous to property of a higher zone reclassification; will not be materially detrimental to uses or property in the immediate vicinity of the site; and has merit and value for the community as a whole.

Based on the above findings of fact, the Hearing Examiner enters the following:

### **III. CONCLUSIONS OF LAW**

1. The proposed rezone to the R-4 zone complies with the rezone criteria set forth in SVMC 19.30.030.

2. SVMC 19.30.030 erroneously states that site-specific zoning map amendments shall be processed pursuant to SVMC 17.80.140, which section applies to Comprehensive Plan amendments and area-wide rezones processed through the Planning Commission and City Council. SVMC 18.20.030(A)(5)(h) expressly vests the Hearing Examiner with authority over site-specific

rezones that are not processed at the same time as an implementing Comprehensive Plan amendment for the same site, such as the proposed rezone.

3. Washington case law requires the proponent of a rezone to establish, by a preponderance of the evidence, that the proposed rezone bears a substantial relationship to the public health, safety or general welfare; and that a substantial change of circumstances has occurred in the area. However, proof of a substantial change of circumstances is not required if the rezone implements the comprehensive plan of the local government.
4. The proposed rezone to the R-4 zone implements the Comprehensive Plan; and bears a substantial relationship to the public health, safety or welfare.
5. The procedural requirements of the State Environmental Policy Act and SVMC Title 21 (Environmental Controls) have been met.
6. Any conclusion of law above that is a finding of fact is hereby deemed such.
7. The approval of the rezone application, as conditioned, is appropriate under SVMC 19.30.030, and SVMC Chapter 18.20 (Hearing Examiner).

#### IV. DECISION

Based on the Findings of Fact and Conclusions of Law above, the application for a site-specific amendment to the City Zoning Map, to rezone 1.73 acres of land from the R-3 district to the R-4 district under the SVMC, is hereby *approved*.

The map amendment applies to the real property currently referenced as County Assessor's tax parcel nos. 45151.1208 & 45151.1601, and more particularly described as follows:

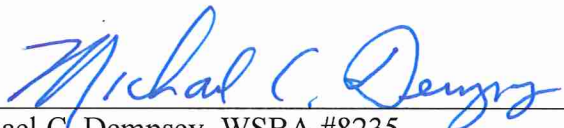
45151.1208 - DUNHAMS ACRES LT 1 B1 AND

45151.1601 - VERA B104 S90.43FT OF W300FT OF N1/2

The City Zoning Map shall be revised to reflect such map amendment.

DATED this 18<sup>th</sup> day of July, 2012

**SPOKANE VALLEY HEARING EXAMINER**

  
Michael C. Dempsey, WSBA #8235

**NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL**

Pursuant to Chapter 17.90 of the Spokane Valley Municipal Code (SVMC), the decision of the Hearing Examiner on an application for a site-specific amendment to the City of Spokane Valley zoning map (i.e. site specific rezone) is final and conclusive unless within fourteen (14) from the date the Examiner's decision was mailed, a party with standing appeals the decision to the Spokane Valley City Council pursuant to Section 17.90.070 of the SVMC.

This decision was mailed by regular mail to the Applicant, and to all government agencies and persons entitled to notice under Section 17.80.130(4) of the SVMC, on July 18, 2012. **THE APPEAL CLOSING DATE IS AUGUST 1, 2012.**

The complete record in this matter, including this decision, is on file during the appeal period with the Office of the Hearing Examiner, Third Floor, Public Works Building, 1026 West Broadway Avenue, Spokane, Washington, 99260-0245; and may be inspected by contacting staff assistant Kristine Chase at (509) 477-7490. The file may be inspected during normal working hours, listed as Monday-Friday of each week, except holidays, between the hours of 8:00 a.m. and 4:30 p.m. After the appeal period (unless an appeal is timely filed), the file may be inspected at the City of Spokane Valley Department of Community Development-Planning Division, 11707 E. Sprague Avenue, Spokane Valley, WA, 99206; by contacting Christina Janssen at (509) 921-1000. Copies of the documents in the record will be made available at the cost set by the City of Spokane Valley.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.