

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of	)	
	)	<b>FILE NO. 04 115791</b>
SSHI LLC dba D.R. Horton	)	
( <i>Silver Lake Meadows</i> )	)	
	)	
The request is for an 86-lot Planned Residential	)	
Development (PRD) subdivision with a Rezone	)	
from Residential-9,600 (R-9,600) to Residential-7,200	)	
(R-7,200) on 11.83 acres	)	

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DATE OF DECISION: September 15, 2005

DECISION (SUMMARY): The 86-lot Planned Residential Development and rezone from R-9,600 to R-7,200 are **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: This project is located at 1308 126<sup>th</sup> Street SE, Everett.

ACREAGE: 11.83 acres

NUMBER OF LOTS: 86

AVERAGE LOT SIZE: 3,444 square feet

MINIMUM LOT SIZE: 2,944 square feet

DENSITY: 7.26 du/ac (gross)  
12.2 du/ac (net)

ZONING: CURRENT: R-9,600  
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)  
Subarea Plan: North Creek  
Subarea Plan Designation: Suburban (1-4 du/ac)

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions  
Public Works (DPW): Approval subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on January 21, 2005. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 18, 19 and 20)

A SEPA determination was made on June 30, 2005. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on August 31, 2005, the 64<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on August 31, 2005 at 9:05 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, SSHI LLC dba D.R. Horton, was represented by Jack Molver of David Evans & Associates and by Camille Christ. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services and by Andrew Smith of the Department of Public Works.

3. No member of the public attended the hearing. A letter of support was submitted into the record by Scott Henshaw. Letters raising concern or opposition were submitted by Walter Anderson, Mike Feskens, Amy Myers and Richard & Dana Spoelstra. Their concerns were primarily related to stormwater drainage, especially along 126<sup>th</sup> Street SE. Some of those citizens raise concerns about traffic in the area, particularly on 129<sup>th</sup> Street at 10<sup>th</sup> Drive SE and the intersection of 132<sup>nd</sup> SE and 12<sup>th</sup> Drive SE. (See Amy Meyers' letter, including maps, at Exhibit 26C) Their concerns are addressed by the applicant's letter of August 9, 2005 (Exhibit 21) and by the staff report.
4. The hearing concluded at 9:45 a.m.

Note: The above information summarizes the information submitted to the Examiner through the public hearing process. For a complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

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

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. Because of local citizen concern about storm drainage, the Examiner questioned the applicant's representative at length about the drainage. The applicant testified in response that the runoff after development will not exceed one-half of the natural runoff from the two-year, 24-hour storm and the detention vault is sized to hold runoff from the 100-year storm. There are drainage problems in the vicinity but not caused by this proposal. The plat in progress on the Monroe site in the wetland may provide the best opportunity to address the vicinity drainage problems.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$918.00 for each new single-family home.
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
6. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

7. PDS has reviewed the Critical Areas Study and Mitigation Plan submitted with the application (Exhibit 16) and has determined that the project can comply with county Critical Areas Regulations (CAR). There are five wetlands on the property; three in the northwest corner of the site, one in the middle and one on the east side. Four of these wetlands (totaling 8,265 square feet) are to be filled to accommodate the development, which is allowed by code due to their smaller size. The largest of the wetlands at the east side of the property, and its required buffer surrounding it, will be preserved from development and will be protected in a Native Growth Protection Area (NGPA). To mitigate the loss of the functions and values associated with filling the four smaller wetlands, the applicant will preserve an additional 8,265 square feet of buffer adjacent to the wetland at the east side of the property as NGPA.
8. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service will be available for this development as well as electrical power.
11. The property is designated Urban Low Density Residential (4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the LDMR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. One of the implementing zones is the R-7,200 zone, which is the zoning requested here.
12. The Planned Residential Development must comply with the provisions of SCC 30.42B. The staff report review is thorough as to the PRD requirements, bonuses and related issues and is not repeated here.
13. Chapter 30.42A 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.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

14. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
15. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

## **CONCLUSIONS OF LAW**

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and(4) the applicable design and development standards.
4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. The request should be approved subject to compliance by the applicant with the following conditions:

### **CONDITIONS:**

- A. The Preliminary Plat (Exhibit 22A) received by the Department of Planning and Development Services on August 9, 2005, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The PRD Site Plan received by PDS on August 9, 2005 (Exhibit 22B), Conceptual Building Elevations received by PDS on August 9, 2005 (Exhibit 13) and Detailed Landscape and Recreation approved per condition B. ii., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
  - i. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.
  - ii. A detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibits 6B through 6E and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.

- iii. The plat shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
  - iv. A final mitigation plan that addresses the proposed filling of multiple BMP wetlands shall be submitted for review and approval during the construction review phase of this project.
- C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition B, above.
- D. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. “The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for eight existing parcels. Lots 1-8 shall receive credit.”
  - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
    - \$1,986.78 per lot for mitigation of impacts on county roads paid to the County,
    - \$69.58 per lot for Transportation Demand Management (TDM) paid to the County,
    - \$328.50 per single-family residential lot for mitigation of impacts on state highways paid to the County,
    - \$220.05 per lot for mitigation of impacts on City streets for the city of Mill Creek paid to the City. Proof of payment shall be provided.
 These payments are due prior to or at the time of building permit issuance for each SFR. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
  - iii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-115791.
  - iv. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include any open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, benches, and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.”

- v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

- vi. "The dwelling units within this development are subject to park impact fees in the amount of \$918.00 per newly approved dwelling unit, as mitigation for impacts to the North Creek community area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by January 21, 2010 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

E. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along 126<sup>TH</sup> Street SE, 128<sup>TH</sup> Street SE, 129<sup>TH</sup> Street SE and 12<sup>TH</sup> Drive SE, according to EDDS standard plan 3-050 and 3-065. (SCC 30.66B.420)
- ii. Two waiting areas for school children as requested by the Everett School District shall be constructed along the north-south Road "A" and Road "B" and Road "C" intersection. (RCW 58.17.110)
- iii. Covenants and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of commonly owned tracts and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership.
- iv. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.
- v. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125(5)(b).
- vi. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- vii. The final mitigation plan for multiple BMP fills shall be completely implemented.
  - viii. The unopened right of way in the southeast and southwest corners of the site, as depicted on the Preliminary Plat and PRD Official site plan, shall be vacated.
- F. Prior to occupancy of any unit in the PRD:
- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

Preliminary plats which are approved by the county are valid for five (5) years from their effective date and must be recorded within that time period unless an extension has been properly requested and granted pursuant to Section 30.41A.300.

- 6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

## **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a 86-lot Planned Residential subdivision along with a Rezone from Residential-9,600 to Residential-7,200 are hereby **CONDITIONALLY APPROVED, SUBJECT TO COMPLIANCE** by the applicant, with the **CONDITIONS** set forth in Conclusion 5, above.

Decision issued this 15th day of September 2005.

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Ed Good, Deputy 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **SEPTEMBER 26, 2005**. 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, 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 **SEPTEMBER 29, 2005** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

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Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin  
Department of Public Works: Andy Smith

<p>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.</p>
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