

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: January 8, 2007

PLAT/PROJECT NAME: *SHASTA RIDGE*

APPLICANT/
LANDOWNER: Shasta Ridge, LLC

FILE NO.: 05 128835 SD

TYPE OF REQUEST: REZONE from Residential-9600 (R-9600) to Residential-8400 (R-8400) and a PRELIMINARY PLAT for a 73 lot subdivision on 17.55 acres, utilizing lot size averaging provisions

DECISION (SUMMARY): APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 3910 83rd Avenue NE, Everett, WA

ACREAGE: 17.55 acres

NUMBER OF LOTS: 73

AVERAGE LOT SIZE: 5,833 square feet

MINIMUM LOT SIZE: 4,051 square feet

DENSITY: 4.15 du/ac (gross)
5.16 du/ac (net)

ZONING: CURRENT: R-9,600
PROPOSED: R-8,400

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-5 du/ac) – Marysville UGA

UTILITIES:

Water: Snohomish County PUD No. 1
Sewage: City of Marysville

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

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 April 24, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on December 12, 2006 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 22, 23 and 24)

A SEPA determination was made on October 20, 2006. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on December 14, 2006, the 86th 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 December 14, 2006 at 4:12 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. The applicant, Shasta Ridge, LLC, was represented by John Mirante of Group Four. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services.

The hearing concluded at 4:27 p.m.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. Shasta Ridge, LLC (Applicant) seeks to rezone a 17.55 acre tract at 3910 83rd Avenue NE, Everett, from R-9600 to R-8400 and to subdivide the tract into 73 single-family lots utilizing the lot size averaging provisions of the Snohomish County Code (SCC). The site is rectangular in shape, except that the northeast corner and the residence on it have been removed from the site by a Boundary Line Adjustment (BLA) process administratively approved by PDS. The site plan to be considered was filed on December 14, 2006 as Exhibit 44.
2. Access to the site will be from 83rd Avenue NE by a new public road. The internal roadway will be stubbed to the north, south and west to connect with anticipated adjacent development. There are two large wetlands on the site which will be preserved in Native Growth Protection Areas (NGPA). A third, small wetland will be filled.
3. Adjacent properties are either zoned R-9600 or R-7200 and developed with single-family residences. The PSE transmission line and Olympic Pipeline are located to the west of the site.
4. Applicant will pay impact fees for parks, county roads, state highways, Arlington and Marysville streets and schools. Applicant's Transportation Demand obligation will be satisfied by on-site features.
5. Applicant will provide full frontage improvements on 83rd Avenue NE, to City of Marysville standards. A right-of-way width of 30 feet from the centerline of 83rd Avenue was approved, to conform to other developments on the same road.
6. The proposal will generate an average of 646 new daily vehicle trips, with 51 a.m. and 68 p.m. peak hour trips. The project was certified as concurrent as there are no arterial units in arrears in TSA "A".
7. All students in the plat will ride the bus to school, and will be picked up at the entrance to the plat on 83rd Avenue NE. Internal sidewalks will provide safe walking conditions.
8. Storm water will be conveyed to an underground detention vault and released at a controlled rate into a water quality storm filter. From there it will go to the drainage system in the adjacent Patey plat currently under construction review. Details of the system will be approved during full drainage review.
9. The site is designated for Urban Low Density Residential land use and is located in an Urban Growth Area. Implementing zones include the requested R-8400 zone.
10. A Determination of Nonsignificance (DNS) for the proposal was issued on October 20, 2006. There was no appeal.
11. 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 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 rezone approval criteria are set forth in SCC 30.42A.100. Staff concludes that the proposed rezone is consistent with the comprehensive plan and bears a substantial relationship to the public health, safety and welfare and should be approved. The Examiner concurs.
3. The criteria for approval of a preliminary plat are contained in Chapter 30.41A and RCW 58.17.100-120 and 195. Staff's analysis of these criteria concludes that the proposal satisfies these standards and should be approved, subject to conditions. The Examiner concurs.
4. A Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The requests for a REZONE from Residential-8400 to Residential-7200 and a PRELIMINARY PLAT are hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS:

- A. The preliminary plat, received by Planning and Development Services (PDS) on November 1, 2006 (Exhibit 18), shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. The plattor 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.
 - ii. A detailed functions and values analysis for potential impacts to trees within the buffer areas is due during the construction phase of the review to address all grading activities within 15 ft. of the buffer as depicted on the targeted drainage plan sheets. If trees are to be impacted, then a final mitigation plan shall be included for review during the construction phase.
 - iii. The new septic drainfield for the house on the existing northern lot shall be installed per Snohomish County Health District permit specifications.
 - iv. The applicant shall provide evidence that Boundary Line Adjustment application 05-128835 BA has been approved by PDS and recorded with the county Auditor. The temporary drainfield easement shall be recorded simultaneously with the BLA.

- C. 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 Lake Stevens 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 three existing parcels. Lots 1-3 shall receive credit.”
 - ii. “The developer shall pay the County \$1,361.22 per single family unit as mitigation for impacts to the Centennial park service 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 April 24, 2011 (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.”
 - iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made);

"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 UDC 30.91N.010 are allowed when approved by the County.”
 - iv. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit or double the amount for a duplex:

\$2,139.87 per lot for mitigation of impacts on county roads paid to the county,

\$19.11 per lot for mitigation of impacts on state highways paid to the county (SR9/108th Street NE)

\$2,470.41 per lot for mitigation of impacts on city streets paid to the City of Marysville. Proof of payment shall be provided.

\$203.93 per lot for mitigation of impacts on city streets paid to the City of Arlington. Proof of payment shall be provided

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
- D. Prior to recording of the final plat:
- i. Urban frontage improvements shall be constructed along the parcel’s frontage, which includes the pre BLA parcel, on 83rd Ave NE to the satisfaction of the DPW.

- ii. 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 plattor 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.

- iii. The final wetland mitigation plan shall be completely implemented *if required* for impacts to trees in the buffer for grading within 15 ft. of the buffer.
- iv. The features on the approved TDM plan shall be constructed/installed.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

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

Decision issued this 8th day of January, 2007.

Gordon Crandall, 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 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 **JANUARY 18, 2007**. 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 **JANUARY 22, 2007** 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.

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.