

# **REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

DATE OF DECISION: March 10, 2006

PLAT/PROJECT NAME: *RAKESTRAW*

APPLICANT/  
LANDOWNER: Darling Investment, LLC

FILE NO.: 05 120595

TYPE OF REQUEST: REZONE of an 8.8 acre site from Residential-9600 (R-9600) to Residential-7200 (R-7200) and PRELIMINARY PLAT approval for a 38-lot subdivision utilizing lot size averaging

DECISION (SUMMARY): Request APPROVED subject to conditions

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located at 3921 71<sup>st</sup> Avenue NE, Marysville, WA

ACREAGE: 8.8 acres

DENSITY: 4.32 du/ac (gross)  
7.18 du/ac (net)

NUMBER OF LOTS: 38

AVERAGE LOT SIZE: 5920.77 square feet

MINIMUM LOT SIZE: 4233.54 square feet

OPEN SPACE: 54,479 square feet/1.25 acres

ZONING: CURRENT: R-9600  
PROPOSED: R-7200

### **COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential/Limited (5-6 du/ac) Marysville (UGA Only)

Subarea Plan: Snohomish-Lake Stevens

Subarea Plan Designation: Suburban (2-4 du/ac)

UTILITIES:

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

SCHOOL DISTRICT: Marysville

FIRE DISTRICT: No. 12

SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services: Approve subject to conditions  
Public Works: Approve subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on September 29, 2005. (Exhibit 13)

The Hearing Examiner (Examiner) made a site familiarization visit on January 26, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 17, 18 and 19)

A SEPA determination was made on November 7, 2005. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on February 23, 2006, the 65<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 February 28, 2008 at 2:00 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. Mr. Rick McArdle spoke on behalf of the applicant and stated that they have revised the plat to meet the requirements of the City of Marysville and the County. There will be 38 lots. He indicated that he had no objection to the conditions except as to C.v. He stated that he would like the same verbiage as used in Exhibit 33, which states: "Additionally, the City is agreeing to credit the final fee for road construction costs (excluding right-of-way dedication costs) for 40<sup>th</sup> St. NE against traffic mitigation fees that are due to the City pursuant to the interlocal agreement between the City of Marysville and Snohomish County."
3. Ms. Monica McLaughlin appeared on behalf of PDS and stated that it should be 38 lots.
4. No one appeared in opposition to the request.

The hearing concluded at 2:15 p.m.

**NOTE:** Audio tapes of this hearing are available in the Office of the Hearing Examiner.

## FINDINGS, CONCLUSIONS AND DECISION

### FINDINGS:

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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. No comments were received from the general public regarding the proposal.
4. The request is for preliminary plat approval to divide 8.8 acres into 38 lots utilizing lot size averaging provisions and a rezone of the property from R-9600 to R-7200. An existing home will be retained on one of the lots. Access to the lots will be provided by a new public road constructed within the subdivision, which will intersect with 71<sup>st</sup> Avenue NE.
5. There is R-9600 zoning surrounding the property with those areas being either single-family residential or vacant.
6. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,361.22 for each new single-family home.
7. 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. (See Pages 3-6, Exhibit 32)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. There are three Category 4 and two Category 3 wetlands on the site. PDS has examined the Critical Areas Report and has determined that the project complies with Chapter 30.62 SCC.
10. Rainwater runoff from the site is to be collected and transported via catch basins and pipes to a detention vault in the southeast corner of the site where it will be released at a controlled rate into a bioswale to enhance water quality, and then to a level spreader which will direct water toward Soper Hill Creek, which lies off-site to the east. 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).
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished and with the understanding that the existing onsite sewage systems will be abandoned in accordance with health district regulations. Any existing on-site septic systems shall be abandoned.

12. Public water and sewer service will be available for this development as well as electrical power.
13. The subject property is designated as Urban Low Density Residential – Limited (5-6 du/ac) Marysville UGA Only on the Future Land Use map and is located within an Urban Growth Area (UGA). According to the GPP, the Urban Low Density Residential- Limited (5-6) designation “allows mostly detached housing developments on larger lot sizes. It is applied to portions of the Sunnyside area in the Marysville UGA. Land in this category may be developed at a density of five to six dwelling units per acre. Implementing zones include R-7,200 and PRD-7,200.”
14. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.
15. 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.
16. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
17. 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.
18. The aerial photograph (Exhibit 11) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
19. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

## **CONCLUSIONS:**

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. However, one minor change has been made to Condition C.v.
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 GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with 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 will allow for the development of single-family homes in this attractive area of the county next to Marysville.
6. The request should be approved subject to compliance by the applicant with the following Conditions:

#### **CONDITIONS**

- A. The preliminary plat, received by Planning and Development Services (PDS) on February 16, 2006 (Exhibit 14) 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 platlor 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. An updated Critical Areas Report shall be submitted for review and approval during the construction review phase of this project.
- 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 Marysville 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 one existing parcel. Lot 37 (containing the existing home) 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 June 8, 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."
  - iii. 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."
  - iv. On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works grants a formal deviation.
  - v. 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:

\$1,863.76 per lot for mitigation of impacts on county roads paid to the county,  
\$2,000.00 per lot for mitigation of impacts on Marysville streets paid to the city.  
\$207.60 per lot for mitigation of impacts on Arlington streets paid to the city.

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. Additionally, the City is agreeing to credit the final fee for road construction costs (excluding right-of-way dedication costs) for 40<sup>th</sup> St. NE against traffic mitigation fees that are due to the City pursuant to the interlocal agreement between the City of Marysville and Snohomish County.”

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall be constructed along the property frontage with 71<sup>st</sup> Avenue NE unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. Construction of an offsite walkway to the nearest bus stop location for the public school students as identified by the Marysville School District (currently the intersection of 71<sup>st</sup> Avenue NE and 37<sup>th</sup> Street NE) must have been completed along a legal and the most direct route in any location where none exist.
- iii. 40<sup>th</sup> Street NE shall have been constructed from 71<sup>st</sup> Avenue NE to 73<sup>rd</sup> Drive NE to adequate public “half” road standards with a minimum of a 20-foot pavement width.
- iv. 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 platlor 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.

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.

7. Any 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-9600 to Residential-7200 and PRELIMINARY PLAT approval for a 38-lot subdivision utilizing the lot size averaging provisions are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 10<sup>th</sup> day of March, 2006.

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Robert J. Backstein, Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **March 20, 2006**. 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **March 24, 2006** 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

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.

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Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin  
Department of Public Works: Ann Goetz

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.
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