



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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NOTICE OF HEARING EXAMINER DECISION

October 21, 2008

To: Interested Parties and Parties of Record

RE: Project Name: **Shen – SS/PBD**
Applicant: **John Shen & Dorothy Pao**
2035 Lacamas Drive
Camas, WA 98607
South Kitsap County, Commissioner District #2
Application: **Short Subdivision/Performance Based**
Development
Case Number: **080925 – 073 (022201-3-005-2006) LIS#07 47866**

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. **ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON NOVEMBER 4, 2008.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

The written appeal shall be made on or attached to an appeal form provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County:
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

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3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

The complete case file will be available for review at the Department of Community Development, Monday through Friday, except holidays, 8:15 a.m. to 4:00 p.m.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft
Clerk of the Examiner

Enclosure

See attached transmittal

RECEIVED

OCT 17 2008

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 080925-073
)	
)	
Joseph Shen)	
)	FINDINGS,
)	CONCLUSIONS,
For Approval of a Short Subdivision and)	DECISION,
<u>Performance Based Development</u>)	AND RECOMMENDATION

SUMMARY OF DECISION AND RECOMMENDATION

The request for short subdivision of 20-acres of property located adjacent to the east of Madrona Road SW, one-half mile north of the Pine Road intersection in south Kitsap County, Washington, is **APPROVED**, subject to conditions. The Hearing Examiner recommends that the request for a performance based development on 20-acres of property located adjacent to the east of Madrona Road SW, one-half mile north of the Pine Road intersection in south Kitsap County, Washington, should be **APPROVED**, subject to conditions.

SUMMARY OF RECORD

Requests:

Joseph Shen requests short subdivision of 20-acres into four, 2.5-acre parcels and a performance based development on property located adjacent to Madrona Road SW, one-half mile north of the Pine Road intersection in south Kitsap County, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on September 25, 2008. The Hearing Examiner kept the record open until October 2, 2008 to receive proposed conditions of approval from Kitsap County staff.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Jeff Smith, County Planner
- Frederick Kegel, P.E., P.L.S., for Applicant
- John Stacy
- Maureen Stacy
- Kris Wilder

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Barbara Bellamy
Raymond St. Ours

Exhibits:

The following exhibits were admitted into the record:

1. Short Subdivision Application with attachments, dated September 1, 1975
2. KC Assessor's Map
3. GIS Aerial Map
4. Preliminary Site Plan Map, with hand-drawn landscape and utility features, dated August 16, 2007
5. GIS Topo Map
6. Site Photos, dated December 29, 2005
7. Wetland Analysis Report – Kucinski Consulting Services, dated April 2007
8. Historical Information, dated September 12, 2003
9. Preliminary Site Plan with Access Road Plan, dated May 31, 2007
10. Pre-Application Meeting Request
11. Request Waiver Pre-Application Meeting, dated June 6, 2007
12. Short Subdivision/Performance Based Development Application, dated June 6, 2007
13. Environmental (SEPA) Checklist, dated July 26, 2007
14. Preliminary Drainage Report, dated July 2007
15. GIS Zoning Map, dated July 10, 2007
16. GIS Aerial Photo, dated July 10, 2007
17. GIS Critical Areas Topographical Map, dated July 10, 2007
18. GIS Critical Aquifer Recharge Areas, dated July 10, 2007
19. GIS Critical Drainage Map, dated July 17, 2007
20. GIS Building Limitations Map, dated July 17, 2007
21. KC Assessor's Property Report, dated July 17, 2007
22. Pre-application Meeting Waiver Denial Letter, dated July 16, 2007
23. LIS Update, dated July 23, 2007
 - A. KCHD Pre-Application Checklist, dated July 23, 2007
24. GIS Critical Areas Aerial Map, dated July 24, 2007
25. Site Review – Bill Noerenberg, dated July 20, 2007
26. Written Pre-Application Summary, dated July 25, 2007
27. KCPW Application for Concurrency Test, dated July 26, 2007
28. Petition for Road Name, dated July 31, 2007
29. Email message from Nancy Hanson, dated August 5, 2007
30. Mitigation Plan for Roadway Creek Crossing & Buffer Encroachment, dated August 16, 2007
31. Preliminary Site Plan Map, dated August 16, 2007
32. Notice of Incomplete Application, dated October 3, 2007
33. Letter from Frederick A Kegel, dated November 15, 2007
34. Notice of Complete Application, dated January 23, 2008
35. Notice of Application, dated January 28, 2008

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36. Affidavit of Mailing, Notice of Application, dated January 28, 2008
37. Email message from Jackie Blackwood KCFM, dated January 31, 2008
38. Letter from Barbara Bellamy, dated February 6, 2008
39. Letter from Nancy Hanson, dated March 17, 2008
40. Notice of Public Hearing, dated March 24, 2008
41. Affidavit of Mailing, Notice of Public Hearing, dated March 24, 2008
42. Notice of Postponement Letter, dated March 25, 2008
43. Affidavit of Mailing, Notice of Postponement, dated March 25, 2008
44. KC Fire Marshal Comments/Conditions, dated January 25, 2008
45. Email message from Nancy Hanson with attachments, dated March 25, 2008
46. Notice of Publication, Notice of Public Hearing, dated March 26, 2008
47. Memorandum from Shawn Alire, dated May 14, 2008
48. KCHD Short Plat Approval Sheet, dated June 25, 2008
49. Notice of Public Hearing, dated September 8, 2008
50. Affidavit of Mailing, Notice of Public Hearing, dated September 8, 2008
51. Mitigated Determination of Nonsignificance, dated September 8, 2008
52. Email message from Jeff Smith with attachments, dated April 3, 2008
53. County Staff Report, dated September 17, 2008
54. Affidavit of Posting, Public Hearing, with attached photograph, dated September 10, 2008
55. Preliminary Site Plan Map, received June 19, 2008
56. Preliminary Site Plan Map, with hand-drawn landscape and utility features, dated August 16, 2007
57. Memorandum from Candy Mursell, Kitsap County Department of Community Development Engineering, to Jeff Smith, dated April 8, 2008
58. Shen Preliminary Short Plat/PBD PowerPoint presentation slides, dated September 25, 2008
59. Letter from John and Maureen Stacy to the Kitsap County Department of Community Development, undated, signed by 33 other residents
60. Letter from Greg and Kris Wilder and John and Maureen Stacy, undated
61. Memorandum from David Lynam, Fire Marshal, to Jeff Smith, dated September 25, 2008
62. Memorandum from Jeff Smith to the Kitsap County Hearing Examiner, dated October 2, 2008

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

1. Joseph Shen (Applicant) requests short subdivision of 20 acres into four, 2.5-acre parcels and a performance based development (PBD) on property located adjacent to

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the east of Madrona Road SW, one-half mile north of the Pine Road intersection in south Kitsap County, Washington.¹ *Exhibit 2; Exhibit 12.*

2. Kitsap County (County) determined the application was complete on January 23, 2008. *Exhibit 34.* The County gave notice of the application on January 28, 2008 by mailing notice to all owners of property within 400 feet of the subject property. *Exhibit 36.* The County mailed notice of the associated open record hearing to owners of property within 400 feet of the subject property on September 8, 2008.² *Exhibit 49; Exhibit 50.* The County posted notice of the hearing on the subject property on September 10, 2008. *Exhibit 54.* Jeff Smith, County Planner, testified that the County gave notice of the application and associated hearing in accord with County ordinances. *Testimony of Mr. Smith.*
3. The County acted as lead agency and analyzed the environmental impact of the proposed short subdivision and performance based development, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County determined that with conditions, the proposal would not have a probable significant adverse impact on the environment and issued a Mitigated Determination of Nonsignificance (MDNS) with three conditions on September 8, 2008. The three conditions concern a final mitigation planting plan for road construction, Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW), and conditioning of the project in accord with Kitsap County Code (KCC) Title 12, Chapter 19.200 KCC, and Chapter 19.300 KCC. Mr. Smith testified that the MDNS was not appealed prior to the expiration of the appeal period on September 22, 2008. *Exhibit 39; Testimony of Mr. Smith.*
4. The subject property is designated Rural Residential by the County Comprehensive Plan. The Rural Residential designation is intended to allow low-density residential development consistent with rural character, and primarily focuses on single-family dwellings. The designation is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features, and also recognizes areas that are already committed to a pattern of smaller rural lots. *Kitsap County Comprehensive Plan (December 2006), page 3-4; Exhibit 53, Staff Report, page 2.*

¹ The property subject to the application is identified by Tax Assessor's Parcel No. 022201-3-005-2006. A legal description of the subject property is included with the application. *Exhibit 12.* The Hearing Examiner made a virtual visit to the subject property through use of *Google Earth* technology during the week prior to the open record hearing on the request.

² The County postponed the open record hearing on the application initially scheduled for April 10, 2008 to September 25, 2008, due to the County's request for more information from the Applicant. The County mailed notice of the public hearing postponement to owners of property within 400 feet of the subject property on March 25, 2008. *Exhibit 40; Exhibit 42; Exhibit 43.* Jeff Smith, County Planner, testified that the County has since received the soils information requested from the Applicant. *Testimony of Mr. Smith.*

5. Comprehensive Plan goals and policies for Rural and Resource Lands relevant to the request include retaining the rural character of the County outside of designated urban areas by providing for a variety of densities to make more efficient use of land, maximize return on public infrastructure investment, and provide for affordable housing; and by permitting residential uses in rural areas consistent with the existing and planned rural character of the surrounding area. Relevant goals and policies also include encouraging development standards that help preserve the County's rural character by encouraging design standards and development practices to limit paved surfaces, grade changes from pre-development site conditions, elaborate entrance signs, and extensive lawns and landscaping; maintain appropriate public service levels in rural areas by providing for emergency vehicle access and ensuring proper septic system installation, use and maintenance; and preserve existing open space and promote new open space in rural areas. *Kitsap County Comprehensive Plan (December 2006), pages 3-5 – 3-8.*
6. The Rural Residential designation is implemented by the Rural Residential (RR) zone. The zone promotes low-density residential development consistent with rural character, and allows a maximum development density of one dwelling unit per five acres (du/acre). *Kitsap County Comprehensive Plan (December 2006), page 3-4.* The subject property is located within the County's Rural Residential zoning district. Development of single-family residential detached dwellings is an allowed use within the Rural Residential zoning district. *KCC 17.310.020; KCC Table 17.381.040(E); Exhibit 50, Staff Report, page 2.*
7. The Kitsap County Code does not establish a maximum or base density for development within the RR zone. *KCC 17.382.100.* Lots within the RR zone must be at least 5 acres in size, 140-foot wide and 140-foot deep, with 50-foot wide front setbacks and 20-foot wide side and rear setbacks. *KCC 17.310.030; KCC 17.382.100.* Clustering residential development in all development is encouraged by the Kitsap County Code. *KCC 17.382.100.15.*
8. Performance based development (PBD) standards are set forth in the Kitsap County Code to allow flexibility in design and creative site planning while providing for orderly development of the County. A PBD allows for the use of lot clustering in order to preserve open space, encourage the creation of suitable buffers between incompatible types of development, provide for increased efficiency in the layout of the streets, utilities and other public improvements and to encourage the use of creative techniques for the development of land. The PBD allows for mixed uses, subject to the density limits of the zone where the PBD is located. *KCC 17.425.010.* Uses permitted in the underlying zone are also permitted within the PBD. *KCC 17.425.030.* In rural zones, common open space within a PBD must be a minimum of 50-percent of the total site area. *KCC 17.425.040.C.3.* To promote creativity and innovation, the board of county commissioners may modify the PBD standards and

criteria found within the Kitsap County Code or substitute with other design concepts. *KCC 17.425.040.C.4.*

9. The subject property is bisected by Bear Creek, a Category F stream,³ which lies in a ravine and runs south to north across the property. The subject property also includes a small, unnamed tributary of Bear Creek, flowing into the creek in the southwest corner of the property. The site predominantly consists of rolling topography that slopes toward the ravine from all sides of the parcel. The subject property west of the creek is relatively undisturbed wooded property with second- or third-growth alder, cedar, and salmonberry vegetation. The subject property east of the creek consists of pasture with some individual Douglas fir and Big leaf maple trees. A single-family residence and garage existed within the east portion of the subject property but has been abandoned. One remaining building exists in the south central portion of the property. Approximately 50-percent of the subject property has been cleared. *Exhibit 7; Exhibit 14; Exhibit 16.*

10. The subject property contains wetlands immediately adjacent to both sides of the stream and within upland forested areas west of the stream. Wetland A-B begins near the northwest corner of the subject property and continues south along Madrona Road SW, crossing the Bear Creek tributary and following the tributary to its confluence with Bear Creek. Wetland E exists in the southwest corner of the subject property, south of and separate from Wetland A-B, and extends off-site to the south. Wetland C-D exists adjacent to Bear Creek. *Exhibit 7.*

11. Wetland A-B is a Category III wetland approximately 101,000-square feet in size. Wetland C-D is a Category III wetland approximately 24,000-square feet in size.⁴ Wetland E is a Category IV wetland approximately 14,000-square feet in size.⁵ *Exhibit 7.*

³ "Streams" are those areas in Kitsap County where the surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. *KCC 19.150.635.* Type F streams are surface waters that contain habitat for salmonid fish, game fish, and other anadromous fish and meet the criteria of the Washington Department of Natural Resources (WDNR) found in Washington Administrative Code (WAC) 222-16-030(2). *Chapter 19.800 Appendix B.B.*

⁴ "Wetlands" are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. *KCC 19.150.685; KCC 19.200.210.A.1.* Category III wetlands are those regulated wetlands that score between 30-50 points on the wetlands ratings system. *KCC 19.200.210.B.3.* Category III wetlands are 1) wetlands with a moderate level of functions (scores between 30 – 50 points) and 2) interdunal wetlands between 0.1 and one-acre in size; and wetlands scoring between 30 – 50 points and have generally been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. *Chapter 19.800 Appendix A.C.*

⁵ Category IV wetlands are wetlands with the lowest levels of function (scores less than 30 points) and are