

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 04 118193
ROBINETT INVESTMENT COMPANY, LLC)	
<i>(Rose Place)</i>)	
)	
Request for an 11-lot Rural Cluster Subdivision)	
on 37.64 acres)	

DECISION SUMMARY

Date of Decision: September 14, 2005

The application for an 11-lot rural cluster subdivision is **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: The property is located approximately one-half mile north of the intersection of Rose Road on SR 530.

ACREAGE: 37.64 acres

NUMBER OF LOTS: 11

AVERAGE LOT SIZE: 43,819 square feet

MINIMUM LOT SIZE: 43,597 square feet

DENSITY: .29 du/ac (gross)
.30 du/ac (net)

ZONING: Rural-5 (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential – 5 (1 du/5 ac)
Subarea Plan: Northwest County
Subarea Plan Designation: Rural (1 du/2.3 ac)

UTILITIES:

Water: Wells
Sewer: Septic systems

SCHOOL DISTRICT: Stanwood

FIRE DISTRICT: No. 14

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 September 24, 2004. (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 22, 23 and 24)

A SEPA determination was made on June 28, 2005. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on August 30, 2005, the 108th 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 30, 2005 at 9:04 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Robinett Investment Company, LLC, as agent for owner Port Blakely Tree Farms Limited Partnership, was represented by Henry Robinett and Martin Robinett, and by Land Resolutions through Ryan Larsen and Ry McDuffy. Snohomish County was represented by Monica McLaughlin of the Department of Planning & Development Services and by Andy Smith of the Department of Public Works hearing. No member of the public participated by letter or by testimony. A letter from Glenn L. Beasley dated October 6, 2004 mistakenly referred to this plat but applies to a companion plat No. 04-100649. His concerns are addressed in that file.

3. The hearing focused on the sharply contested issue of what review role is appropriate for Olympic Pipeline Company, which owns two high pressure gasoline pipelines in an easement over which lie the proposed plat's residential lots 5,6,7, 8 and 999 (open space).

The hearing concluded at 11:40 a.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, for a full and complete record, electronic recordings of the hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all 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. Except as noted herein, 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 staff report is hereby adopted by the Examiner as if set forth in full herein.
3. Olympic Pipeline Company has two (16 inch and 20 inch) high pressure gasoline pipelines in a 30-foot easement which crosses through the rear yards of lots 5, 6, 7 and 8. The residence on Lot 5 will be approximately 80 feet from the edge of the pipeline easement. The residence on Lot 6 will be approximately 70 feet from that easement. Wells are shown within 10 to 20 feet of the easement on Lots 6, 7 and 8. The residences on Lots 7, 8 and 9 range from approximately 100 to 300 feet from that easement.
4. Olympic Pipeline Company's note of October 8, 2004 (Exhibit 29) asked to be involved in the design phase of the plat because of present concerns about locations of septic systems and wells. The note expresses further "big concerns" about future fences after lots are sold. The note concludes:

"We definately [sic] need to be kept informed of the progress of this plat & need to be involved in the design phase."
5. In contrast, Olympic Pipeline Company makes no such request as to the companion application for a six-lot plat (Rose Run) on 20 acres adjoining the subject site, although proposed Lots 3 and 4 thereof have lot lines on the easement itself and wells proposed approximately 10 feet from of the easement. The difference is that those two Rose Run lots stop at the easement; whereas the subject plat's (Rose Place) Lots 5, 6, 7 and 8 lie atop the high pressure pipeline easement and beyond it to the east.

6. To clarify, if a future homeowner of Rose Run Lot 3 or 4 wishes to fence the back yard, the fence will parallel the pipeline but not cross it. However, complete back yard fencing of Rose Place Lot 5, 6, 7 or 8 would cross the full width of the pipeline easement and beyond it to the east. In the latter lots, the pipeline is in the back yard.
7. In response to Olympic Pipeline Company's request, the staff notes in testimony that no permit is required to build a fence less than six feet high and, therefore, the staff report recommends that the Examiner impose the following condition, as modified during the hearing:

“No construction of any kind, including installation of fencing, shall be allowed within the 30-foot-wide Olympic Pipeline Easement without the written approval of the Olympic Pipeline Company.”
8. The Department of Public Works representative (a geological engineer) testified that the 30-foot easement that the high pressure line lies in is very narrow and the well locations look “fairly close to that easement.” He also testified that: “A lot of times when they put these lines in they're not quite centered to the easement.” Thus, he recommends that a representative of Olympic Pipeline should be on site during any subsurface work.
9. The applicant testified regarding the edge of the pipeline easement:

“...There is nothing in the field in terms of how we normally do business that would mark where that exactly is. I think I know where it is...but actually out in the field we don't know, we don't know exactly where it is until it's been surveyed in.”
10. The applicant objects to that proposed condition, arguing:
 - A. Since adoption of the Growth Management Act, if a proposal complies with the Comprehensive Plan and regulations implementing that Plan, the proposal must be approved without inquiry into issues of the “public health, safety and welfare”, and
 - B. To give Olympic Pipeline Company approval authority over what or when work can be done on this plat grants Olympic Pipeline Company rights beyond the easement rights with no payment by either the County or by Olympic Pipeline Company, and
 - C. To give Olympic Pipeline Company such approval authority places unnecessary requirements on the owner of private property unsupported by fact or law, and
 - D. The condition would serve its purpose if it simply required that the applicant take no action that would violate the terms of the easement.

The Examiner reviews each of those four arguments under Conclusions of Law, *infra*.

11. The Examiner disclosed that he was a resident of Bellingham, Washington in June 1999 when a high pressure gasoline pipeline exploded, killing two ten-year-old boys and an older youth. The Examiner stated that his proximity to that event may bias him in the interest of public safety when a pipeline is at issue. The applicant suggested that the Examiner should withdraw from hearing or deciding this matter. The Examiner concludes that it is sufficient to disclose that he is taking notice of a potential public hazard.
12. A separate contested issue at the hearing was whether or not to impose a staff-recommended pre-condition upon this application to require that a related boundary line adjustment and any associated conveyance documents would have been recorded with the County Auditor. The argument became moot when the applicant went to the Auditor's office during a recess of the hearing and filed the required documents.
13. 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.
14. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,056.00 for each new single-family home.
15. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
16. Six Category 3 wetlands and one Type 4 stream are located on the property wetland will not be disturbed and will be protected by a minimum 50-foot-wide Native Growth Protection Area buffer in accordance with Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations.
17. 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).
18. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
19. The subject property is designated Rural Residential -5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
20. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.

21. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A and 30.41C as well as the State Subdivision Code, RCW 58.17. As conditioned herein, 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.
22. 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.
23. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

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.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
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 Examiner disagrees with the arguments advanced by the applicant as reported at Finding of Fact No. 10, supra. The Examiner concludes that the Growth Management Act did not repeal RCW 58.17.110, which requires:

“(1) The ...county...shall determine: (a) If appropriate provisions are made for...the public health, safety and general welfare...and (b) the public use and interest will be served by the platting of such subdivision....”

That language of RCW 58.17.110 does not permit plat approval as a ministerial act akin to a building permit. The facts of each application must be weighed absent any presumption in favor of a plat. The condition requiring review by Olympic Pipeline Company brings that Company’s knowledge and expertise to bear on whether a specific act of construction or field work will damage the pipeline: no less and no more than that. Further, the County has no authority to yield its plat review function to whatever might be the terms of a private lease.

5. The request should be approved subject to compliance by the applicant with the following conditions:

(Note: A proposed precondition was met by filing during a recess of the hearing.)

CONDITIONS:

- A. The preliminary plat, received by Planning and Development Services (PDS) on May 18, 2005 (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 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. A final detention pond landscape plan shall have been submitted to and approved by the Department of Planning and Development Services. The plan shall be in conformance with Exhibit 10.

 - iii. A final mitigation plan based on the Conceptual Wetland Mitigation Plan for Rose Place, prepared by Wetland Resources, Inc. dated May 13, 2005 (Exhibit 17), 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 Stanwood 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 1 shall receive credit.

 - ii. 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence (SFR)
 - \$2,143.68 per lot for mitigation of impacts on county roads paid to the County
 - \$344.52 per lot for impacts on the state highways paid to the County,
 - \$209.68 per lot for mitigation of impacts on Arlington streets paid to the City. Proof of payment shall be provided.

 - \$114.84 per lot for mitigation of impacts on city streets for the City of Stanwood 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 lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- 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. Homes within the development shall be designed and constructed in accordance with the recommendations contained in the Rose Run and Rose Place Noise Study dated May 16, 2005, prepared by JR Engineering.
- v. All utilities shall be underground.
- vi. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
- vii. Lots within a rural cluster subdivision or short subdivision, and adjacent to or within 1,300 feet of agricultural or forestry uses located in a designated open space tract may be subject to inconvenience or discomforts arising from agricultural or forestry activities, including but not limited to noise, odors, fumes, dust, smoke, the operation of machinery of any kind, timber harvest, brush control, the storage and disposal of manure, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural or forestry activities.
- viii. No construction of any kind, including installation of fencing, shall be allowed within the 30 foot wide Olympic Pipeline Company easement without the prior written approval of the Olympic Pipeline Company and, if that work is subsurface, that Olympic Pipeline Company be given timely notice so that it may chose to be on-site; provided, that Olympic Pipeline responds with reasonable and deliberate speed to any request for written approval or presence on-site and issuance of any related documents thereafter.

D. Prior to recording of the final plat:

- i. Pedestrian facilities shall be constructed to the specifications of the DPW on the interior subdivision roads from the new lots to the school bus stop located at the intersection of the plat's access road and Rose Road. (RCW 58.17.110)
- ii. An asphalt-paved waiting area 10 feet by 15 feet shall be constructed to the specifications of the DPW.
- iii. Rural standard frontage improvements shall be constructed along the parcel's frontage on Rose Road to the specifications of the DPW [SCC 30.66B.410].

- iv. The developer shall pay the County \$1,056.00 per single family unit as mitigation for impacts to the Stanwood community area of the County parks system in accordance with SCC 30.66A. Provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- v. 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.

- vi. The final wetland mitigation plan shall be completely implemented.
- vii. The detention pond landscaping shall be installed and inspected.
- viii. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
 - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts. Tracts 997 and 998 shall be commonly owned by the lot owners. Tract 999 may be in a separate, individual ownership. The restricted open space areas shall be protected in perpetuity and be restricted to those uses specified in the Open Space Management Plan (Exhibit 6).
 - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space, including required sight obscuring buffers, open space, detention facilities, and all other commonly owned and operated property in a manner which assures continued use for the purpose intended. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a binding requirement of lot ownership.
- ix. The Department of Planning and Development Services staff shall confirm that the sight obscuring buffer continues to perform its sight obscuring function.

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.

6. Any conclusion in this 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 an 11-lot rural cluster subdivision on 37.64 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 5 above.

Decision issued this 14th day of September 2005.

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, 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 **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, 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 **SEPTEMBER 28, 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.

Staff Distribution:

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

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.