

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

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|--|---|---------------------------|
| In the Matter of the Application of |) | |
| |) | FILE NO. 04 118695 |
| ROBINETT INVESTMENT COMPANY, LLC. |) | |
| <i>(Rainbow Run)</i> |) | |
| |) | |
| Request for a 12-lot Rural Cluster Subdivision (RCS) |) | |
| on 39.66 acres |) | |

DECISION SUMMARY

DATE OF DECISION: September 15, 2005

DECISION: The application for a 12-lot Rural Cluster Subdivision is
 CONDITIONALLY APPROVED.

BASIC INFORMATION

GENERAL LOCATION: The property is located on the east side of 12th Avenue NW, just north and south of where 12th Avenue intersects the east side of East Sunday Lake Road about 3½ miles east of the City of Stanwood.

ACREAGE: 39.55 acres

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 48,343 square feet

MINIMUM LOT SIZE: 43,921 square feet

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

ZONING: Rural-5 (R-5)

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Individual wells
Sewer: Individual on-site systems

SCHOOL DISTRICT: Stanwood No. 401

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 October 7, 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 26, 27 and 28)

A SEPA determination was made on July 8, 2005. (Exhibit 25) No appeal was filed.

The Examiner held an open record hearing on August 31, 2005, the 167th 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 11:01 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 was represented by Ryan Larsen and Ry McDuffy of Land Resolutions. Snohomish County was represented by Bob Pemberton of the Department of Planning & Development Services and by Ann Goetz of the Department of Public Works. No member of the public participated in this matter by letter or by appearance. There were no contested issues expressed at the hearing.

The hearing concluded at 11:15 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. The staff report submitted in the matter correctly analyzes the application and its consistency with adopted codes and policies, land use regulations and the State Environmental Policy Act (SEPA). That staff report is by this reference adopted as if set forth in full herein.
3. The applicant, Hank Robinett, requests approval of a 12-lot rural cluster subdivision on 39.66 areas known as Rainbow Run. The site slopes at 4 to 21 percent from a knoll along the south property line to extensive wetlands along the north property line. The site is undeveloped and covered with second growth forest.
4. 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.
5. 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.
6. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
7. The site contains four wetland areas. One large Category 2 wetland extends onto the site from the north and is hydrologically connected to Pilchuck Creek located off-site to the northeast. The other three Category 3 wetlands are smaller and located south of the larger wetland in the northeast corner of the site. No development is proposed within the wetland/stream areas. These wetland/stream areas will remain undisturbed and protected with minimum 75-foot wide buffers for the large wetland and minimum 50-foot wide buffers for the smaller wetlands. The wetlands/stream and buffer areas will be designated in perpetuity as Native Growth Protection Areas. PDS has reviewed the Critical Areas Study and Habitat Management Plan (Exhibit 21) and determined that the project complies with the critical areas regulations.

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. Public water and sewer service and electrical power will be available for this development.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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 request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS:

- A. The preliminary plat received by the Department of Planning and Development Services on ~~April 29, 2005 (Exhibit 24)~~ August 31, 2005 (Exhibit 41) shall be the approved plat configuration as ~~revised in response to the above Precondition.~~¹ Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. 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.
- 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 No. 401 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. No lot shall be permitted to take direct access via 12th Avenue NW.
 - iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$2,143.68 per single-family residence for mitigation of impacts on County roads paid to the County.
 - \$344.52 per lot for mitigation of impacts on state highways paid to the County.
 - \$306.24 per lot for mitigation of impacts on the City of Stanwood streets paid to the City.
 - \$207.60 per lot for mitigation of impacts on the City of Arlington streets paid to the City.
- Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once a building permit has been issued all mitigation payments for that lot shall be deemed paid.

¹ Scrivener’s error – corrected condition with updated plat/exhibit information. (10/5/05)
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- iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) 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."

- v. Lots within a rural cluster subdivision and adjacent to or within 1,300 feet of forestry uses located in a designated open space tract may be subject to inconvenience or discomforts arising from 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.

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$1,056.00 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; 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.
- ii. Construct an adequate pedestrian refuge area at the Tract 997 & 12th Avenue NW intersection. [RCW 58.17.110]
- iii. 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.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 4) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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.

5. 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 a 12-lot rural cluster subdivision is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 15th 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 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.

Staff Distribution:

Department of Planning and Development Services: Bob Pemberton
Department of Public Works: Ann Goetz

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| 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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