

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

DATE OF DECISION: January 8, 2007

PLAT/PROJECT NAME: *L-157-1 NYSETHET*

APPLICANT/  
LANDOWNER: L 157-1 Nysether, LLC

FILE NO.: 05 127298 SD

TYPE OF REQUEST: 73 lot RURAL CLUSTER SUBDIVISION (RCS) on 167 acres

DECISION (SUMMARY): APPROVED subject to CONDITIONS

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located between McElroy Road and Burn Road at about 150<sup>th</sup> Street NE, Arlington, WA

ACREAGE: 167 acres

NUMBER OF LOTS: 73

AVERAGE LOT SIZE: 25,325 square feet

MINIMUM LOT SIZE: 20,000 square feet

DENSITY: .44 du/ac (gross)  
114.8 du/ac (net)

ZONING: R-5

### **COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Rural Residential (1 du/ 5 ac Basic)

### **UTILITIES:**

Water: Snohomish County PUD No. 1  
Sewage: Individual on-site systems

SCHOOL DISTRICT: Granite Falls No. 332

FIRE DISTRICT: No. 22

**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 March 20, 2006. (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 23, 24 and 25)

A SEPA determination was made on October 17, 2006. (Exhibit 22) No appeal was filed.

The Examiner held an open record hearing on December 14, 2006, the 93<sup>rd</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 December 14, 2006 at 1:04 p.m.

1. The Examiner indicated that he has read the PDS staff report and therefore has a general idea of the particular request involved.
2. The applicant, L157-1 Nysether, LLC, was represented by Ryan Larsen of Barclay's North. Snohomish County was represented by Bob Pemberton of the Department of Planning and Development Services.

The hearing concluded at 1:15 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 of FACT:**

1. L 157-1 Nysether, LLC (Applicant) proposes an RCS on a 167.06 acre tract between McElroy Road and Burn Road at about 150<sup>th</sup> Street NE. The site is T-shaped and is adjacent to the recently approved St. Andrews proposal (05 126648). Some 65% of the site will remain as open space.

2. The site is not in an Urban Growth Area and is zoned R-5. It is designated Rural Residential on the comprehensive plan.
3. Access to the site will be from a new public road from McElroy Road at about 144<sup>th</sup> Street NE, to be constructed for the St. Andrews proposal. Two road connections from St. Andrews will lead to the Nysether project. The St. Andrews project secured approval of a collector road with 36 feet of pavement width with the first 150 feet designed as a divided boulevard to compensate for the fact that more than 250 average daily trips would be using a dead end road system. In addition, the stopping sight distance to the south on McElroy Road must be improved by cutting down a hump in McElroy Road to the north of the access road. Both the project and St. Andrews are owned by the same company.
4. Applicant will pay impact fees for schools, parks, county roads, state roads and for Arlington and Marysville city streets.
5. The site has 19 wetlands and one Type 4 stream. There will be no permanent impacts to these critical areas and buffers will be provided.
6. Comments received pursuant to public notice centered on loss of natural conditions, traffic impacts and impacts to Frontier Airpark. Some 65% of the site will remain as open space. Traffic impacts will be mitigated by payment of fees. Frontier Airpark was concerned that purchasers of lots would not be aware of its proximity.
7. Traffic from the proposal will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall into arrears and does not impact any designated ultimate capacity arterial units. A certificate of concurrency was included in the final recommendation of the DPW. It is estimated that 73 lots will generate about 699 daily trips, with 74 in the a.m. and 55 in the peak p.m. periods.
8. Paved shoulder walkways will be provided along all new roads to McElroy Road, which will provide safe walking conditions for children walking to the school bus stop.
9. A Determination of Nonsignificance (DNS) for the proposal was issued on October 17, 2006. There was no comment or appeal.
10. 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 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. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**DECISION:**

The request for a Rural Cluster Subdivision for 73 lots is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

**CONDITIONS**

- A. The rural cluster subdivision/preliminary plat received by PDS on September 24, 2006 (Exhibit 20) shall be the rural cluster subdivision and approved plat configuration. 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.
  - iii. A final mitigation plan based on the Critical Areas and Conceptual Mitigation Report for L157-1 Nysether, LLC prepared by The Jay Group dated September 7, 2006 and Addendum dated August 26, 2006 (Exhibit 19) 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 Granite Falls School District No. 332 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~~ six existing parcels. Lots 1-6 ~~one~~ shall receive credit."<sup>1</sup>
  - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
    - \$2,526.48 per lot for mitigation of impacts on county roads paid to the county,
    - \$344.52 per lot for mitigation of impacts on State roads paid to the county.
    - \$801.58 per lot for mitigation of impacts on the City of Marysville streets paid to the city.
    - \$733.85 per lot for mitigation of impacts on the City of Arlington streets paid to the city.

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<sup>1</sup> Scrivener's error – corrected 1-9-07  
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The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- 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. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision development, to include open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, benches and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."
- v. The developer shall pay the County \$35.75 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.
- vi. 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.

D. Prior to recording of the final plat:

- i. Construction of the work shall be completed to obtain the required amount of stopping sight distance to the south on McElroy Road from the new public road (144<sup>th</sup> Street NE) per EDDS 3-08.
- ii. The road system from the Road A stubs at the south property line (west leg and east leg) shall have been constructed to the Standards required by EDDS to McElroy Road; and the right-of-way for the road shall have been dedicated.
- iii. A safe paved school bus waiting area outside of the traveled way of either McElroy Road or Road A shall have been completed.
- 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 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.

- v. 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.
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 8) 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

Decision issued this 8<sup>th</sup> day of January, 2007.

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Gordon Crandall, Hearing Examiner Pro-Tem

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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.

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Staff Distribution:

Department of Planning and Development Services: Bob Pemberton

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.