

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

DATE OF DECISION: July 18, 2008

PLAT/PROJECT NAME: *Roosevelt Hills*

APPLICANT/
LANDOWNER: Wayne Fjelstad
Roosevelt Hills LLC
14090 Frylands Blvd., 306
Monroe, WA 98272

FILE NO.: 05-120116-000-00-SD

TYPE OF REQUEST: 12 lot Rural Cluster Subdivision in a RUTA

DECISION (SUMMARY): Approved Subject to Conditions

BASIC INFORMATION

GENERAL LOCATION: 13330 Roosevelt Road, Snohomish, WA 98290

ACREAGE: 27.8

DENSITY: .43 du/ac (gross)
.46 du/ac (net)

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 19,145 square feet

MINIMUM LOT SIZE: 18,101 square feet

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1du/5 acres – Basic)
Property is within Rural Urban Transition Area (RUTA) of the City of Monroe.

UTILITIES:

Water: Roosevelt Water Association
Sewage: Individual Septic

SCHOOL DISTRICT: Snohomish #201

FIRE DISTRICT: No. 3

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve – Subject to Conditions

INTRODUCTION

The applicant filed the Master Application on September 4, 2007. (Exhibit 1A)

The Hearing Examiner (Examiner) made a site familiarization visit on July 14, 2008 in the afternoon.

The Department of Planning and Development Services (PDS) and applicant gave proper public notice of the open record hearing as required by the county code. (Exhibits 6A Mailing, 6B Publication, 6C Posting)

A SEPA determination was made on June 6, 2008. (Exhibit 5B) No appeal was filed.

The Examiner held an open record hearing on July 17, 2008, the 83rd 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 July 17, 2008 at 9:30 a.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. Witnesses were sworn under oath and presented testimony. Ed Caine, PDS, appeared and presented the staff report and answered questions from the examiner. Neil Latta, agent for the applicant, appeared and described the project. Roger Pinneo, a neighbor to the proposed project, appeared with questions about the protection of the easement for his septic drain field which is within the proposed project

The hearing concluded at 10:01 a.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. Nature of Application: The applicant is requesting a 12-lot rural cluster subdivision on a 27.79 acre parcel. The site is primarily pasture, with an existing single-family residence. The existing residence will be removed. Access will be by a private road off Roosevelt Road. Water will be provided by Roosevelt Water Association and each lot will be served by individual septic systems.
3. Site Description: The site is irregular in shape with an existing single family residence. The site is primarily pasture. The northern and southern portions of the site are within the 100 year floodplain, but no development is proposed within the floodplain. The northern and southern portions of the site contain two (2) Category 3 wetlands, and there is an area of slopes in excess of 40%. The western portion of the site fronts onto SR-2. The site is within the Rural-Urban Transition Area (RUTA) of the city of Monroe.
4. Adjacent Zoning and Uses: Properties to the east are zoned R-5 and are developed as single-family residence. Properties to the north, west, and south are zoned Agriculture-10 (A-10) with an Agriculture-Riverway Commercial Farmland (AG-RCF) designation.
5. Matters of Concern: Two public comments were received by PDS. [Exhibit 9B (Greg Baltzell, who owns the land that is east of Tract 997 and identified as adjacent Lot 3 on Exhibit 2A) and Exhibit 9P (Clarence Prins, who owns the land that is immediately north of proposed Lot 8 and identified as adjacent Lot 5 on Exhibit 2A)]. The stated concerns were:

Building structures in an area that is frequently flooded. RESPONSE: All residential lots are located south of the commentator's properties. No development is proposed to the west of the commentator's properties, which is within the flood plain of French Creek.

There is potential for residences located west of their properties to cause flooding of their lots. RESPONSE: All residential lots are located south of the commentator's properties. No development is proposed to the west of the commentator's properties, which is within the flood plain of French Creek.

There is potential of leachate from the drain fields flowing to the east and impacting their properties. RESPONSE: All residential lots are located south of the commentator's properties. No development is proposed to the west of the commentator's properties, which is within the flood plain of French Creek.

Mr. Pinneo testified at the open record public record hearing. He had questions regarding the septic drain field easement that he had within the proposed project. Mr. Caine from PDS explained that the drain field was shown on the plans (Exhibit 2A page 3) between lots 11 and 12. He said that no development on the lot was proposed at this time, but things could change in the future if sewer service is extended to the area and the need for the septic drain field easement goes away.

6. Grading and Drainage: The PDS Engineering Division reviewed the concept of the proposed grading and drainage and recommended approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC.

7. Transportation: Snohomish County DPW reviewed the request with regard to traffic mitigation and road design standards. That review covered Title 13 SCC and Chapter 30.66B 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 that review, the DPW determined that the development is concurrent and has no objection to the requests subject to various conditions. Comments dated October 1, 2007 were received from the Snohomish School District (Exhibit 8C5) indicating that all grade levels of public school children will be provided with bus service to school, and the bus stop location was identified as on Roosevelt Road at the entrance of the development. An appropriate bus stop waiting area was requested.

The bus stop will be located at the intersection of the private road with Roosevelt Road, and since 7-foot wide paved shoulder walkways will be constructed along the private road, safe walking conditions will be provided to the bus stop. Roosevelt Road will have a widened pavement area at the intersection with the private road, as well as the paved shoulder along the private road that will act as an appropriate and safe area for the students to wait for the bus.

8. Park Impact Mitigation: The proposal is within Park District No. 306 (Centennial) and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies.
9. School Impact Mitigation: School impact fees must be paid prior to building permit issuance for each unit.
10. Critical Areas: The site contains two Category 3 wetlands with lightly forested, scrub-shrub and emergent habitats. Steep slopes, >33% are located in the south near proposed Lot 12. The applicant has avoided all impacts to the on-site critical areas including the steep slopes, wetlands, buffers, floodplain and floodway as required per SCC 30.62.365. PDS reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with the critical areas regulations.
11. Public Health: The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. (Exhibit 8B2) Water will be provided by Roosevelt Water District. (Exhibit 8C2) Septic sewer service will be available for this development. Electrical power is available. (Exhibit 8C3)
12. Landscape plan: A landscape plan is a required component of the submittal documents for a rural cluster subdivision (SCC 30.41C.040(8)). Exhibit 2B, Sheets L1 and L2, are the PDS approved landscape plan for the project.
13. Fire Code: The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on October 18, 2007. The application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access.

14. **GMA Compliance:** The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). This designation includes all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation. Also included are lands which have a higher density subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres. The base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9.

The 12 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

15. **Rural Cluster Subdivision Standards:** The subject rural cluster subdivision (RCS) application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on May 14, 2008 (Exhibit 2A), and in an open space management plan (Exhibit 2H) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 71% (19.7 acres) of the property in interim open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

The application has been reviewed by PDS for compliance with the requirements of SCC 30.41C.200 as follows: critical areas have been identified and designated as Native Growth Protection Areas; a sight obscuring buffer of native vegetation has been provided, in accordance with the provisions of Table 30.41C.210(1), DPW has indicated that the private road shall be constructed to EDDS standards; all utility lines are to be located underground; there is unbuildable land as defined by Chapter 30.41C SCC on site which is designated as a native growth protection area; no on-going agriculture or forestry uses are proposed within the open space tracts; there are no adjacent designated open spaces which affect the location of the open space in the RCS; an open space management plan has been provided detailing the required maintenance and management tasks for the proposed open space; at least 75% of the residential lots abut a required buffer or open space tract; the proposed RCS has been designed in accordance with the natural features of the site, maintains rural character, and maximizes the visibility of the open space tracts from the adjoining road; the proposal is not served by public sanitary sewer; clusters of lots are located near the interior of the site and are not located on prominent topographic features, to the extent feasible; and the site is located within a rural fire district.

The application complies with the provisions of SCC 30.41C.230 and SCC 30.41C.240 based on the following analysis:

Basic lot yield: 1,210,564 square feet/100,000 square feet	= 12.1 lots
Total lot yield-rounded	= 12 lots
Total lots proposed	= <u>12 lots</u>

16. Rural – Urban Transition Area: The General Policy Plan specifies that the Future Land Use Map will provide generalized urban and rural residential, commercial, and industrial land use designations (LU-88). The Rural/Urban Transition Area (RUTA) is a designation that is intended to reserve a potential supply of land for future addition into the UGA. Developments utilizing rural cluster subdivision will have the option of redeveloping required open space tracts upon inclusion within an urban growth area (LU-97).

The required open space for rural cluster subdivisions and short subdivisions located within the RUTA are designated as Interim Open Space and included in a separate tract that is reserved for future use at an urban development level. The Interim Open Space shall contain a minimum of 65% of the subject property, shall be configured so that future land division is possible, and shall accommodate future public roadway access to the lot upon redivision. The Interim Open Space Tract may be used for any use permitted within the Restricted Open Space specified in SCC 30.41C.210(2)(b)(i), except that no permanent structures are allowed.

A Land Use Binder is required to be filed with the County Auditor at the time of recording the subdivision or short subdivision (SCC 30.41C.220(7)).

17. Plats- Subdivisions-Dedications: The plat has been reviewed by PDS for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the 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. The building lots are outside the flood zone.

The proposed plat conforms to applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas, the single-family homes will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water will be provided by Roosevelt Water Association (Exhibit 8C2) and sewer will be provided by individual septic systems.

18. Any finding of fact in this Report and Decision, which should be deemed a conclusion, is hereby adopted as such.

CONCLUSIONS:

1. The Examiner has jurisdiction to hear this matter and render a decision thereon.
2. Adequate public services exist to serve the proposal.
3. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
4. The request is consistent with: (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.
5. 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 12 lot Rural Cluster Subdivision is hereby **Approved** subject to the following conditions:

CONDITIONS

- A. The preliminary plat received by PDS on May 14, 2008 (Exhibit 2A) shall be the 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.
- 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 Snohomish School District No. 201 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 1 existing parcel. Lot 1 shall receive credit.”
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,456.24 per lot for mitigation of impacts on county roads paid to the county,

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.

- iii. The final plat shall show a 40-foot right-of-way dedication along the property frontage with Roosevelt Road to total 40 feet from the right-of-way centerline (the section line).
- iv. No lot shall have direct access to SR 2. All lot access shall be via the private road (Tract 993) which shall connect to Roosevelt Road.
- v. 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 30.91N.010 are allowed when approved by the County."

- vi. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 (Centennial # 306) per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- vii. Management activities and maintenance responsibilities specified in the Open Space Management Plan (Exhibit 2H) shall be implemented.
- viii. The Land Use Binder shall be recorded with the County Auditor. The Land Use Binder shall serve both as an acknowledgement of and agreement to abide by the terms and conditions of the subdivision or short subdivision and notice to perspective purchasers of the conditions and restrictions applicable to the open space tract including restriction on redivision of the tract.

D. Prior to recording of the final plat:

- i. Rural standard frontage improvements shall have been constructed along Roosevelt Road unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- ii. The private road shall have been constructed per EDDS requirements and per the approved deviation request.
- iii. The existing access on SR 2 shall be eliminated, which shall be shown on the construction plans.
- iv. The applicant shall show proof of application for a WSDOT construction permit prior to approval of the construction plans.

- 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 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 2B, Sheets L1 and L2) 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 18th day of July, 2008.

James A. Densley, Hearing Examiner Pro Tem

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 **JULY 28, 2008**. 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 **AUGUST 1, 2008** 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: Ed Caine

<p>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.</p>
