

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**ROBINETT INVESTMENT CO., LLC** ) **FILE NO. 05 101290**  
 )  
Six-lot Rural Cluster Subdivision (RCS) on 14.78 acres )

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DATE OF DECISION: April 24, 2006

PROJECT NAME: *Startup Station*

DECISION (SUMMARY): The proposed rural cluster subdivision is **APPROVED** for only lots 1, 2 and 3 without public sewers and for Lots 4, 5 and 6 only when public sewers serve Lots 4, 5 and 6.

**BASIC INFORMATION**

GENERAL LOCATION: The property is located on the west side of Kellogg Lake Road, just north of its intersection with State Route SR2, just east of the unincorporated town of Startup, Washington and adjacent to the Startup Water District well heads.

ACREAGE: 14.78 acres

NUMBER OF LOTS: 6

AVERAGE LOT SIZE: 51,607 square feet

MINIMUM LOT SIZE: 43,771 square feet

DENSITY: .41 du/ac (gross)

ZONING: Rural-5 (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/ 5 ac Basic)  
Subarea Plan: Skykomish Valley  
Subarea Plan Designation: Rural (1 du/2.3 ac)

UTILITIES:

Water: Startup Water District  
Sewer: Individual on-site sewage

SCHOOL DISTRICT: Sultan No. 311

FIRE DISTRICT: No. 5

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 February 10, 2005. (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 17, 18 and 19)

A SEPA determination was made on February 8, 2006. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on March 29, 2006, the 91<sup>st</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 March 29, 2006 at 11:02 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 property and its surroundings.
2. The applicant, Robinett Investment Co., LLC, was represented by Ry McDuffy of Land Resolutions and by Martin Robinett. Snohomish County was represented by Bob Pemberton of the Department of Planning and Development Services.
3. The hearing was attended by abutting owner Michael Fadden and his attorney, Gary Brandstetter and by Glenn Eaton and Karen Eaton, Commissioners of the Startup Water District. Letters of concern or opposition were received pre-hearing from 11 additional households but none attended the hearing. Issues focused on asserted threats to the water quality of the aquifer which lies under the subject plat and which feeds the wellheads of the Startup Water District serving 250 households.

The hearing concluded at 11:54 a.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

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 application was initially submitted on February 10, 2005 for 12 lots on nearly 40 acres, including the now proposed 6 lots on approximately 15 acres as submitted on December 13, 2005. The revised plat proposes three lots (Lots 4, 5 and 6) due west of and at approximately the same elevation as the two well heads of the Start Up Water District. Lots 1, 2 and 3 are located on a plateau atop a steep rise farther west. Specifically, Lot 4's septic drainfield is approximately 540 feet west of the westernmost well head, Lot 5's is closer at 375 feet and Lot 6's is closest at 240 feet. Those three drainfields are at elevations of approximately 155 – 160 feet above sea level: approximately the same elevation as the well heads. In contrast, Lots 1, 2 and 3 and their septic drainfields lie approximately 1,000 feet west of the most westerly well head and 100 feet higher in elevation than Lots 4, 5 and 6 and the well heads.
3. In March 2005, the Water District's System Operator, Ken Lindgren, wrote (See Exhibit 42) expressing the District's concerns about release of pesticides, herbicides, petroleum spills and other toxic chemicals in close proximity to the shallow, "hence vulnerable", aquifer. At that same time, the law firm Gender & Mann by letter of March 9, 2005 assert on behalf of the Water District that the lots will discharge into the shallow, unconfined aquifer that provides the sole source of water for the Community of Startup. (Testimony of record establishes that the subject wells serve 250 households wherein dwell approximately 500 people.) That law firm challenges the conclusions of the applicant's consultants, AES, that the septic drainfields' effluents will be effectively treated before reaching the well system. Is it important to note that all storm drainage will be infiltrated into the soil of the subject site pursuant to the targeted drainage plan proposed (Exhibit 9).
4. The concerns documented above were about the original, 12-lot proposed plat. However, the concerns apply to the remaining 6 of the original 12 lots, albeit in reduced intensity. A well contaminated by three or six lots instead of by 12 lots is still contaminated. The two wells at issue already show elevated nitrate levels. (Exhibit 42).
5. The Evergreen Rural Water Association is a non-profit association advising small water systems in Washington State. Dave Tysz of that Association submitted an undated report (Exhibit 42) specifically addressing the issues about water quality here. He notes that the water table is only about 15 feet deep here and the bottom of the aquifer is 37 feet from the surface with bedrock at 43 feet. He describes the soil and the fact that water drains downward rapidly through it. He describes how dry season heavy usage can cause a septic tank's effluent water to move in the direction of the drawdown. His report is uncontested in this record.
6. A category 3 wetland extends across the center of the site. That wetland abuts steep slopes on its north side. The wetlands, buffers and steep slopes will be undisturbed as Native Growth Protection Areas.
7. 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.

8. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$344.52 for each new single-family home.
9. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
10. 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).
11. The Snohomish County Health District has no objection to this proposal provided that public water is furnished. Public water and electrical power will be available for this development.
12. The subject property is designated Rural Residential (1 du/5ac Basic) by the GMA Comprehensive Plan. The implementing zones within this designation are the Rural-5 Acre zone and other zones with 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. This policy states that within the Rural Residential designation subdivisions may exceed the basic density of 1 lot per 5 acres if the rural cluster subdivision technique is used, all of the criteria and requirements for the maintenance and enhancement of the rural character are met, and the maximum lot yield does not exceed 1 lot per 2.3 acres.
13. 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.
14. 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.
15. 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.
16. 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, except as otherwise stated herein. 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. The Examiner concurs as to traffic use.
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 preponderance of the evidence of record demonstrates a sole source aquifer vulnerability too great to be risked by septic systems combined with storm water retention by infiltration directly atop that aquifer. Lots 1, 2 and 3 appear far enough distant to pose minimal risk but the other three proposed lots pose too great a risk absent sanitary sewers and storm sewers.
5. The request should be approved subject to compliance by the applicant with the following conditions:

## **CONDITIONS**

- A. The preliminary plat received by PDS on December 14, 2005 (Exhibit 7) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330. However, no site work except roads shall be undertaken on Lots 4, 5 and 6 until sanitary sewer and storm sewer serve those lots.
- 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 Sultan School District No. 311 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. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,114.97 per lot for mitigation of impacts on county roads paid to the county,  
\$344.52 per lot for impacts to WSDOT roads paid to the county.

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. Thirty feet of right-of-way shall be dedicated to Snohomish County, from centerline of the road, parallel to the parcel's frontage on the west side of Kellogg Lake Road on the final recorded plat if necessary. [SCC 26B.55.060]
- iv. 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 UDC 30.91N.010 are allowed when approved by the County."

- v. The developer shall pay the County \$344.52 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.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel's frontage on Kellogg Lake Road to the specifications of the DPW [SCC 30.66B.410].
- ii. 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. 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.

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 a 6-lot rural cluster subdivision on 14.78 acres is hereby **CONDITIONALLY APPROVED** as to Lots 1, 2 and 3 but site work on Lots 4, 5 and 6 shall not occur until public sanitary and storm sewers serve Lots 4, 5 and 6 , and subject to the conditions set forth in Conclusion No. 5 above.

Decision issued this 24th day of April 2006.

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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, 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 **May 4, 2006**. 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 **May 8, 2006** 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  
Department of Public Works: Andrew 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.