

WHATCOM COUNTY HEARING EXAMINER

re: The application of **Roger & Joan Roosendaal** for a Preliminary Long Subdivision

LSS2019-0002
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION

“Rosehaven Long Subdivision”

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting Preliminary Long Subdivision Approval to subdivide five conventional lots with a residential building site on approximately 10 nominal acres in the Rural [R2A] zoning district. The site contains no Agricultural Protection Overlay (APO) soils and no documented wetlands. The lots will be served by a Group-B public water system and individual on-site sewage systems [OSS]. There will be three (3) access points from the public right-of-way (Van Dyk Road), and one (1) access point from the public right-of-way (Hannegan Road), either direct or shared between lots for ingress, egress, and utilities.

Decision: The Hearing Examiner grants Preliminary Long Subdivision Approval, subject to the conditions recommended herein.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

FINDINGS OF FACT

I.

Applicants: Roger and Joan Roosendaal

Site Location/Address: 7489 Hannegan and Dyk Roads, Lynden, Washington

Assessor's Parcel Numbers: 400332 477250

Zoning: Rural [R2A]

Comprehensive Plan: Rural Neighborhood

Number of Lots: Five residential lots

Total Acreage: Approximately 10 nominal acres

Roads: No Road – Shared access easements

Water Supply: Rosehaven Water System, Group-B

Sewage Disposal: On-Site Septic Systems

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Lynden School District

Topography: Mostly flat

Vegetation: Vegetation consists mostly of pasture grass with a tree near existing residence.

Adjacent Land Uses:

North:	Single-family Residential
East:	Single-family Residential
South:	Single-family Residential
West:	Single-family Residential

Utilities Easements: Necessary utility easements will be established prior to recording of Final Plat.

Variances: Variance to minimum lot size pursuant to WCC 20.80.720

SEPA Review: Determination of Non-significance, issued July 17, 2020

Authorizing Ordinances

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
Revised Code of Washington Chapter [RCW] 36.70B, Local Project Review
RCW 58.17, Plats & Subdivisions
Whatcom County Comprehensive Land Use Plan
Whatcom County Code Chapter [WCC] 2.11, Hearing Examiner
WCC 2.33, Permit Review Procedures [repealed ordinance 2018-032]
WCC 12.08, Development Standards
WCC 15, Building Code
WCC 16.08, Whatcom County Environmental Policy Administration
WCC 16.16, Critical Areas
WCC Title 20, Official Whatcom County Zoning Ordinance
WCC Title 21, Subdivision Regulations
WCC Title 22, Land Use and Development Procedures
WCC Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, July 30, 2020
 Mailed – Notice of Application & Public Hearing, July 23, 2020
 Notice of Public Hearing, July 30, 2020
 Published – Notice of Public Hearing, July 30, 2020

Hearing Date: August 12, 2020

Parties of Record

Roger & Joan Roosendaal
1337 West Park Street
Lynden, WA 98264

Jaime White
Whatcom Land Use Consulting, LLC
220 West Champion Street, Suite 270
Bellingham, WA 98225

Laura Vandervort
Public Works, Engineer

Sarah Cierebiej
Whatcom County Health Department

Craig Ostrom, Planner III
Planning and Development Services

Admitted Exhibit List

1. Preliminary LSS application
2. Project narrative
3. Project contacts
4. Preliminary traffic concurrency info
5. Prelim stormwater site plan
6. Stormwater operations and maintenance manual
7. Land Disturbance and Clearing Application
8. Environmental checklist
9. Lot of Record application and deeds
10. Revised preliminary site plan
11. Vicinity map
12. Water information
13. OSS application and info
14. Determination of completeness ltr
15. Sept 2019-2020 combined distribution list
16. Notice of application
17. Notice of application & Optional SEPA Determination of Non Significance
18. Mailing labels and cert of mailing
19. Lummi national agency comment
20. Blanca Uribe public comment
21. Parties of Record Mail Merge Data Base
22. Traffic concurrency exemption Rosehaven
23. Fire and school concurrency ltrs
24. Fire concurrency ltr
25. Revised preliminary site plan dated
26. Rosehaven Group B water system approval ltr
27. Dennis Gross public comment
28. Revised List of Parties of Record
29. DNS distribution packet
30. Staff Report

II.

The project area consists of a 10-acre parcel on the southeast corner of Hannegan and Van Dyk Roads and is zoned Rural [R2A]. The property is currently developed with one single-family residence and a barn with a loop driveway between Hannegan & Van Dyk Roads. The remainder of the property appears to be used for pasture grass and hay, with

no identified wetlands located onsite.

The Application was reviewed by the Technical Review Committee. The recommendation of this Committee was set forth in the Staff Report, entered into the Hearing Examiner file as Exhibit No. 30, dated August 3, 2020, prepared by the Land Use Services Division of Whatcom County Planning and Development Services. The Technical Review Committee put in writing its Findings of Fact and Conclusions of Law. Based on these, the Committee recommended Preliminary Long Subdivision Approval, subject to conditions.

III.

There is an error in the Staff Report in regards to §4 in regards to “Roads” on Page 16, which should reflect that there will be three (3) access points from the public right-of-way (Van Dyk Road), and one (1) access point from the public right-of-way (Hannegan Road).

IV.

The Applicant’s Representative indicated that there are no other factual inaccuracies in Staff’s factual findings and no objection to the Conditions of Approval requested by Staff. There was no public comment on the proposal at the public hearing. There were two comment letters expressing public concern by the homeowners about the effects of five new homes on a permit exempt well on existing water supplies. The Applicant has submitted and received design approval for the Rosenhaven Water System, a Group B Public Water System, with conditions for final approval. The County Health Department responded to the first concerned party regarding their options to document their water supply and any impacts via email which was forwarded.

V.

There was also Agency comment during the public comment period from the Lummi Nation Tribal Historic Preservation Office indicating this subdivision is subject to Inadvertent Discovery of Archaeological Resources and Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington [RCWs 68.50.645, 27.44.055, and 68.60.055.]

VI.

The Findings of Fact in the Staff Report are hereby adopted, through this reference, by the Hearing Examiner as the Findings of Fact herein.

VII.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

There is nothing in the record which would indicate either the Findings of Fact made by the Technical Review Committee, as set forth in the Staff Report, or its Conclusions of Law were incorrect or failed to properly support the approval of the Preliminary Long Subdivision. The Hearing Examiner hereby adopts, by this reference, the Conclusions of Law reached by the Technical Review Committee in the Staff Report, dated August 3, 2020, Exhibit No. 30, a copy of which is attached hereto and incorporated herein by this reference.

The Hearing Examiner concurs with the Technical Review Committee that, subject to the proposed Conditions of Approval, the project will comply with the applicable Whatcom County and Washington State regulations and is in the general public interest, health and welfare. The Hearing Examiner should grant Preliminary Subdivision Approval to Roger and Joan Roosendaal for the Rosehaven Long Subdivision and associated infrastructure to subdivide five conventional lots with a residential building site on approximately 10- acres in the R2A Zoning District.

II.

Based on these Findings of Fact and Conclusions of Law, the following decision is issued:

DECISION

Preliminary Approval is granted for the proposed Preliminary Subdivision and

Development Agreement Applications for five conventional lots with a residential building site on approximately 10 nominal acres, to be located on Assessor's Parcel No. 400332 477250, addressed as 7489 Hannegan Road, Lynden, Washington, subject to the following conditions:

Current Planning Division

1. The use and location on the site as shown on the site plans, dated June 8, 2020, shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.05.110.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet in size.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless the final plat is submitted in its proper form for final plat approval within five (5) years of the date of preliminary subdivision approval.
5. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
6. The Applicant shall obtain all necessary Federal, State and local permits prior to construction.
7. The applicant shall comply with Inadvertent Discovery of Archaeological Resources and Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055) per comments submitted by the Lummi Nation Tribal Historic Preservation Office (LNTHPO).
8. The rear and/or side setbacks for habitable and non-habitable structures for lots 1-7 shall be as stated by WCC 20.80.210(5)(b) as modified by the Fire Marshal's Office.
9. The following right-to-farm note shall be placed on the face of the plat:

RIGHT-TO-FARM COVENANT: (THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF AN OPERATING FARM, AN AGRICULTURE OR RURAL DISTRICT.) THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS SHORT PLAT WILL REFRAIN FROM ANY LEGAL ACTION TO RESTRAIN OR COLLECT DAMAGES FROM OWNERS OR OPERATORS OF SUCH SAID AGRICULTURAL LANDS, OR FROM WHATCOM COUNTY, ARISING OUT OF ANY REASONABLE AND LAWFUL FARM OPERATIONS ON. THE SELLER SHALL REQUIRE THAT THE “DISCLOSURE STATEMENT” AS SET FORTH IN TITLE 14.02 BE SIGNED BY THE PURCHASER AND RECORDED IN THE WHATCOM COUNTY AUDITOR’S OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.

10. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.
11. Include the applicable stormwater note to reflect findings based on the final approved stormwater report.

Health Department

12. The Applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated January 30, 2020, unless modified by that Department or appealed to the appropriate agency.
13. Wells drilled after January 2018 require a note pertaining to ESSB 6091, RCW 58.17 and Whatcom County Ordinance 2018-020 on the face of the plat:
 - a. THIS SUBDIVISION IS LOCATED IN AN AREA THAT IS GOVERNED BY CHAPTER 173-501 WAC AND IN WHICH INSTREAM FLOWS ARE NOT MET AND/OR ARE SUBJECT TO CLOSURE. IN COMPLIANCE WITH ESSB 6091 AND RCW 58.17 THE COUNTY HAS DETERMINED ADEQUATE POTABLE WATER IS AVAILABLE FOR THIS SUBDIVISION ON THE BASIS OF EVIDENCE SUPPLIED BY THE APPLICANT. THE SUBDIVISION HAS BEEN APPROVED UTILIZING A PERMIT-EXEMPT WELL CONSTRUCTED IN ACCORDANCE WITH RCW 18.104 AND DRILLED AFTER JANUARY 19, 2018. CONSISTENT WITH ESSB 6091 AND WHATCOM COUNTY ORDINANCE 2018-005, RESTRICTIONS ON WITHDRAWAL MAY BE APPLIED AT THE TIME OF BUILDING PERMIT ISSUANCE. THE COUNTY’S ISSUANCE OF THIS SUBDIVISION APPROVAL SHOULD NOT BE RELIED UPON BY THE APPLICANT OR ANY SUCCESSOR IN INTEREST AS AN

ASSURANCE, WARRANTY OR GUARANTEE OF THE FUTURE AVAILABILITY OF WATER TO SERVE THE SUBDIVISION.

14. An exhibit in the Stormwater Site Plan from October 2019 prepared by Freeland & Associates shows future shops for lots 4 and 5 in the sanitary control area of the Group B water system well. Please note that no structures are allowed within the 100 ft. sanitary control area of the well.
15. An exhibit in the Stormwater Site Plan from October 2019 prepared by Freeland & Associates does not show an accurate location of the OSS based on the WCHD approved soils application. This does not appear to impact the location of the conceptually proposed stormwater infiltration, but the applicant should be aware that the OSS would need to be located as designated in the approved soils application.

Critical Areas

16. The following critical areas note shall be placed on the face of the plat:

CRITICAL AREAS ORDINANCE (CAO) NOTE:

THIS LONG SUBDIVISION HAS BEEN REVIEWED ACCORDING TO THE CRITICAL AREAS ORDINANCE, WHATCOM COUNTY CODE TITLE 16, CHAPTER 16.16 ADOPTED PURSUANT TO ORDINANCE 2017-077 § 1 (EXH. A) AS OF APRIL 2018 REGULATED CRITICAL AREAS ARE NOT LOCATED WITHIN THIS SHORT PLAT.

Fire Marshal's Office

17. WCFMO has the following condition to be added to the final approval document.

The following fire protections setback note shall be placed on the face of the plat:

FIRE PROTECTION SETBACKS

AS THERE ARE NO PUBLIC OR PRIVATE FIRE PROTECTION FACILITIES AVAILABLE WITHIN 600 FEET OF LOTS WITHIN THIS SHORT PLAT, ALL BUILDINGS SHALL BE SET BACK AT LEAST 20 FEET FROM ALL SIDE AND REAR PROPERTY LINES FOR FIRE PROTECTION PURPOSES. PLEASE NOTE THAT DEVELOPMENT REGULATIONS MAY SUPERSEDE AND ALTER THIS SETBACK REQUIREMENT. ADDITIONALLY, NO SINGLE-FAMILY RESIDENCES OVER 4000 SQUARE FEET IN SIZE, OR DETACHED STORAGE BUILDINGS OVER 2500 SQUARE FEET IN SIZE WILL BE ALLOWED ON THE LOTS WITHOUT ADEQUATE FIRE PROTECTION. THE WHATCOM COUNTY FIRE MARSHAL HAS THE AUTHORITY TO SELECTIVELY OVERRIDE THIS RESTRICTION IN THE EVENT ADEQUATE FIRE PROTECTION FACILITIES BECOME AVAILABLE AS SPECIFIED BY THE FIRE CODE.

Public Works Engineering Services

18. All development shall comply with the Whatcom County Development Standards (WCDS).
19. A final engineered stormwater design report that meets requirements of the 2012 Department of Ecology Stormwater Management Manual for Western Washington, as amended in 2014 (SWM), must be approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington.
20. All road, stormwater, and grading plans shall be designed and stamped by a Washington State licensed civil engineer. Final civil plans and design documents shall be submitted and approved by PWES prior to any land disturbance or final plat recordation.
21. Sediment and erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
22. The *Stormwater Maintenance Plan* shall be included in the CC&R's for the subdivision.
23. Conservation areas shall be noted on the final plat.
24. The northerly existing driveway access to Hannegan shall be obliterated prior to final plat recordation. There will be three (3) access points from the public right-of-way (Van Dyk Road), and one (1) access point from the public right-of-way (Hannegan Road).
25. A Stormwater Facility Location Site Plan shall be recorded against the property to include any additional area required for dispersion flow pathways. Dispersion flow pathways shall be included on the Stormwater Facility Location Site Plan.
26. The developer shall obtain approval from the local U.S. Postal Office for the location, style and height of the mailbox(es). Mailbox location, if shared, shall be shown on the final construction plans.
27. Applicant shall obtain an Encroachment Permit for any and all work in the County right-of-way, including construction of driveway aprons.
28. Applicant shall show on the final plat map all easements and any physical appurtenances (such as fences or structures that might indicate encroachment, lines of possession, or conflict of title) per current Washington Administrative Code (WAC) 332-130-050(1)(f)(vii).
29. A map at 1"=400' scale of the lots shall be provided to PWES for address assignment. The plat address fee shall be paid prior to recording.

30. Pursuant to the SWM, applicant shall complete and record a Declaration of Covenant and Grant of Easement for stormwater maintenance purposes. This document is required to be recorded prior to issuance of any building Certificate of Final Occupancy.
31. Provision for maintenance of the private stormwater system shall be required as set forth in WCDS, Chapter 2, Section 205.B.11. Prior to Final plat approval a fund will need to be established for the first two years of the stormwater system performance verification and maintenance.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The Applicant, any party of record, or any County Department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 13th day of August 2020.



Rajeev Majumdar, Whatcom County Hearing Examiner