

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Hillside Enterprises LLC  
C/O Galen and Debora Johnson  
23158 Bonnie View Road  
Mount Vernon, WA 98273

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**Agent:** Ravnik & Associates  
C/O John Ravnik  
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**File No:** PL07-0407

**Request:** Special Use Permit

**Location:** 23002 and 23158 Bonnie View Road, within a portion of  
Sections 29 and 32, T33N, R4E, W.M.

**Parcel Nos:** P17482, P17603

**Land Use Designation:** Rural Business

**Summary of Proposal:** To redevelop and expand the existing Hillside Motel  
A new three-story building (plus basement) is proposed  
containing 78 units. The proposed footprint is 17,381  
square feet. The total square footage within the building  
proposed is 64,188 square feet. Associated parking would  
include 114 parking stalls.

**Public Hearing:** After reviewing the report of Planning and Development  
Services, the Hearing Examiner conducted a public  
hearing on March 12, 2008.

**Decision:** The application is denied.

## **FINDINGS OF FACT**

1. Hillside Enterprises LLC (Galen and Debora Johnson) seeks a Special Use Permit to redevelop and expand the Hillside Motel.
2. The project is located at 23002 and 23158 Bonnie View Road, within a portion of Sections 29 and 32, T33N, R4E, W.M. The site is on the hill at the south end of the Skagit Valley. It is just west of Interstate 5 and is served by a freeway interchange about a quarter mile to the southeast at Starbird/Milltown Road. The access is via Bonnie View Road, running north from Milltown Road and dead-ending at the motel. The immediate area is sparsely developed. There are a few houses and many trees.
3. The total site is approximately 23 acres in size. The core of the property is 4.67 acres zoned Rural Business (RB) where the existing motel is located. The motel now has eight units in five buildings. The existing base square footage of the motel use is approximately 11,731 square feet. The applicant owns adjacent property to the south in Rural Reserve zoning that comprises approximately 17.66 acres.
4. The proposed redeveloped motel would remain within the Rural Business zone, however the adjacent Rural Reserve ownership would contain some parking spaces and sewage disposal facilities, plus private utility and drive-lane improvements for the project.
5. The proposal is to build a new building near to the west of the existing motel and to remove all of the existing structures from the site. The new building would have three floors of motel rooms totaling 78 units and a basement. The basement would be used for conference rooms, storage areas, mechanical equipment, and staff facilities. The redeveloped motel would also contain a swimming pool for its patrons. The proposal does not include a restaurant.
6. Water for the expanded facility would come from an existing well on-site. A 225,000 gallon storage tank would provide fire protection. Sewage disposal would be via a new septic drainfield on the Rural Reserve property. Stormwater from impervious surfaces would be directed to an onsite detention facility that would ultimately discharge to a wetland on the west through a trough spreader. Bonnie View Road would continue to provide access. An accessory connection to Bonnie View would be built from the parking area to provide an access loop. As shown on the Preliminary Site Plan, approximately 114 parking stalls are proposed. Landscape screening is proposed around the entire perimeter.
7. Based on review of the floor plans submitted, the Staff added together the square footage of each floor and the entrance area and determined that the applicant is proposing 64,188 square feet of finished motel use.

8. Testimony amply demonstrated the long-term motel use of the site. The enterprise has roots that go back to the World War II era. In the 1940's rooms were rented in a cabin by what was then a grocery and gas station on the site. After the war a restaurant and motel were established. Records from the Skagit County Assessor's office identify multiple buildings on site that were constructed in 1946 and designated as hotel/motel. In the 1950's officer's barracks from Whidbey Island were trucked over and installed as motel units. Monthly rentals were instituted in the 1960's. Over the intervening years various improvements were made. Early on, the road to and by the motel was the Great American Highway which eventually became Highway 99. When Interstate 5 was built, direct highway access to the motel was cut off, but as a result of a lawsuit, the freeway interchange at Starbird/Milltown Road was provided and the motel continued to operate.

9. The regulations for the RB zone allow existing businesses to expand, subject to limitations. SCC 14.16.150(2)(c) reads as follows:

A use designated Rural Business may expand, subject to the following: Expansion is limited to a maximum of 50% of the existing building footprint provided that the total expansion does not exceed a total of 1,500 square feet of gross floor area and/or 50% of the existing outdoor working area. The total square footage of allowable expansion is determined on a one-time basis, based on the area of use as of June 1, 1997. The expansion must occur on the same lot upon which the existing use is located. (emphasis added.)

SCC 14.16.150(4)(d) reads, in part, as follows:

With an approved Hearing Examiner Special Use Permit, a use designated Rural Business which was established prior to July 1, 1990, may be expanded beyond the 1,500 square foot limit established by Subsection (2)(c) of this Section; provided that the 50% maximums of that subsection are met and the following criteria are met: . . . [listing six additional criteria for expansion] (emphasis added.)

10. There is an argument between the Applicant and the Staff over the interpretation of these Code sections which is central to the disposition of the application. The dispute is over whether the maximum expansion refers only to the footprint of the replacement building(s) or is a limitation on the square footage that the new building(s) may contain. The Applicant argues that the applicable limitation is to the size of the footprint. The Staff asserts that the Code was intended to limit the total square footage of floor space whether in one or several stories.

11. Adding 50% to the present square footage of 11,731 square feet results in 17,596.5 square feet being allowed for the replacement structure. The Applicant's request is for a 17,381 square foot footprint in the new building. In light of this footprint figure, the Applicant asserts that its proposal meets the expansion limitation. The Staff, however, has looked at the aggregate square footage from the three floors and basement, and has determined that the expansion proposed is over 500% of the present square footage. The Staff maintains that such an increase far exceeds the limits of the Code. The Applicant was made aware of this Staff position in the County's first formal review letter following receipt of the application (July 23, 2007).

12. As an exhibit, the Staff presented an Appendix to the Staff Report which is described as "excepts from the period when the Rural Business designation and zone were being developed." The Appendix uses historical documents and Staff commentary to argue that "these various excerpts demonstrate the intended restrictive nature of the zone consistent with the Department's interpretation that the maximum 50% expansion allowed for Rural Business uses in existence by July 1, 1990, applies to the total gross floor area of the expansion, not solely to the expansion of the building footprint."

13. The historical documents presented by Staff show what the County's planners thought the new RB limits meant when they were proposed, and reveal that the Staff explicitly opposed allowing the 50%/1500 square foot expansion limit to refer to building footprint rather than gross floor area. However, they do not clearly show what the County Commissioners intended when they adopted today's Code language.

14. Nevertheless, the Examiner is aware that members of the current planning staff were present through the difficult period during which the current RB regulations were being developed. The regulations were in response to litigation challenging the County's efforts to comply with the Growth Management Act (GMA). In general, the challenges asserted that the County was allowing more uses at higher densities and greater intensities than permitted under the GMA. There is a strong institutional memory that the expansion allowed for existing businesses in the RB zone was intended as limited to a 50% increase in the use, not as means for expanding that use many times.

15. Based on its interpretation of the limits of permissible expansion, the Staff restricted its review of the application to an expansion that would total no more than 17,596.5 square feet of motel use. In addition, on December 20, 2007, it issued a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) containing a condition that would limit the expansion to 17,596.5 square feet of total building square footage.

16. For some reason, the Applicant did not appeal the MDNS. The time for such appeal has long-since run. Instead, the Applicant insisted that the Staff complete the processing of the application and bring the matter to hearing before the Examiner.

17. Several citizen comment letters were received during the application process. All were in opposition to the proposal. Two members of the public testified at the hearing – one in favor and the other opposed.

18. Any conclusion herein which may be deemed a finding is hereby adopted as such.

## CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter and the persons of this proceeding. SCC 14.06.050(1)(b)(ii). The proposal is a Level II application.

2. Evaluation of the proposal requires interpretation of the applicable Code provisions for the Rural Business (RB) zone. The Applicant seems to complain that the Staff did not give them adequate notice of their interpretation, although in fact, the Applicant was provided with the Staff's interpretation of the "expansion" issue in the County's first formal response to the application. Thereafter the Applicant took issue with the County's interpretation, but the Staff remained consistent in its view through all the subsequent processing of the application. The Staff did not fail to give the Applicant fair notice of its interpretation.

3. Indeed, the Applicant had ample opportunity to seek an official Administrative Interpretation under SCC 14.06.040(3)(a). Such an official interpretation could then have been appealed and a definitive decision reached before going further with the application. SCC 14.06.040(3)(d). However, the Applicant did not choose to ask for such an interpretation but rather insisted that its application continue to be processed.

4. The Applicant appears to complain that, in taking the position that it did on the "expansion" issue, the Staff should have told the Applicant that a variance was needed in order to approve the application. The Applicant is represented by sophisticated and experienced professionals. As noted, the Staff's position on "expansion" was well-known to the Applicant and any decision to seek a variance was and is solely the responsibility of the Applicant.

5. In reviewing the provisions of a statute or code, great deference is to be given to the administrative interpretation of the agency charged with the implementation of the provisions in question.

6. Any interpretation must be consistent with the purpose of the subject zone. This purpose is set forth at SCC 14.16.150(1), as follows:

The Rural Business zone is intended to provide reasonable expansion and change of use opportunities for existing isolated nonresidential uses in the

rural area that provide job opportunities for rural residents and that are not consistent with the other commercial and industrial Comprehensive Plan designations and zoning districts. (emphasis added)

Under the above description, the Examiner concludes that the limitation on expansion in the RB zone is a limitation on expansion of the use. Here the motel use would expand almost 10 times (from 8 units to 78 units). The Examiner concludes that the expansion proposed is not a reasonable expansion of use, consistent with the purpose of the RB zone.

7. In the RB zone, existing uses may expand without a permit on a one-time basis if the expansion is limited to 50% of the existing building footprint and not over a total of 1,500 square feet of gross floor area. SCC 14.160.150(2)(c). Expansion beyond the 1,500 square foot limit is allowed by Hearing Examiner Special Use Permit provided that the 50% maximum of Subsection (2)(c) is met. SCC 14.16.150(4)(d)

8. Reading the provisions of SCC 14.16.150(2)(c) and (4)(d) together, the term “expansion” may be read as referring to the total square footage of use area in the resulting building or buildings. The term “footprint” is employed simply to identify the number from which the 50% expansion is to be calculated. The expansion can be in several stories or multiple structures so long as its area of use does not in the aggregate exceed 50% more than the square footage of the existing footprint. If an expansion exceeds 1,500 square feet of use area, it is still limited to a total use area that is no more than 50% above the square footage of the original footprint. In short, it is not that a building of unlimited size can be constructed so long as its footprint is not too big. It is that no use can exceed a 50% increase over the square footage of the original footprint used as a measure.

9. Giving appropriate deference to the interpretation of Staff and in light of the purpose of RB zone, the Examiner adopts the above reading of the Code provisions in question and concludes that the expansion proposed by the Applicant cannot be approved because it is too large.

10. In light of this result, it is unnecessary to determine whether the development meets the additional criteria for expansion set forth in SCC 14.16.150(4)(d)(i-vi).

11. Because of its view of the restrictions of the Code, the Staff review herein stopped short of a thorough evaluation of what the Applicant actually proposed. If the Staff’s interpretation were to be reversed on appeal, it would be necessary to remand the application for completion of review of the larger proposal.

12. Any such remand should include an instruction that the MDNS be withdrawn. Otherwise the SEPA threshold decision would stand as a barrier to complete project review, including environmental review of the entire proposal. This is because the original MDNS effectively redesigned the project. The apparent basis for this was the

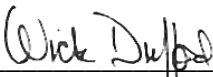
concept that applying existing development regulations would mitigate any adverse environmental impacts to below the level of “significance.” But, even though conditions may be included in an MDNS without the Applicant’s consent, there is a question as to how far an MDNS may go in unilaterally changing a project. Because the original MDNS was not appealed, consideration of this question is now foreclosed.

13. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### **DECISION**

The Special Use Permit application is denied.

DONE this 7<sup>th</sup> day of April, 2008.

  
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Wick Dufford, Hearing Examiner

Transmitted to the Parties: April 7, 2008

### **RECONSIDERATION/APPEAL**

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.