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Kathy Hill, Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON ADMINISTRATIVE APPEAL PL 99 0670

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: MICHAEL MORGAN

ASSESSOR PARCEL NOS: P42022, P42023

ABBREVIATED LEGAL DESCRIPTION: located at 31409 South Skagit Highway, Sedro Woolley, WA; within the NW 1/4 of the NW 1/4 of Section 29, Township 35 North, Range 06 East, W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

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| In the Matter of the Appeal of MIKE MORGAN |) | |
| |) | PL99-0670 |
| |) | |
| From the Conditions of Approval in an Administrative Decision Regarding the Location of Two Small Residential Lots in a Four-Lot Short CaRD Development |) | FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION |
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THIS APPEAL relates to the clustering requirement of the Short CaRD Ordinance. The Administrative Decision appealed was issued on December 28, 1999. The Appeal was made by letter dated January 10, 2000. The Appeal came on for hearing before the Hearing Examiner, after due notice, on February 16, 2000. At the hearing, Gene Morgan represented the appellant and the Morgan family. Marge Swint appeared for the Planning and Permit Center.

Testimony was given, exhibits were admitted and argument was made. On the basis thereof, the Examiner enters the following:

FINDINGS OF FACT

1. The subject property is located at 31409 South Skagit Highway within a portion of the NW ¼, NW ¼, Sec. 29, T35N, R6, WM. The area is designated as Rural Resource in the Comprehensive Plan and the zoning of the site is Rural Resource. The locale is commonly called the Day Creek area.
2. The Morgan family (applicants) has owned the property for over 80 years. Initially it was a 40-acre parcel at the corner of the South Skagit Highway and Aten Road. Some years ago, a lot was carved out of the northeast corner at the road intersection and given to a family member. This left a parcel of about 33.74 acres. The family now seeks to create four lots out of this remaining acreage by use of the Short CaRD technique.
3. One of these lots would include the old family house and associated outbuildings (hereafter called "the homestead"). This lot would encompass about 1.67 acres lying along the South Skagit Highway in about the middle of the eastern border. Open agricultural land would remain to both the north and south of this lot, as well as on the majority of the westerly portion of the property.
4. The applicants propose two other home site lots (each about one acre) near the north boundary on Aten Road, adjacent to the parcel initially carved out of the northeast corner.



The Administrative Decision under appeal is about the placement of these two lots. The applicants object to Condition #4, which reads:

“In order to best meet the clustering requirements of the CaRD Ordinance, the two proposed clustered lots shall be located along the rear property line with a single shared access to Aten road. These lots would be in close proximity to the existing residences located at the end of Aten Road.”

As called for by the County, the two lots would lie along the westerly boundary at the northwest corner of the property.

5. The applicants maintains that Administrative Decision focuses on clustering to the exclusion of other Short CaRD concerns. They point to SCC 14.08.118(7)(c), which states, in part:

“Within the Natural Resource Lands, building lots shall be placed to minimize potential impacts to natural resource land production on both the subject property and adjacent Resource Lands. Building lot clustering or alignment shall not be designed to complicate access, normal field operation or harvesting.”

6. A strip of gravelly soil angles through the property. The applicants' proposed home sites are within this strip -- an area that is less desirable for farming than the balance of the property. The home sites selected by the County are outside of this strip on some of the best farm land in the parcel.

7. Based on their many years of experience on this farm, the applicants are convinced that the ground water found within the gravelly area is superior for drinking water purposes to that found elsewhere on the site. Outside of the gravels, wells have produced water with a high iron content.

8. Furthermore, the applicants operation extends to an additional 70-acre parcel that abuts the northwest corner of the subject property. That corner area provides a pathway for the movement of livestock between two areas of pasture. The sites selected by the County lie in this pathway, and residential development there would necessitate the rerouting of livestock drives, complicating farm operations.

9. The County's rationale for its lot selection is that lots on the western boundary at the northwest corner of the property would be close to two neighboring residences. However, it is also true that the two adjacent lots proposed by the applicants abut upon on the separate lot carved from the northeast portion of the original 40 acres, where there is an existing residence. Either way, a form of clustering would be achieved.



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10. The applicants propose a single access to both one-acre lots, with a green belt between the lots and Aten road. They want to keep their western boundary straight in the interests of maintaining an efficient and manageable farm.

11. The Examiner finds, contrary to the County's assertion, that use of the home sites designated in Condition #4 would be more disruptive of resource land usage than would use of the sites proposed by the applicants.

12. The applicants do not intend to sell the lots created by the new home sites. They are to be used by family members in their retirement. They have chosen the sites not only because of advantages for the integrity of the farm, but also because the lots border a lightly traveled, dead-end dirt road where the perceived danger of traffic to small grandchildren and dogs is slight.

13. The "Day Creek" neighborhood in the vicinity of the intersection of Aten Road and South Skagit Highway includes a small grocery store, a church, and about eight homes. Development is located along the Highway. There is space along the Highway to the north of the Morgan homestead where new homes could be built. This would be across the street from the church. The applicants do not want to build homes there because of the high speed traffic on the South Skagit Highway. The County concurs that the Highway is congested in this area.

14. The Short CaRD Ordinance states discourages the alignment of building sites along a public road and calls for only one access to a public road from multiple building lots that lack existing residences. Both the South Skagit Highway and Aten Road are County maintained, but they appear to present distinctly different levels of accident risk. The applicants' proposed home site locations would pose less hazard from the traffic standpoint than would sites along the Highway.

15. 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 parties and the subject matter of this proceeding.

2. The Administrative Decision was made because the application was construed as asking for building lot placement that differs from the criteria of the Short CaRD Ordinance.

3. Under SCC 14.08.118(7), clustering of buildable lots is preferred and building lots are not to be substantially aligned along a public road. Any other placement requires an Administrative Decision based on a consideration of

- (a) Best Management Practices;
- (b) Existing special conditions, circumstances and topography which are peculiar to the land, buildings, or structures;



- (c) The special conditions and circumstances are not a result of the actions or omissions of the applicant;
- (d) The placement will not confer onto the applicant any special privilege that is denied by this section to other lands, buildings, and structures in the same designation.

4. The Examiner concludes that the home sites chosen by the applicant are superior to those chosen by the County from the standpoint of management of the acreage and of minimizing impacts to resource lands. Existing special conditions of soil type make the applicants' sites preferable to the County's for locating homes. Conversely, the natural conditions at the County's selected sites make them better for farming. These conditions are not the result of acts or omissions by the applicants.

5. In addition, the conditions of traffic are a special circumstance which militates in favor of an Aten Road location as opposed to building along the South Skagit Highway. This is consistent with the Short CaRd Ordinance's apparent concern for avoiding congestion.

6. Finally, the applicant's proposed lots, lying adjacent to the separate lot in the northeast corner of the original 40-acres, form in effect a three-lot cluster. Because of this, no special privilege would be conferred by approving the applicant's proposal.

7. In sum, the Examiner determines that the applicants' proposal meet the requirements for approval by Administrative Decision under the Short CaRd Ordinance.

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

DECISION

The appeal is granted. The Administrative Decision is reversed. The applicants' proposed two one-acre home sites are approved as to lot placement.


Wick Dufford, Hearing Examiner

Date of Action: April 17, 2000.

Copies transmitted to Appellant: April 17, 2000



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Kathy Hill, Skagit County Auditor