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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 APPEAL AP 04 0109

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: MARVIN and MIRIAM JARMIN

ASSESSOR PARCEL NO: P#:21975

LEGAL DESCRIPTION: the parcel is located adjacent to 16866 Donnelly Road, Mount Vernon, WA; within the South 1/2, East 1/2, Northwest 1/4, Southeast 1/4 of Section 14, Township 34 North, Range 3 East, W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of)
) PL 04-0109
MARVIN AND MIRIAM)
JARMIN) **FINDINGS OF FACT**
) **CONCLUSIONS OF LAW**
From an Administrative Determination) **AND DECISION**
Requiring Aggregation of Contiguous)
Parcels Prior to Development (PL04-0041))

This matter, the appeal of an administrative determination, came on regularly for hearing before the Examiner on March 24, 2004. Paul Taylor, Attorney at Law, represented the Appellants. Grace Roeder, Associate Planner, represented the Planning and Permit Center.

Testimony was taken, exhibits were admitted and argument was heard. From the record made, the following is entered:

FINDINGS OF FACT

1. Marvin and Miriam Jarmin acquired a lot at 16866 Donnelly Road in Skagit County from Harvey and Thelma McIntyre on July 15, 1968. The parcel number is P21974. When acquired, the parcel contained a residence built in 1928. The Jarmins have lived there since they bought the property.
2. On January 15, 1969, the Jarmins acquired the adjacent property to the south from the McIntyres. The parcel number is P21975. When they acquired this contiguous parcel the Jarmins were advised that it was a separate buildable lot.
3. For a number of years the Jarmins farmed on P21975, growing first raspberries and later apples. Their long-range plan for the parcel was to subdivide and sell it, using the money for their retirement.
4. Parcels 21974 and 21975 are each 2.5 acres in size. Adjacent to them on the east is the Avon Acres First Addition subdivision, a 10 acre tract that was divided into 30 residential lots in 1958. Nilson Road which traverses the southern portion of the subdivision deadends at parcel P21975.
5. Parcels 21974 and 21975 are zoned Agriculture-Natural Resource Land, with a 40-acre minimum lot size. The properties to the north and east are zoned Rural Intermediate, with a 2.5 acre minimum lot size.
6. P21975 is encumbered with a 60-foot wide easement in favor of the Trans Mountain Oil Pipeline Corporation.



7. Eventually, the Jarmins concluded that the farming of P21975 was no longer practical. Lack of packing facilities, increased susceptibility to disease and low prices adversely affected the apple business. In addition, the proximity of the Avon Acres housing prevented the use of sprays.

8. In September 2002, Mr. Jarmin contacted the Planning and Permit Center about subdividing P21975. He was told that he could not create a subdivision like the adjacent Avon Acres, but went away assuming that he could sell P21975 as a separate single building lot. He inquired again about developing P21975 in October 2003 and was informed that the lot could not be developed as a separate residential property.

9. Prior to Skagit County's adoption of the Unified Development Code on July 24, 2000, an aggregation requirement had been in effect for contiguous substandard lots in common ownership. The UDC repealed the former aggregation provisions, replacing them with regulations that allowed development of substandard lots of record if certain development requirements were met. These new provisions, among others, were brought before the Western Washington Growth Management Hearings Board and subsequently the Board's determinations were appealed to the Skagit County Superior Court in Civil Case Nos. 01-2-00423-1 and 01-2-00424-0. In the course of pursuing settlement of these suits, the County has adopted interim controls that have restored the prior aggregation regulations.

10. On January 18, 2002, Skagit County adopted Interim Ordinance R20020037. The provisions of this ordinance have been renewed through subsequent enactments, the most recent being Interim Ordinance 020030032, adopted December 22, 2003.

11. The Ordinance recites that it is applying interim rules during the time that the parties to the above referenced law suits as seeking possible settlement. The interim controls relating to lot aggregation are those of former SCC 14.04.04.190(5), as adopted in Ordinance 16291, as follows:

(5) When any person owns or acquires contiguous pieces of property involving descriptions setting forth lots which would be substandard under the provisions of this chapter, the Planning Department and Assessor shall combine such property in the following manner:

(a) If either or both of the two (2) lots are substandard, they shall be aggregated to form one (1) lot;

(b) If any of three or more lots are substandard, they shall be aggregated in such a way that no substandard lots remain.

(c) All contiguous substandard lots shall be aggregated into a single lot even if the resultant lot is substandard.



(d) Exceptions:

(i) Any lot which was approved and platted under Skagit County Subdivision Ordinance No. 3787 (adopted March 1, 1965) need not be combined or aggregated. Any lot divided by short plat or other legal means after March 1, 1965, need not be combined or aggregated.

(ii) Aggregation of lots under this provision is not required for substandard size lots in the Rural Resource-NRL, Agriculture-NRL, Industrial Forest-NRL and Secondary Forest-NRL zones acquired after September 11, 1996.

12. On January 22, 2004, Marvin Jarmin filed an application for Lot of Record Certification with the Planning and Permit Center. The application sought certification for P21975. The application was assigned file number PL04-0041.

13. The application contained a series of real estate contracts and deeds. The first of these showing the transfer of P21975 as a separately described parcel is the contract between the McIntyres and Jarmins in 1969.

14. On February 6, 2004, the Planning and Permit Center issued a Lot of Record Certification for P21975 under file number PL04-0041. The form contained a handwritten note saying, "See attached letter, subject to aggregation."

15. The attached letter, dated February 6, 2004, referenced PL04-0041, and stated, in part:

This office has completed review of the above noted Lot of Record Certification Application and has made the following determination:

Parcel P21975 is considered a Lot of Record as defined in Skagit County Code 14.04.020. However, it has been noted that Parcel 21974 is also under contiguous ownership. These Parcels are each substandard to the current zoning designation of Agricultural-Natural Resource Land. . . .

The letter went on to note the adoption and renewal of the Interim Ordinance that restored SCC 14.04.190(5), and said, in effect, that the provisions of that section apply to this application since contiguous substandard lots are held in common ownership. The letter went on to say:

At this time, if development is proposed on either of the Parcels, it will first be necessary to combine or aggregate the parcels through the Boundary Line Adjustment process.

16. It is the determination set forth in the above letter that is under appeal here. The Staff's interpretation is that the determination effectively prevents the separate development of P21975. This means that it cannot by itself be sold as a developable lot. The Planning and



Permit Center would withhold building permits for any residence that a separate purchaser might propose to build. The only development the County will allow is whatever structures are permissible after P21975 and P21974 are combined into a single lot. This would limit development, even in the hands of the present owners, to whatever accessory structures are allowed on a lot already developed with a residence.

17. An agricultural zoning designation for the subject property has been in effect since 1966. In 1966 the minimum lot size for the zone was 10,000 square feet. In 1973, this was changed to a minimum lot size of 30 acres. It has since been changed to a minimum lot size of 40 acres.

18. As revived, the aggregation requirements of SCC 14.04.190(5) were in effect at the time the challenged administrative determination was made. Indeed, except for the period between the July 14, 2000 and January 18, 2002, the applicable provisions of SCC 14.04.190(5) have been in effect for many years. There was no proof that the subject lots fall under any of the subsection's exceptions. Accordingly, the aggregation requirement has long applied to the two parcels held by the Jarmins.

19. Mr. Jarmin testified that there is a difference of at least \$100,000 between the value of 2.5 acres of farm land and a 2.5 acre residential building site.

20. The Notice of Appeal herein was timely filed on February 19, 2004. The appeal raises only constitutional issues: (A) an unconstitutional taking, (B) a violation of substantive due process, (C) a violation of procedural due process, (D) a violation of equal protection of the law.

21. In Appellants' brief an additional allegation of mapping error in the zoning is made. But no proof of this proposition was provided.

22. 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 persons and the subject matter of this appeal.

2. There was no argument that the administrative determination made by the Planning and Permit Center and its interpretation of the law are wrong under the terms of SCC 14.04.190(5) or any other County code provision.

3. The Examiner's hearings are in an administrative forum. His authority is limited to applying the ordinances the County has adopted. He has no power to adjudicate the validity of those ordinances. In particular, he is not authorized to determine constitutional questions. See Grade v. Lynnwood, 45 Wn. App 876, 728 P.2d 1057 (1986); Yakima County Clean Air Authority v. Glascam Builders, 85 Wn.2d 255, 534 P.2d 33 (1975).



4. Under the County code provisions cited to him, the Examiner concludes that the Planning and Permit Center's administrative determination was correct.

5. Any findings herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The appeal is denied. The administrative determination is affirmed.



Wick Dufford, Hearing Examiner

Date of Action: April 23, 2004

Copy Transmitted to Appellant: April 23, 2004

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center 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 the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.



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