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Skagit County Auditor

4/29/2004 Page

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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 0036

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: CHARLES and LORRAINE SAUNDERS

ASSESSOR PARCEL NO: P#:73379

LEGAL DESCRIPTION: The parcel is located at Lot 6, Kincaid Addition to Fidalgo City, adjacent to 15234 Gibraltar Road, Anacortes, WA; within Section 19, Township 34 North, Range 2 East, W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

In the Matter of the Appeal of )  
 ) PL04-0036  
**CHARLES AND LORRAINE** )  
**SAUNDERS** )  
 ) **FINDINGS OF FACT,**  
From an Administrative Determination ) **CONCLUSIONS OF LAW**  
Requiring Aggregation of Contiguous ) **AND DECISION**  
Parcels Prior to Development (PL03-0917) )  
\_\_\_\_\_ )

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. Charles and Lorraine Saunders purchased Lot 5, Kincaid Addition to Fidalgo City on December 9, 1997. The lot was developed with a residence when they bought it. The address is 15234 Gibraltar Road, Anacortes. The parcel number is P73378.
2. On October 18, 1999, they purchased Lot 6, Kincaid Addition to Fidalgo City. The parcel number is P73379. Lot 6 is undeveloped and lies adjacent to and contiguous with Lot 5.
3. On April 4, 2003, the Saunders listed their lots for sale as separate listings.
4. On May 18, 2003, John Chulick and Elizabeth Calcedo entered into a Real Estate Purchase and Sale Agreement with the Saunders for the purchase of the residence and Lot 5.
5. Chulick and Calcedo approached the Planning and Permit Center to inquire about a permit to install skylights. They were advised that Lot 5 was aggregated with Lot 6 and that they would need to own both lots in order to receive a permit.
6. On May 23, 2003, Christopher Carol signed a Real Estate Purchase and Sale Agreement with the Saunders for the purchase of Lot 6.
7. Carol sought a Lot Certification from the Planning and Permit Center. He was told that a lot certification could not be granted because Lots 5 and 6 were aggregated.



8. The contracts to purchase Lots 5 and 6 were rescinded because the potential buyers were informed by the Planning and Permit Center that the lots were aggregated and could not be sold separately.

9. On June 2, 2003, Charles and Lorraine Saunders first learned about a requirement for aggregation. The Planning and Permit Center advised them that aggregation was required because of growth management related lawsuits (Skagit County Superior Court Nos. 01-2-00423-1 and -1-2-00424-0.)

11. Mr. Saunders inquired of the County Assessor's office about the status of the lots. He was advised that the Dewey Beach area was originally platted around the turn of the 20<sup>th</sup> Century and was platted again in 1954. Lots 5 and 6 appear on the plat of Kincaid Addition, Fidalgo City, filed and approved September 9, 1954.

12. The zoning in the area changed from Residential to Rural Intermediate in June 1997, requiring a minimum lot size of 2.5 acres. Lots 5 and 6 are rectangular. Each measures 100 feet by 165 feet. Both of the lots are, therefore, substandard under the current zoning.

13. On January 18, 2002, Skagit County adopted Interim Ordinance R20020037 which restored and slightly modified former lot aggregation provisions of the Skagit County Code. The provisions of this ordinance have been renewed through subsequent enactments, the most recent being Interim Ordinance 020030032, adopted on December 22, 2003.

14. The Ordinance recites that it is applying interim rules during the time that the parties to the above referenced law suits are seeking possible settlement. The interim controls relating to lot aggregation are those of former SCC 14.04.190(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.

15. On December 4, 2003, Charles and Lorraine Saunders filed an application for Lot of Record Certification with the Planning and Permit Center. The application sought certification for Lot 6 (Parcel 7339). The application was assigned the file number PL03-0917

16. The application for certification showed six transfers of Lot 6 as a separate lot since it was platted in 1954. The application also showed eight transfers of Lot 5 as a separate lot since 1954. The owners of the two lots ceased to be the same in 1968.

17. On January 14, 2004, the Planning and Permit Center issued a Lot of Record Certification for P73379 under file number PL03-0917. The form contained a handwritten note saying, "See attached letter regarding substandard lot status."

18. The attached letter, dated January 14, 2004, referenced PL03-0917 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 P73379 is considered a Lot of record as defined in Skagit County Code 14.04.020. It is noted that Mr. Saunders currently owns P73378. These parcels are substandard to the current zoning designation of Rural Intermediate. . .

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.

19. It is the determination set forth in the above letter that is under appeal here. According to the staff's testimony, the effect of that determination is to prevent the separate development of Lot 6. 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 Planning and Permit Center will



allow is whatever structures are allowed after Lots 5 and 6 have been 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.

20. In short, the Planning and Permit Center interprets SCC 14.04.190(5) to prohibit any further development on either of the lots until they are formally aggregated. It is clear that past statements of staff that the lots are aggregated was just a shorthand way of saying that once the aggregation requirement attaches, the parcels cannot be developed as separate lots.

21. Mr. Saunders asked the Planning and Permit Center what the development potential on Lot 6 would be if another party had purchased it in 1999. He was told that another purchaser would have been allowed to develop a residence on the lot as a separate parcel. This is because under those circumstances, Lot 6 and Lot 5 would not have come into contiguous ownership by one owner.

22. The provisions of SCC 14.04.190(5), as applicable here, were in effect in 1999 when the Saunders purchased Lot 6. At that time the Saunders were unaware of the requirement. They were not then advised of the requirement by any realtor, title company or government official.

23. Mr. Saunders testified that he went to the County Assessor's Office before purchasing Lot 6 and asked if there were any problems or issues for him as owner of adjacent Lot 5. He was told, in effect, that Lot 6 was grandfathered as a separate lot and that he could develop it as a separate lot.

24. For a time after July 24, 2000, the previously effective aggregation ordinance was not in effect. With the adoption of the Unified Development Code on that date, the former requirements were replaced with provisions allowing development on substandard lots of record if certain development requirements were met. However, the Code was challenged before the Western Washington Growth Management Hearings Board in cases that were subsequently appealed to the Superior Court. As stated above, in context of this litigation, the former SCC 14.04.190(5) was resurrected in January 2002 through adoption of Interim Ordinance R20020037. The revived aggregation requirement was in effect at the time the challenged administrative determination was made.

25. The Saunders were given no separate or personal notice of the adoption of Interim Ordinance R20020037 or any of its renewals. Notices were published in a newspaper of general circulation, the Skagit Valley Herald.

26. The Saunders initial effort to sell Lots 5 and 6 separately in 2003 was precipitated by Mr. Saunders' health problems and his doctors' advise to move to a dryer, warmer climate. Since the separate sales fell through, the Saunders have attempted to sell the two lots as one unit but have found no buyers. In the meantime, Mr. Saunders health problems have multiplied and his condition has worsened.



27. The Notice of Appeal herein was timely filed on January 21, 2004. The appeal raises only constitutional issues. The appeal asserts (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.

28. 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 dispute as to any fact.

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

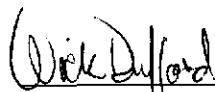
4. The Examiner's hearings are in an administrative forum. His authority is limited to applying the ordinances the County has adopted. He has no power to adjudicate the validity of those ordinances. In particular, he is not authorized to determine constitutional questions. See Grader v. Lynnwood, 45 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).

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

6. Any finding 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 21, 2004

Copy Transmitted to Appellant: April 21, 2004



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## 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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