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Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
1800 CONTINENTAL PLACE
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON APPEAL AP07-0873

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: DAVID ALLAN

PROPONENT: RALPH WEICHE

ASSESSOR PARCEL NO: P119253

PROPERTY LOCATION: The project is located at 15561 Flinn Road, extending southward approximately 1,000 feet, Bow, WA; a portion of Section 22, Township 36N, Range 3 East, W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

DAVID ALLAN,

Appellant,

v.

**SKAGIT COUNTY and RALPH
WEICHE,**

Respondents.

AP07-0873

**FINDINGS, CONCLUSIONS
AND DECISION**

PL07-0574, BP06-0363

This case involves two appeals filed by David Allan in relation to an application for a Grading Permit. Allan appealed the issuance of a Mitigated Determination of Non-Significance (MDNS) and the issuance of the Grading Permit itself.

A hearing on the MDNS was held on September 19, 2007. After taking the evidence, the Examiner entered an Order stating that the MDNS appeal should be dismissed, but deferring a final determination of the case until a decision on the merits of the Grading Permit and a hearing on any appeal thereof.

The reason for this was to comply with the State law requirement that SEPA appeals and appeals of underlying permits be combined into a single proceeding. RCW 43.21C.075(1),(2)(a), SCC 14.12.210.

The Grading Permit was approved on October 23, 2007 and Allan appealed. A hearing on the Grading Permit decision was held on January 9, 2008. This decision incorporates the Findings and Conclusions from the September 19th hearing and serves as the final Order as to both appeals.

At the second hearing session, David Allan represented himself. Brandon Black, Senior Planner, represented the County. Ralph Weiche represented the project proponents. Additional testimony was given by neighbors, Barry McMonigle and Lyle Gerrits.

Based on the entire record, the Hearing Examiner enters the following:

FINDINGS

1. The Findings in this matter entered on October 4, 2007, as corrected by the Order dated October 17, 2007, are incorporated herein and adopted as though fully set forth.

2. The application was for the widening of a private access road from 12 feet to 20 feet in order to conform to applicable standards. The extension proposed is 1,000 linear feet from the end of Flinn Road. No improvements to the existing County maintained portion of Flinn Road are proposed.



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3. Allan essentially reiterated arguments made previously. He contended that clearing and grading activities were conducted in 2005 without a permit and that the project as a whole should be regarded as including those activities.

4. He argued that, because the size of the total project was misrepresented, the SEPA threshold decision was based on just a portion of what should have been considered, rendering the environmental evaluation insufficient.

5. He also contended that the County's evaluation failed adequately to address additional discharges of flood waters resulting from the road that the clearing and grading permit authorizes. He said that flooding is interfering with the occupation of his house and that storm water detention is needed to control drainage.

6. Ralph Weiche testified that early work at the site had been to gain access to his property and that, according to the County, such work was exempted from permit under the Building Code. He said that after the work was commenced his neighbors advised that they wanted to create a road that would provide access to their properties as well. They all were then advised that a wider road would be needed and that a Grading Permit would be necessary. At that point, he said, prior work was stopped and a permit was applied for. He asserted that he and his neighbors have carefully followed the County process.

7. Weiche pointed out that, in connection with the permit process, surveys were conducted by professional engineers and a wetland report was prepared. This information was available to the County in making its SEPA threshold determination.

8. He stated that Allan's property is in the flood plain and emphasized that evidence given earlier by the project engineer established that no flooding impacts to the Appellant will result from the subject grading project.

9. Barry McMonigle is owner of a 40 acre parcel located north of Allan's. McMonigle said he is himself a geotechnical engineer and geologist and that he evaluated the calculations for the road project, its alignment and its culverts, walked the site and looked at relevant topographic information. He concluded that any increase in drainage from the new road will be so miniscule as to make no difference. He stated that flooding is a pre-existing problem around Allan's house and said that drainage improvements put in by Lyle Gerrits may actually improve the situation for Allan.

10. Lyle Garrets owns 10 low-lying acres south of Flinn Road and six acres on the hillside. He said there has been an ongoing dispute resulting from Mr. Allan's efforts to solve his (Allan's) flood problems by using Gerrits' low-lying property. Garrets stated that the flooding in the low-lying area that includes both his and Allan's properties has been a known problem for at least 80 years. He said that the subject access road will not affect this flooding and that indeed new culverts may help.



11. Thus, it is clear that there is an ongoing dispute among neighbors relating to the flooding problem. Apparently there is active litigation concerning it. The Examiner makes no findings concerning the various contentions of the Appellant and his neighbors about who is doing what to whom.

12. However, the Examiner remains persuaded and finds that the preponderance of evidence is that the project authorized by the subject Grading Permit will not appreciably increase runoff and will not cause adverse impacts to downstream properties. (See prior Findings 15 and 16.)

13. In connection with the SEPA threshold determination, the Examiner is not convinced, given the sequence of events, that the County was obligated to evaluate work done in the vicinity prior to the application for the subject permit. Even were this so, the Appellant did not prove that the total of all work about which he is concerned will have a significant adverse impact on environmental quality.

14. The County's review of the subject application included evaluation of a wetland delineation with a planting plan as well as a geotechnical report. After reviewing these documents, the Critical Areas staff signed off on the permit, indicating compliance with the Critical Areas Ordinance.

13. This County conclusion was not challenged by Appellant. Beyond the general assertions regarding flood effects, no evidence was provided that would support denying the subject Grading Permit on its merits.

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

CONCLUSIONS OF LAW

1. The Conclusions in this matter entered on October 4, 2007, as corrected by the Order dated October 17, 2007, are incorporated herein and adopted as though fully set forth.

2. The decision to issue the MDNS was not shown to be clearly wrong.

3. The decision to approve the Grading Permit was not shown to be in error.

4. Since both appeals have been resolved on the merits, there is no basis for refunding the filing fees paid by the Appellant.

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



DECISION

The appeal of the MDNS is denied. The MDNS is affirmed. The appeal of the Grading Permit is denied. The Grading Permit is affirmed.



Wick Dufford, Hearing Examiner

Date of Action: January 17, 2008

Date Transmitted to the Parties: January 17, 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 14.06.110(13), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with clerk of the Board within 14 days after the date of the decision, or decision on reconsideration, if applicable.

