BEFORE THE SKAGIT COUNTY HEARING EXAMINER

MISSION HOLDINGS, INC.,	)	
	)	**PL09-0144**
Appellant,	)	
	)	
v.	)	**FINDINGS OF FACT,**
	)	**CONCLUSIONS OF LAW**
SKAGIT COUNTY,	)	**AND DECISION**
	)	
Respondent.	)	
	)	

This matter, the appeal of an Administrative Interpretation issued by the Skagit County Planning Director, came on for hearing at the Commissioner's Hearing Room in Mount Vernon, Washington, on May 27, 2009.

The Appellant was represented by Thomas Moser, Attorney at Law. The County was represented by Brandon Black, Senior Planner. Appellant presented one witness, David Hough, Consultant. The County's sole witness was Mr. Black.

Exhibits were admitted and argument was heard. Based on the record made, the Hearing Examiner enters the following:

FINDINGS OF FACT

1. On March 10, 2009, the County Planning Director issued an Administrative Interpretation (PL09-0027) in response to a request by Appellant Mission Holdings, Inc. (MHI) The request had asked that a proposed project be considered vested by January 2005. The interpretation denied the request.

2. The project is the "Delvan Hill Short Plat", a concept which calls for the division of a 20-acre parcel into four lots by the Short CaRD process. The property is located at 7520 Delvan Hill Road, within a portion of Sec. 10, T35N, R4E, W.M.

3. The vesting date is critical to MHI because the County adopted Comprehensive Plan amendments, effective October 10, 2007, which placed a Mineral Resource Overlay (MRO) on nearby property, thereby limiting residential density on the subject parcel to no greater than one unit per 10 acres. There is no contest over this amendment's adoption or its legal effect.

4. On November 9, 2004. Appellant filed a "Pre-Application Fact Sheet" and attachments with the County. The attachments described the "Delvan Hill" project in brief and showed a rough layout of it.

5. On learning that a formal pre-application meeting could not be scheduled until late December which was after the date set for closing on the subject property, MHI's consultant met informally on November 12, 2004, with two members of Planning and Development Services (PDS) staff. Thereafter, the Appellants closed on the property.

6. A formal pre-application meeting was scheduled for December 30, 2004, but canceled after that date passed and no one representing MHI showed up. MHI does not claim that this meeting took place.

7. Two different documents on a form entitled Predevelopment/Preapplication Meeting Notes and dated 12/30/04 were admitted. Both relate to the subject development and provide general information. Neither makes any reference to a prior meeting. The County explained that notes of this kind are created in advance of scheduled pre-application meetings and then provided to applicants. The Examiner is persuaded by this explanation, and finds that these documents do not show that an earlier pre-application meeting was actually held.

8. The Examiner finds that no formal pre-application meeting was ever held. On June 29, 2005, MHI's consultant, in a letter to PDS requested a waiver of a pre-application meeting, stating that his discussions with staff had been adequate to identify issues. PDS granted the waiver on July 13, 2005.

9. During 2006, 2007, and 2008, MHI was in communication with the County Health Department regarding various aspects of the project.

10. On August 18, 2008, MHI's consultant wrote PDS requesting that the project be vested to the requirements in place in January 2005. On September 11, 2008, PDS responded that the department was unable to deem the project vested. PDS noted that a completed development application is needed for vesting to occur. The letter stated that materials submitted for a pre-application meeting are different from a development application.

11. The Administrative Interpretation under appeal is to the same effect.

12. The Skagit County Code contains the requirements for a preliminary subdivision application, including an application for a short plat. SCC 14.18.100. The record does not disclose that a completed application, conforming to the regulations, was ever submitted to PDS in relation to the Delvan Hill Short plat.

13. On appeal MHI contends that the short plat vested when the pre-application process was complete and notes that the County continued to work on specific steps in the processing of this project even after the MRO amendment was adopted. In effect, they ask that the pre-application submittal or that submittal plus the informal meeting which followed it should be sufficient to vest the project.

14. MHI emphasizes that the County never provided them with specific personal notice that the MRO was pending and that it would change the law with respect to the platting of the subject property. The County responded (and proved) that it made all the notices required by law for the Comprehensive Plan amendments and that MHI would readily have learned what was going on if it had made inquiry.

15. If the project was not vested, MHI argues that the County was "negligent in continuing to simultaneously process the MRO application and allow MHI to spend thousands of dollars working on the short plat."

16. 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. The County Code clearly requires this appeal to be denied. Any question of the County's "negligence" must be taken up in another forum.

3. Appellant's argument that the County has treated other applicants differently is not relevant to the vesting issue here. Moreover, the information submitted on that subject is distinguishable because it does not deal with the presence or absence of a complete application.

4. SCC 14.06.080(2) addresses pre-application review for projects generally:

> The purpose of the meeting is to conduct a review of the development application prior to submittal to the Department. Pre-application review will include discussion of requirements for application completeness, permit and approval requirements, fees, review process and schedule, and responding to questions from the applicant.

The point is that "pre-application" means what the plain meaning of the term conveys. It is about steps taken before the filing of an application.

5. Vesting occurs when "a completed application is filed with Planning and Development Services and all required permit fees are paid." SCC 14.02.050(1). See also RCW 58.17.033. SCC 14.18.100(1) contains detailed application requirements for preliminary subdivisions. There is simply no proof that an application meeting the requirements for a subdivision was ever submitted to PDS. Indeed, there is no proof that MHI ever provided <u>any</u> formal application, as such. As the County noted in its initial letter denying vesting (September 11, 2008), the materials submitted for a pre-application meeting are different from a development application.

6. In short, the application did not vest because there was never an application. The eventual waiver of the pre-application conference did not waive the necessity for an application.

7. Given the detailed requirements involved, particularly in the area of platting, the Examiner rejects the argument that the pre-application materials submitted were the functional equivalent of an application.

8. Moreover, any contention that submission of pre-application materials, coupled with the conduct of a pre-application meeting, might in some circumstances constitute the equivalent of a complete application, must also fail. As found above, the pre-application meeting contemplated by the Code never occurred.

9. That some agencies of the County continued to work on aspects of this project even though no application had been submitted shows problems with internal communications. However, the Examiner does not believe that, as a matter of law, such behavior can change the time of vesting as fixed by regulation.

10. Finally, the record fails to show that the County suppressed information about the pending Comprehensive Plan amendment or violated any duty of disclosure to the Appellant here. MHI simply failed to find out what any citizen is able to learn when put on inquiry by lawfully given public notice.

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

DECISION

The appeal is denied. The Administrative Interpretation is sustained.

DONE this 10th day of June, 2009.

Wick Dufford

Wick Dufford, Hearing Examiner

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.