

## NOTICE OF DECISION

### SKAGIT COUNTY HEARING EXAMINER

**Appellant:** Schmitt Family Trust  
%C. Macauley and E. O'Conner  
2927 Colby Avenue, Suite 100  
Everett, WA 98201

**Representative:** Christopher Knapp  
Anderson Hunter Law Firm  
2707 Colby Avenue, Suite 1001  
Everett, WA 98201

**Contact:** Marianne Manville-Ailles (MMA)  
Skagit Surveyors and Engineers  
806 Metcalf Street  
Sedro Woolley, WA 98284

**Application #:** PL11-0300 - Appeal of Administrative Decision

**Location:** 120 acres located within Sections 14, 15 and 16, Township 33  
North, Range 4 East, W.M., Skagit County, Washington.  
Parcel #s P16627, P16628, P16637, P16638, P16643, P96039

**Summary of Case:** Appellant appeals an administrative decision by the Director of  
Planning and Development Services (PDS) in an August 31, 2011  
letter, holding that the Swan Ridge Plat filed in 1995 had been  
abandoned.

**Public Hearing:** An open record hearing was held November 16, 2011. Ryan  
Walters represented Skagit County. Christopher Knapp  
represented appellant.

**Decision/Date:** The Administrative Decision of August 31, 2011 is remanded to  
the Director of PDS for further consideration. December 7, 2011

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10  
days of this decision. (SCC 14.06.180). The decision may be  
appealed to the Board of County Commissioners within 14 days  
of the date of decision or decision on reconsideration, if applicable.  
(SCC 14.06.110(13))

**Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearing\\_examiner](http://www.skagitcounty.net/hearing_examiner)

## **FINDINGS OF FACT**

1. This matter comes before the undersigned hearing examiner as a result of an appeal from an administrative decision that PL95-0001 known generally as the “Swan Ridge” subdivision had been abandoned.

2. The owners and appellants are the Schmitt Family Trust. Mr. Charles R. McCauley and Mr. Edward O’Connor are the trustees. The applicants/appellants are represented by Mr. Christopher Knapp of the Anderson Hunter Law Firm.

3. The exhibits which constitute the written record of this matter and which were admitted at the November 16, 2011 hearing are as follows:

1. The staff report under file number PL11-0300 along with attachments;
2. A supplemental copy of the May 15, 2001 letter from Linda Kuller, Senior Planner, to David C. Hough and Associates, with attachments;
3. A notebook submitted by appellants containing various “Swan Ridge” documents;
4. A letter from Deputy Director of PDS Oscar Graham dated February 28, 2005 to MMA;
5. A comment letter from June Kite of Friends of Skagit County received November 15, 2011 by PDS.

4. The only testimony at the November 16, 2011 hearing was submitted by appellant and presented by MMA. While the county submitted a number of comments no testimony was presented.

5. On April 10, 1995 an application for a land subdivision was submitted to the Skagit County Planning Department (PD), a predecessor of PDS.

6. On October 17, 1994 a letter from MMA to the PD referenced the general outline of the proposed Planned Unit Development (PUD) preparatory to a pre-application meeting.

7. The pre-application meeting took October 24, 1994. A December 8, 1994 letter from MMA to David Hough, Director of the PD, requested assistance determining the level of detail for a “PUD” application to be considered a “complete application”.

8. Later, in December of 1994 separate correspondence from MMA to Jeff Morgan (PDS) and Jon Aarstad (Parks Director) related the questions concerning the entire 648 acre plat involving a potential land donation to a proposed county park and the significant question of the amount of density and density bonus that was to be allowed. Additionally the Public Works Department submitted information concerning the requirements for surface water management on the proposed PUD.

9. On February 6, 1995 a letter from MMA to Jeff Morgan regarding the density allowances for the PUD, including any bonus density for the proposed county park, was submitted. The letter also indicated that the formal PUD was to be submitted at a later time.

10. On June 6, 1995 a memorandum was submitted by MMA to John Aarstad regarding the proposed county park. The memorandum discussed the lack of density determination including the proposed bonus park provisions. A copy of that memorandum was submitted to Jim Cahill (PD) on June 7, 1995.

11. On July 6, 1995 David Hough, Jeff Morgan and Jim Cahill sent a letter to John Aarstad indicating the conclusion that dedication of raw land was not appropriate for density bonuses. On July 18, 1995 a copy of that memorandum was faxed to MMA.

12. In June and July 1995 the county submitted various memoranda concerning PUD requirements for the Swan Ridge proposal.

13. A May 16, 1996 letter from MMA to her client reiterated the uncertainty of current planning options, including decisions by the Western Washington Growth Management Hearings Board, that were applicable to the project. The memo also noted that no State Environmental Policy Act (SEPA) threshold determination had been made by Skagit County. That fact was also noted in a May 17, 1996 memo from MMA to planner Jeff Morgan.

14. On September 19, 1996 the then attorney for the appellant requested a meeting with county staff concerning the SEPA threshold determination, the proposed park land dedication along with density bonus calculations and “timing of the review process.” A meeting was held on October 29, 1996 and the county PD indicated a status report would be issued. As of April 15, 1997 a request was made to the PD to issue that status report.

15. On September 11, 1998 a letter was sent from MMA to David Hough (no longer the director), of the Skagit County Planning and Permit Center. The letter outlined appellant’s position on the status of the Swan Ridge application.

16. The next reported activity concerning this property occurred on May 15, 2001. It involved a letter from Linda Kuller, a senior planner with the Planning and Permit Center to Mr. David C. Hough and Associates a private businessman. The letter (exhibit 2) was sent in “response to *your* letter to questions regarding Swan Ridge Estates”. The testimony from MMA was undisputed that Mr. Hough was not in any way acting on behalf of the appellant/applicant nor had appellant/applicant ever received a copy of that May 15, 2001 letter.

17. On May 19, 2011 a pre-development meeting between appellant/applicant and PDS set forth the decision that staff considered the original application to be abandoned. Appellant/applicant orally requested a decision in writing. A formal request from Mr. Knapp was made by letter dated June 28, 2011.

18. On August 31, 2011 Gary R. Christensen, AICP, PDS Director sent a letter to appellant/applicant denying application PL95-0001 “for a land division” for failure to timely submit information requested in the May 15, 2001 letter.

19. A notice of appeal pursuant to SCC 14.06 was timely filed by Christopher J. Knapp on September 9, 2011. Notice of the hearing was published October 27, 2011.

20. A Level I open record appeal hearing was held on November 16, 2011.

21. 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 subject matter of this proceeding pursuant to Skagit County Code. (SCC 14.06.110(7)(8)(9)(10)(11)). The Appellant must show that the August 31, 2011 administrative decision was “clearly erroneous”.

2. Compliance has been achieved with the notice requirements of state and local law.

3. The parties made a number of contentions with regard to the appeal of the Director’s August 31, 2011 denial of the plat. Review has been made of the variety of decisions by the hearing examiner involving the Robert Weeks appeal PL10-0493. Review has also been made of the appellate case of *Graham Neighborhood Assn. vs. Pierce County*, 162 Wash. App. 98 (2011).

4. While many issues are presented by this appeal, the dispositive issue is simple and straightforward. The Director relied on SCC 14.06.100(1) and (5). The basis of that conclusion related to the “request for information” appearing in the letter from Linda Kuller to Planner David Hough dated May 15, 2001 and the fact that no information was submitted by the applicant within the 120 day time frame. Since the undisputed testimony in the hearing was that the letter was never sent to nor received by any representative of the applicant, it cannot be used as a basis for concluding the original plat had been abandoned.

5. The appropriate remedy, suggested by counsel for the appellant/applicant, is to remand the matter to the PDS Director for further determination.

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

## DECISION

The August 31, 2011 decision of PDS Director Christensen is reversed. The matter is remanded to him for further consideration.

**DONE** this 7th day of December, 2011.

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Wm. H. Nielsen, Hearing Examiner *pro tem*

Date transmitted to applicant: December 7, 2011.

See Page 1, Notice of Decision for information on Reconsideration and Appeal.