

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**Applicant:** George Theodoratus  
37921 State Route 20  
Concrete, WA 98237

**Counsel:** Gary T. Jones, Attorney at Law  
415 Pine Street  
P. O. Box 1245  
Mount Vernon, WA 98273

**Appeal/File No:** Appeal of Administrative Denial of Short Plat 97-0019  
Case no: PL13-0286

**Location:** Off Highway 20 at Rocky Creek Lane near Rockport; within a portion of NW1/4NE1/4SW1/4 Sec. 20, T35N, R10E, W.M.

**Land Use Designation:** Time of Application (March 1997) -- Rural  
Present: Rural Reserve

**Summary of Case:** Short Plat denied for failure to timely submit requested additional information. Appellant asserted ongoing efforts to complete plat requirements and submitted evidence of recent actions to this effect.

**Public Appeal Hearing:** October 16, 2013. Marge Swint presented testimony for the County. George Theodoratus testified on his own behalf. Gary Jones, counsel for Appellant, presented a brief and argument for the Appellant. Jill Dvorkin, Assistant Prosecutor, presented the County's argument.

**Decision/Date:** The matter is remanded to Planning and Community Development for further consideration. October 22, 2013.

## **FINDINGS OF FACT**

1. On March 11, 1997, George Theodoratus (Appellant) submitted an application to what is now Planning and Development Services (PDS) for a four lot short plat (SP97-0019) on an essentially vacant 20.26 acre site on the south side of State Highway 20 near the Skagit River about 4.25 miles east of Rockport.

2. The application sought the creation of lots ranging from 5 to 5.25 acres in size.

3. The property is located within a portion of the NW1/4NE1/4S1/4 Sec. 20, T35N, R10E, W.M. The site has an irregular configuration. The east side of the property is adjacent to Rocky Creek. The adjoining properties are primarily large acreages with some residential development.

4. On April 9, 1997, a letter was sent to the Appellant identifying additional information needed before the application could be approved. The letter stated that "the application has been put on hold until such time as the requested information is submitted." Through July 3, 2013, no responsive written communication was received from Appellant.

5. On July 3, 2013, the Administrative Official for PDS sent a letter to Appellant denying the short plat for failure to timely provide the additional information sought in the April 9, 1997 letter.

6. The denial was made pursuant to SCC 14.06.105(2), a provision that became effective on May 24, 2011, allowing the Administrative Official to deny an application made more than 120 days prior to the subsection's effective date when "all required information" has not yet been received.

7. The Appellant testified that he had no knowledge of the adoption of this Code provision until he received the PDS letter of denial. He was first apprised of a problem in June of 2013 when he met with the Health Department at a well site for a proposed public water system for the subject short plat and other property. In sending back an essentially favorable letter about the water system, the Health Department advised that the PDS data base shows SP 97-0019 as having expired.

8. SCC 14.06.105 was duly adopted using the notice appropriate for legislative actions. No direct personal notice was given of its pendency or of its adoption to the Appellant. Such notice was not legally required.

9. The Appellant testified that, over the years, he had numerous oral communications with PDS about the subject application, and was always assured that the project was in good standing. However, he did not show that any of these communications came after the passage of SCC 14.06.105.

10. At the hearing Appellant presented proof of a number of actions taken toward meeting the requirements for approval of the short plat-- actions involving the expenditure of substantial sums. The information provided shows significant activity right around the time of the initial application and PDS letter. Then there appears to have been an extended period of inactivity. A series of actions have been taken since 2008 toward completing the short plat.

11. Prior to its letter denying the short plat, PDS had no opportunity to review the chronology of activity presented by the Appellant in subsequent correspondence and at the appeal hearing.

12. The Appellant could now re-apply to divide the property under the CaRD procedure, but this would mean that the residential lots could be no more than one acre in size. Such an approach would significantly reduce the potential sales price of the lots.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.06.105(3), SCC 14.06.050(1)(a).

2. The public notice given in connection with the adoption of SCC 14.06.105 met the requirements of the law. Personal notice to the Appellant was not legally required.

3. Under RCW 58.17.033, Appellant's application for the subject short plat vested to the "land use control ordinances" in effect at the time of the application. There is no argument here that the Appellant's application was not a "fully completed application" as that term is used in the statute.

4. However, subsequently adopted procedural provisions may properly affect the processing of even vested applications. Such provisions are not viewed as "land use control ordinances," governed by the vesting provisions of the statute. SCC 14.06.105(2) is such a procedural provision.

5. Nevertheless, denial of an application under SCC 14.06.105(2) does not occur by operation of law when the requested information has not been received. The Administrative Official must issue a separate order denying the application. This arrangement presupposes discretion in the Administration Official over when or whether to issue such an order.

6. Therefore, the Examiner holds that the denial at issue here is discretionary and that the exercise of that discretion may properly be reconsidered.


7. Under all the circumstances, the Examiner is persuaded that the matter should be reconsidered by PDS in light of the facts made known subsequent to the issuance of the denial letter during the course of the hearing and otherwise

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

**ORDER**

The application for SP97-0019 is remanded to PDS for reconsideration in light of the evidence admitted at the appeal hearing. The Administrative Official shall then issue a new decision, either reversing or affirming the denial contained in the letter of July 3, 2013. PDS is not precluded from communicating with the Appellant if it finds the need for more information bearing on the question of due diligence in pursuing the application.

**SO ORDERED**, this 22<sup>nd</sup> day of October, 2013

  
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Wick Dufford, Hearing Examiner

Transmitted to the parties on October 22, 2013.