

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**Appellant:** Tom Butler and Linda Lewis  
7421 Decatur Place  
Anacortes, WA 98221

**Applicant:** Hazel Ford  
PO Box 127  
LaConner, WA 98257

**Appeal Nos:** PL13-0354 and PL14-0117 of Administrative Approval  
Remand from Board of County Commissioners

**Description:** Appeal PL14-0117 of approval of a Reasonable Use Exemption  
PL14-0026; and Appeal PL13-054 of Administrative Approval of  
Reduction in Setbacks PL13-0146

**Location:** The subject property is described as Lots 12 and 13, Block 2,  
Holiday Hideaway #1; recorded in Vol 8 of Plats, Pages 36-42;  
August 6, 1962; Auditor File #625483; within a portion of the  
Northwest ¼ of Section 8, Township 35 North, Range 2 East,  
W.M., Skagit County, Washington.

**Land Use Designation:** Rural Intermediate

**Public Hearings:** November 6, 2013, June 11, 2014, January 7, 2015

**Decision/Date:** The appeals are denied. February 4, 2015.

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10  
days of this decision. 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.

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

## FINDINGS OF FACT

1. The public hearing was held on January 7, 2015. It was the third public hearing regarding this case. The basis of this order relates to Board of County Commissioners (BoCC) remand resolution R201400288 dated September 16, 2014 (Remand).
2. Pursuant to the Remand an amended prehearing order (PHO) was entered October 13, 2014 setting forth the issues to be presented at the January 7, 2015 hearing. There were no objections to the issues and determination of the PHO issues.
3. The first appeal resulted in a Hearing Examiner (HE) hearing on November 6, 2014. That appeal was taken by Tom Butler and Linda Lewis (Butler) against the decision of Skagit County Planning and Development Services (PDS) granting an administrative reduction in setbacks for both Lot 12 and Lot 13 of the Holiday Hideaway Plat located on Guemes Island. The applicant for the permit, Hazel Ford (Ford) was represented at that time by her architect and consultant Tom Lindsey.
4. By HE order dated 12/17/13 the appeal was remanded to PDS for compliance with the reasonable use and lot certification requirements of Skagit County Code (SCC).
5. After the second PDS administrative decision was appealed, another hearing was held June 11, 2014. The HE order dated July 10, 2014, affirmed the PDS determinations subject to compliance with the boundary line adjustment (BLA) requirements of SCC 14.18.700(3) before any permits would be issued.
6. Conclusion of Law 13 of the July 10, 2014 order held that neither PDS nor the HE had jurisdiction to enforce "plat restrictions".
7. Conclusions of Law 8 and 9 (7/10/14) related to the both the factual and legal criteria for the Reasonable Use Exemption (RUE) under SCC 14.16.850(4)(f)(i).
8. The BLA concerning the use of the road easement as part of the property was contained in HE Conclusion of Law 10.
9. The July 10, 2014 HE order was appealed to the BoCC. The closed record hearing was held September 9, 2014 and a decision was made September 16, 2014.
10. At the BoCC hearing PDS provided a memorandum dated September 2, 2014. Attorney Mervyn Thompson appeared and recited his earlier letter of August 18, 2014 to Will Honea regarding his representation of Butler and the arguments concerning the appeal.
11. The undersigned has taken official notice of those public documents and they are part of the record of this appeal.
12. At the HE January 7, 2015 hearing testimony was taken and exhibits were entered. PDS was represented by Jill Dvorkin, Skagit County DPA. Ford was represented by C. Thomas Moser. Butler did not have representation and did not appear because of health concerns. An e-mail dated January 6, 2015 at approximately 8:00 p.m. was admitted as exhibit #42.

13. Written statements were submitted by PDS dated November 7, 2014, C. Thomas Moser dated November 12, 2014, and Butler dated January 1, 2015 with a response from Mr. Moser dated January 6, 2015, in addition to a written memo from PDS dated January 7, 2015.
14. Exhibit #40, a letter from Lindsey dated 11/12/14, was submitted. Exhibit #41 another letter from Lindsey dated 12/23/14 along with an accompanying map was submitted. Exhibit #43 is a photo of a portion of the property. Exhibit #44 is a letter from Karen Everett, realtor, dated 1/6/15. Exhibit #45, a letter from Greg and Pamela Small dated 12/19/14, was submitted. All exhibits were admitted.
15. In addition to the written exhibits and photo, Mr. Lindsey, Mr. Small and Ms. Everett all submitted supporting testimony.
16. At the hearing the undersigned asked if there were objections to a HE review of the BoCC hearings. None was received. Butler was sent a recording of the HE hearing along with a request for any objection to the HE review of the BoCC hearing. Butler's objection was overruled. Review of the BoCC hearings took place.
17. At the BoCC hearing PDS asserted that SCC 14.16.810(4) was the sole ordinance dealing with administrative reduction in setbacks. PDS now concedes that the BoCC concluded that the general variance provisions of SCC 14.10.020 apply to administrative setbacks determinations as well.
18. The weight of the evidence in this case from all three hearings, viewed under the clearly erroneous burden assigned to Butler (SCC 14.06.160(3)) is that the topography of Lot 12 and Lot 13 directs any reasonable development of those properties to be as requested by Ford. HE decision 7/10/14 agrees with the administrative official that public health, safety and welfare will be maintained even with the granting of the setbacks. (HE decision 7/10/14).
19. The weight of the testimony in the current hearing is that a large percentage of the homes in the Holiday Hideaway Plat take advantage of the "view" height difference. That trait is common throughout the Plat. It would not confer a special privilege upon Ford to grant the requested setbacks and development plans.
20. PDS finds compatibility between SCC 14.18.700 (Aggregation) and SCC 14.16.850 (Lot Certification). Under these facts PDS has found that lot aggregation through the BLA process is appropriate under the requirements of SCC.
21. The claim that the aggregation of Lots 12 and 13 violates critical area requirements of the SCC is without factual basis.
22. Plat restriction 1 requires that each lot contain 7,200 square feet (both Lot 12 and Lot 13 comply) and that the lot contain greater than 60 feet in width at the building setback lines (Lot 12 and Lot 13 comply).
23. Plat restriction 2 provides that there are no setbacks from a private roadway easement, which is what Decatur Place is. The uncontroverted evidence is that there are no violations of any plat restrictions.

24. Any claim of violation of a “developer agreement” entered subsequently to the recording of the plat is not sustained by the evidence and is not relevant to the issues in this case. HE rule 1.11(b).
25. A prior factual determination concerning reasonable use of the Ford property was not changed by the BoCC remand and is not properly an issue in this case.
26. There is no credible evidence in the record that any restrictions against a single family residence exist in the Plat of Holiday Hideaway. Butler’s claim of “camping” usage of Lots 12 and 13 is without basis.
27. Butler has failed to show that PDS has an inviolate policy for BLA when an existing easement is part of the property.
28. Butler has failed to produce proof under the clearly erroneous test (or any test) that Ford has received special privileges.
29. Motives of any of the parties, PDS, Butler and/or Ford, are neither material nor relevant to any factual issue.
30. Any conclusion herein which may be deemed a finding is hereby adopted as such.

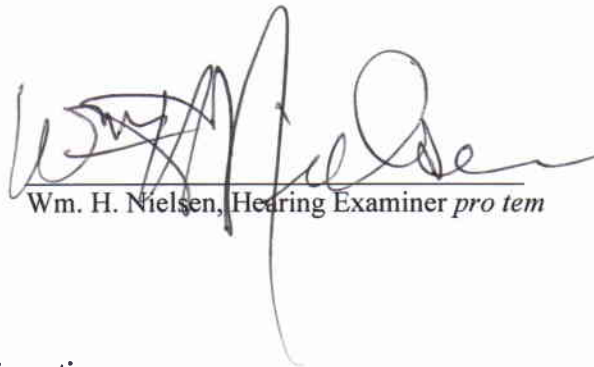
#### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over the parties and subject matter of this appeal.
2. The BoCC has ruled in the remand resolution that the general variance criteria of SCC 14.10 apply in addition to the specific criteria set forth in an administrative setback determination. While it is something of a mystery how the BoCC reached that determination after viewing the public hearings, it is the written resolution that determines the scope of this remand hearing.
3. Ford’s claims that issues were not presented in a notice of appeal are untimely. Those claims should have been made either at the last HE hearing or at the BoCC hearing on September 9, 2014.
4. The provisions of RCW36.70.B.170 do not relate to this case. Likewise Butler’s argument that the Growth Management Act applies is not legally sufficient.
5. The Butler “demand” for submitting further evidence after the hearing, is not legally sufficient particularly since Butler voluntarily absented himself from the January 7, 2015 hearing.
6. The directive from the remand resolution included further fact finding on the issue of general variance criteria and plat restrictions. Butler has failed to sustain his burden of proof to show any factual violations of the general variance criteria and failed to show any restrictions on the face of the plat that would negate the PDS determination found sufficient in the July 10, 2014 HE order.
7. The PDS determinations which were found compliant with SCC in the July 10, 2014 HE order (with the BLA exception) are affirmed.
8. Any findings herein which may be deemed a conclusion is hereby adopted as such.

**DECISION**

All the appeals from Tom Butler and Linda Lewis are denied.

**DONE**, this 4<sup>th</sup> day of February, 2015



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

Transmitted to the Parties: February 4, 2015

See Page 1, Notice of Decision, for Appeal Information.