

**SKAGIT COUNTY HEARING EXAMINER  
STATE OF WASHINGTON**

In the Matter of:

JOE ZENDER & SONS, INC.

Applicant,

Preliminary Plat Application.

PL07-0240

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER**

This matter having come regularly before the Skagit County Hearing Examiner for a public hearing on November 17, 2010 under an application filed with the Planning & Development Services Department by the applicant, Joe Zender & Sons, Inc.

**PROJECT DESCRIPTION:** Applicant is seeking preliminary plat approval of the Long CaRD land division for the Plat of Tranquil Estates. The project proposal includes the creation of eight (8) single family residential lots, along with designated open space associated with one of the lots (lot #6), through the Conservation and Reserve Development (CaRD) land division process.

**SITE DESCRIPTION:** The subject property is 41.39 acres in size located in the Alger area, off of the end of Able Lane, northwest of Alger - Cain Lake Road. The property consists of existing trees and brush, having been logged in 1997, and contains slopes from 0 to 5% on the eastern portion which slopes down towards the west. The site contains several delineated wetlands as well as a Type 3 stream (Silver Creek), running north to south along the western portion of the property, a Type 4 stream located along the easterly portion of the property, and a Type 5 stream with associated wetlands located in the middle of the parent parcel. All critical areas have been identified and delineated and the ground and surface water flow path of travel from the site is to the south west.

**PROCESSING:** A Notice of Development Application was posted on the subject property, published in a newspaper of general circulation on May 17, 2007, and mailed to all of the adjacent property owners within 300 feet of the subject property lines as required by SCC Section 14.06.150 (*Exhibit #4*). The Notice of Development included a twenty-one (21) day comment period which ended on June 7, 2007. There were five (5) public comment letters received during the comment period (*Exhibit #5*). Per SCC 14.06.050(1)(a)(iv), long subdivisions of fewer than 9 lots, tracts or parcels are reviewed as a Level I administrative review process unless a public hearing has been requested pursuant to SCC 14.06.110(15), in which case they shall be processed as a Level III-HE decision. A comment letter was received requesting a public hearing, therefore, the Preliminary Plat application is being reviewed as a Level III Hearing Examiner pre-decision requiring an open record public hearing before the Skagit County Hearing Examiner, for which the Hearing Examiners action is a recommendation to the Board of County Commissioners.

## FINDINGS OF FACT

1. **ZONING/COMPREHENSIVE PLAN:** The proposed project is located within the Rural Reserve (RRv) zoning/comprehensive plan designated area as indicated in the Skagit County Comprehensive Plan. A letter of completeness was not issued and the application was determined to be complete for vesting purposes on April 18, 2007.
2. The surrounding area is rural and residential in nature and is designated as Rural Reserve (RRv) and Rural Resource (RRc). The area consists of a mix of parcel sizes. There are parcels of similar size, and larger, located immediately to the north, south, and west with surrounding tracts of five (5) acres and smaller scattered around the area along Alger Cain Lake Road, Butler Creek Road, Silver Creek Drive and associated spur lanes.
3. **STATE ENVIRONMENTAL POLICY ACT.** A Mitigated Determination of Nonsignificance (MDNS) was issued and published on July 22, 2010 becoming affective following a fifteen (15) day comment period and a fourteen (14) day appeal period which ended on August 20, 2010. No appeals were received and the conditions were placed on the threshold determination (MDNS).
4. **FLOOD AREA REVIEW.** A portion of the parent parcel is located within a designated Zone A flood hazard area along Silver Creek, however, the portion of the property where the building sites (lots) will be located is not located within a designated flood hazard area identified on FEMA on Flood Insurance Rate Map (FIRM) panel number 530151 0050 C with the effective date of January 3, 1985.
5. **CRITICAL AREA REVIEW:** The subject parcel was reviewed with the respect to the Skagit County Critical Areas Ordinance, SCC 14.24 of the Skagit County Code. After review Critical Areas staff indicated that the review items had been addressed and recommended approval of the preliminary plat.
6. **PROJECT REVIEW:** The application was circulated to Skagit County Public Works, Planning and Development Services Environmental Health Unit (Water Resources and Septic review), Planning and Development Services Critical Area staff, the Skagit County Fire Marshal, and the Skagit County Treasurer for review. Based on all comments received, and review by Planning staff, a list of requirements was compiled into a “status letter” which identified several items that will need to be addressed prior to final plat approval in addition to the requirements outlined within RCW 58.17 and Skagit County Code section 14.18.
7. RCW 58.17.110(2)(a) requires specific findings relating to adequate provisions for public health, safety, and general welfare and for such open spaces, drainage ways, street or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning

features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. The following are staff findings (abbreviated form) regarding those statutory issues outlined in the above State Statute and are adopted by the Hearing Examiner:

**A. Public Health, Safety and General Welfare:**

It appears the proposed plat has met the minimum requirements relating to on-site sewage disposal. Water Resources had indicated that all water related requirements have been met.

**B. Open Spaces**

The applicant has proposed an eight (8) lot single family residential CaRD (Conservation and Reserve Development) Land Division on approximately 41.39 acres. The proposed lots are all one acre in size comprising a total of approximately eight acres of clustered development located along the northeasterly portion of the property, with the remaining property (approximately 33 acres) left as open space associated with proposed lot #6 and placed in an open space designation per SCC 14.18.310(5) - (Open Space Rural Open – Os-RO) along with three Protected Critical Area (PCA) tracts.

**C. Drainage Ways**

Storm drainage and access easements will be provided along with the stormwater facilities. All lots in the development are subject to the drainage report and conditions therein including any maintenance plan requirements for all drainage facilities as required detailing the nature and frequency of required maintenance.

**D. Streets or roads, alleys and other public ways, transit stops:**

The proposed land division will be accessed by a private roadway off of the end of the County maintained portion of Able Lane. A 50 foot access easement has been provided across adjacent property owned by Washington State Department of Transportation. Additionally, a request was made to allow the access roadway to remain as a private road and that request was granted by Public Works. Lot #4 will have a 20 foot wide access easement across Lot #3. All other lots will have frontage along the private road. The roadway is to be built to County Road standards with a road maintenance agreement in place prior to final plat approval. No transit stops are located within the vicinity.

**E. Potable Water Supplies**

The proposed lots will be supplied water by individual drilled wells. Two wells have been drilled on the property, one on proposed Lot #7 and one on proposed Lot #3 demonstrating adequate water quality and quantity. All water resource related issues have been approved.

**F. Sanitary Wastes**

The proposed lots will utilize individual on-site septic systems. Soil site

evaluations have been completed which demonstrated approved soils were available for all proposed lots.

**G. Parks and Recreation, playground**

Skagit County Code section 14.18.000(5)(e)<sup>1</sup> “Parkland and facilities” states the developer shall either provide parkland and facilities within the land division in accordance with the standards in the Skagit County Comprehensive Park and Recreation Plan or a fee in lieu of required land and/or facilities. Even though the applicant is providing approximately 33 acres of open space per SCC 14.18, a voluntary mitigation agreement with Skagit County Parks shall be set up to compensate for the increase in parks and recreation/playground use.

**H. Schools and Schoolgrounds**

The proposal is located within the Burlington-Edison School District. The Burlington-Edison School District has adopted a Capital Facilities Plan that includes calculations relating to the impact of new housing on the District. Skagit County has adopted the Capital Facilities Plan as a portion of the County’s Comprehensive Plan. Mitigation of the school impacts will be made by requiring the lot owners to contribute fees in the amount included in the School’s CFP at the time of issuance of a building permit.

**I. Public Use and Interest**

This proposal is not contrary to the public use or interest of the area. The proposed lot locations are designated as Rural Reserve (RRv) with a density requirement of one home per 10 acres, unless the land is divided through the use of the CaRD land division, then smaller lots will be allowed as a density of 2 lots per 10 acres (or 1 per 5 acres). The CaRD land division allows for building lots or envelopes that are much smaller than typical of the zone, leaving open space for among other things the continuity of ecological functions characteristic of the property.

- 8. The proposal, with the recommended conditions, meets the minimum preliminary subdivision requirements outlined within Skagit County Code section 14.18.100.

**CONCLUSIONS OF LAW**

- 1. The Hearing Examiner has jurisdiction over the subject matter of this application and has authority to make a decision.
- 2. The following are applicable policies from the Skagit County Comprehensive Plan relating to the proposed preliminary plat:

**Chapter 4 Land Use Element**  
**Land Division**

*Goal D: To develop innovative techniques that create land use patterns that*

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<sup>1</sup> Now SCC 14.18.000)5)(f)

*provide for greater efficiency and flexibility of land use, housing diversity, natural resource land conservation, critical area protection, maintenance of rural character and lifestyles and the retention of open space benefits.*

*Objective 3: To help retain the rural landscape, character, and lifestyle; To protect critical areas by transferring development potential from the critical area portion of a site to a non-critical area portion of a site; To create development patterns that provide for greater efficiency and flexibility for current and future land use; housing diversity; natural resource land and critical area conservation and protection; retention of open space; and provide incentives for utilizing CaRD land division*

***Policy 4D-3.2*** *The intent of a CaRD land division is to achieve some or all of the following benefits:*

*(a) Flexibility in site development which may result in more compact clustered lots or environmentally sound use of the land, while assuring compatible development and maintaining the county's rural character.*

*(c) Provides for more very low, low and moderate cost housing encouraged by reducing site development costs and allowing more intense use of buildable areas.*

*(f) Large tracts of open space land held for recreation, natural resource management, and protection of significant cultural resources and critical areas.*

***Policy 4D-3.5*** *CaRD land divisions should be encouraged where any of the following criteria exist:*

*(a) existing lots, tracts, or parcels of land exceeding 10 acres in size;*

*(b) the land to be developed, or any part of it, is within 500 feet of designated natural resource land or identified critical areas;*

*(d) development will not require extension of urban services.*

***Policy 4D-3.8*** *When CaRD land divisions are approved for Long CaRDs their conservation easement or conditions/covenants/restrictions (CCRs) shall be in place for a specified period of time.*

*(a) Certain identified critical areas shall be set-aside as a Protected Critical Areas (PCAs) and other may be placed into Open Space Preservation Areas (OSPAs).*

## **DECISION AND RECOMMENDATION**

The Hearing Examiner now recommends **approval** of the Preliminary Plat Application with the following conditions which shall be completed prior to final plat approval:

1. The applicant shall submit a corrected PCAE agreement for review and approval. Under section #2 of the PCA, the first Skagit County Code cite listed shall be changed to read SCC 14.24.**070** as opposed to SCC 14.24.100.
2. The applicant shall comply with the conditions outlined within the SEPA threshold determination (MDNS) published on September 23, 2010. Conditions are outlined within Departmental Finding number 3 (*Exhibit #15*).

3. Road name sign must be installed on the private road in accordance with Skagit County Road Standards.
4. Prior to starting road construction, and in accordance with Skagit County Road Standards Section 12.09, the applicant must post one or more signs showing both the names or business names of both the applicant and the project engineer as well as contact telephone numbers for each.
5. Section 12 of the Skagit County Road Standards manual mandates that the project engineer certify that all roadway and drainage improvements have been constructed in accordance with the approved construction plans.
6. In accordance with 14.32.080(10) of the Skagit County Code, the applicant must provide drainage easements for all stormwater and drainage conveyance systems that are not located in public rights-of-way or tracts. Provide easement for drainage facilities shown on BP06-1298 construction plans that cross proposed lots 5 and 6.
7. In accordance with 14.32.100 (3) (a) of the Skagit County Code, the applicant must provide a Maintenance Plan for all stormwater and drainage conveyance systems.
8. The applicant has received approval for alternative design to design, construct and maintain the access road as a private road. (March 7, 2007 Sheridan letter – *Exhibit #6*). All road construction, per plans in approved Grading Permit BP06-1298 shall be completed prior to final plat approval. Inspections by third-party and County inspectors required.
9. The applicant shall provide a road maintenance agreement that includes all users of the private road.
10. The parcel numbers need to be added to the first page of the PCA.
11. In accordance with Section 14.18.200(4)(d) of the Skagit County Code, the lot corners must be set prior to final plat approval.
12. The applicant shall show compliance with SCC 14.18.200 prior to final approval. Please refer to that section of code to verify that all items have been addressed for the final subdivision requirements.
13. Once the address range is assigned it will be forwarded to Azimuth Northwest Inc. and shall be shown on the face of the plat map. Additionally, a road name will need to be selected and placed on the face of the plat map prior to final approval. The approved road name choices are “**Freedom Lane**” or “**Comfort Lane**.”
14. All standard plat notes and appropriate departmental signoffs are required. Please ensure that there are the appropriate number of acknowledgement blocks for all parties to the land division and County staff including the appropriate signature line for the Auditor’s Office.
15. Copies of any proposed covenants shall be provided for review. Also, provide any copies of Homeowners association agreements and/or Road Maintenance Agreements for review prior to final approval.
16. Final plat fees of \$200 per lot will be assessed at the time of Final Plat submittal.
17. If any portion of the parent parcel is in an Open Space taxation program with the Skagit County Assessor’s Office, please contact them at (360) 336-9370 prior to proceeding with the land division.

18. The applicant shall ensure that the plat map appropriately shows and labels all utility easements on the face of the plat map.
19. A set of stamped envelopes addressed to all neighboring property owners and occupants within 300 feet of the subject property (with appropriate postage) will be required for the final plat submittal. Please also provide a list of those individuals.
20. The applicant shall pay the Parks and Recreation fee to Skagit County Parks and Recreation prior to final approval and provide proof of receipt. This impact fee will be noted on the face of the final plat map and addressed in the CC & R's for the project. This voluntary mitigation shall be in the amount of \$100/residential lot.
21. The final landscape plan shall be approved and all required landscaping shall be installed (**if other than existing vegetation**) prior to final approval.
22. Prior to final approval all Soil evaluations shall be reviewed and approved and shown in the correct location on the final plat map. Please show the location of the new soil logs for Lot #3 and show the correct location of the old soil logs for Lot #3 (2 of which are located within the WPZ).
23. Additional plat notes may be required prior to final approval.
24. All fees shall be paid prior to final approval.
25. Final plat approval shall comply with any requirements of the Skagit County Fire Marshal. The Long CaRD requires Fire Flow per the Coordinated Water System Plan table 4.3 (500 GPM for 30 minutes or 15,000 gallons of storage).
26. Driveways that cross one lot to access another need to be constructed prior to final plat approval.
27. The appropriate property taxes shall be paid prior to final approval.
28. A nonprofit maintenance corporation or home owners' association with the lot owners as members shall be established for all plats that provide access for two (2) or more lots from the plat road. The homeowners agreement will be recorded and auditors file number will be shown on the face of the short plat.
29. Additional conditions or requirements may be conditioned for final plat approval as a result of final plat review once submitted.
30. Per Skagit County Code section 14.18.100(6)(b), the preliminary plat shall be valid for a period of 5 years from the date of preliminary approval by Skagit County.

Dated this 30th day of November, 2010.

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C. Thomas Moser  
Skagit County Hearing Examiner, Pro Tem