

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Glen and Karen Nickel
PO Box 775
Concrete, WA 98238

File No: PL08-0330

Request: Modification of Plat
(Lekcinton Acres – PL03-0319)

Location: South side of the South Skagit Highway, southeast of the intersection of Cape Horn Road and South Skagit Highway, within SW1/4NE1/4 and a portion of E1/2NE1/4 Sec. 18, T35N, R8E, W.M.

Land Use Designation: Rural-Resource-NRL

Summary of Proposal: To remove the building envelopes on residential lots. The recorded plat shows building envelopes of 80.25 feet by 140 feet. With the change plat map would not restrict building in area 132.5 feet by 160 feet on the 10 one-acre lots. The community bylaws would address additional setbacks.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on September 10, 2008.

Recommendation: The application should be approved, subject to conditions.

FINDINGS OF FACT

1. Glen and Karen Nickel seek to modify the Plat of Lekcinton Acres (PL03-0319) to expand the building envelopes as shown on the recorded plat map.
2. The final plat was recorded on September 19, 2005, showing the division of approximately 111 acres into an eleven lots through the CaRD process. The plat includes 10 one-acre lots and one 101 acre lot. The large lot has a development right within a defined one-acre area and the rest is reserved as open space (OSPA). An internal private plat road (Lekcin Lane), onsite sewage disposal systems, and individual water wells serve the residential lots.
3. The property is located south of the South Skagit Highway, southeast of the intersection of Cape Horn Road and South Skagit Highway. It lies with SW1/4NE1/4 and a portion of the E1/2NE1/4, Sec. 18, T35N, R8E, W.M. The property is zone Rural Resource-Natural Resource Land. The property immediately to the west also has NRL zoning.
4. Building Lots 1-10 are located in a north-south tier fronting on Lekcin Lane which occupies a 60 foot-wide strip along the west boundary of the plat. The north property line along the South Skagit Highway is separated from the first lot by about 280 feet. Of the 11 lots, six have been developed, three are vacant and two (including the large lot) are owned by the developer.
5. The plat map recorded in 2005 shows building envelopes (80.25' x 140') on the residential lots that reflect front, rear and side setbacks. These building setbacks were not required by the regulations in effect then or now. SCC 14.18.310(8) contains the setback requirements for buildings within a CaRD. These standards include: (a) 20-foot setback from a public road, (b) 200-foot setback from adjacent NRL designated parcels, (c) fire separation pursuant to the Building Code.
6. The subject request is to change the setbacks on the plat map to reflect the minimum code requirements. The altered map does not show building envelopes and eliminates the typical setback drawing, shown on page 2 of the recorded map. Instead it shows only the 200 foot setback line from the adjoining NRL property to the west. No side or rear setbacks are shown. The public road setback is more than met by the position of the lots in relation to the South Skagit Highway.
7. This means that the plat map will not restrict building on Lots 1-10 in an area that measures 160 wide and 132.25 feet long. The one-acre residential set-aside on Lot 11 does not show any setback restrictions.
8. Note 8 of the recorded plat effectively reflects the provisions of the code. It states:

“No building setbacks are required in a Long Card except that fire separation may be required based on the UBC. Internal setbacks may be established by private covenant. A 200-foot setback for all buildings within the development shall be observed from adjacent NRL designated parcels.

The application states that the residents of the plat are requesting the removal of building envelopes to clarify Note 8. The application further advises that community bylaws (CC&R’s) will address the issue of required structure separation and will require 8-foot sideline setbacks for each of the 11 lots. An intention to fully comply with any fire code mandatory structure separation is also noted.

9. The application claims that it is submitted by all owners of Lots 1-11 of Lekcinton Acres. Such universal consent is not shown on this record, but it is clear that a majority of the owners support the modification request.

10. Owners of Lot 3, Tom and Karen Palinkas, wrote letters urging that building envelopes be retained so that eight-foot side setbacks could be enforced by the County, rather than making this an issue of covenant enforcement. The Palinkas stated, however, that they signed the amended plat.

11. The applicant Glen Nickel testified that a homeowner’s association has been formed and that CC&R setbacks have been discussed. There was no showing that any restrictive covenants have been recorded. Nevertheless, Nickel maintained that the Palinkas are not likely to experience a side setback problem. There was no public testimony at the hearing.

12. After submittal of the application, notice of the development and notice of the hearing were given as required by County Code. No issue regarding notice has been raised.

13. The revised plat map was routed to the health division for review because the adjusted building area includes more of the proposed well protection areas for the lots. They requested that the following information be added to the revised map:

(1) Amend plat note 5 to include the following notice for development activity in a public Well Protection Area: *“No development or activity shall take place within the Well Protection Area without prior approval from Cape Horn Water System, ID#11060, and Skagit County Health Department.”*

(2) Show the approximate location of the WPA for Cape Horn Water as it overlays the areas of Lots #1 to #3.

14. The Examiner finds that the proposed plat alteration will not be contrary to the public use and interest.

15. The Staff recommended approval of the request with the addition of the conditions regarding the public well.

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 proceeding. SCC 14.06.050. This application is being processed as a Level III-HE matter requiring final approval by the County Commissioners.

2. The request is exempt from the requirements of the State Environmental Policy Act.

3. SCC 14.18.200(8) provides that alterations of a final recorded subdivision shall be processed in accordance with RCW 58.17.215 through RCW 58.17.218 and shall comply with the regulations in effect at the time the alteration application was submitted.

4. RCW 58.17.215 and the County Code state that alternation applications shall contain the signatures of the majority of those persons having an ownership interest in the lots in the subdivision to be altered. The subject request complies with this standard.

5. No dedications, easements or assessments are involved in this plat alteration.

6. The Hearing Examiner concludes that the proposal, as conditioned, will consistent with the applicable provisions of Chapter 58.17 and Chapter 14.18 SCC.

7. Chapter 14.06 SCC has been amended to provide for Hearing Examiner approval of plats between 9 and 50 lots. SCC 14.06.050(1)(b)(vi). However, SCC 14.18.200(8)(c) states that an application for alteration of an approved final subdivision shall be processed as a Level III-HE permit. The Examiner suspects that the intention was to give him jurisdiction to make final decisions over plat alterations for plats between 9 and 50 lots. But, the Code does not say so, and still explicitly calls for Commissioner approval of all alterations. Therefore, the Examiner hereby makes a recommendation for approval to the Commissioners.

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

CONDITIONS

1. After approval of the alteration, the applicant shall produce a revised drawing (final plat milar) of the approved alteration of the final subdivision, to be processed in the same manner as required for final subdivisions under Chapter 14.18 SCC.

2. The revised drawing shall conform to the application herein, with the addition of amended plat note #5 and with the approximate location of the Well Protection Area for the Cape Horn Water System shown as it overlays the areas of Lots #1 and #3.

3. Plat note #5 shall be amended to contain the following language:

No development or activity shall take place within the Well Protection Area for the Cape Horn Water System without prior approval from the Cape Horn Water System, ID #11060, and Skagit County Public Health Department.

4. The applicants shall submit community bylaws to the Planning and Development Services prior to recording the revised plat. These bylaws shall show compliance with fire code mandatory structure separation. The bylaws shall be recorded with the plat alteration.

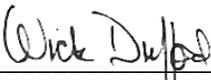
5. The final revised plat milar shall contain all of the required signature blocks and all other requirements of SCC 14.18.200.

6. Prior to recording the revised final plat map, all outstanding planning review fees shall be paid.

RECOMMENDATION

The Hearing Examiner recommends approval of the requested plat alteration, subject to the conditions set forth above.

DONE this 24th day of September, 2008.



Wick Dufford, Hearing Examiner