

BEFORE THE SKAGIT COUNTY HEARING EXAMINER
FINDINGS, CONCLUSIONS AND RECOMMENDATION

Applicant: TaDa, LLC, c/o Alfred Carlson
22304 State Route 9
Mount Vernon, WA 98274

Agent: John Semrau
Semrau Engineering & Surveying, PLLC
2118 Riverside Drive, Suite 208
Mount Vernon, WA 98273

File No: PL05-0216

Request: Preliminary Plat – Long CaRD (Madalyn Estates)

Location: West of Lake McMurray, north and south of State Route 9,
within a portion of the NW1/4 Sec. 25, T33N, R4E, W.M.

Parcel Nos: P121695, P17227, P124631, P123835

Land Use Designation: Rural Village Residential (9.96 acres) and Rural Reserve
(16.65 acres)

Summary of Proposal: Preliminary Plat for the division of 26.61 acres into 11
single-family residential lots, and two tracts using the
Conservation and Reserve Development (CaRD) process.
Nine lots, ranging in size from 0.25 to 0.48 acres in size
will be located south and east of SR 9. Two lots, each an
acre in size, will be located north of SR 9. Tract A, south
of the highway, will be a well field containing 1.20 acres.
Tract B will be a 20.16-acre area, north of the highway,
designated Open Space-Protected Area (OS-PA). A
private access for the lower lots will occupy 0.29 acres. The
drainfield area for the development will be located on
separate property to the northwest of the subdivision.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on January 9, 2008. Post-hearing comments of Jens
Brautaset and Alfred Carlson were added to the record. The
record closed on February 5, 2008.

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

FINDINGS OF FACT

1. TaDa. LLC (Alfred Carlson) seeks approval of a preliminary plat for the division of 26.61 acres into 11 residential lots, two tracts and a roadway. The developed area will comprise about 6.45 acres. Approximately 20.16 acres will be left in open space. The subdivision is called Madalyn Estates.

2. The property is located west of Lake McMurray, within a portion of NW1/4 Sec. 25, T33N, R4E, W.M. State Route 9 divides the property, proceeding westerly and curving south. Nine smaller residential lots will be clustered inside the curve, along with Tract A, a wellfield tract. These residential lots will vary from 0.25. to 0.48 acres in size. Tract A will take in 1.20 acres. North of the highway will be the 20.16 acre Open Space-Protected Area (Tract B) and two one-acre residential lots (Lots 10 and 11).

3. The topography rises by about 200 feet from the southern portion to the north. The southerly nine lots are just inland of a tier of waterfront lots on Lake McMurray. None of the subdivision, however, is within the shoreline jurisdiction. The southerly nine lots will be accessed from Willabelle Place an existing road that borders the interior of the waterfront lots. A small private access circle called Virginia Place will be built from Willabelle Place.

4. The two northerly lots will be located in the interior of the open space tract. They will be accessed from Valhalla Drive which runs westerly across the northern portion of the property.

5. In the past, the property has been primarily maintained as pasture for cattle, with scattered forest vegetation.

6. The property is within two different zoning designations. Rural Village Residential (RVR) covers 9.96 acres, including all 9 of the southerly lots and some area adjacent to the highway on the north. The northerly 16.65 acres, adjacent to Valhalla Drive are in Rural Reserve (RRv) zoning.

7. The residences will be served potable water by a private Group B system. According to a plat note, the system will be restricted from use for irrigation of landscaping or lawns. The source of the water will be a well or wells located in Tract A. The wells were successfully tested for safe yield. Well withdrawals will go to an 11,000 gallon storage tank. Water will be served by gravity.

8. The water system will be subject to a water user's agreement plus conditions in the plat's CC&R's. The system will be operated by the homeowners. The conservation provision of the plat note is intended to insure that the maximum water demand is kept below 5000 gallons per day. The use restriction translates to 454 gallons per day per service.

9. Skagit River System Cooperative expressed concern that use of the wellfield will draw on the water table of Lake McMurray with the ultimate possibility of reducing flows in the West Fork of Nookachamps Creek. The applicant's analysis shows that such water level or flow reduction impacts will not occur.

10. The residences will be served by individual septic systems. Effluent will be pumped to individual drainfields within a large community drainfield area located on separate property owned by the applicant. The drainfield property is located northwest of the subdivision property. Utility easements to the drainfield property will be provided. Maintenance will be provided by the homeowners.

11. An early version of the project called for sharing the drainfield used by Willabelle Place Estates. Concerns raised about this idea resulted in a shift of the Madalyn Estates community drainfield to a separate and more remote location.

12. A nitrate loading analysis for the proposed drainfield was conducted. It showed that the nitrate concentrations in the groundwater leaving the drainfield property will be below the Skagit County standard and not harmful. System owners will be required to sign and record a maintenance agreement binding them to have their systems maintained and tested annually.

13. A detailed drainage report has been submitted and reviewed by Public Works. The stormwater from Lots 1-9 will drain into the existing ditch and swale improvements built by the adjacent plat of Willabelle Place Estates and will then ultimately discharge to Lake McMurray. Stormwater from Lots 10 and 11 will be handled by dispersion into the open space tract. The applicant stated that relatively little impervious surface will be created by this project and that biofiltration will take care of the pollution potential. As a result, no detention facilities are needed. Impacts on Lake McMurray will be minimal.

14. A Protected Critical Area (PCA) easement is proposed for Tract B, the OS-PA tract, and for the portion of Tract A containing a Type 3 stream and its 100-foot riparian buffer. The PCA easement will contain a note stating that a Site Assessment encompassing 200 feet around any proposed activity within the OS-PA must be completed before that activity may occur. With this easement in place, the plat will achieve Critical Areas compliance.

15. The significant open space retained will be achieved by the clustering of the lower nine lots as contemplated by the CaRD provisions. The development on these lots will be screened from SR 9 by preserving existing perimeter vegetation and augmenting what's there with additional plantings.

16. As noted, access to Lots 1-9 will be via the existing Willabelle Place which connects to SR 9. Lots 2-6 will be accessed via the private roadway (Virginia Place) off of Willabelle Place. Lots 1 and 7 front on Willabelle Place. Lots 8 and 9 are corner lots fronting on both Virginia Place and Willabelle Place. Valhalla Drive is a private

roadway which extends north from SR 9 and then turns in a westerly direction along the northern boundary of the project property. Lots 10 and 11 will be reached via Valhalla Drive. The Washington State Department of Transportation has approved the access locations for the project. The new road name will be approved prior to final plat approval.

17. The interior subdivision road (Virginia Place) will be constructed to the standards of Figure B-2 of the Skagit County Roadway Standards. After some discussion, Public Works agreed to allow road construction to meet Figure B-1 of the Roadway Standards for the Valhalla Drive access to the northerly lots.

18. The developer shall provide a fee in lieu of providing parks and recreation facilities. Mitigation in the amount of \$100 per lot has been agreed to. Payment shall be made in connection with building permit applications.

19. The property is located within the Mount Vernon School District. The District has adopted a Capital Facilities Plan which 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 fees for school impacts shall be made at the time of building permit issuance for each lot.

20. The Rural Village Residential designation (here 9.96 acres) sets density at one home per acre on a public water system. The Rural Reserve designation (here 16.65 acres) sets density at one home per 10 acres with smaller lots allowed through use of the CaRD process. The proposal meets the Code's density requirements for a CaRD land division.

21. The application was reviewed by various County Departments. Their comments are reflected as conditions of approval.

22. Jens Brautaset owns 40 acres inland of the applicant's property and also served by Valhalla Drive. Part of the proposed sewer route to the community drainfield is in the road as it passes through Brautaset's property. While not objecting to the plat, Mr. Brautaset requested some changes in the road design. In addition he underscored the need for the future homeowners association to accept responsibility for repairing pipe failures and providing road maintenance on Valhalla Drive.

23. Alfred Carlson, the project proponent, met with Brautaset and responded to his comments. Carlson submitted a letter setting forth an agreement that by and large accommodates the Brautaset requests. Compliance with this agreement shall be a condition of approval. Other than input from the Brautaset, there was no other public comment.

24. Environmental review was performed pursuant to the State Environmental Policy Act (SEPA). On August 23, 2007, a Mitigated Determination of Non-

Significance (MDNS) was issued. The MDNS was not appealed. The following conditions were placed on the MDNS:

- a. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage Ordinance. Said measures shall remain in place until completion of the project.
- b. The applicant shall comply with all Northwest Clean Air Agency requirements.
- c. The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Drainage Ordinance.
- d. The applicant shall comply with the relevant provisions of 14.24 (Skagit County Critical Area Ordinance).
- e. The applicant shall comply with Fire Code Standards.
- f. The applicant shall be responsible for ensuring that all requirements of Skagit County Code 14.18 have been met.
- g. The applicant shall obtain an approved Access Connection Permit from the Washington State Department of Transportation (WSDOT) and comply with all WSDOT requirements.
- h. The applicant shall comply with all required mitigation measures outlined within the Hydro-geologists report, and any subsequent Addendums, to address nitrate issues.

25. With respect to a proposed subdivision, the State platting statute, at RCW 58.17.110(2), requires specific findings that:

Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts . . . and (b) the public use and interest will be served by the platting of such subdivision and dedication.

26. The foregoing findings show that the proposed plat will provide infrastructure sufficient to accommodate the impacts of development in the particular setting. The

proposal will provide adequate services for water supply, sewage disposal, and drainage control. The modest traffic generated will not exceed the capacity of surrounding roads. The development is located with the boundary of a Fire Protection District.

27. The project makes “such appropriate provisions” as are called for by RCW 58.17.110(2)(a). The public use and interest will be served by the plat.

28. 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. The application is a Level II application pursuant to SCC 14.06.050(1)(b)(vi).

2. The requirements of SEPA have been met.

3. The application requirements for a Long Subdivision have been met. SCC 14.18.100.

4. The proposal meets the purposes of the CaRD provisions. SCC 14.18.300. The proposal complies with the density and dimensional requirements for CaRD approval SCC 14.18.310. Lot clustering and screening requirements are satisfied. SCC 14.18.330.

5. The proposal, as conditioned, complies with the requirements of RCW 58.17.110 for preliminary plat approval.

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

CONDITIONS

1. The preliminary plat shall be developed as set forth in the application materials, except as the same may be modified by these conditions.

2. The applicant shall acquire all other permits required under local or state laws.

3. As proposed, a Protected Critical Area (PCA) is required for Tract B (OS-PA) and that portion of Tract A containing the Type 3 stream and 100-foot riparian buffer. The PCA easement shall contain a note that states a Site Assessment must be completed 200 feet around any proposed activity within the OS-PA before that activity may occur. (See 14.24.170 for PCA requirements.)

4. A plat note shall be added to reference the Auditor’s file number of the PCA.

5. The applicant shall comply with the conditions set forth in the SEPA threshold determination (MDNS) published on August 23, 2007. (See Finding 24 above.)

6. The interior subdivision road (Lots 1-9) shall be constructed to the standards of Figure B-2 of the Skagit County Road Standards. This includes a 24-foot wide driving surface consisting of 10 inches of gravel base, 2 inches of crushed surfacing top, and 2 inches of Class B asphalt. Drainage ditches may be required, depending in final roadway design.

7. Valhalla Drive serving Lots 10 and 11 shall be constructed to the standards of Figure B-1 of the Skagit County Road Standards. The agreement between Alfred Carlson and Jens Brautaset, as reflected in Carlson's response to Brautaset's suggestions (Exhibit 30), shall be implemented.

8. The applicant shall comply with all requirements of the Washington State Department of Transportation (WSDOT).

9. Prior to start of construction and after the Grading Permit (#BP07-0848) is approved, a pre-construction meeting shall be scheduled with Skagit County Department of Public Works. The applicant shall comply with all conditions of the grading approved grading Permit.

10. The applicant shall obtain approval of the road names. Road name signs shall be installed on the two plat roads. The northerly road name sign (Lots 10 and 11) must meet WSDOT requirements. The southerly road name sign (Lots 1-9) must meet County Road Standards.

11. Willabelle Place, Virginia Place and Valhalla Drive shall be shown on the plat map as private roads.

12. The applicant shall review and show the tangent and curve data on Valhalla Drive.

13. The applicant shall comply with the requirements of final drainage review.

14. Lot corners must be set in accordance with SCC 14.18.200(4)(d).

15. Prior to Final Plat approval, the applicant shall demonstrate compliance with all relevant provisions of SCC 14.18.200.

16. All standard plat notes shall be provided and appropriate departmental signoffs shall be obtained prior to Final Plat approval.

17. Once the address range is assigned, it shall be forwarded to Semrau Engineering and shall be shown on the face of the plat map.

18. Copies of proposed CC&R's, along with copies of any homeowners Association agreement and any other agreements relating to maintenance of roads, the water system and the sewage system shall be submitted to Planning and Development Services for review.

19. Final plat fees of \$100 per lot will be assessed at the time of Final Plat submittal.

20. A set of stamped envelopes addressed to all neighboring property owners within 300 feet of the subject property (with appropriate postage) shall be required for the Final Plat submittal.

21. The final landscape plan shall be approved and all required landscaping shall be installed prior to Final Plat approval. A plat note shall be placed on the face of the plat map referencing the approved final landscape plan and date of approval.

22. Additional plat notes may be required prior to Final Plat approval.

23. All fees shall be paid prior to Final Plat approval.

24. The applicant shall post one or more signs showing the names and business names of the applicant and the project engineer, as well as contact telephone numbers for each.

25. The water system name and State ID# shall be designated in the plat notes.

26. Prior to Final Plat approval, the water system shall be approved, and as-built drawings shall be submitted the Washington State Department of Health. Approval shall be shown by a Letter of Acceptance or water system approval from the DOH District Engineer.

27. To avoid the requirement for a water rights permit, the water system is approved only up to a maximum usage of 5000 gallons per day. The water users agreement or by-laws and plat notes shall inform users that the maximum daily water allocation per service connection shall be restricted to 454 gallons (*unless an alternative distribution methodology is established and documented*). The water users agreement or by-laws shall prescribe conservation measures, such as low-use water fixtures, landscaping with native vegetation, prohibition of outside watering, etc.

28. Prior to Final Plat approval the water distribution system shall be installed and stubbed to the property line of each parcel being served. Confirmation shall be

provided to Planning and Development Services by the Skagit County Health Department or the applicant's Engineer.

29. The 10.94-acre recharge area defined in the Site Assessment Report prepared by Geo-Engineers shall be shown on the face of the plat.

30. Per the recommendation of the applicant's Hydro-Geologist, water supply wells are prohibited within the defined recharge area. Plat notes and covenants shall cite this prohibition.

31. A plat note shall set forth: a) the method of sewage disposal (*e.g.*, individually owned Aerobic Treatment Units pumped to shared drainfields in a community disposal area); b) that Aerobic Treatment Units shall be installed at each residence to pre-treat sewage prior to its being pumped to the common drainfield for disposal; c) that the homeowner of each parcel shall record an Aerobic Treatment Unit maintenance contract on his/her property title.

32. Prior to Final Plat approval a sewage system operation and maintenance manual shall be produced and submitted.

33. A nonprofit maintenance corporation or homeowners association with the lot owners as members shall be established. The corporate articles or homeowners agreement shall be recorded and the auditors file number shall be shown on the face of the plat.

34. By-laws and CC&R's outlining the rights and responsibilities of any maintenance corporation or homeowners association shall be prepared in regard to maintenance of the community drainfield and other shared facilities. Signed user's agreements are recommended.

35. Depending upon the design criteria approved for the on-site sewage system, a plat note may be required limiting or restricting the future use of Accessory Dwelling Units.

36. A 2 inch HDPE line has been proposed from the gravity storage tank to supply pressure and flow for the NFPA Fire Sprinklers for Lots 10 and 11. A note shall be placed on the plat stating: "NFPA Residential Fire Sprinklers shall be provided on Lots 10 and 11 prior to obtaining a building permit."

37. Prior to Final Plat approval, the 2 inch HDPE lines to Lot 10 and 11 shall be installed, tested, and approved.

38. The following notes shall be placed on the face of the plat:

All private roads, easements, community utilities, and properties shall be owned and maintained by a separate corporate entity or by

the owners of property served by the facility and shall be kept in good repair. Adequate provisions shall be made for appropriate pro-rata contributions for such maintenance by any future land divisions that will also use the same private road.

In no case shall the County accept a dedication or any obligation as to any private road, street or alley until the same and all roads, streets or alleys connecting the same to the County road system have been brought to full conformity with current County Road Standards and a right-of-way deed has been transferred to and accepted by the County.

39. Prior to Final Plat approval, all property taxes shall be paid.

40. The legal description on the face of the plat map shall be reviewed and corrected as necessary.

41. Prior to Final Plat approval, the applicant shall provide a formal mechanism for the collection and distribution of the impact fee to be paid to Skagit County Parks and Recreation. This fee will be noted on the face of the final plat and addressed in the CC&R's for the project. The fee will be in the amount of \$100 per lot and shall be paid prior to each application for a building permit.

42. Mitigation of school impacts shall be made by lot owners in accordance with the Mount Vernon School District Capital Facilities Plan at the time of issuance of building permits.

43. Operation of equipment, construction activities, and daily operations shall comply with Chapter 173-60 WAC (Maximum Environmental Noise Levels), and shall comply with SCC 14.16.840 as to noise, vibration, and light. Applicable standards shall be met for ventilation for heating and cooling of any office, storage or garage buildings.

44. State regulations for water quality and ground water (Chapters 173-201A and 173-200 WAC) shall be met. Best management practices shall be used to prevent degradation of water quality from point or non-point sources.

45. Additional conditions or requirements may be included in Final Plat approval, as necessary to meet Code requirements.

46. Per SCC 14.18.100(6)(b), this preliminary plat shall be valid for a period of five years from date of approval thereof.

DECISION

The Preliminary Plat of Madalyn Estates, PL05-0216, should be approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: February 7, 2008

Date Transmitted to Applicant: February 7, 2008

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.