

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**  
**FINDINGS, CONCLUSIONS AND DECISION/RECOMMENDATION**

**Applicant:** Birdsview Estates LLC  
c/o Dan Madlung  
848 Bella Vista Lane  
Burlington WA 98233

**Surveyor:** Skagit Surveyors & Engineers  
806 Metcalf Street  
Sedro-Woolley, WA 98284

**File Nos:** PL96-0065, PL07-0931

**Requests:** Preliminary Plat – Level III  
Variance – Level I

**Location:** 8082 Pinelli Road, Birdsview, within a portion of Sec. 17,  
T35N, R7E, W.M.

**Parcel Nos:** P42916, P42915

**Land Use Designation:** Vested to Residential Reserve (February 9, 1996)

**Summary of Proposal:** To subdivide approximately 35 acres into 27 lots. The proposed residential lots range in size from 1 acre to 1.78 acres, as allowed by the zoning in force at the time of application. A variance is sought to allow the interior road right-of-way to be 50 feet wide instead of the 1996 requirement of 60 feet wide.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on February 27, 2008.

**Decision:** The variance is approved. The application for preliminary plat should be approved, subject to conditions.

## **FINDINGS OF FACT**

1. Birdsvie Estates LLC (Dan Madlung) seeks approval of a preliminary plat and a variance to create a 27 lot subdivision on approximately 35 acres of land.

2. The proposed project is located at 8082 Pinelli Road, Birdsvie, within a portion of Sec. 17, T35N, R7E, W.M. Pinelli Road forms the eastern boundary. The southern boundary abuts the abandoned Burlington Northern Railroad right-of-way (now a rural trail) parallel to State Route 20. The location is about 14 miles east of Sedro-Woolley. Currently the majority of the property is within Rural Reserve zoning. A small triangular piece in the southeast corner is designated Rural Intermediate. Electric transmission lines run in a 100-foot-wide easement east/west across the northern quarter of the site.

3. The property approximates a square in shape. It is situated in a narrow valley with mountains to the north and to the south. The northerly, westerly and central portions of the site are a flat forested bench. There is an existing residence, garage and several out-buildings on the bench near the southwest corner. The bench slopes off steeply to the south and east. A Category II forested wetland surrounding a Type 5 stream forms a critical area feature that proceeds diagonally across the property at the toe of the slope. A pasture lies near the southeast corner of the site.

4. As originally submitted, the application called for dividing the property into 29 one-plus-acre lots with individual septic systems and public water. However, because of the topography and the need to relocate an interior road, the number of lots proposed has been reduced to 27. The lots will range in size from one acre to 1.78 acres.

5. The internal road system will feature one main road (Fieldstone Court) entering the development from Pinelli Road at the northeast. Initially this road will parallel the north side of the power easement and then turn south terminating in a cul-de-sac at the existing residence. Fieldstone Court will serve the majority of the lots (Lots 1-16 & 24). A smaller interior road (Coyote Springs Lane), also ending in a cul-de-sac, will branch off of Fieldstone Court about 250 feet west of the entrance to the plat and will serve Lots 17-23. These proposed internal roads will become public roads and will be built to appropriate County road standards. Lots 25-27 will have a separate combined private driveway access from Pinelli Road. The paved driveway to the existing residence will be removed prior to final plat approval.

6. The proposed lots are to be served by individual on-site sewage disposal systems. Preliminary soils work has been done on several lots and indicates adequate soils. Full site evaluation will be needed for each lot before final plat approval.

7. The proposed lots will be served by Skagit County Water District #1. A letter from the water purveyor granting service to the initial 29 lots was submitted with the original application. The County Health Department has given preliminary approval to the water supply arrangement. A pre-existing non-conforming well located below the existing house will be used for irrigation purposes in the future. The house will be connected to the public water system. A nitrate study was recommended after an inventory of downstream wells was performed. The study concluded that the development will not cause an increase in nitrate concentrations in the aquifer in excess of the 5 mg/l standard.

8. Because of the closeness of SR 20 to the subject property, the Washington State Department of Transportation (WSDOT) requested a traffic impact study. As a result, a channelization plan for turns from the highway onto Pinelli Road was developed and approved.

9. A drainage report was prepared and a stormwater management strategy developed. Stormwater runoff will be provided by a series of infiltration trenches with each lot having a system to accommodate increased storm flows generated by new impervious surfaces. Runoff from the roadways will be accommodated in infiltration trenches located on both sides of the roadways.

10. The plat will be required to meet the fire flow requirements of the Coordinated Water System Plan (CWSP). The applicant provided a letter from the water purveyor showing that there is enough pressure to meet the CWSP requirements.

11. The wetland and its 100-foot buffer were professionally delineated. Buffer averaging was allowed. As a result, approximately 7.5 acres will be placed within a Protected Critical Area (PCA) adjacent to Lots 11 through 27. The Preliminary Plat submitted shows the PCA as a series of tracts. The plat design, in effect, conforms the project to current critical area requirements.

12. A geotechnical site assessment report showed slopes geologically hazardous areas (slopes exceeding 40%) requiring a 30-foot setback from the slope top and toe. Development of Lots 6 and 10 is subject to such a setback.

13. The application was deemed complete on February 9, 1996. At that time the Residential Reserve zoning classification applied to the property. The Eastern District Comprehensive Plan designation in effect then was Rural Residential.

14. The Staff Report recites the history of why certain subdivision applications (including the subject application) were held in abeyance pending the outcome of litigation. The Staff Report is by this reference incorporated herein as though fully set forth.

15. Sometime after submittal of the initial application, the original property owner sold this property and the subject application to the current applicant. In February of 2005, Planning and Development Services (Exhibit 7) clarified that such applications are vested under the subdivision standards, including minimum lot requirements, in place at the time of submittal. Thus, this preliminary plat request (PL96-0065) is being processed under the prior standards.

16. The practical consequence of this is largely with respect to lot size and density. The environmental requirements instituted since 1996 will be complied with.

17. The subject property is located adjacent to designated natural resource land. Although at the time the application was submitted, the natural resource section of the Code had not been adopted, the applicant has agreed to comply with the provisions of SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.

18. On June 28, 2007, a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued by the County on this proposal. The purpose of an MDNS is to impose conditions that will reduce the environmental impact of a project to below the level of significance. The MDNS here was not appealed.

19. The application was submitted prior to the adoption of the Critical Areas Ordinance (CAO) in the County. However, environmental impact analysis is based on present real world conditions. Compliance with the CAO generally represents mitigation of environmental effects and thus may be required through SEPA. The applicant is meeting the mandates of the CAO through its project design and is effectively required to do so by conditions included in the MDNS.

20. The conditions imposed by the MDNS are as follows:

(1) 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/Erosion/Sedimentation Control Ordinance. Said measures shall remain in place until completion of the project.

(2) The applicant shall be required to schedule a preconstruction meeting with Public Works prior to the start of road construction.

(3) The applicant shall comply with Northwest Air Pollution Authority requirements.

(4) The applicant shall provide a formal mechanism for the collection and distribution of the proposed mitigation for Skagit County Park and Recreation fees prior to final plat approval.

(5) The plat will be required to meet the fire flow requirements of the Coordinated Water System Plan (CWSP). The water system is to be installed prior to final Plat approval.

(6) Operation of equipment/construction and daily operations shall comply with Maximum Environmental Noise Levels, Chapter 173-60 WAC, and address noise and vibration limitations, and SCC 14.16.840 for light and noise conditions.

(7) Washington state WAC's 173-201A and 173-200 shall be complied with, as required to address surface water quality issues and ground water issues. Best management practices shall be utilized to prevent interference with and/or degradation of water quality. There shall be no maintenance of vehicles or equipment on the property.

(8) All critical areas and buffers shall comply with Protective Critical Area Standards per Skagit County Code 14.06.145(1) and 14.18.310(5)(a).

(9) Skidder, tractor, cat and/or shovel yarding shall be prohibited at times of high soil moisture. Skidding shall stop if soil rutting exceeds 10 inches in depth.

(10) The public right-of-way shall be kept clean. Tracking of mud and debris off site shall not be allowed.

(11) No harvest, road construction or any development activities shall occur on or within 100 feet of the wetland and streams on the subject site.

(12) Prior to final plat approval, the intersection of SR 20/Pinelli Road will need to be completed and approved by WSDOT.

(13) The applicant will adhere to the recommendations of the Aquifer Recharge Assessment and Nitrate Evaluation Report prepared by Earthworks Environmental Inc., dated April 2, 2007.

21. The application was routed to appropriate County departments for review. Their comments, to the extent not already complied with, are reflected in conditions of approval,

22. At the time of plat application, the minimum road right-of-way width was 60 feet. Under today's requirements, the minimum right-of-way width is 50 feet. On

December 3, 2007, the applicant requested a variance to have the right-of-way width reduced to current requirements. The Public Works Department recommends approval.

23. If granted the variance will, in fact, make little difference spatially. In 1996 stormwater facilities, such as infiltration trenches, were allowed within the right-of-way. Under current standards, such facilities must be placed on private land outside of the road right-of-way. Based on a revised design, all stormwater control and treatment facilities for this project will now run parallel to the road right-of-way within 10-foot utility easements reserved on the sides of roads.

24. Because of the wetland and steep slope features of the property, the main access road must be located in the northern part of the property. There is, as noted, a 100-foot-wide PSE easement for power transmission that runs across the northern quarter of the property. The road right-of-way cannot share the power easement. As a result, it must, in part, run parallel to it. The topography and the power easement combine to impose a physical constraint on the width of the road right-of-way.

25. The Staff Report analyzes the variance application in light of the Code criteria for a variance (See SCC 14.10.030(2)) and concludes that the request meets the criteria. The Hearing Examiner concurs with this analysis and adopts the same.

26. The reasons set forth in the variance application justify the granting of the variance. The effect is merely to bring the development into harmony with the present requirements of the Code. The variance is the minimum variance that will make possible the reasonable use of the land. Granting the variance will be in harmony with the general purpose and intent of the Unified Development Code and will not be injurious to the neighborhood or otherwise injurious to public welfare.

27. RCW 58.17.110(2) sets forth the criteria for approval of a preliminary plat. Under the statute adequate provisions must be made for public health, safety and welfare and for various items of project design and infrastructure. As applicable here, these include open space, drainage, roads, potable water, sanitary wastes, parks and recreation and schools. In addition there must be a finding that the public use and interest will be served by the platting of the subdivision.

28. The Staff Report analyzes the application in light of all of the relevant statutory categories and concludes that “adequate provisions” are made for each of them. Again, the Hearing Examiner concurs with this analysis and adopts the same. He also finds that the public use and interest will be served.

29. Appropriate notice was given of the preliminary plat application, the variance application, and the public hearing. One comment letter was received. There was no public testimony at the hearing.

30. The one comment letter – from Friends of Skagit County – asked if there is a time limit on the approval of applications, questioned the completeness of the original application on the matter of water availability, and asked about the applicability of the Critical Areas Ordinance.

31. No time limit on the processing of an application has been identified. The Staff report notes that the number of connections available to the Water District will be determined by the State Department of Health and State Department of Ecology. Protection of the critical areas on the property is accomplished by the design of the subdivision.

32. Any conclusions 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 proposal is a Level III application. SCC 14.18.100(3)(c).

2. The requirements of SEPA have been met.

3. The request for a reduction in road width meets the criteria for a variance. SCC 14.10.030.

4. The proposal will provide protection meeting critical areas standards.

5. The application meets the dimensional requirements of the former Rural Residential zone including lot size and density. The lots are capable of being developed for single-family residences without the necessity for variances. See former SCC 14.04.095.

6. The proposal, as conditioned, is consistent with the requirements of RCW 58.17.110 for preliminary plat approval.

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

### **CONDITIONS**

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

2. The applicant shall acquire all other permits required by local or state laws.
3. The final plat shall comply with the provisions of SCC 14.18.200, Chapter 58.17 RCW, and the conditions included in the MDNS (see Finding 20) prior to final approval.
4. All standard notes and appropriate departmental signoffs shall appear on the face of the plat. Dedications shall be shown on face of the plat.
5. The variance number and date of approval shall be shown on the final plat map.
6. Road names and address ranges within the subdivision shall be shown on the final plat map. The range information shall be forwarded to the surveyor upon issuance after the road has been approved and the lot corners verified.
7. A homeowners association shall be required for the maintenance of any property held in common by the lot purchasers.
8. If applicable, a copy of the protective deed covenants shall be submitted to Planning and Development Services (PDS).
9. The applicant shall comply with the provisions of SCC 14.16.870, Notification of Activities On or Adjacent to Designated Natural Resource lands.
10. Prior to final plat approval, full site evaluations for septic system operation for each lot shall be submitted to PDS.
11. All lots are required to have approved septic soils and reserve locations shown on the final plat map per SCC 12.48.240.
12. All side service lines to all lots are required to be installed and approved in writing by the land division engineer. As-built copies shall be sent to the County Health Department and PDS. Any bonding must be approved per SCC 12.48.190.
13. Prior to final approval, a copy of County Water District #1's professional engineer's "Construction Completion Report for Distribution Main Projects" [DOH document 331-147 (3/00)] for project completion must be submitted to the County Health Department.
14. Prior to final approval, proof that Lot 11 is disconnected from the prior non-conforming well and is connected to County Water District #1 shall be submitted to the County Health Department.

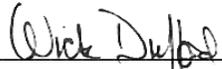
15. The roads shall be constructed in compliance with County Road Standards. The roads shall be classified as Rural Access Roads and the geometrics shall be in compliance with the appropriate ADT.
16. All plat roads require monumentation per section 7.05D of the County Road Standards manual.
17. Access locations (driveways) shall be shown along the plat road for each lot, including distance from lot lines.
18. Access to Lots 25, 26, and 27 shall be included in construction plans and shall be completed prior to final plat approval.
19. The applicant shall provide a drainage plan showing compliance the temporary erosion and sediment control provisions of Chapter 14.32 SCC, based on the submitted Drainage Report. This plan shall be included in the construction plans for the grading permit operation
20. A grading permit is required for the construction of roadway and drainage facilities. The permit application shall include engineered plans consisting of title sheet, plan and profile, erosion control plan, specifications and details.
21. Lot corners must be set.
22. The applicant shall submit lot closures that correspond with the lot lines as shown on the face of the plat.
23. Additional requirements for public roads include a third party inspector and submission of as-built plans.
24. Road name signs shall be installed in accordance with County Road Standards.
25. Per County Road Standards Section 12.09, prior to starting road construction, the applicant must post one or more signs showing the names or business names of the applicant and the project engineer as well as contact telephone numbers for each.
26. Maintenance and restoration surety is required in accordance with County Road Standards Section 14.02.
27. Per SCC 14.32.100(3), the applicant must provide a Maintenance Plan for all stormwater and drainage conveyance systems. The Plan shall be recorded with the final plat and noted on the face of the plat.

28. A plat note shall identify responsibility for maintenance of the drainage system and of the PCA.
29. Each critical area on the plat map shall be labeled as a separate tract or easement. Critical areas and associated buffers shall be designated as a Protected Critical Area (PCA).
30. The applicant shall submit a PCA easement agreement for review and approval.
31. The plat map shall indicate the location of PCA signs. Typically signs should be located every 200 feet or line of sight, whichever is closer.
32. A plat note shall be added to reference the auditor's file number for the PCA.
33. Prior to final plat approval, the water system to supply fire flow shall be installed.
34. Prior to final plat approval, the Washington State Department of Transportation (WSDOT) developer agreement must be prepared and executed, and any bonding must be submitted and approved.
35. Prior to final plat approval, the highway improvements identified with the WSDOT preliminary approval must be installed or bonded, if bonding is acceptable.
36. The fee to be paid to County Parks and Recreation shall be noted on the face of the final plat. The fee will be in the amount of \$100 per lot and shall be paid prior to each application for a building permit.
37. Mitigation of school impacts shall be made by lot owners in accordance with the Sedro-Woolley School District Capital Facilities Plan at the time of issuance of building permits.
38. Prior to final plat approval, property taxes for the current year for the current year along with advance taxes for the next year and any delinquent taxes shall be paid.
39. Prior to final plat submittal, all outstanding preliminary plat review fees shall be paid. Prior to final plat recording, any outstanding final plat review fees shall be paid.
40. Additional conditions or requirements may be included in the final plat approval, as necessary to meet Code requirements.
41. Per SCC 14.18.100(6)(b), this preliminary plat shall be valid for a period of five years from the date of approval thereof.

## **DECISION/RECOMMENDATION**

The requested variance relating to road width (PL07-0931) is approved. The preliminary plat of Birdsvew Estates (PL96-0065) should be approved, subject to the conditions set forth above.

DONE this 1<sup>st</sup> day of April, 2008.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant: April 1, 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.