

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: James Scott
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Agent: Young-Soo Kim
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2218 Old Highway 99 South
Mount Vernon, WA 98273

Request/File No: Preliminary Plat of Spring Breeze, PL08-0112

Location: 11489 Bayview-Edison Road, within a portion of SE1/4NE1/4
Sec. 31, T35N, R3E, W.M. Parcel #s P35083, P71206

Zoning: Rural Village Residential

Summary of Proposal: Division of approximately five acres into five residential lots of approximately one acre each. An internal private plat road, onsite sewage, and PUD water will serve the project.

SEPA Compliance: Mitigated Determination of Non-Significance (MDNS), dated December 4, 2008. No appeals.

Public Hearing: April 25, 2012. Public testimony from four persons. Planning and Development Services (PDS) recommended approval.

Decision/Date: Approval, subject to conditions; May 11, 2012.

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 by filing an appeal with PDS 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. James Scott (applicant) seeks approval of a Preliminary Plat for a residential subdivision to be known as "Spring Breeze."

2. The location is 11489 Bayview-Edison Road, within a portion of the SE1/4NE1/4 Sec. 31, T35N, R3E, W.M. Almost all of property is located on the north side of Bayview-Edison but there is a small area located on the south side of the road. The site is northwest of Marihugh Road and south of Josh Wilson Road. It is adjacent to the Bayview Mobile Home Park. The waters of Padilla Bay are nearby to the southwest.

3. Including road right-of-way, the site is 5+ acres in size. The parcel numbers are P35083 and P71206. The Comprehensive Plan designation for the property is Rural Village. The zoning is Rural Village Residential. The property is located within the Airport Environs Overlay (AEO) for the Port of Skagit County.

4. The "north" parcel which comprises the vast majority of the property lies in a north-south configuration and is roughly triangular, although there is a notch in the lower east boundary. The sliver of land in the "south" area is triangular in shape and lies in an east-west configuration. There are an existing residence, garage and shop in the southwest corner of the "north" parcel.

5. The upper portion of the site is forested. The lower portion is in pasture. The "north" parcel of the property slopes southerly towards Bayview-Edison Road.

6. The forested portion is part of a remnant of forest which continues northeast and northwest of the site. Other than this remnant, development has eliminated most of the forest in the neighborhood. Lands in the vicinity are devoted to agricultural and residential use.

7. The applicant proposes to divide the property into five one-acre residential lots. A portion of Lot 1 will incorporate the small area south of the Bayview-Edison Road. An internal private road (Bayside Lane) will run north-south through the property with two lots on either side and Lot 5 occupying the apex of the triangle at the north. The road will be paved and will be maintained by the homeowners.

8. The lots will be served by Public Utility District (PUD) water. Currently there is no operating water line fronting the proposed plat. However, there are a couple of lines in the area that the developer can hook into. He will need to provide an eight-inch ductile iron water pipeline extension. Also fire flow requirements will have to be met. A hydrant is planned for the intersection of the private road and Bayview-Edison Road.

9. An old well on the site will have to be decommissioned. The developer has provided a hydrogeo report.

10. The lots will be served by onsite septic systems. Site evaluations have now been approved for all septic locations. Initially, nearby property owners feared problems from

elevated water tables at the proposed septic sites. These concerns resulted in delay of the plat in order for the matter was to be reviewed during appropriately wet conditions. Upon re-evaluation, the Health Department required new septic locations for Lots 1 and 2. These locations were approved in April 2012.

11. The applicant submitted a professionally prepared Stormwater Analysis Report. The analysis found that downstream impacts due to the project will be insignificant, requiring only minor drainage mitigation. The onsite runoff will be collected and conveyed directly to a drainage ditch which discharges to Padilla Bay. There is no intervening private property. A biofiltration swale along the south line of Lot 2 is proposed to provide water quality control. The residences, when built, will incorporate either splash blocks or quarry spall pads for dispersion.

12. The property is not located within a flood hazard zone. No critical areas were found located within 200 feet of the proposed development. There are some adjacent designated Natural Resource lands.

13. A landscaping/screening plan has been submitted. The plan includes the planting of trees along Bayview-Edison Road.

14. The only open space requirement for this proposal is the 10% called for within the airport environs overlay (Safety Zone 6). The developer has designated the internal road as the open space needed.

15. In addition to the items of infrastructure to be provided, there are adequate public services in the vicinity to serve the proposed plat. The proposal is located within the boundaries of a Skagit County Fire Protection District.

16. A plat note has been proposed which will require a contribution per lot, assessed at the time of building permit application, for impacts on parks and recreation.

17. At present the Burlington-Edison School District has not asked the County to collect fees for impacts on schools. The possibility of such fees should be reflected in a plat note.

18. Environmental review was conducted pursuant to the State Environmental Policy Act (SEPA). As a result a Mitigated Determination of Non-Significance (MDNS) was entered on December 4, 2008. The MDNS was not appealed. The conditions imposed by the MDNS were:

(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 will be required to schedule a preconstruction meeting with Public Works prior to the start of construction.

- (3) The applicant shall comply with Northwest Air Pollution Authority requirements.
- (4) The development will be required to meet the fire flow requirements of the Coordinated Water System Plan (CWSP). The system is to be installed prior to final plat approval.
- (5) 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. This includes ventilation for safety, heating and cooling of any office and storage garage, preparation barns or recreational buildings, as well as operation of daily use and activities.
- (6) 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 and/or degradation of water quality. There shall be no maintenance of vehicles or equipment on the property.

19. The principal focus of concern about the proposed development, as expressed in writing and in testimony, is its potential effect on nesting by bald eagles. An eagle's nest was known to exist on nearby property and its location was confirmed by the State fish and wildlife authorities. Now neighbors, who have been observing eagles over the years, report that this nest has fallen down and that a new one has been built. The precise location of the new nest has not been determined, but the birds have continued to be observed and heard in the area.

20. In the time since this plat was proposed in 2008 and the present, the United States Fish and Wildlife Service (USFWS) has taken over the relevant program for protection of bald eagles from the State. Under the new regime, the radius for nest protection has been set at 660 feet. This would put the perimeter of the circle of protection just outside the subject property if the old nest site were used. However, the new nest may well be located closer to the applicant's property.

21. The 660-foot perimeter describes an area within which clearing, external construction, and landscaping must be restricted to times outside of the nesting season. The applicant testified that he has no intention of eliminating all the trees from the site. He said he believes that he can work with USFWS to provide a program that will adequately address eagle protection. The Examiner concurs and a condition requiring consultation with USFWS has been inserted.

22. The application was given notice as required by law. During the comment period, a public hearing was requested. The public hearing was likewise given appropriate notice.

23. The application was circulated among County departments. Their comments are reflected in conditions of approval

24. The Staff reviewed this application for compliance with the criteria for plat approval set forth in RCW 58.17.110(2). These include making "adequate provisions" for public health, safety and general welfare, for open spaces, for drainage, for streets, for potable water, for sanitary wastes, for parks and recreation, for schools and, in general, for the public use and interest. The Staff concluded that "adequate provisions" have been made for all the statutory items of concern. The Hearing Examiner concurs in this determination and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

25. 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 subject matter of this proceeding. SCC 14.06.050(1)(b). Because a public hearing was requested, this case is being processed as a Level II application.

2. The requirements of SEPA have been met.

3. The proposal, as conditioned, meets the requirements of the State platting statute by making "adequate provisions" for infrastructure and facilities. RCW 58.110(2)(a). The public use and interest will be served by the platting of the subdivision.

4. The proposed plat, as conditioned, meets applicable County regulations and complies with general requirements for the approval of plats.

5. Any finding here which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The activities conducted pursuant to this preliminary plat approval shall be consistent with the application materials, except as the same may be altered by these conditions.

2. Prior to final plat approval, the plat shall comply with the provisions of SCC 14.18.200, Chapter 58.17 RCW, and the conditions set forth in the MDNS dated December 4, 2008. (See Finding 18 above.)

3. All standard plat notes and appropriate departmental signoffs are required on the plat map.

4. Prior to final plat approval, the address range, including road name, will be shown on the plat map, along with the correct plat note.

5. Prior to final plat approval, per SCC 14.18.200(4)(d), the lot corners must be set.

6. Note 15 of the preliminary plat notes shall be changed on the final plat to read:

"This land division is located within the vicinity of an active bald eagle nest site. Development and/or land clearing activities shall comply with measures determined, after consultation with the United States Fish and Wildlife Service, to minimize risk to eagles."

7. Except as set forth in Condition 6 above, all plat notes shown on the approved preliminary plat shall be on the final plat map.

8. Any proposed articles of incorporation, bylaws or Covenants, Conditions and Restrictions (CC&Rs) shall be submitted to PDS for review.

9. Prior to final plat approval, all proposed landscaping shall be installed, or performance assurance bonding, as described in SCC 14.16.830(6)(g), shall be accomplished.

10. Prior to final plat approval, the landowner shall sign an Avigation Easement for any property within the Airport Environs Overlay (AEO). A note shall be added to the plat map referencing the Avigation Easement.

11. The applicant shall comply with the provisions of SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.

12. Prior to final plat approval, as-built plans for all roads and for drainage and water lines shall be approved by the appropriate department.

13. Prior to final plat approval, the private internal road shall be constructed in accordance with Figure B-1 of the Skagit County Road Standards. The road must be paved.

14. Prior to final plat approval, the proposed 37-foot wide ingress, egress and utility easement providing a driveway for Lots 3 and 5 shall be constructed to Figure C-18 of the Skagit County Road Standards.

15. A Grading permit shall be obtained prior to the construction of the roads and drainage facilities. Construction plans shall be prepared by a licensed civil engineer.

16. Prior to road construction, a preconstruction meeting shall be held with the Skagit County Department of Public Works.

17. Prior to road construction, per Skagit County Road Standards Section 12.09, the applicant shall post one or more signs showing the names or business names of both the applicant and the project engineer, as well as contact telephone numbers for each.

18. The applicant shall provide a right-of-way deed or appropriate dedication for any additional right-of-way for the County road.

19. A road name sign shall be installed at the entrance to the private road, in accordance with Skagit County Road Standards.

20. The applicant shall provide the County with a road maintenance agreement that includes all users of the private road.

21. An access permit shall be required for the connection to Bayview-Edison Road.

22. The applicant shall obtain an NPDES General Permit for Stormwater Discharge, if required by the State Department of Ecology. The applicant shall obtain all other Federal, State and local permits that may be required.

23. A bio-filtration swale shall be constructed along the southerly property line of Lot 2. Single family residences shall incorporate either splash blocks or quarry spall pads for dispersion methods.

24. Any driveway ditch slope greater than five percent shall be rock lined to prevent erosion.

25. PUD water line requirements for the installation of the eight-inch line shall be met. The water line installation shall be inspected, approved and accepted by PUD engineering and the PUD board prior to final plat approval, or appropriate bonding shall be obtained.

26. Any bonding proposal for water supply facilities shall be reviewed by the PUD before final bond acceptance. After acceptance a written confirmation of acceptance from the PUD shall be sent to PDS.

27. All side service lines to interior lots shall be installed, and a written approval by the land division engineer shall be submitted to PDS. If Lots 1 and 2 are not going to be metered off of Bayview-Edison Road, then those lines shall also be installed.

28. The dug well on Lot 2 shall be decommissioned per Chapter 173-160 WAC. A copy of the final decommissioning papers issued by the State Department of Ecology shall be provided to PDS. The Ecology decommissioning numbers shall be shown on plat face in the location of the dug well or by referencing the well location and decommissioning numbers in a plat note.

29. Easements for water lines and the approximate placement of the lines shall be shown on the final plat map.

30. For fire flow requirements, a system meeting Coordinated Water System Plan Table 4-3(5) shall be installed, inspected and approved, including a certification from the design engineer that the system was installed per the drawings and specifications.

31. The applicant shall arrange with the Skagit County Fire Marshal's office to have the fire flow system tested by having the appropriate Fire District flow it with their equipment. Final approval of the PUD will also be required.

32. A plat note shall be added advising buyers of lots that they may be subject to school impact fees at the time of building permit issuance should the Burlington Edison School District adopt such fees within its Capital Facilities Plan.

33. Property taxes for the current year along with advance taxes for the next year and any delinquent taxes shall be paid prior to final plat approval.

34. All outstanding preliminary plat review fees shall be paid within 30 days of receipt of the invoice.

35. The preliminary plat shall be valid for a period of seven (7) years from the date of signed resolution by the Board of County Commissioners.

DECISION

The Preliminary Plat of Spring Breeze (PL08-0112) is approved, subject to the conditions set forth above.

DONE, this 11th day of May, 2012



Wick Dufford, Hearing Examiner

Transmitted to Applicant on May 11, 2012

See Notice of Decision, Page 1 for Reconsideration and Appeal information.