

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Peter Steichen and Donald C. McRae
PO Box 149240
Seattle, WA 98109

Agent: Marianne Manville-Ailles
Skagit Surveyors & Engineers
806 Metcalf Street
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File No: PL96-0295

Request: Extension of Time for Preliminary Plat
(Moonlight Terrace)

Location: West side of Big Lake off Majestic Ridge Lane off West
Big Lake Boulevard, within a portion of W1/2 Sec.1,
T33N, R4E, W.M.

Land Use Designation: (1) Rural – at time of Preliminary Plat application
(2) Rural Reserve, Rural Resource Natural Resource Lands,
Rural Village Residential – currently

Summary of Proposal: The plat proposal received preliminary approval on
May 27, 2004. The development will divide
approximately 164.7 acres into 32 one-acre residential
lots. The request is to extend the preliminary plat
expiration date from May 27, 2009 to October 1, 2011.

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

Decision: A two-year extension is granted, allowing the final plat to
be submitted no later than May 27, 2011, subject to
conditions.

FINDINGS OF FACT

1. Peter J. Steichen and Donald C. McRae seek an extension of 2+ years to complete development of the preliminary plat of Moonlight Terrace and submit the project for final plat approval.
2. The subject property is approximately 164.7 acres in size. It is located on the hillside on the west side of Big Lake off of West Big Lake Boulevard, within a portion of the W1/2, Sec. 1, T33N, R4E., W.M.
3. The Preliminary Plat approval was issued to Port Gardner Timber, on May 27, 2004. The approval was for division of the property into 32 one-acre residential lots, with the remainder in protected open space. Sewage disposal was to be by individual septic systems. Water was to be supplied by Public Utility District #1.
4. Condition #21 of the approval stated that “the preliminary plat shall be valid for a period of five (5) years from the date of the Hearing Examiner’s approval.” The current approval, therefore, terminates on May 27, 2009. The application for the extension was filed June 6, 2008.
5. The application for Moonlight Terrace was filed by Shamrock Lands, Inc., and deemed completed as of August 27, 1996. The proposal vested to the Comprehensive Plan and zoning regulations in effect at that time. These regulations include former SCC 14.12.130.
6. SCC 14.12.130 provided for a submission of final plats within five years of preliminary plat approval, but explicitly allowed extensions of the five-year period by the Hearing Examiner “upon a showing of good cause.”
7. The property in question has changed ownership twice since the initial application was submitted. The current owners took possession in February of 2008. They have been diligently pursuing completion of the preliminary plat requirements since they took over.
8. At the time the current owners took possession the property was in violation of water quality requirements owing to the overflow of a detention pond and sediment discharge that reached Big Lake. Extensive site work has been performed during the 2008 construction season to attack this problem and it is close to being resolved. An erosion-control specialist has been hired and on-going monitoring will be performed.
9. Though a fill and grade permit (BP06-0048) was issued in April of 2006, progress on the site has been slow. The steep topography and wet conditions apparently present unusual difficulties. Moreover, the changes of ownership have not been conducive to a smooth development process. It is clear, however, that the present owners

(applicants here) are committed to the prosecution of the project as rapidly as possible. They have already expended considerable sums to this end.

10. The applicants say that the status of the project is equivalent to the completion of year one of normal subdivision construction. They estimate that two more summer construction seasons are needed to complete the project. They note that roads are not cut to final grade, no utilities have been installed, and the water system (including construction of a major reservoir) has not been started. They propose to do the major road work and underground utilities in 2009 and to complete the water system in 2010.

11. The applicants are particularly concerned with their inability to control the amount of time consumed by agency review (particularly of the proposed water system) before they can submit the final plat. Therefore, they feel that the extension should run to October 11, 2011.

12. At the hearing one citizen testified to concerns about the sediment problem and failures in the past to monitor the site adequately. In response, applicant McCrae stated that they think the sediment management facilities will work this year, that monitoring will be continuous, and that hydroseeding will be carried out to control erosion. Should it be necessary this winter, water will be pumped into trucks and hauled away to prevent overflows.

13. A neighbor, who said he did not oppose the extension, testified about the need to obtain an easement to his property.

14. Noting that the current regulations would not allow approval of the subject development, the Staff argued for a tighter schedule than proposed. They recommended that the final plat application be submitted not later than February 1, 2011 (with all preliminary conditions completed) and that the plat be recorded no later than May 27, 2011. Further, they sought a requirement for quarterly progress reports and a prohibition on further extensions.

15. The applicants opposed this schedule. They said the regulation makes no provision for a date of plat recording and pointed out that they have no control over how long it takes the County to approve their submitted final plat. Further they argued that the regulation does not provide for progress reports and does not state that further extensions cannot be granted.

16. Based on the entire record, the Hearing Examiner finds that "good cause" has been shown for an extension and that a two-year period would be reasonable.

17. 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.
2. Both the State Platting Statute and the Skagit County Code provide for vesting as of the date a completed application is filed. Vesting means that the application is not subject to any laws or regulations which become effective after the date of vesting. RCW 58.17.033, SCC 14.02.050.
3. In the case of preliminary plats, vesting is normally effective for only five years, because after that time the preliminary approval expires. RCW 58.17.140, SCC 14.18.100(6)(b). However, the State statute also says that nothing shall prevent a County from adopting by ordinance procedures which would allow “extensions of time.” RCW 58.17.140.
4. Former SCC 14.12.130(c)(ii) (effective when the original plat application was filed) explicitly allowed such extensions upon a showing of “good cause.” Subsequently, the County code was changed and the current version is silent on the question of extensions. The question here is whether former SCC 14.12.130(c)(ii) applies to the extension application in this case.
5. The application for extension in this case was filed in June of this year, well after the current version of the code became effective, but before the five-year vesting period had run. It appears from the structure of the State law, that the vesting period can, in effect, be prolonged by the approval of an extension allowed by County ordinance.
6. Nothing here suggests that the County, by repealing the explicit extension provisions, intended to limit the potential vesting period for preliminary plats. Accordingly, the Examiner holds that the provisions of prior law regarding extensions may be used with regard to vested preliminary plat approvals.
7. The State statute and SCC 14.12.130 clearly contemplate the ability to grant multiple extensions. Therefore, a condition prohibiting further extensions would not be appropriate.
8. Neither the State Statute nor SCC 14.12.130 establish any definite date for the recording of final plats. Extensions, where allowed, are to be granted to the date for submitting a final plat to the County for approval. Therefore, a condition setting a date for plat recording would not be appropriate.
9. SCC 14.12.130 does not expressly allow for any conditions to an extension decision. However, the power to deny necessarily includes the power to condition. Accordingly, the Examiner concludes that a condition on progress reports is within his

authority to impose. He believes, however, that annual reports, after the construction seasons, will suffice.

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

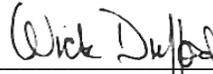
DECISION

A two year extension for the Preliminary Plat approval for Moonlight Terrace (PL90-0295) is granted. The final plat application shall be presented to the County for final approval on or before May 27, 2011, subject to the following conditions:

(1) The final plat application shall show that all conditions of the preliminary approval have been completed or bonded (as allowed by the County).

(2) Progress reports shall be submitted annually – in October 2009 and in October 2010.

DONE this 15th day of September, 2008.



Wick Dufford, Hearing Examiner

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.