

UNOFFICIAL DOCUMENT

KATHY HILL  
SKAGIT COUNTY AUDITOR

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RECORDED \_\_\_\_\_ FILED \_\_\_\_\_  
REQUEST OF \_\_\_\_\_

**9906220077**

AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
302 SOUTH FIRST STREET  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON ADMINISTRATIVE APPEAL AP 99 0223

GRANTOR(S): SKAGIT COUNTY HEARING EXAMINER

GRANTEE: JON MILLER

ASSESSOR PARCEL NO: P30507

ABBREVIATED LEGAL DESCRIPTION: 24219 Gunderson Road, Mount Vernon, WA; within  
Section 30, Township 34 North, Range 5 East, W.M., Skagit County, Washington.

**9906220077**

AP990223.ORD

**SKAGIT COUNTY HEARING EXAMINER**  
**STATE OF WASHINGTON**

In the matter of:	)	
Administrative Appeal AP 99 0223	)	Findings of Fact
Of JON MILLER	)	Entry of Order
Of an administrative determination by the	)	No. AP 99 0223
Skagit County Planning Director concerning	)	
A Short CaRD application.	)	

**INTRODUCTION**

The appellant is the proponent of a Short CaRD subdivision. He appealed three decisions by the Skagit County Planning Director issued February 17, 1999 as follows:

1. Denial of an individual access to a proposed Short CaRD subdivision Lot 1;
2. Denial of permission to include within "Lot 2" 1.44 acres;
3. Denial of permission to include within "Lot 3" 3.76 acres to accommodate outbuildings, a barn, paddock areas and "recreational areas".

At the hearing, the appellant abandoned its appeal with respect to the maximum lot size of Lot 2. This decision, therefore, is limited to the issues concerning individual access to Lot 1 and the maximum lot size of Lot 3.

**FINDINGS OF FACT**

1. The applicant proposes a Short CaRD subdivision for Tract 4 of Gunderson Meadows Survey, auditor's file no. 8302090038.
2. The parcel in question is comprised of approximately 18.91 acres
3. Lot 1 is proposed to include 1.00 acres, Lot 2 was proposed at 1.44 acres, but by the abandonment of the appeal with respect to that acreage will be one acre, the applicant proposes Lot 3 lot size of 3.76 acres with 1.87 acres designated as Open Space-FD and Lot 4 in a total size 12.71 acres with 9.8 acres in open space RA and 1.03 acres in Open Space PA.
4. The property currently has one access leading to an existing residential structure and associated buildings on the proposed Lot 3. The access at the point where the proposed egress to Lot 1 would begin is 168 feet from the south border of Lot 1.
5. An access driveway to Lot 1 from the existing access road, along the northeast boundary of Lot 2 would run parallel approximately in position of the existing ridge line and would call construction of a shared driveway across the northeasterly side of Lot 2..
6. The construction of a separate driveway to Lot 1 could enhance stormwater runoff from Lot 1 into the existing ditch on the east side of Gunderson Road.

7. Sight distances for a vehicle entering Gunderson Road (40 mph posted speed, minor collector) are 455 feet to the south and over 1000 feet to the north.
8. The required sight distance for a 40 mph posted roadway is 320 feet, for a minor collector is 450 feet.
9. The construction of a separate access to Lot 1 would not require substantial cuts and would be within the parameters established by the Skagit County Fire Marshal for emergency vehicle access.
10. The 240 driveway individually for Lot 1 would be 2880 square feet, a combined driveway for Lots 1 and 2 would be approximately 7200 square feet. A single driveway to Lot 2 would total 2400 square feet.
11. Staff and appellant agree that Lot 3 may be comprised of a minimum of 2.5 acres to contain both the existing residential building and existing accessory buildings.
12. The total acreage proposed to be included in Lot 2 is Open Space 1.2 acres proposed as a "pasture area" and to which the appellant agrees an Open Space designation can apply.
13. The appellant and staff agree that were the 1.2 acres proposed to be included in Lot 3 were a part of Lot 4, a covenant or easement could be recorded providing a full access to the 1.2 acres to the owner of Lot 3. In other words, whether the property is included as part of Lot 3 or as Lot 4 could have no functional effect as to the manner by which property is used and occupied after subdivision. The 1.2 acres of Lot 3 in question are physically separated from Lot 4 by the access road and directly adjacent to the existing home and accessory buildings which would in any event be included in Lot 3.

#### **CONCLUSIONS OF LAW**

Skagit County Code 14.01.060(5), provides that the Hearing Examiner, when ruling on an appeal of an administrative determination, may:

reverse or affirm, wholly or in part, or may modify the order, requirement or decision or determination appealed from, and may make such order, requirement, decision or determination as should be made, and to that end, shall have all the powers of the Administrative Official from whom the appeal was taken, insofar as the decision on the particular issue is concerned.

Skagit County Ordinance 17418 (Short CaRD Subdivision Ordinance) Skagit County Code Section 14.08.118(4) states that, "Open space *may* consist of: (a) a separate tract, lot or parcel within the Short CaRD plat; or (b) land within one of the parcels of the Short CaRD plat which shall be protected in accordance with SCC 14.08.118(9) (emphasis supplied Subsection 14.08.118(6)(d) states that only one (1) parcel within each Short CaRD subdivision may be greater than one (1) acre and then only for the sole purpose of containing Open Space, "*unless a larger lot is allowed under SCC 14.08.118(6)(c).*" ). (emphasis supplied) Section 14.08.118(6)(v) provides for a maximum lot size of 1 acre except "to contain the Open Space land which shall be protected under SCC 14.08.118(9)."

Notably, the language of 14.08.118(4) by the use of the word "may" is permissive, not mandatory.

The exception in subsection (d) allowing larger lots pursuant to subsection (6)(c) would be meaningless if not construed to allow a second or more lots to contain open space pursuant to subsection (c)(v). While the staff contends that the intent of the ordinance is to allow only one lot to contain more than one acre as open space, it would appear that a specific exception to allow more than one parcel to contain open space is specifically allowed in reading subsections (d) and (v) together.

This reading of the ordinance is reinforced by the fact that the incidence of "fee ownership" can be rendered immaterial largely to the manner by which the open space and lots will be utilized pursuant to the Short CaRD subdivision. Both the appellant and planning staff recognize that even if the contested property were included in Lot 4, the owner of Lot 3 could keep full control, and virtually all the incidence of ownership by use of covenants or an easement. It would therefore seem to substitute form over substance and ignore the language of the ordinance to adopt the Planning Director's interpretation.

With respect to the proposed second access for Lot 1, the Skagit County Comprehensive Plan, with respect to transportation policies, states on page 9-5 that roads, etc. "shall be designed and constructed in such a way as to minimize the alteration of landscape, to preserve natural systems, to protect critical areas, to protect important land features such as ridgelines..." Further, rural road standards "shall minimize paving and right of way requirements", recognizing the need to maintain LOF and multi-mobile use.

The Skagit County Short Subdivision Ordinance, SCC 14.08, sets forth short plat road requirements. SCC 14.08.090(3) (ix) provides that "individual lot accesses to county roads shall be combined when required by the Public Works Director", but does not itself provide any criteria to govern the discretion of the Public Works Director.

The Skagit County Public Works Department Road Standards, Section 7.02, governs "driveways". Section 7.02(E)(1) states that for "major collectors" internal collection of traffic will be achieved wherever possible. The number of access points shall be a function of traffic volume on the county major collector, but generally they will not exceed one access point per 900 feet of frontage." For minor collectors, the road standards state that the same general guidelines will apply as for "major collectors" except that the "number of access points shall be one access point per 700 feet of frontage." Id.

Neither the applicant nor the Public Works Department submitted information as part of this hearing with respect to the traffic volume on Gunderson Road. Inasmuch as the applicant has the burden of proof in this matter, it is therefore impossible to conclude that the application of the one access point per 700 feet of frontage is incorrect. Given the discretion granted to the Public Works Director by the short subdivision ordinance, and road standards applicable to this development, and the lack of evidence to indicate that the standards have been improperly applied, the decision of the Planning Director with respect to the second access point must be upheld.

**DECISION**

Based on the foregoing Findings and Conclusions, the applicant's appeal with respect to inclusion of 3.76 acres within Lot No. 3 is granted provided that the western .8 acres depicted as a "paddock area" in exhibit submitted to the Hearing Examiner and the 1.2 acres on the east side of the property delineated as "pasture area" on exhibit no.4 be designated as "Open Space" on the face of the plat and be subject to open space requirements contained within the CaRD ordinance. The appellant's appeal with respect to a second independent access for Lot No. 1 is denied.

This decision shall become final unless Request for Reconsideration is made in accordance with Skagit County Code 14.01.057 or unless appeal is made to the Skagit County Board of Commissioners in accordance with Skagit County code 14.01.061.

SKAGIT COUNTY HEARING EXAMINER

  
BRADFORD E. FURLONG, PRO TEM

Date of Action: June 17, 1999

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