BEFORE THE SKAGIT COUNTY HEARING EXAMINER

KAREN BLANTON,	)	**PL05-0566**
	)	
Appellant,	)	**FINDINGS OF FACT,**
	)	**CONCLUSION OF LAW**
v.	)	**AND DECISION**
	)	
SKAGIT COUNTY, and	)	
WILLARD HENDRICKSON,	)	
	)	
Respondents,	)	
	)	

This matter came on regularly for hearing before the Skagit County Hearing Examiner in the Commissioner's Hearing Room, 1800 Continental Place, Mount Vernon, Washington, on October 20, 2005.

The case involves the appeal of an administrative setback reduction granted in relation to two lots within the plat of Willard Estates near Concrete.

Appellant Karen Blanton represented herself. Skagit County Department of Planning and Development Services was represented by Brandon Black, Senior Planner. Respondent Henrickson was represented by Marianne Manville-Ailles.

The parties or their representatives testified. Exhibits were admitted. Argument was made. On the record created, the Examiner enters the following:

FINDINGS OF FACT

1. On June 7, 2005, Skagit Surveyors and Engineers, on behalf of Willard Hendrickson, applied for an administrative reduction of the setbacks for Lots 8 and 10 within the plat Willard Estates, located within a portion of Sec. 10, T35N, R7E, W.M.

2. The subject property was zoned Rural Resource – Natural Resource Land (RRc-NRL) in the year 2000. The setbacks within this designation are 50 feet on all side of structures.

3. The Willard Estates subdivision was recorded on December 23. 1999, after preliminary and final approval through the Hearing Examiner process (PL 96-0056). The approval of the subdivision was never appealed.

4. The subdivision, as recorded, consisted of 15 lots, all one acre in size. At the time the subdivision was created, the zoning of the property allowed a minimum setback of 35 feet from the front property line, eight feet from the side property lines, and 25 feet

from the rear property lines. The subdivision was designed so that these setbacks could be met.

5. The recording of the final plat vested the property to the setbacks then in effect for a period of five years. See RCW 58.17.170. The five years ended on December 23, 2004.

6. The zoning of the property was changed to RRc-NRL in 2000 during the vesting period.

7. Prior to the end of the vesting period, building permits were obtained for ten of the lots, authorizing home construction complying with the previous setbacks. After the vesting period ended, requests for reduced setbacks were approved for three more lots. No public comments were received in regard to these requests. (See PL05-0194, PL05-0226.)

8. The instant setback reduction requests are to allow construction that is consistent with the prior setback standards on the only undeveloped parcels remaining from the original 15 lots.

9. The standards for administrative setback reductions are set forth at SCC 14.16.810(4) which reads:

> The Administrative Official may reduce the required front, side or rear setbacks where topography or critical areas or the lot's size and configuration impact the reasonable development of the property. To reduce the front or rear setback, the Administrative Official must determine that the public health, safety, and welfare will be maintained. Consultation with the Public Works Department concerning traffic Safety may be solicited during this analysis.

10. The requested setback reductions for Lots 8 and 10 were administratively approved on August 1, 2005, in a written decision (PL05-0332). In approving the request, the Administrator found that the size and dimensions of the lots prevented development meeting the current 50-foot setbacks. The proposal was reviewed by Public Works which had no comments. The decision determined that the reductions requested are reasonable due to the existing lot size. No problems with traffic safety or otherwise with maintenance of public health, safety or welfare were identified. Four conditions of approval were imposed.

11. The subject appeal does not quarrel with any of the administrative findings. Thus, no basis was established for determining that the decision itself was clearly erroneous.

12. The appellant has taken another tack. At bottom, her contention is that numerous legal errors in the approval of the original subdivision prevent the County from going forward to approve subsequent changes. The argument is that the County cannot lawfully assist in the development of lots created in violation of the Code.

13. The appellant alleges an array of past problems, including the timing of the original subdivision application, the ownership of the lots when the application was filed, the correctness of the legal description on the notices, and whether adequate notice was given to her.

14. She asserts that the lots created were not in compliance with the law in effect at the time they were created. From this she argues that the lots are "innocent purchaser lots" that are not now eligible for building permits, and asks for a ruling to this effect. See SCC 14.18.000(9)(b)(iii)

15. Appellant is also concerned about unspecified "vested rights" for her own property that she says were taken away by the County. She asks that these rights be restored.

16. The appellant has furnished a substantial body of material from the official files to buttress the various contentions about infirmities in creating the subdivision.

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 appeal. The hearing held was an open record hearing.

2. An administrative setback reduction is a Level I proceeding. Under SCC 14.06.160(3)(a), in open record hearings of Level I administrative decisions, the appellant shall bear the burden of demonstrating that the decision of the Administrative Official is clearly erroneous.

3. The appellant did not carry her burden. The criteria for administrative setback reductions were met. The administrative decision, therefore, must be upheld.

4. The appellant seeks to review actions that were taken before the Willard Estates subdivision was approved. Even if the contentions are correct, they cannot now be considered. The decision to approve the subdivision became final when the appeal period on its approval ended. Such finality is honored in the law, notwithstanding the subsequent discovery of errors.

5. Further, if there was a defect in the giving of notice for the subdivision's approval, no timely appeal was filed after the discovery of that defect.

6. Moreover, application of the "innocent purchaser" restriction on building permits requires, as a predicate, that the lots failed to comply with the law at the time they were created. The record does not demonstrate that this is true. The lots appear to conform to the prior zoning. The appellant is misinformed about the dimensional requirements that formerly applied.

7. Accordingly, the relief that the appellant seeks is not available in these proceedings. The law simply does not allow her to use the instant setback reduction application to obtain a consideration of other matters long closed. The lawfulness of the Willard Estates subdivision must now be accepted. And whatever may have happened in regard to appellant's own property is not relevant to this appeal.

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

DECISION

The administrative setback decision for Lots 8 and 10 of Willard Estates (PL05-0332) is sustained. The appeal is denied.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: November 29, 2005

Date Transmitted to Appellant: November 29, 2005

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 14.06.110(13), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the clerk of the Board within 14 days after the date of the decision, or decision on reconsideration, if applicable.