BEFORE THE SKAGIT COUNTY HEARING EXAMINER

KIM SADLER, Appellant, v. **SKAGIT COUNTY,** Respondent.	**PL07-0906** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

This is an appeal of an administrative determination made by the County. On November 5, 2007, the Administrative Official informed the Appellant herein that in the County's view she does not meet the definition of an "innocent purchaser' under the Skagit County Code. The determination relates to an undeveloped substandard lot on Big Lake, purchased by the Appellant. The County further advised that the lot cannot be developed with a residence.

The Hearing was held on due notice on January 23, 2008. C. Thomas Moser, Attorney at Law, represented the Appellant. Jill Olson, Deputy Prosecuting Attorney, represented the County.

FINDINGS OF FACT

1. Lot 18, West View Replat of Block 40, Montborne (tax parcel P119374) is a waterfront lot on Big Lake. The zoning is Rural Village Residential which has a one acre minimum lot size. Lot 18 is approximately 0.16 acre in size.

2. On November 5, 2007, Bill Dow, Deputy Director, Planning and Development Services, directed a letter to Dave Hough, land use consultant for the Appellant Kim Sadler. The letter was an official reply and determination regarding questions asked about innocent purchaser status and potential residential development on Lot 18.

3. The second paragraph of the letter reads as follows:

> To summarize, the County has concluded your client is not eligible for Innocent Purchaser status. The County has further concluded that the parcel in question is a substandard lot and is not eligible for residential development.

4. Lots 18 and 19 are adjacent parcels created as part of a plat recorded on January 6, 1946 (AF399691). Each is 50 feet wide. Nancy (Greenstreet) Wendlandt

purchased Lots 18 and 19 in September 1978. She held these lots in common ownership for 24 years.

5. In 2002 Wendlandt sold Lot 19 to Mario Brown. When sold, Lot 19 had a residence. Lot 18 remained undeveloped. At the time of the sale to Brown, each of the lots was smaller than the minimum lot size requirement for development in the Rural Village Residential zone. Also at that time, the two substandard contiguous lots were subject to the aggregation requirements of former Code section SCC 14.04.190(5).

6. Among other things, former Code Section 14.04.190(5) said that when a person owns or acquires contiguous substandard lots, "the Planning and Permit Center and the Assessor shall combine such property . . . ." While this provision was in force, the County had no affirmative program to discover and pro-actively aggregate properties. Instead they waited for a situation requiring aggregation to be brought to their attention, usually at the time development was sought. For Lots 18 and 19, the County never performed the required aggregation.

7. On June 10, 2003, Brown applied for a building permit for a new carport on Lot 19. The County responded by a letter dated July 17, 2003. The letter recited that his lot was acquired from an individual with common adjacent ownership and that both lots are substandard in size for the zone. The letter noted that the aggregation requirements applied to the adjacent lots and stated:

> It … appears that Ms. Wendlandt was in error by conveying the subject property individually from the adjacent parcel. This action is considered out of compliance with [the aggregation ordinance] and is considered an illegal segregation.

The letter went to say that the aggregation issue would have to be addressed before the building permit could be approved. Brown was asked to file a Lot of Record Certification Application in order for staff to determine "if in fact an illegal segregation has occurred."

8. On August 1, 2003, the County sent a letter to Wendlandt, enclosing a copy of the July 17 letter to Brown. The letter stated that "the conveyance of only a portion of the total parcel is not consistent with the current Interim Ordinance." However, the letter then advised:

> Although, there is not currently a Skagit County regulation preventing the conveyance of either parcel, Skagit County will not issue development permits (i.e. Building Permits) for either parcel. For example, if the remaining portion of property is conveyed to someone other than Mr. Brown, the resulting owner will not be able to obtain a building permit.

10. The above-referenced letters from the County to Brown and Wendlandt were not recorded. On December 15, 2005, Kim Sadler (Appellant) purchased Lot 18 from Wendlandt following receipt of a title report from Chicago Title Company that showed nothing in property records that would give the purchaser notice of the aggregation issue or the issue of substandard lot size for development.

11. Chapter 58.17 RCW is the State statute which contains the basic rules for the subdivision of land. With certain exceptions, RCW 58.17.210 disallows the issuance of development permits for illegally created lots. An exception is made for "an innocent purchaser for value without actual notice."

12. The County code was amended in May 2005 (prior to appellant's purchase of Lot 18) to include detailed provisions governing when a lot can be conveyed and under what circumstances a substandard lot can be developed. SCC 14.06.045.

13. Now, for conveyance purposes, a lot must either be a "lot of record" or a lot owned by an innocent purchaser who has met the requirements described in SCC 14.18.000(9) and RCW 58.17.210 for the lot in question. The ordinance explicitly states that a "lot of record" may be conveyed without violating Chapter 58.17 RCW, but may or may not be eligible for development permits. SCC 14.06.045(a)

14. To "be considered for development permits, a lot must either meet the minimum lot size for the zone or, if it is substandard, it must meet a specific listed exemption. SCC 14.06.0045(b).

15. A "lot of record" is defined under SCC 14.04.120 as, among other things:

> Any tract of land . . . platted and recorded with the auditor prior to March 1, 1965.

16. Under SCC 14.18.000(9), an innocent purchaser of a lot created in violation of the code is entitled to have the lot treated as a "lot or record" for the purposes of conveyance.

17. However, even in the case of an innocent purchaser, a substandard lot must meet a specific exemption to be considered for development permits. The exemptions are listed in SCC 14.16.850(4)(c). None of them apply to Lot 18.

18. 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. SCC 14.06.110(7).

2. The Appellant argues that Lots 18 and 19 should be treated a though they had been aggregated by operation of law before the sale to Brown. Otherwise the Appellant will be victimized by the dereliction of the County. Viewing the situation in this way, the sale of Lot 19 to Brown was an illegal segregation, creating two illegal lots. The Appellant is therefore "an innocent purchaser for value without actual notice" of the illegal creation of Lot 18. As such, she asserts she is entitled to a development permit.

3. The County maintains that she is not an innocent purchaser because Lot 18 was legally created initially. Even if the sale of Lot 19 in 2002 is seen, as in some sense, an illegal act, there was no prohibition against the separate sale of Lot 18 as a lot of record at the time it was sold in 2005.

4. Further, even if she is an innocent purchaser, the County argues, she is not entitled to a development permit by virtue of that status. Under SCC 14.16.045, her qualification as an innocent purchaser would only allow the property she bought to be treated as a lot of record. A separate set of criteria must be met to be considered for development permits.

5. After reviewing relevant County Code provisions, the Examiner is convinced that the County's position here is the correct one.

6. There is no contest over whether Lot 18 was legally created when it was platted in 1946. That a requirement for aggregation of adjacent substandard parcels was later for a time a part of the County Code does not matter. For aggregation to occur an affirmative act was needed. The aggregation simply didn't happen. That is why the record the Title Company looked at provided no notice about any aggregation issue. It was a non-event. By definition the innocent purchaser concept is limited to buyers of lots that were not legally created. Since, nothing ever occurred to disturb the initial legal creation of Lot 18, the appellant cannot qualify as an innocent purchaser.

7. It is by no means clear what legal duties the former aggregation requirements placed on the County. If legal consequences attach for its failure affirmatively to aggregate lots in any case, the remedy is not through applying the innocent purchaser provisions to a fictional aggregation.

8. In any event, the innocent purchaser idea only protects a person from the inability to develop when the lot's illegal creation is the cause of that inability. In general, for development a property must surmount two barriers: it must be a lot of record and it must meet the minimum lot size for the zone. Innocent purchaser status can only remove the first of these barriers. Indeed, Appellant does even need innocent purchaser protection because her lot is regarded as a lot of record without it.

9. However, there are additional barriers to development that have nothing to do with how the lot was created. They arise from the zoning code. Here the problem is that

the lot is significantly under the minimum lot size. This problem is beyond the reach of innocent purchaser protection.

10. The ordinance on development of lots of record provides other mechanisms for relief from holding an undersized lot. Specific exemptions are listed under SCC 14.18.850(c). Certain non-residential uses are allowed per SCC 14.18.850(d). In some cases, an owner can apply for a "reasonable use exception under SCC 14.18.850(f).

11. In sum, under Skagit County's Code, the protections provided for innocent purchasers of illegally created lots do not extend to conferring immunity from the zoning restrictions that apply to all property owners. Any buyer is presumed to be on notice of the generally applicable dimensional and use regulations for the zone in which the purchase is located.

12. The Appellant asserts that Skagit County's innocent purchaser provisions are more stringent than those imposed by state law and that this represents an unconstitutional conflict. The Hearing Examiner has no authority to address this question and does not do so.

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

DECISION

The administrative decision that Appellant is not an "innocent purchaser" and that Lot 18, a substandard lot, is not eligible for residential development under Skagit County Code is affirmed.

DONE this 29th day of February, 2008

Wick Dufford, Hearing Examiner

Transmitted to the Parties: February 29, 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 14.06.110(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.