



Walla Walla County Community Development Department

310 W. Poplar Street, Suite 200, Walla Walla, WA 99362 / 509-524-2610 Main

File No. SUB19-005

NOTICE OF DECISION

Date of Notice: 7/30/2019
Date of Decision: 7/29/2019
Applicant: KNOWLES, BRENT & VICTORIA
Type of Application: SUBDIVISION
File Number: SUB19-005

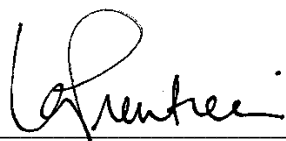
Enclosed is the Hearing Examiner's decision from the 5/24/2019 agenda.

Walla Walla County Code Section 14.11.060 allows for the reconsideration of the final decision. The request must be submitted to the administrator within ten (10) days of the final decision or action; the submittal period ends **August 9, 2019**. Reconsideration of the final decision must be granted or denied by the Hearing Examiner prior to an appeal being submitted to Walla Walla County Superior Court. Pursuant to Walla Walla County Code Sections 14.11.020 and 14.11.040 the Hearing Examiner's decision may be appealed to the Walla Walla County Superior Court. The appeal must be submitted to the Walla Walla County Superior Court within twenty-one (21) days of the final decision or action date. The Hearing Examiner's decision will be considered final if no appeals are filed within the allowed time frame described in Walla Walla County Code Chapter 14.11.

Please review Chapter 14.11 for the County's appeal requirements.

The complete project file is available for inspection at the Walla Walla County Community Development Department (CDD) office during normal office hours. Please contact the CDD at the phone number above to arrange for inspection.

Feel free to contact me at 509-524-2620 if you have any further questions.



Lauren Prentice, Principal Planner/Acting Community Development Director
Walla Walla County Community Development Department

Enc. SUB19-005 Findings, Conclusions and Decision



Walla Walla County Hearing Examiner

310 W. Poplar Street, Suite 200, Walla Walla, WA 99362

BEFORE THE HEARING EXAMINER FOR WALLA WALLA COUNTY

FINDINGS, CONCLUSIONS AND DECISION APPROVING

PONDEROSA SUBDIVISION PLAT ALTERATION

FILE NUMBER: SUB19-005

OWNER(s)/APPLICANT(s): Brent and Victoria Knowles (as owners of Lots 6 and 11)
1010 Valley Chapel Road
Walla Walla, WA 99362

OTHER PROPERTY OWNERS: Joshua and Dalari Allington (as owners of Lot 5)
PO Box 602
College Place, WA 99324

SURVEYOR OF RECORD: Greg Flowers
PBS Engineering and Environmental, Inc.
5 N. Colville Street
Walla Walla, WA 99362

TYPE OF APPLICATION: Plat Alteration to combine two residential lots in the Ponderosa Subdivision (Lots 5 and 6) into a single lot (to be known as Lot 6-R), and re-assign the single-unit of development rights eliminated through such lot consolidation to another lot (Lot 11).

AFFECTED TAX PARCELS: 350608530005, 350608530006, and 350608530010

LOCATION: Ponderosa Subdivision, south of Frog Hollow Road. This application affects existing Lots 5 and 6 at the end of Ponderosa Court the private road in the Ponderosa Subdivision off of Frog Hollow Road, and Lot 11, the 82+ acre "resource parcel".

STAFF RECOMMENDATION: Approval.

SUMMARY OF DECISION: APPROVED, subject to conditions

DATE OF DECISION: July 29, 2019

I. CONTENTS OF RECORD.

Exhibits:

1. Community Development Department Staff Report and Recommendation (of APPROVAL) to the Hearing Examiner regarding the Alterations to Final Plat for Ponderosa Subdivision, File No. SUB19-005, prepared by Lauren Prentice, Principal Planner, dated May 22, 2019 [hereinafter referenced as the “*Staff Report*”];
2. Final Plat Alteration application form, signed 3/8/19;
3. Preliminary replat map, dated 1/28/2019;
4. Title Report;
5. Hearing Examiner’s Findings Conclusions and Decision for the Ponderosa Subdivision preliminary plat approval (P14-026) dated 7/28/2014;
6. Final Plat map of Ponderosa Subdivision (AFN 2015-06607) recorded 7/31/2015;
7. Notice of Application and Notice of Public Hearing and affidavit of posting, mailing, and publishing;
8. Letter and map with revisions from Darrell Sowards, County Surveyor, dated 5/21/2019; and
9. Materials submitted at the public hearing from Mr. Reser, including a copy of RCW 90.44.030 re: surface water rights; some seepage data re: the West Walla Walla River; and a water well report from 1974.

Testimony/Comments: The following persons participated in the open-record hearing held on May 24, 2019, and provided testimony under oath as part of the record:

1. Lauren Prentice, Principal Planner, for the Walla Walla County Community Development Department, summarized her analysis, recommendation of approval, noted that no one submitted any written comments following public notice regarding the application;
2. Mark Wendover, with the PBS Surveying and Engineering firm, appeared for the applicants, and accepted the Staff Report and all recommended conditions without objection or requests for modification. He provided additional information and explanations responding to comments made by Mr. Reser; and
3. Yancy Reser, local resident, expressed concerns that project could adversely impact his water rights, by pumping too much water, noted state regulations that protect water rights and limit impairment of such rights.

II. APPLICABLE LAW.

Jurisdiction.

Applications for final plat alterations shall be processed using the Type 3 review process, for which the Hearing Examiner is the decision-maker. *See WWCC 14.09.025 – Table of types of review for project permits, and WWCC 14.09.045.*

Approval Criteria for Alteration of a Final Plat (also known as a Final Subdivision).

As explained in WWCC 16.36.060, alteration of a final plat or any portion thereof shall meet all requirements of WWCC Chapter 16.36 (*requirements for obtaining Final Plat or Final Short*

Plat approval), as applicable, as well as RCW 58.17.060 (*requirements for Short Plat approval*), RCW 58.17.215 (*procedures for Alteration of a Subdivision*), RCW 58.17.217 (*authorizing hearing examiner to conduct hearings on plat alteration applications*), RCW 58.17.218 (provides that the alteration of a subdivision is subject to RCW 64.04.175, which reads: *Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement*), and WAC 332-130-050(3) (*survey map requirements for items that must be recorded with the County*), as applicable.

County Staff properly reads WWCC 16.36.060 to require plat alteration applications to satisfy relevant approval criteria for final plat approval, found in WWCC 16.36.050, except for this application, the term ‘plat alteration’ should be substituted for ‘final plat’:

WWCC 16.36.050 – A final plat or final short plat shall be approved, approved with conditions, or denied based on a determination that:

- A. The plat or short plat complies with the applicable provisions in Section 16.04.050; and
- B. The plat or short plat conforms to all conditions of preliminary approval; and
- C. Adequate provision is made for roads, alleys, drainage facilities, potable water supplies, sanitary wastes, transit stops, parks and recreation, playgrounds, schools and school grounds, sidewalks and safe walking conditions for students who only walk to and from school as applicable, and other general purposes as may be required to protect the public health, safety and general welfare; and
- D. The plat meets all standards established by state law and this title relating to final plats or final short plats; and
- E. The plat bears the certificates and statements of approval required by state law and this title; and
- F. A title insurance report current within thirty days has been furnished by the subdivider confirming that the title of land to be subdivided is vested in the name of the owners whose signatures appear on the plat's certificate; and
- G. Required improvements have been approved by the director, county engineer, and county public health department, as applicable, or financial guarantees in accordance with the provisions of Chapter 16.97 have been posted with the county; and
- H. A maintenance, operation, and defects guarantee in accordance with the provisions of Chapter 16.97 Financial Guarantees has been posted with the county for all applicable improvements constructed and approved by the director, county engineer, and county public health department, as applicable; and
- I. The public use and interest will be served.

Burden of Proof.

As explained in WWCC 14.03.010, applicants for project approvals bear the burden of proof of showing compliance with all applicable standards in the Walla Walla County Code.

III. ISSUE PRESENTED.

Whether substantial evidence demonstrates that the applicants have met their burden of proof to satisfy the criteria for plat alteration approval?

Short Answer: Yes, subject to conditions.

IV. FINDINGS OF FACT.

1. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such.
2. The applicants in this matter, Brent and Victoria Knowles, seek a plat alteration to combine two lots into one, reassigning the lost development right to another lot.
3. This application involves the final plat known as the Ponderosa Subdivision, which was recorded in 2015, under AFN 2015-06607, shortly after receiving final plat approval by the County. The Ponderosa Subdivision is what is known as a cluster subdivision, approved under WWCC Chapter 17.31. It contains nine cluster lots served by a private road off of Frog Hollow Road. (*Staff Report, at page 1; Ex. 6, final plat map*).
4. If approved, this application would combine the current lots 5 and 6 into a single lot, to be known as Lot 6-R, and reassign the lost development right from the consolidation to Lot 11, the much-larger, surrounding parcel from which the Ponderosa cluster subdivision was originally created. *Id.* The Knowles own Lots 6 and 11. Joshua and Dalari Allington are the owners of Lot 5. The application reflects signatures from Mr. Knowles and the Allingtons. (*Ex. 2, application, page 2*).
5. The terms “final plat” and “final subdivision” are and mean the same thing. In this Decision, their abbreviated versions – “plat” and “subdivision” – also mean the same thing.
6. The Staff Report and Recommendation of Approval, shared with the Examiner in the week before the hearing, (*the “Staff Report”, Ex. 1*), includes a number of findings and factual statements explaining how the pending Plat Alteration application satisfies provisions of applicable law, and is designed or can be conditioned to comply with applicable development standards and guidelines. For reasons explained below, the Examiner finds that the proposal should be approved.
7. As a starting point, the Examiner finds and concludes what may seem obvious – development on just one lot in a subdivision is likely to have fewer impacts than development on two lots. Here, Staff appropriately concluded that the recent SEPA review process for the entire plat, which has nine lots, was sufficient for purposes of reviewing this application, which would formally reduce the number of lots in the subdivision, thereby reducing potential impacts. Additional SEPA review is not warranted for this

matter. (*Staff Report, page 2*). Any future application to subdivide or in any way develop Lot 11 must stand on its own, and will require its own SEPA review.

8. The County's Principal Planner assigned to review the application, Ms. Prentice, testified at the public hearing to provide a thorough summary of the County's staff review process for the proposed plat alteration and staff's recommendation of approval, subject to certain conditions of approval.
9. The applicants' hearing representative, Mr. Wendover, fully accepted the analysis and content provided in the Staff Report, including all recommended conditions of approval, without objection or request for modification.
10. Mr. Reser spoke at the public hearing for a lengthy period, raising and then repeating general concerns that any development in the plat could adversely affect his water rights. The Staff Report and exhibits in the record show that the plat at issue, the Ponderosa Subdivision, was recorded after final plat approval in 2015. (*See Staff Report, at page 1; Ex. 5, preliminary plat approval; and Ex. 6, final plat map, recorded in 2015*). No one appealed the Ponderosa final plat approval. Accordingly, it stands unchallenged, and any provisions – including those addressing water supply – cannot be collaterally attacked in this plat alteration application.
11. Relevant language in the preliminary plat approval issued for the Ponderosa Subdivision notes that domestic water supply is provided through a groundwater permit exemption established in state law at RCW 90.44.050, and that the applicants anticipated each lot owner would drill individual wells to receive up to 555 gallons of water per day per lot. (*Ex. 5, preliminary plat approval, at page 8, item 18*). It stands to reason that instead of adversely impacting water resources, the lot-consolidation accomplished via this plat alteration would actually reduce currently approved draws on groundwater supplies by up to 555 gallons of water per day.
12. Again, any future application to subdivide or in any way develop Lot 11 must stand on its own, and will require any future applicant to demonstrate a lawful and adequate source of potable water, among other things. This Decision only approves the lot consolidation of current Lots 5 and 6, and the reassignment of one development right/unit of density to Lot 11, without any expectation or suggestion that Lot 11 can be developed or subdivided, or that a sufficient water source exists to serve such project.
13. In any event, one lot will most likely draw less water than two lots, thereby reducing surrounding property owners' possible concerns about reductions in available water resources.
14. The affected lots, and the entire cluster subdivision at issue, is located on land zoned Agriculture Residential 10-acres (AR-10) and located in the Agriculture Residential Comprehensive Plan land use designation. The zoning and Comprehensive Plan designation have not changed since the preliminary plat was originally approved in 2014.

15. The Staff Report explains that a combined Notice of Application and Public Hearing was issued on May 8, 2019. (*Exhibit 7*). Proper notices were published in the Walla Walla Union Bulletin on May 9th and in the Tri-City Herald on May 10th. The Notice was also posted on the Department's website on May 8th. As required for public hearing notices, it was mailed to property owners within 500 feet of the site on May 10th and posted on site May 8th. The Examiner concurs with Staff, that all notification requirements were satisfied for this application, including without limitation the Notice of Application requirements found in WWCC 14.07.080 and the Notice of Public Hearing requirements in WWCC 14.09.065.
16. As documented in the affidavit provided in *Exhibit 7*, application materials were distributed to the following agencies for review and comment: Walla Walla County Environmental Health Department; Walla Walla County Public Works Department; Walla Walla County Fire District No. 4; Walla Walla County Conservation District; and the Walla Walla Valley Metropolitan Planning Organization.
17. The County Public Works Department (including the County Surveyor) and Health Department reviewed the proposal and recommended approval. Darrell Sowards, the County Surveyor, submitted technical comments that must be addressed prior to recording, which are included as part of the conditions of approval (*Exhibit 8*).
18. No other agency invited to comment on this application submitted any written remarks, and no written public comments were received before the hearing.
19. The un rebutted Staff Report credibly explains how the single new lot (6-R) created by consolidating two existing lots (Lots 5 and 6): already receives adequate access from a private road, known as Ponderosa Court, built before final plat approval; that domestic water is supplied through the groundwater water permit exemption noted above; that irrigation water is conveyed to the plat relying on an irrigation right transferred from an adjacent parcel to the east of the subdivision (Ground Water Certificate No. G3-24416C); that the lot will be served by an on-site septic system, meaning one less system will be installed in the plat after the lot consolidation is approved; that the Environmental Health Division recommends approval of this application;
20. The zoning and density requirements have not changed since the original plat was approved in 2014. The proposed plat alterations would not increase the density of the subdivision. As noted on the recorded Final Plat Map (*Exhibit 6*) in the Density Note on Page 1, Lot 11 has one development right. Each of the residential lots (existing Lots 5 and 6) also have one development right apiece, which is true for all residential lots in cluster subdivisions. The proposed plat alteration would eliminate Lot 5, combining it with Lot 6, and re-assign the Lot 5 development right to Lot 11. The final plat map (*Exhibit 6*) contains the density note required by WWCC 17.31.060W to specify that "the acreage [in the subdivision] shall not be used more than once for determining the allowable number of units."

21. The Staff Report explains that the Ponderosa Subdivision was created from “Lot 11” of Bluff Haven Estates (which included two phases) with density rights transferred from the south, which is referred to as Parcel 01 in the Hearing Examiner’s 2014 decision (*Exhibit 5*). The applicant did not provide with their new application a summary how why they think assigning the Lot 5 development right to Lot 11 is consistent with County standards, so Staff assumed that they believe that if the development right was originally transferred from Lot 11 to this project site to create the Ponderosa Subdivision, then it is appropriate to re-assign one development right back to Lot 11 after eliminating Lot 5. No one submitted any argument, facts, or evidence to rebut this assumption. There does not appear to be any legal or factual impediment to return the single development right back to Lot 11. However, it is worth repeating – any subsequent application to subdivide or develop Lot 11 will stand on its own merits, and must comply with all applicable codes and development regulations in effect at the time a future application might be submitted. No one should read or construe any part of this Decision to suggest that a future development project on Lot 11 can or will be approved.
22. Staff reviewed the application, and determined that the consolidated lot created in this plat alteration application would fully comply with applicable design standards found in WWCC 17.31.060, including without limitation several dimensional standards that apply to cluster subdivisions. For example, the post-consolidation size of the new Lot 6-R will be 2.72-acres, which is below the 3-acre maximum lot in a cluster development like this. See WWCC 17.31.060(O); and the average acreage of the remaining cluster lots would only increase to 1.46-acres under this application, which is well below the 2-acre maximum average allowed for lots in a cluster subdivision. See WWCC 17.31.060(P).
23. The Staff Report includes an un rebutted summary of facts and evidence that demonstrate how the application complies with applicable approval criteria found in WWCC 16.36.050. (*Staff Report, at pages 5 and 6*).
24. The only adverse comments made at the public hearing questioned whether the plat has water rights, or a source of enough water, or will impair other water rights in the area. Again, state subdivision statutes mandate determinations regarding the adequacy and source of potable water supplies as part of the plat approval process, and the final plat for the Ponderosa Subdivision was approved several years ago, without any appeal. The pending plat alteration makes no changes to the designated water supply/source for the plat, and actually reduces the potential water use in the Ponderosa plat. No one presented any facts or evidence that would serve as a legal basis to deny the pending plat alteration.
25. Except as modified in this Decision, all findings and statements of fact that are included in the Staff Report are incorporated herein as Findings of Fact supporting this decision to approve the requested plat alteration and the conditions of approval set forth below.
26. Based on all evidence, exhibits and testimony in the record, the undersigned examiner specifically finds that the proposed plat alteration, as conditioned below, makes appropriate provision for the considerations detailed in applicable codes and that the public interest will be served by the proposed plat alteration.

V. CONCLUSIONS OF LAW.

1. Based on the Findings as summarized above, the applicants satisfied their burden of proof to obtain approval of the requested plat alteration application, which would combine two cluster lots into one. All owners support the requested modification. Accordingly, the above-referenced plat alteration application should be and is hereby approved.
2. The undersigned examiner concludes that the proposed plat alteration, as conditioned below, conforms to all applicable County codes and policies. Upon reaching such findings and conclusions as noted above, the requested plat alteration meets the standards necessary to obtain approval by the County.
3. The recommended conditions of approval, as set forth in the Staff Report and modified below, are reasonable, supported by the evidence, and capable of accomplishment.
4. Any Findings or other statements in previous or following sections of this document that are deemed Conclusions are hereby adopted as such.

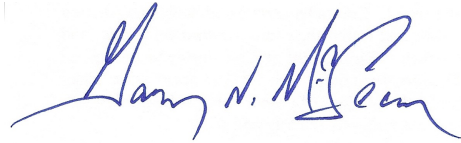
VI. DECISION AND CONDITIONS OF APPROVAL.

Based on evidence included in the record for this matter and all findings and conclusions as set forth above, the requested plat alteration – to combine Lots 5 and 6 in the Ponderosa Subdivision into a single new Lot 6-R, and to reassign a development right to the surrounding Lot 11 – meets all applicable review criteria. Therefore, the requested plat alteration is hereby approved, subject to the following Conditions of Approval:

1. The applicant(s) shall produce a revised drawing of the approved alteration to be processed and recorded in the same manner as set forth in the county's code for final plats, found in WWCC Chapter 16.36. Prior to submitting the final plat map for signature and recording, the surveyor shall make the following map revisions and ensure compliance with the content requirements of WWCC 16.36.030 and 16.36.040:
 - a. The corrections noted by Walla Walla County Surveyor Darrell Sowards in *Exhibit 8*;
 - b. Add the project number in the title block (SUB19-005); and
 - c. Remove contour lines.
2. One (1) mylar copy shall be provided to the County for signature.
3. The applicant shall comply with the recording procedure set forth in WWCC 16.36.055 and WWCC 16.36.070.
4. All persons with an ownership or security interest in property(ies) to be altered must sign the altered plat.

5. The plat alteration approved in this Decision is expressly limited to alter or supersede the original plat in the specific ways approved and described herein, particularly the consolidation of Lots 5 and 6 into a new Lot 6-R, and the reassignment of a single development right to Lot 11, as described in the Staff Report. All other conditions and aspects of the recorded final plat for the Ponderosa Subdivision remain in full force and effect.
6. This Decision should not be read or construed in any manner to indicate that a future application for development of any kind on Lot 11 will be or should be approved. All subsequent applications must comply with development regulations and policies in effect at the time a complete application is submitted.
7. This plat alteration and all subsequent development on affected parcels shall comply with all applicable provisions of the Walla Walla County Code, whether or not such provisions are enumerated or referenced in the Staff Report or in this Decision. The burden is on the applicant to show compliance with applicable provisions of the WWCC at every stage of future development.

Decision issued: July 29, 2019.



Gary N. McLean
Hearing Examiner for Walla Walla County

FINALITY OF DECISION AND NOTICE OF RIGHTS OF APPEAL

As provided in WWCC 2.50.070(B), *the decision of the hearing examiner on all matters is final and conclusive, unless appealed pursuant to Chapter 14.11 of the Walla Walla County Code.*

WWCC 2.50.120, captioned “Reconsideration”, provides that: *An applicant or party of record to a hearing examiner's public hearing may seek reconsideration only of a final decision by filing a written request for reconsideration with the community development director within ten days of the final decision. The request shall comply with Section 14.11.030 of this code. The hearing examiner shall consider the request at the next regularly scheduled meeting, without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final as of the date of the decision on the request for reconsideration. If the request is granted, the hearing examiner may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. Reconsideration should be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision.*

Finally, WWCC 2.50.130 addresses appeals of a hearing examiner decision, and reads as follows: *The final decision by the hearing examiner on any matter within his or her jurisdiction may be appealed in accordance with Chapter 14.11 of the Walla Walla County Code.*

NOTE: *The Notice provided on this page is only a short summary, and is not a complete explanation of fees, deadlines, and other filing requirements applicable to appeals. Individuals should confer with advisors of their choosing and review all relevant codes, including without limitation the code provision referenced above and state law, particularly the Land Use Petition Act (Chapter 36.70C RCW), for additional information and details that may apply.*