

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WA 98802-4109

IN THE MATTER OF

APP-23-01
Shull

)
)
)
)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on April 20, 2023, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and Decision:

I. FINDINGS OF FACT

1. The Appellants are Randolf and Leta Shull, 44 Sageland Dr., East Wenatchee, WA 98802.
2. This is an appeal is of an administrative decision denying the removal of condition #17 (SS-2021-09A) for the preliminary approval of Shull short subdivision (SS-2021-09). Condition of approval #17 stems from an interpretation of Douglas County Code 12.52.020 (B) (6) by the County Legislative body in consultation with their attorney. The appellant tried but failed to file a timely appeal of the preliminary approval. The appellant then applied for a plat amendment to remove condition #17. The application was denied and the appellant filed a timely appeal of that decision.
3. The appellant applied for short subdivision SS-2021-09. The short subdivision would create two parcels from one parent parcel. An existing structure would be on each of the two parcels created. Access to the lots would be via the existing access private road (Sageland road). One half of the road is located on the Shull property. The access road is subject to a maintenance agreement managed by the Sageland HOA. The appellant is not a member of the HOA.
4. The appellant's short subdivision application proposed to continue to use Sageland Road for access to the property. Comments received during the comment period expressed the desire that the Appellant join the HOA and pay a share of the development costs of the road. The Appellant responded that both he and the HOA benefit equally from the use of the road and that he had contributed to the maintenance of the road.

5. The Board of County Commissioners was asked by interested parties to render an interpretation of the code requirements. The specific code section with applicability is DCC 12.52.020 (B) (6) which follows:

Maintained in accordance with these standards by a capable and legally responsible owner, homeowners' association or other legal entity made up of all benefited property owners. A written road maintenance agreement addressing the rights and responsibilities of all benefited property owners shall be approved by the department prior to final approval of the land development. Said road maintenance agreement shall be recorded with the county and shall become a covenant with the affected properties. The term "benefited property owners" shall include the owners of record of all properties with frontage, including access rights, on the private road or otherwise have legal access, whether constructed or not, to the private road. (Emphasis added).

6. The BOCC determined that condition #17, which allowed the use of Sageland Road as access to the short subdivision provided the appellant enter into a private access, operation, and maintenance agreement with the HOA was supported by the language in the above code section. Condition #17 was made part of the preliminary approval of the short subdivision.
7. The appellant attempted to become a member of the HOA. The appellant asserts that the HOA would not enter into the agreement unless the appellant paid \$30,000.00 as a pro rata share of the initial development cost of the road. This figure was derived from a written comment submitted by the head Of the HOA. The appellant asserts the HOA would not further negotiate his entry into the HOA.
8. The appellant submitted a plat amendment application to remove condition #17 from the preliminary approval of the short subdivision. The appellant believed the condition should be removed because:
 - 8.1 There is no proposed construction so there will be no additional traffic.
 - 8.2 The application is to split the existing structures.
 - 8.3 The easement is clearly defined as access to my property with driveways and access to Sageland Road and Keane Grade permitted by you.
 - 8.4 We have tried to join the road maintenance and the HOA is unwilling to move forward in the process.
9. The basis for the denial of the short subdivision amendment begins with the interpretation of the relevant code section offered by the Board of County Commissioners. The appellant asserts the County has no authority to impose condition #17 (see appellant's narrative). The Board of County Commissioners in consultation with the Prosecuting Attorney's concludes the code does authorize and support the condition of approval.
10. Preliminarily, the Hearing Examiner notes that the appellant submitted no evidence for the record that the \$30,000.00 pro rata share which the HOA required for the appellant to join the agreement was unreasonable. As noted above this figure was derived from the written comment by the head of the HOA. The appellant asserts that he already has access to his property through Sageland Road and has participated in the maintenance of the road, but he does not provide any evidence as to the extent and value of his participation. The facts

support the conclusion that the HOA offered conditions by which the appellant could join in the maintenance agreement and the appellant turned them down.

11. The decision being appealed is the decision by Douglas County Land Services to deny SS-2021-09A, which was an application to amend the preliminary plat approval by removing a condition of approval.
12. The Hearing Examiner would note that the Hearing Examiner's review of the Douglas County Code, DCC 17.42.020, references revisions to preliminary plat approvals.
13. Douglas County denied the application for the revision to the preliminary plat approval based upon Douglas County's position that the County's interpretation of DCC 12.52.020(B)(6) is legal and effective and requires the applicant, as a private road benefitted property owner, to be a part of a homeowner's association or other legal entity made up of all the benefitted property owners.
14. An open record public hearing after due legal notice was held on April 20, 2023.
15. The entire Planning Staff file was admitted into the record at the public hearing.
16. Appearing on behalf of the appellants was Tom O'Connell. Mr. O'Connell did not provide any testimony, but provided argument based upon the record before the Hearing Examiner.
17. Attempting to provide testimony at the hearing was David Visser, attorney for the non-party homeowner's association. The Hearing Examiner did not allow Mr. Visser to provide testimony or argument because the Hearing Examiner believes that this dispute is between the County and the Appellant and that it would be unfair to either party to allow additional evidence that may not have been relied upon by the County in rendering this decision.
18. The Hearing Examiner raised at the hearing whether or not the Hearing Examiner can, sua sponte, raise the question of whether or not the revision to preliminary approval process could be used to eliminate a condition of approval of the preliminary plat approval that was not appealed. Because this issue was not raised by either party, the Hearing Examiner will decline to address this issue in this decision.
19. Admitted into the record were the following exhibits:
 - 19.1 Ex. 1 APP-2023-02 Materials
 - 19.2 Ex. 2 SS-2021-09A Notice of Action
 - 19.3 Ex. 3 SS-2021-09 Notice of Action
 - 19.4 Ex. 4 April 17, 2023 letter from Northwest GeoDimensions
 - 19.5 Ex. 5 Draft Private Access and Maintenance Agreement
 - 19.6 Ex. 6 Knowles SP
 - 19.7 Ex. 7 Road Maintenance Agreement
 - 19.8 Ex. 8 Email from Stephen Skylstad
 - 19.9 Ex. 9 Shull Preliminary Plat
 - 19.10 Ex. 10 Simmons SP
 - 19.11 Ex. 11 Batterman Survey Book

- 19.12 Ex. 12 Breisendine SP
 - 19.13 Ex. 13 Additional Parcels Appurtenant to Sageland Road
 - 19.14 Ex. 14 Skylstad SP
 - 19.15 Ex. 15 Letters of Support from the Public
20. No member of the public testified at the hearing.
21. The Hearing Examiner specifically finds and concludes that the Applicant/Appellant is required to join the legal association of “all benefitted property owners” in order to maintain the private road. The term “benefitted property owners” pursuant to the Douglas County Code, refers to “all properties with frontage, including access rights on the private road or otherwise have legal access, whether constructed or not, to the private road.” This definition includes Appellants and members of the homeowner’s association.
22. The Appellant argues that they have been providing maintenance costs for this road. However, they are not members of the homeowner’s association that maintains the private road.
23. The Hearing Examiner recognizes that in this particular instance, the Appellant’s development rights are now contingent upon a third party entity accepting them as members. Nevertheless, the Hearing Examiner agrees with Douglas County that their interpretation is the correct reading of the applicable provisions of the Douglas County Code.
24. The appellant has failed to demonstrate that:
24.1 Condition #17 is outside of the authority of the County to impose.
24.2 Condition #17 cannot be accomplished and therefore is unreasonable.
25. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

- 1. The Hearing Examiner has been granted authority to render this decision.
- 2. The appellants have failed to meet their burden of proof challenging the Notice of SS-2021-09 dated December 17, 2021 is erroneous.
- 3. The appellants have failed to meet their burden of proof challenging the Notice of SS-2021-09A dated March 9, 2023 is erroneous.
- 4. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the March 9, 2023 SS-2021-09A Notice of Action and the March 9, 2023 SS-2021-09 Notice of Action are hereby **AFFIRMED** in all respects.

Dated this 3rd day of May, 2023.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.