BEFORE THE HEARING EXAMINER FOR THE CITY OF BLACK DIAMOND

Phil Olbrechts, Hearing Examiner

RE: Bailey Plat Alteration

PLN14-0029

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

INTRODUCTION

The applicant requests approval of an alteration to a two-lot short residential subdivision in order to delete a restrictive covenant that prohibited development of one of the two lots because at the time the lot did not comply with the minimum lot size of applicable King County development standards. The plat is now in the jurisdiction of the City of Black Diamond and the subject lot meets Black Diamond minimum lot size requirements. The plat alteration is approved.

ORAL TESTIMONY

Stan May, Black Diamond planner, testified that there was no information in the record as to why King County would create an unbuildable lot. He noted that the unbuildable lot has all frontage improvements required of adjoining lots (which means no curb, gutter or sidewalk) and that it is unlikely that any additional frontage improvements will be constructed on any adjoining lots. He also noted that if the subdivision were approved for the first time today the City would still not be requiring any additional frontage improvements since those improvements would have nothing to connect to on adjoining lots. The subject lot is served by all necessary public services. The lot needs no new infrastructure development to serve it. The application has been signed by the other lot owner of the two lots short plat and he also received notice of the hearing.

EXHIBITS

Ex. 1: Staff Report.
Ex. 2: Agreement to Amend Short Plat dated September 25, 2014
Ex. 3: 1980 Short plat.
Ex. 5: Vicinity map.
Ex. 6: Notice of application.

FINDINGS OF FACT

Procedural:

2. **Hearing.** The Hearing Examiner conducted a hearing on the application at 5:30 p.m. at the Black Diamond City Council Meeting Chambers on October 22, 2014.

**Substantive:**

3. **Site/Proposal Description.** The applicant requests approval for alteration of a two-lot residential short subdivision to delete a restrictive covenant that prohibits development of one of the two lots because at the time the lot did not comply with the minimum lot size of applicable King County development standards. The plat is now in the jurisdiction of the City of Black Diamond and the subject lot meets Black Diamond minimum lot size requirements. The plat alteration is approved.

Josh Bailey, the applicant, owns Lot 2 of the subject short plat. Alan and Glenda Ahearn own Lot 1 of the short plat. Mr. Bailey and the Ahearns signed an agreement authorizing removal of the covenant, entered into the record as Ex. 2. The size of the subject lot is 15,449 square feet. The minimum lot size in the R4 district is 9,600 square feet. See BDMC 18.30.040(A)(1)(a).

4. **Characteristics of the Area.** The area is developed with single family housing.

5. **Adverse Impacts.** No significant adverse impacts are associated with the proposal. The lot meets minimum lot size standards and will be fully served by all necessary public infrastructure and services. There is nothing in the record to suggest that the lot cannot be developed due to critical areas or any other environmental constraints.

**CONCLUSIONS OF LAW**

**Procedural:**

1. **Authority of Hearing Examiner:** BDMC 18.08.030 provides that preliminary plat alterations are classified as Type 3 applications. BDMC 18.08.060 provides that the Hearing Examiner shall make final decisions on preliminary plat alterations after holding an open record hearing.

**Substantive:**

2. **Zoning Designation:** R4, Single Family Residential

3. **Review Criteria and Application.** BDMC 17.20.090 governs the criteria for preliminary plat alterations. Those criteria are quoted in italics below and applied to the application under corresponding Conclusions of Law.

**BDMC 17.20.090(B):** Alteration. If an applicant is interested in the alteration of any subdivision or any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to the community development department requesting the alteration. The application shall contain the signatures of all persons having an ownership interest in lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered.
If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

....

For purposes of this section, a "major alteration" means the creation of additional lots, the elimination of open space, or changes to conditions of approval on an approved preliminary subdivision, and a "minor alteration" means (a) modifications to engineering design, unless the proposed design alters or eliminates features specifically required as a condition of preliminary subdivision approval, (b) a modification to lot dimensions, provided that such modified dimensions conform to city code, or (c) a reduction in the number of lots to be created, provided that the reduction otherwise conforms to the provisions of city code. ...

If the alteration to a subdivision is requested after filing the final plat with King County, a minor plat alteration may be approved with consent of the city council. If the community development department determines that the proposed alteration is a major alteration, then the department may require replatting pursuant to this title. Upon receipt of an application for alteration, the community development department shall provide notice of the application to all owners of property within the subdivision, and as was required by the subdivision application.

The city shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between properties.

After approval of the alteration, the city shall order the applicant to produce a revised drawing of the approved alteration of the subdivision. The final plat shall accurately reflect the approved alteration and shall be filed with the county auditor to become the lawful plat of the property, after receiving final plat approval...

4. The proposed alteration complies with all applicable standards quoted above. An agreement to terminate the restrictive covenant was signed by all parties to the covenant as shown in Ex. 2. The proposal qualifies as a major alteration because it involves a modification to the short plat conditions of approval that required the restrictive covenant. A re-platting is not required since the alteration involves no dimensional or map changes. A notice of application was published as required by city code on October 6, 2014 and notice was also provided to the Ahearns, the owners of the other lot of the short subdivision. The public use and interest is served by the alteration since there are no adverse impacts associated with the alteration and it will be fully served by all necessary infrastructure and public services as determined in Finding of Fact No. 5. Filing a revised drawing of the plat is not required as the only alteration is to the covenant. The conditions of approval require that the signed agreement altering the covenant must be filed with the county auditor prior to issuing any development permits for the subject property.
DECISION

The proposed subdivision alteration is approved subject to the condition that the agreement entered as Exhibit 2 be record with the county auditor prior to the issuance of any development permits of the subject property.

Dated this 5th day of November, 2014.

Hearing Examiner
City of Black Diamond

Appeal Right and Valuation Notices

This land use decision is final and subject to appeal to superior court as governed by Chapter 36.70C RCW. Appeal deadlines are short and procedures strictly construed. Anyone wishing to file a judicial appeal of this decision should consult with an attorney to ensure that all procedural requirements are satisfied.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.