

Appeal, Staff Report and Recommendation to the Hearing Examiner

Project Name:	Matson and Morgan Code Interpretation Appeal	
Case Number:	OLR-2019-00158	
Request:	Appeal of Decision of Matson and Morgan Code Interpretation	
Address:	20401 NE 58 th Street	
Parcel number(s):	171700-000, 986046-022, 986046-024 and 986046-023	
Appellant/Contact:	LeAnne Bremer Miller Nash Graham & Dunn LLP 500 Broadway St. Suite 400 Vancouver, WA 98660 360.617.7002 Leanne.bremer@millernash.com	
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Neighborhood Association/Contact: Proebstel Neighborhood Association
 Marilee. McCall, contact
 Phone: 564.391.2316
 Email: Marilee.mccall@clark.wa.gov

Date of notice: April 9, 2020

Hearing Examiner: Dan Kearns

Public hearing date: May 14, 2020

Recommendation

Deny Appeal and Uphold Planning Director's Determination

Land Use Manager Initials: Date issued: May 5, 2020

Revised 5/5/2020



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 1300 Franklin Street, Vancouver, Washington
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www.clark.wa.gov/development



For an alternate format,
 contact the Clark County
 ADA Compliance Office.
 Phone: 564.397.2322
 Relay: 711 or 800.833.6384
 E-mail: ADA@clark.wa.gov

Legal description: 171700-000, 986046-022, 986046-024 and 986046-023, Located in the NE quarter of Section 17, Township 2 North, Range 3 East of the Willamette Meridian.

Zoning/Comp plan designation: R-5 /Rural

Comments

On April 21, 2020 an email was submitted by Gary W. Eckert, as Exhibit 15a, within which he expressed his concerns regarding NE 49th Street.

See staff's findings below.

Applicable Laws

Clark County Code: Title 12.05 (Public and Private Road Standards), Chapter 40.100 (General Provisions), Chapter 40.500.010 (Summary of Procedures and Processes), Chapter 40.520.010 (Legal Lot Determination), 40.630.070 (Appeal)

Project description

Appeal of Planning Director Review, OLR-2019-00158.

Background

The applicant has requested two separate interpretations by the responsible official(s) allowed under the provisions of 40.100.050.B and 40.500.010 by the Community Development Director and the County engineer (OLR-2019-00158). Requesting the interpretation of Clark County Code (CCC) 40.100, 40.520 and former CCC 12.05.

The applicant initially requested that the Community Development Director and County Engineer interpret both the above referenced code sections as applied to two separate unappealed land use decisions from 1990 and 2018. On January 7, 2020, staff informed the applicant the requested interpretation of prior unappealed land use decisions fell outside the parameters of a code interpretation request and requested that the applicant supplement the application to separate the code interpretation request from the facts of any previous land use decisions.

On January 8, 2020, the applicant agreed to limit the code interpretation to the following:

1. Does Section 40.520.010 require the County to confirm legal lots have access when it approves a legal lot determination?
2. Does CCC 12.05.210(a)(1) apply to rural roads in public rights-of-way?

On February 5, 2020, staff issued the decision OLR-2019-00158 (see exhibit 4).

On February 14, 2020, the applicant appealed the staff decision (see exhibit 4). Although the applicant had previously agreed to limit the subject code interpretation request to the above referenced questions, the applicant's appeal includes detailed discussion and argument that

seeks to characterize two land use decisions as well as a parallel lawsuit relating to NE 49th Street that is currently pending in Clark County Superior Court. (*Linda Matson and Danny Morgan v. Cambridge Estates HOA et al, Cause No. 19-2-02001-06*). This lawsuit was filed by the applicant against Clark County and the Cambridge Estates HOA in July of 2019. The applicant contends that this discussion and argument regarding the prior decisions, the Cambridge Estates subdivision, and the pending lawsuit regarding NE 49th was intended to provide context for the code interpretation.

On March 16, 2020, Cambridge Estates HOA (HOA) requested party status in this appeal. (See Ex. 9)

On March 17, 2020, the applicant opposed the HOA's request for party status in this appeal (See Ex. 10). Although the applicant's appeal includes a discussion of the Cambridge Estates subdivision as well as the merits of applicant's pending lawsuit against the HOA, the applicant argues that the HOA should be denied party status and that its "viewpoint [does not] need to be considered" as a part of the subject code interpretation. (Ex. 10, p.3). In addition, the applicant argues that because staff did not consider the alleged facts in the underlying decision, there is no reason for HOA to be a party in this appeal, even though the applicant has now re-alleged these same facts to the Hearing Examiner for consideration on appeal (See Ex. 10, p. 1).

On April 14, 2020, (See Exhibit 13) the applicant e-mailed staff and reiterated that the factual discussion and argument provided in the planning director interpretation request was intended to provide context for the code interpretation request and that "they fully acknowledge that the examiner does not have the authority to adjudicate the facts of a dispute between the appellants and their neighbors."

Appeal issues and response

Except as modified below, staff adopts the findings and conclusions of the original decision for OLR-2019-00158, as found in exhibit 4 for that record for each of the appeal items.

Issue #1:

Appellants respectfully request that the Hearing Examiner finds that the County's approval of a legal lot under UDC 40.520.010 necessarily means that it approves the lot as a legal lot of record with access and is eligible for a building permit.

Response to Issue #1

Clark County Code (CCC) 40.520.010.A outlines the purpose and summary of the legal lot determination code. The approval criteria for legal lot determinations are found in CCC 40.520.010.E. In these code sections, the process and criteria are limited to the zoning and platting conditions that must exist for approval of a legal lot determination. These approval criteria do not include a review of the access for a parcel.

As stated in the staff report for OLR-2019-00158 (Exhibit 4), through the building permit process, staff verifies access for any lot. If access is required off a public road, review and approval is required by Clark County Public Works. If access is off a state road, review and approval is required by Washington Department of Transportation. If access is off a private road/easement a recorded easement description must be provided, at the time of building

application, so Permit Center staff can verify the owner has legal access off the private road easement to a public right of way.

The authority for granting road approach permits is found in CCC 12.08.010, while CCC 40.350.030(B)(4) provides provisions for access to public roads and CCC 40.350.030(B)(10) provides provisions for private roads. Procedurally, if the parcel connects to a public right of way the applicant can apply for road approach prior to a building permit, but if a road approach is not done prior to a building permit then one will be done with the building permit (See Exhibit 19).

If the parcel connects to a private road at the time of building permit application, the applicant shall submit a recorded easement proving the parcel has access from the private road to a public right of way. There is no separate application prior to building permit application, this is only done with the building permit process or through a short plat or subdivision process. None of the applicable code or related procedures are completed as part of a legal lot determination.

Issue #2

Appellants respectfully request that the Hearing Examiner find that CCC 12.05.210(1), allowing private roads in public rights-of-way only applies to urban roads and roads serving less than 9 lots.

Response to Issue #2

Staff concedes that, depending upon the applicable code year revision, CCC 12.05.210(a)(1) generally applied to urban roads and/or cluster subdivisions of 8 lots or less in the rural area. However, depending upon the circumstances of particular developments that did not meet this criteria, the County may also have approved the placement of private roads in dedicated public rights of way by approving road modifications and/or variances, or by otherwise approving or accepting a particular development without requiring dedication of the roadway.

Recommendation

Based on the above findings and information in the record, staff recommends that the Hearings Examiner decline to consider, interpret or apply the contextual facts offered by the applicant relating to neighboring parties and a dispute that is being actively litigated, because doing so would be inconsistent with a Type 1 Code Interpretation. To the extent that consideration of these facts is necessary, the matter should be remanded to the Planning Director and notice should be provided to affected parties.

With regard to the merits, and assuming the context offered by the applicant is not considered, staff recommends that the Hearing Examiner DENY the appeal as to Issue #1; and DENY the appeal as to Issue #2, in favor of the qualified response set forth in staff's response to Issue #2.