

BEFORE THE HEARING EXAMINER
IN AND FOR THE COUNTY OF SNOHOMISH

In Re Frogmal Estates,

No. 05-123050 SD

Picnic Point Preservation Committee,

Appellant,

Order Striking January 11, 2016 Hearing
Date

Frogmal Estates, LLC,

Applicant,

Snohomish County Planning and
Development Services Department,

Respondent.

1 Snohomish County Planning and Development Services (PDS) moved to continue the open
2 record hearing on appellants' SEPA appeal and type 2 land use applications preliminary plat
3 approval and subdivision alteration scheduled to begin January 11, 2016. PDS discovered a
4 defect in notice of the open record hearing. A proposed alteration of the Regatta Estates plat
5 requires notice of the open record hearing to all parcel owners, and eleven parcel owners were
6 not given notice.¹ Applicant Frogmal Estates reluctantly accedes to PDS' motion.

7 Appellants proposed to bifurcate the open record hearing, i.e., conduct the SEPA and
8 preliminary plat hearing as scheduled on January 11 and follow up later with an open record
9 hearing on the plat alteration.

10 PDS correctly points out the problem with this approach is that the preliminary plat cannot be
11 approved with approval of the plat alteration. A further problem is the potential violation of the
12 local project review law: "[T]he local government shall provide for consolidated permit review
13 with a **single open record hearing** and no more than one closed record appeal as provided in
14 RCW 36.70B.060." RCW 36.70B.120(2) (1995) (emphasis added).

¹ Notice was given to all property owners within five hundred feet of the proposed plat, but these eleven property owners were beyond the five hundred foot radius.

1 The Examiner is well aware of the effort required by all parties to prepare for a major proceeding
2 and the impact of an eleventh hour continuance. However, the Examiner believes there is no
3 appropriate legal choice but to strike the hearing date.²

4 Adequate notice is imperative. "A neighboring landowner should be afforded a fair opportunity to
5 be heard." *Prosser Hill Coal. v. County of Spokane*, 176 Wn. App. 280, 291, 309 P.3d 1202,
6 1208 (2013), citing *Gardner v. Pierce County Board of Commissioners*, 27 Wn. App. 241, 243-
7 44, 617 P.2d 743 (1980) (court tolled the time period to appeal a land use decision when the
8 lack of public notice deprived a neighboring landowner of a fair opportunity to be heard). The
9 lack of notice to the eleven parcel owners in Regatta Estates who are beyond the five hundred
10 foot radius of the proposed subdivision is fatal to the hearing date.

11 Therefore, the hearing date is stricken and will be rescheduled.

12 PDS and Frogmal Estates proposes hearing dates of February 24 through 26, while appellants
13 ask for a hearing date no sooner than March 21 to accommodate its counsel's schedule.

14 The imminence of the hearing requires immediate action by the Examiner; the issue of to what
15 date the hearing will be rescheduled will be decided after the Examiner has more time to reflect
16 on the situation. An order rescheduling the open record hearing will be issued the week of
17 January 11.

18 DATED this 8th day of January, 2016.

19 

20 _____
21 Peter B. Camp
22 Snohomish County Hearing Examiner
23

24 **EXPLANATION OF RECONSIDERATION**

25 This is an interim order from which no right of appeal lies. However, reconsideration by the
26 Examiner may also be sought by one or more Parties of Record as provided by SCC 2.02.170
27 (2013). The following paragraphs summarize the reconsideration and appeal processes. For
28 more information about reconsideration procedures, please see chapter 2.02 SCC and the
29 Examiner Rules of Procedure.

² Even if appellants' were to waive rights to appeal based upon the sequence of the land use decisions and the applicant and appellants were to waive their rights to appeal based on RCW 36.70B.120(2) (1995), other parties of record could appeal.

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1 **Reconsideration**

2 Any Party of Record may request reconsideration by the Examiner pursuant to SCC 2.02.170
3 (2013). A petition for reconsideration must be filed in writing with the Office of the Hearing
4 Examiner, 3000 Rockefeller Avenue, M/S #405, Everett WA 98201, **on or before January 19,**
5 **2016.**³ There is no fee for filing a petition for reconsideration. The petitioner for reconsideration
6 "shall mail or otherwise provide a copy of the petition of reconsideration to all parties to the
7 appeal on the date of filing."

8 The petition for reconsideration does not have to be in any special form but must:

9 (a) Contain the name, mailing address and daytime telephone number of the petitioner,
10 together with the signature of the petitioner or of the petitioner's attorney, if any;

11 (b) Identify the specific findings, conclusions, actions and/or conditions for which
12 reconsideration is requested;

13 (c) State the relief requested; and,

14 (d) Where applicable, identify the specific nature of any newly discovered evidence and/or
15 changes proposed by the applicant.

16 The grounds for seeking reconsideration are limited to the following:

17 (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;

18 (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing
19 Examiner's decision;

20 (c) The Hearing Examiner committed an error of law;

21 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the
22 record; or

23 (e) New evidence which could not reasonably have been produced and which is material to
24 the decision is discovered.

25 Please include the County file number in any correspondence regarding this case.

26 **Staff Distribution:** Ryan Countryman, Planning and Development Services

³ The tenth day falls on Martin Luther King Day, January 18, 2016. The deadline therefore extends to the next business day, Tuesday, January 19, 2016.