

**YAKIMA COUNTY PLANNING DIVISION  
APPEAL STAFF REPORT**

<b>FILE NUMBER:</b>	APL2017-00002
<b>HEARING DATE:</b>	May 4, 2017
<b>APPELANT:</b>	Kristi M. Wilbert 1470 Selah Heights Road Selah, WA 98942
<b>STAFF CONTACTS:</b>	Julia Loudon, Planner, Zoning and Subdivision
<b>PARCEL NUMBERS:</b>	181433-12401, 181433-12402, and 181433-11409 (parcel 181433-11409 is tied to parcel 181433-13405 as a district segregation)

**BACKGROUND**

The Yakima County Planning Division received a Type 1 application for a second farm dwelling together with a boundary line adjustment to create a vacant 3 acre lot (CUP2016-00073/SSE2016-00044). A Type 2 resource setback reduction was also included to reduce the 150 foot resource setback to 115 feet from the western property line and 75 feet from the eastern property line for a proposed residence on the 3 acre lot (VAR2016-00028). The subject property owners were Bill Douglas and William Zirkle and the application agent was Bill Hordan, with Hordan Planning Services. On January 31, 2017, the Yakima County Administrative Official issued a conditional approval for the proposal. A neighboring property owner submitted an appeal of the decision for PRJ2016-00744 / CUP2016-00073 / VAR2016-00028 / SSE2016-00044. The proposal is subject to Yakima County Code Title 19 (Unified Land Development Code).

**Location:**

1. 1480 Selah Heights Road. The subject parcels are located about 100 feet west of Selah Heights Road with the driveway approach about 1/3 of a mile south of the intersection of Selah Heights Road and Selah Naches Road, approximately 1 mile west of the City of Selah, WA.

**Jurisdiction and Process:**

2. The land use application was applied for and approved under Yakima County Code (YCC) Title 19, Unified Land Development Code. According to YCC 19.30.030(1)(b), a boundary line adjustment application requires a Type 1 review. A second farm dwelling (in addition to the owner's single-family residence) on a parcel that is at least 20 acres in size and is in active agricultural use also requires a Type 1 review when in the Agriculture (AG) zoning district,

according to the land use table YCC 19.14-1. The resource setback reduction is considered an administrative adjustment and is subject to a Type 2 review, according to YCC 19.35.020(6)(b). According to YCC 16B03.060, two or more project permits may be processed collectively under the highest numbered category of project permit. As such, the proposal was reviewed under the Type 2 process.

YCC 16B.03.030(1)(b) provides that the Administrative Official's final determinations on Type 2 projects can be appealed to the Hearing Examiner. YCC 16B.09.040 states that appeals of Type 2 project permit decisions shall be conducted in accordance with Sections 16B.08.030 – 16B.08.060 for open record public hearings, and the adopted rules and procedures of the Hearing Examiner. The determination of the Hearing Examiner may be further appealed to the Board of County Commissioners at a closed record appeal hearing.

**Public Notice:**

3. A notice of the May 4, 2017 open record appeal hearing was mailed to adjacent property owners within 300 feet of the project site on April 7, 2017, in accordance with YCC 16B.09.030. However, it was later realized that not all property owners had been included in the original noticing process. A re-notice of the open record appeal hearing was then mailed to all adjacent property owners within 300 feet of the project site on April 14, 2017.

**Appeal Summary:**

4. Kristi Wilbert filed a timely appeal of the land use decision for PRJ2016-00744 / CUP2016-00073 / VAR2016-00028 / SSE2016-00044 on February 14, 2017. The appellant is requesting that the final decision of conditional approval be reversed and denied. The appellant's appeal points and objections are below:
  - a. Applicant has requested authorization for a "Second Farm Dwelling" on a single parcel of land. The approval conditions occupancy upon recordation of a covenant "...stipulating that this second residence be exclusively for use by farm employees, laborers and their families." The existence of a covenant does not include an effective enforcement mechanism for violations. The unit has historically been a "guest house" for family members and no farm employees, laborers or their families have resided in the residence. The decision should include an automatic termination of the land use approval if there is a violation of this requirement.
  - b. Staff Findings incorrectly conclude that the subject property and new parcel have access via a "30' easement recorded under AFN 7059339". This is incorrect. The short plat and expansion of residential usage constitutes an impermissible expansion of the easement use and requires consent and approval from the underlying property owner. I have not consented to that usage and any determinations with respect to legal access should be determined through a judicial process prior to issuance of a land use decision. Yakima County does not have authority to make legal determinations with respect to the scope and extent of easements.
  - c. The proposed plat does not comply with access requirements set forth in YCC 19.10.040 and YCC 19.23.050. Planning also erroneously concludes that "easterly access and easement established on the short plat that created parcel 181433-12401 and -01402, SUB 2001-00004.

- d. The land use decision does not specify specific requirements applicable to the project with respect to fire apparatus access including width, turn around and all weather surface. Such determinations may not be deferred and must be set forth in the land use decision.
- e. The land use decision fails to consider the placement of trees and irrigation systems within the easement and access areas. No provision is made with respect to removal and replacement of such trees and irrigation facilities.
- f. There is not sufficient factual basis to establish review criteria for Administrative Adjustments under YCC 19.35.020.”

The appeal application states that the requested relief is for the final decision of the project be reversed and denied. It is also requested that any decision regarding the land use application be deferred until legal access and rights of use of easement are determined by courts. The appellant is also requesting that the final decision includes the specific standards for the fire apparatus access, along with “such other and further relief as determined just and proper by Hearing Examiner”.

### **STAFF FINDINGS**

#### **Second Farm Dwelling Covenant**

According to the land use table under YCC Table 19.14-1, a Second Farm Dwelling is a Type 1 use in the Agriculture (AG) zoning district. Type 1 uses are allowed uses, subject to approval of applicable permits. This type of use has certain standards under YCC 19.18.210 Farm Labor Housing and Farm Dwellings that must be met before a certificate of planning review can be issued. YCC 19.18.210(2)(e) requires the covenant stipulating that the second farm dwelling is exclusively for use by farm employees, laborers and their family member. The decision for the project requires this covenant under Condition #6. If this condition is not met within the allowed timeframe, the permit will expire and the land use approval is null and void, per YCC 16B.07.050(3). If the condition is met and the covenant is recorded, but the covenant is not followed, Yakima County Code Enforcement could be called upon to look into the matter and determine if code enforcement actions are required. This too could result in the expiration of the permit.

#### **Subject Property Access Easements**

There are three parcels involved in this project, 181433-12401, 181433-12402, and 181433-11409. The primary home is located on -12401 and the proposed second farm dwelling is located on -12402. The application and site plan for the project indicated that the primary home and the second farm home would continue to use the existing driveways to the 30’ access easement to the north, recorded under AFN 7059339. This easement is shown on the short plat that created parcels -12401 and -12402, under the short subdivision SUB2001-00004.

The project involves the relocation of the existing boundary line between -12401 and -12402, no new lots are being created. The resulting 3 acre vacant lot (Parcel A) was proposed to access via an existing easement along the eastern property line. This easement was recorded under AFN 2656554 and was described on the short plat under SUB2001-00004. This easement description contained the following declaration that was signed by both subject property owner (Bill Douglas) and the appellant:

“Know all men by these presents that William B. Douglas and Kristi Wilbert, the owners of the above described land, do hereby declare that said described easement shall exist for the benefit of both parties their successors and assignees in interest.”

Verification of legal access is a requirement of 19.10.040(3). However, as existing access easements were proposed to be used and no additional lots were being created, no easement verification was required as a condition of the decision. The northerly and easterly accesses were reviewed under the original short plat. Boundary line adjustments do not require road improvements, however, based on the comments from the Yakima County Fire Safety Division, the driveways for the proposal were required to ensure that fire apparatus access requirements are met.

#### Fire Apparatus Access and Uses within the Easement

The Building and Fire Safety Division provided the following comment during the project review:

“Driveways must meet fire apparatus access requirements. Including width, turnarounds and all weather surface.”

Based on this comment, the applicants were required under Condition #3 to ensure that the driveways meet the fire apparatus access requirements. As these requirements are specified under Title 13, the applicants were directed to the Building and Fire Safety Division for further details. When being reviewed for condition compliance, the Building and Fire Safety Division will be consulted to determine if the condition has been met. If the condition has not been met within the time allowed, the permit is revoked and the use is not approved.

Regarding the uses within the easement, YCC 19.10.040(6)(c) states that “no building, fence or structure, other than a gate permitted by the easement owner shall be located within or encroach on any public or private access easement or road right-of-way”. The uses within the easement would not be considered buildings, fences, or structures. Issues regarding these type of uses within the easement are a civil matter and cannot be determined by the Planning Division.

#### Administrative Adjustment

YCC 19.18.205 requires certain setbacks and review criteria for especially sensitive land uses (ESLUs), such as dwellings, to ensure that they do not impact or interfere with nearby farming operations. YCC 19.35.020(6)(b) contains the criteria for adjusting the 150’ agricultural resource setback under the Type 2 review process. An applicant must document the following:

- (i) The lot does not have sufficient buildable area as defined by this code to accommodate the space for the proposed ESLU outside the special setback;
- (ii) An intervening physical barrier mitigates the effects of placing an ESLU closer to the agricultural, mineral or forest zoned lot or use; and
- (iii) Based on a response, if any, from the adjoining resource operator, a reduction of the setback will not now, or in the future, adversely affect accepted agricultural, mineral or forest practices.

The application for the project took into account the topography of the property, the presence of a Type 5 drainage way, the location of potential wetlands, and the type of agricultural activity occurring for the reduction to the west. For the reduction to the east, the application included the adjoining resource operator in the proposed boundary line adjustment. A letter also accompanied the application from the operator and stated that the proposed 75’ setback “is far enough away and we do not have an objection if the county allowed a variance of the 150’ requirement”.

The review criteria under YCC 19.18.205(3) allows for mitigation measures to be required to reduce the potential for land use conflicts and separate the site from active agricultural activities. Based on the material provided in the application, it was determined that a proposed home at the reduced setback would not significantly interfere with the adjacent farming operation and the setback reduction was approved with the condition of mitigating sitescreening.

### CONCLUSIONS

**Recommendation:** The Administrative Official recommends that the Hearing Examiner uphold and affirm the decision (PRJ2016-00744/CUP2016-00073/VAR2016-00028/SSE2016-00044) as issued January 31, 2017.

Attachments:

- A. Application Notice of Appeal
- B. Appeal Form/Narrative
- C. Appeal application copy of the Decision for PRJ2016-00744/CUP2016-00073/VAR2016-00028/SSE2016-00044 with pages 1-3 of Attachment F
- D. Notices of Application/Completeness/Hearing
- E. Decision for PRJ2016-00744/CUP2016-00073/VAR2016-00028/SSE2016-00044 with all attachments

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*If this letter pertains to a meeting and you need special accommodations, please call us at 509-574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll free relay service 1-800-833-6388 and ask the operator to dial 509-574-2300.*