APPLICATION: The Possession Point Estates II Homeowners Association has requested preliminary approval for the proposed alteration of a Planned Residential Development, PRD #140/96. The proposed alteration would establish an easement through Tract A of the PRD to serve as access for a parcel adjoining the PRD. The properties are in the Rural zone. The PRD contains 22.64 acres. Tract A is a 2.84 acre parcel. The proposed alteration will allow an access easement over the west 30 feet of Tract A to allow access to the Hill East property, Parcel #R32814-426-4140.

DECISION: Preliminary Planned Residential Development alteration allowing use of the west 30 feet of Tract A of PRD 140/96 is approved subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on February 15, 2007.

I. PRELIMINARY INFORMATION

Applicant: Possession Point Estates Homeowners Association

Property Location: The parcel is located on the western side of Possession Road, and along Quaternary Road and Toma Lane in Clinton, Washington. In the NE ¼ of Sec. 14, Twp. 28N., R3E, W.M. Assessor’s Parcel #R32814-400-4860 & S7768-02-0000A-0.

Applicable Ordinances, Statutes and Regulations: Island County Comprehensive Plan, Land Divisions and Dedications Chapter 16.06 ICC,
Planned Residential Developments Chapter 16.17 ICC, Zoning Ordinance
Chapter 17.03 ICC, Land Use Review Process Chapter 16.19 ICC.

Publication: January 31, 2007  South Whidbey Record

Mailing of Notice to Applicant: January 23, 2007

Sign Posted: September 6, 2006

Mailing of Staff Report: February 5, 2007

Date of Application: August 18, 2006

Hearing Date: February 15, 2007

Exhibit Log:

1. Staff Report
2. Minutes from community meeting held on 5/9/06
3. Complaint investigation request dated 5/17/06
4. Ltr dated 5/20/06 from James Dunlap, to Chris Lurkins, Code Enforcement
5. Pre-Application Conference application dated 6/1/06
6. Site Plan for Proposed Easement Extension within Tract A of PRD 140/96 and map of Possession Point Estates Homeowners Association Properties dated as received 6/1/06
7. Notice of Community meeting in South Whidbey Record dated as received 6/1/06
8. Ltr to Property Owners within 300 feet of Possession Point Estates II (PRD140/96) dated as received 6/1/06
9. Quarter Section Map, NE ¼ of Sec 14, Twp. 28N., R3E
11. Site Plan for Possession Point Estates II PRD 140/96
12. Request for comment dated 6/9/06
13. Ltr dated 6/22/06 from Ryan Morrison, Island County Planning & Community Development, to Terry Swanson
14. Ltr dated 6/22/06 from Bill Poss, Public Works Development Coordinator, to Ryan Morrison
15. Memo dated 6/27/06 from Keith Higman, Island County Health Department, to Ryan Morrison
16. Email dated 6/29/06 from James Dunlap, to Chris Luerkens
17. Possession Point Estates Homeowners Association Membership Roster dated 8/15/06
18. Land Development Permit Application dated 8/18/06
19. Permanent Non-Exclusive Easement for ingress, egress & utilities
20. Amendment to the Operations and Maintenance Agreement for the Swanrun Water System
21. Amendment CC & R's Possession Point Estates & Addition of properties to Possession Point Estates Association
22. Email dated 8/21/06 from Jim Dunlap to Ryan Morrison
23. Email dated 8/21/06 from Jim Dunlap to Ryan Morrison
24. Possession Point Homeowners Association Properties/Possession Point Estates II PRD 140/96
25. Ltr from James Dunlap to Ryan Morrison
26. Notice of complete application dated 8/25/06
27. Request for comment dated 8/25/06
28. Account Summary snapshot
29. Affidavit of Mailing public notice to contact person dated 8/25/06
30. Memo from Aneta Hupfauer, Island County Health Department, Land Use Coordinator, dated 8/30/06
31. Affidavit of mailing public notice to parties of record and property owners within 300 feet of subject parcel
32. Notice of Application dated 9/6/06
33. Affidavit of Publication dated 9/6/06
34. Affidavit of Posting the Public Notice Sign dated 9/6/06
35. Ltr dated 9/15/06 from Bill Poss, to Ryan Morrison
36. Ltr dated 9/18/06 from James Dunlap, to Ryan Morrison
37. Email dated 9/18/06 from James Dunlap, to Ryan Morrison
38. Ltr dated 10/10/06 from Ryan Morrison, to Terry Swanson
39. Ltr dated 11/11/06 from Terry Swanson, to Ryan Morrison
40. Ltr dated 11/28/06 from James Dunlap, to Ryan Morrison
41. Memo dated 12/11/06 from Bill Poss, to Ryan Morrison
42. Deed for multiple easements, submitted at the hearing
43. Ltr submitted at hearing by James Dunlap
44. Ltr submitted at hearing by Harold Jacobs

HEARING TESTIMONY

Ryan Morrison
Island County Planning & Community Development
PO Box 5000
Coupeville WA 98239

Terry Swanson
8053 Toma Lane
Clinton WA 98236

James Dunlap
8031 Toma Lane
Clinton WA 98236

II.
The applicant is seeking an alteration to a Planned Residential Development PRD #140/96. The alteration would increase the length and width of an existing easement through Tract A of the PRD to provide access for an adjacent property outside the boundaries of the PRD.

PRD #140/96 was recorded on February 28, 2000. The PRD created nine (9) residential lots and five (5) tracts. One of the tracts, Tract A was set aside as a recreational tract for the owners of lots within the PRD. Tract A contained a 20 foot wide easement along the western boundary. An application was filed on behalf of the Possession Point Estates II Homeowners Association on August 25, 2006. The alteration seeks to widen and lengthen the easement across the western boundary of Tract A in order to serve an adjacent parcel outside of the PRD boundaries.

III.

The application submitted in the name of the Possession Point Estates II Homeowners Association contained the notarized signatures of eight (8) of the nine (9) owners of lots within the Possession Point Estates II PRD. It also contained the signatures of nearly all of the members of the expanded Possession Point Estates Homeowners Association which appears to be made up of the lot owners of Possession Point Estates and Possession Point Estates II along with certain other lot owners in the immediate vicinity.

IV.

The covenants, conditions and restrictions for the plat of Possession Point Estates and for Possession Point Estates II PRD set up homeowners associations and contained a clause which would allow the declarant of the covenants to combine these two developments as well as other lots within 1000 feet by a declaration of the declarant and without the consent of other lot owners. The declarants have exercised this option as memorialized by a declaration recorded with the Island County Auditor on December 31, 2002. The application filed within contains a majority of all of the property owners in the expanded homeowners association. In fact only one property owner, Jim Dunlap, has objected to the proposed plat alteration.

Mr. Dunlap asserts that there is no Possession Point Estates II Homeowners Association and no Board of Directors; that the expanded Homeowners Association was not legally created and cannot apply for a plat alteration; and that the proposed alteration violates a restrictive covenant of the original Possession Point Estates II PRD and therefore requires approval of all of the lot owners with the PRD.

The CC & R’s for Possession Point Estates II establishes a homeowners association consisting of the lot owners within the PRD. This instrument was
recorded with the Island County Auditor. It is identical to a set of CC & R’s previously recorded on behalf of the original Possession Point Estates Plat. Article 10.3 allows the amendments of each set of CC & R’s requiring agreement of 75% of the owners if done within the first 25 years. More than 75% of the lot owners in each Possession Point Estates development have indicated support for an amendment to the CC & R’s which would allow the easement which is the subject of this plat alteration.

The restrictive covenants applicable to the PRD which created Possession Points Estates II listed the restrictions on the use of property by occupants under Article 2. None of the restrictive covenants in Article 2 would forbid granting an easement across Tract A for the benefit of a parcel outside of the PRD.

Article 3 of the CC & R’s gives the association the authority to pass rules and regulations concerning the use of common areas within Possession Point Estates II. Article 3.3 gives a Board of Director’s the authority to make rules on behalf of the Association after the membership reaches seven (7) members. The election of the Board and Board decisions are to be done by a majority vote. The Hearing Examiner concludes that the owners of lots within Possession Point Estates II can take action in regards to common area Tract A, which was set aside for recreational use by lot owners through a simple majority. There is nothing specific in the CC & R’s which would keep the Board or the Association from granting an ingress and egress easement over Track A by a majority vote.

Even the specific restrictions set forth in the covenants can be amended by a 75% vote of the lot owners. In this case more than 75% of the lot owners have agreed that an easement should be granted over Tract A to serve the Hill parcel.

V.

This matter has been reviewed by Island County Planning & Community Development. Planning has recommended approval of the proposed plat alteration subject to conditions. The Findings of Fact set forth in the staff report prepared by Planning are supported by the record as a whole and are adopted by the Hearing Examiner, by this reference as Findings of Fact herein.

VI.

No County agency has objected to the plat alteration. Even after alteration the plat contains sufficient open space to meet the open space requirements for a PRD, both at the time this PRD was approved and under the current PRD rules.

VII.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:
CONCLUSIONS OF LAW

I.

Chapter 16.17 of the Island County Code allows amendments to a Planned Residential Development subject to the same requirements applicable to the original development, including procedural requirements. Island County has processed this proposed alteration to PRD 140/96 as a Type III decision requiring a public hearing and a decision by the Hearing Examiner. The requested change in PRD 140/96 would still result in a PRD which meets the original approval requirements.

II.

The dissenting owner raises numerous issues about the legality of the homeowners association, argues that there is no Possession Point Estates II Homeowners Association, states that the Association was not created as required by the Island County Code; and argues that the required PRD amendment requires agreement of all of the owners of lots within the PRD.

The Hearing Examiner respectfully disagrees with all of these arguments. A homeowners association for Possession Point Estates II was created by the filing of the CC & R’s. Whether or not the expanded homeowners association has problems it is clear that eight (8) of the nine lot owners within the PRD support the plat alteration. The application submitted was signed by eight (8) of the nine (9) lot owners.

RCW 58.17.215 allows any interested person to seek the alteration of a subdivision or any part of a subdivision. In this case eight (8) of the nine (9) lot owners in the PRD are seeking an alteration. The Hearing Examiner concludes that the proposed alteration meets the requirements for the alteration of a Planned Residential Development, is in the public interest, and should be approved.

III.

The dissenting lot owner argues that pursuant to RCW 58.17.215 the signature of all of the lot owners is required prior to alteration. However this is a mistake in the reading of RCW 58.17.215. It only requires agreement of all of the parties subject to the covenants when the proposed alteration would alter a restrictive covenant. There are no restrictive covenants regarding this PRD which forbid the granting of an ingress and egress easement across Tract A. In fact Article 3 of the CC & R’s specifically gives the lot owners the power, through majority vote, to pass rules and regulations concerning the use of common areas.
Additionally Article 10.3 of the CC & R’s allows amendments of any of the restrictive covenants through a 75% vote of the lot owners. In this case no matter how one determines that the homeowners association is made up it is clear that more that 75% of property owners with a vote support the amendment passed by the homeowners association approving the granting of an ingress and egress easement across Tract A.

IV.

Subject to the conditions recommended by staff in Exhibit 1, the proposed PRD amendment will meet all of the requirements for such an amendment and the Hearing Examiner should approve the requested PRD alteration.

V.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

**DECISION**

The Island County Hearing Examiner hereby approves alteration of PRD 140/96, to allow a 30 foot wide ingress and egress easement through Tract A to serve an offsite parcel. This alteration is approved subject to the following conditions:

1. Compliance with Island County Public Works requirements as specified in the attached comments and conditions dated December 11, 2006.

2. Compliance with Island County Health Department requirements as specified in the attached comments and conditions dated August 30, 2006.

3. Prior to final plat approval, all site and off-site improvements required as a condition of preliminary approval shall be complete, OR, at the discretion of the Board of Island County Commissioners by recommendation of the Planning Director and County Engineer shall be bonded for.

4. The complete PRD number and existing Parcel numbers must appear at the top right corner of each sheet of the Final PRD Alteration Mylar as follows:

   **PRD ALTERATION NO. PLA 349/06.R32814-400-4860**
   **R32814-504-4440**
   **S7768-02-0000A-0**
5. In addition to what has been recorded on the face of PRD 140/96, the following language is to appear on the Final PRD Alteration under “NOTES”:

“The purpose of this PRD alteration is to increase the length and width of the existing access and utility easement within Tract A as established on PRD 140/96.”

6. All requirements shall be completed and the Plat Alteration mylar must be recorded within five (5) years from the date of this approval.

7. All requirements for Final Plat Alteration approval required in ICC 16.06.120 & 130 shall be met. The final subdivision and alteration shall be consistent with the approved preliminary plat as modified by conditions of preliminary approval listed in this section.

8. The above requirements are subject to change if proposed easement size or any other information provided by the applicant or their authorized representatives proves inaccurate.

9. The total of all property taxes for the year in which the plat is to receive final approval and any delinquent assessments for which the property may be liable shall be paid in full to the Island County Treasurer prior to the recording of the final plat alteration.

10. Upon completion of the above requirements, the applicant shall submit:

   A. The original Final PRD Alteration application and all required materials, along with four copies.
   B. An original, complete Certificate of Title formatted to meet the Washington State Recording requirements dated no earlier than 30 days prior to submittal.
   C. Four paper copies of the proposed final PRD alteration.
   D. A signed and notarized statement by the owner that all conditions of preliminary approval have been met.

11. On the final mylar, ALL certification stamps and signatures must be in permanent black ink.

12. The Island County Auditor will only accept the following for recording:

   A. Permanent black ink on linen, photo mylar with a fixed silver halide base and permanent black ink on mylar when the ink is coated with
a suitable substance to assume permanent legibility. They will not accept under any circumstance: Diazo mylar, linen with an image produced by a dry electrostatic process, mylars with an image produced by a dry electrostatic process, or taped down edges.

B. Sheet size must be 24 x 18 inches. Borders must be 2 inches on the left edge and ½ inch on the top, bottom, and right edges. If any part of a signature, seal, drawing, or any other mark is located in the required borders, the Auditor’s Office will not accept the plat for recording.

Entered this 7th day of March, 2007, pursuant to authority granted under the laws of the State of Washington and Island County.

________________________
MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

PLA

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.