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Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER CONSOLIDATING PROCEEDINGS
OF APPEALS AP 02 0725 and AP 02 0711

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANTS: CASCADE AG SERVICES, INC. and CITIZENS FOR ZONING AND
CODE COMPLIANCE

ASSESSOR PARCEL NOS: P112114 and P112115

ABBREVIATED LEGAL DESCRIPTION: The property subject to interpretation is located at
13459 Dodge Valley Road, Mount Vernon, WA, a portion of Section 25,
Township 33 North, Range 03 W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeals of)
)
CASCADE AG SERVICES, INC.) PL 02-725
and)
CITIZENS FOR ZONING AND) PL 02-0711
CODE COMPLIANCE)
)
Of an Administrative Interpretation)
Regarding Permissibility of an)
Agricultural Storage and Processing Facility)
In the Rural Reserve Zoning District) **ORDER CONSOLIDATING**
_____) **PROCEEDINGS**
)
In the Matter of the Application of)
)
CASCADE AG SERVICES, INC.) PL 02-0541
)
For a Special Use Permit to Operate)
an Agricultural Storage and Processing)
Facility in the Rural Reserve Zoning District)
_____)

PROCEDURE

On November 14, 2002, the Planning and Permit Center issued an Administrative Interpretation (PL 02-0655) addressing whether an agricultural storage and processing facility is allowed in the Rural Reserve zoning district. The Interpretation was requested by Citizens for Zoning and Code Compliance (Citizens) in relation to activities of Cascade Ag Services, Inc. (Cascade).

The Interpretation concluded that agricultural "storage" activities are permitted outright in the zone, and that agricultural "processing" may be allowed in the zone by Special Use Permit.

The Interpretation was appealed both by Cascade (PL 02-725) and by Citizens (PL 02-0711). Cascade challenged the decision that the food "processing" involved is not permitted outright in Rural Reserve areas. Citizens argued that Cascade's "storage" and "processing" activities are neither permitted nor permissible in the zone.

On December 27, 2003 Cascade submitted an application for a Special Use Permit in relation to its operations.



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On January 2, 2003, Cascade requested consolidation of the appeal hearings and the Special Use Permit hearing. The Citizens and the Planning and Permit Center opposed this motion.

Argument on the consolidation issued was heard on January 22, 2003 in open hearing before the Hearing Examiner. Phil Olbrechts, Attorney at Law, represented Cascade. Gerald Steel, Attorney at Law, represented Citizens; Linda Kuller, Senior Planner, represented the Planning and Permit Center.

Testimony was taken, exhibits were received and argument was heard. The following exhibits were admitted:

1. Request for Administrative Interpretation, Citizens for Zoning and Code Compliance, October 24, 2002;
2. Administrative Interpretation, Planning Director, November 14, 2002;
3. Letter, Linda Kuller to Richard Sepler re "stay of proceedings", December 4, 2002.
4. Letter, Phil Olbrechts to John Moffat, December 20, 2002.
5. Request for Consolidation, Cascade Ag Services, January 2, 2003.
6. Transmittal of Request for Consolidation to Hearing Examiner, January 7, 2003.
7. Response to Request for Consolidation, Planning and Permit Center, January 7, 2003.
8. Response to Request for Consolidation, Citizens for Zoning and Code Compliance, January 8, 2003.
9. Letter, Gerald Steel to Gary Christensen and John Moffat, January 8, 2003.
10. Reply of Cascade Ag Services re Consolidation, January 10, 2003.
11. Letter, Linda Kuller to Anne Anderson re completion of code enforcement case, January 14, 2003.
12. Hearing Examiner Order setting January 22, 2003 for hearing on consolidation issue and continuing hearings, dated January 14, 2003.
13. Citizens Request for Reconsideration of January 14, 2003 ruling, dated January 14, 2003.
14. Hearing Examiner Order denying Request for Reconsideration, dated January 17, 2003.
15. Cascade's argument re consolidation, January 21, 2003.
16. Letter of Incompleteness re Special Use Permit application, Planning and Permit Center, January 21, 2003.
17. Staff Report, January 22, 2003.
18. Photos of site (13459 Dodge Valley Road) and site plan.
19. RCW 69.07010
20. WAC 296-17-615, Classification 3902
21. Aerial photos of site and ground level photos of operations (9)



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22. Notice of Violation, DE 02WQNR-4998, Department of Ecology, December 13, 2002.
23. Letter, Evergreen Islands, January 21, 2003
24. Appeal PL 02 0725 by Cascade Ag Services, November 27, 2002
25. Appeal PL 02 0711 by Citizens for Zoning and Code Compliance, November 20, 2002

DISCUSSION

After hearing the arguments and considering the written record, the Examiner concludes that the interests of fair and efficient procedure will be served by consolidating the various proceedings for hearing. The issues of whether a permit is needed at all, or whether the proposed uses may lawfully be permitted in the zone, are the kinds of questions that are normally taken up in the course of permit processing. They are not in the usual case segregated out and assigned separate procedural tracks.

The multiple procedures route has the potential for taking much more time in resolving all pending matters than the relatively minor delay involved in readying the pending permit application for hearing. The handling of appeals seriatim with the possibility of reversals and remands could take years.

SCC 14.06.060 relates to the consolidation of development permit applications. The Examiner does not consider the administrative interpretations at issue to be development permits and concludes the SCC 14.06.060 does not apply here. The Examiner's decision on consolidation in this instance rests on his general discretion to manage the hearing process.

The Examiner is convinced that consolidation of the subject appeals with the permit process will advance the aims of regulatory reform under Chapter 36.70B RCW.

The Examiner was not persuaded that the Citizens stand to suffer serious hardship if they are obliged to wait to present their arguments in a consolidated hearing. Substantial and imminent danger from maintaining the site in its current condition was not shown.

Nevertheless, waiting for the consolidated hearing makes sense only if the processing of the Special Use Permit is not significantly delayed. Therefore, along with consolidation, the following procedural steps shall be followed:

1. Cascade shall proceed as quickly as possible to resolve the items that the Planning and Permit Center regards as barriers to a complete application (See Exhibit 16). In this regard, the County shall not unreasonably withhold its determination of completeness.



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2. On February 5, 2003, at 10:00 a.m., the Examiner and the parties shall confer by telephone to determine whether completeness of the application has been achieved or is felt to be imminent. The call will be arranged by the Planning and Permit Center. If significant delay appears likely, the Examiner will thereafter entertain a Motion for Summary Judgment on the issue(s) presented in the Citizen's appeal and will schedule the same to be heard promptly.

3. If completeness is timely achieved, the Planning and Permit Center shall process the application as quickly as possible, with an eye toward completing its review by mid or late March. On March 5, 2003, the parties shall again confer by telephone to determine how close the application is to being heard.

4. If it appears on March 5, 2003, that a consolidated hearing on all matters will be significantly delayed, the Examiner will entertain a Motion for Summary Judgment, as described in 2. above.

ORDER

The Request for Consolidation is granted, as qualified by Items 1 through 4 above. PL 02-0711, PL 02-0725, and PL 02-0541 shall be heard in one proceeding.

When the hearing involving the Special Use Permit application is scheduled, the Examiner will write to the Assessor's office and request the presence of the person(s) responsible for assessment of properties in the vicinity.

When the hearing involving the Special Use Permit application is scheduled, the Examiner will enter an Order requiring the parties to identify in advance the witnesses they will call, the substance of the witnesses' testimony, and the exhibits they intend to offer.

The parties are free to argue whatever reasonable inferences may arise from the underlying legislation and official documents interpreting it. However, the Examiner will require and consider preliminary briefing before allowing testimony of witnesses on legislative intent.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: January 29, 2003

Copies Transmitted to Parties: January 29, 2003

