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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 ON APPEAL AP 03 0563/0164

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: ROY FRAZIER

ASSESSOR PARCEL NO: P34149

LEGAL DESCRIPTION: The property is located at 7875 Ershig Road, Bow, WA; within the SW ¼ of the SW ¼ of Section 12, Township 35 North, Range 03 East, W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

In the Matter of the Appeal of )  
 )  
**ROY FRAZIER** )  
 )  
From an Administrative Decision )  
Denying a Modification to Administrative )  
Special Use PL01-0450 Seeking to Change )  
The Location of a Manufactured Home for )  
A Farm Worker )  
 )  
 )  
 )

PL03-0563/PL03-0164

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND DECISION**

This matter, the appeal of an administrative decision, came on regularly for hearing before the Hearing Examiner on August 27, 2003. David Blane, Planning Director, and Marge Swint, Associate Planner, represented the Planning and Permit Center (herein, the Administrator). Marianne Manville-Ailes represented the Appellant.

Exhibits were admitted, testimony was taken, and argument was given. The Examiner allowed post-hearing written submissions and such submissions were made. The last was dated September 10, 2003. Thereafter, the record closed. The Examiner visited the site after the hearing.

On the basis of the record made, the Examiner enters the following:

**FINDINGS OF FACT**

1. A manufactured home for farm worker housing was placed on Roy Frazier's farm without obtaining the necessary land use, building permit, and septic approvals.
2. In October 2001, Roy Frazier (Appellant), through Skagit Surveyors, applied for an after-the-fact Administrative Special Use permit to allow the farm worker dwelling. In October 2002, the permit was approved based on the narrative provided with the application and on the August 2002 site plan submitted. The site plan showed the home in a location different from the spot where it had been placed initially.
3. Subsequently a building permit based on the submitted site plan was issued and a septic permit was sought.
4. The home has never been moved to the approved location and remains where it was placed when brought onto the farm. The appellant received a Notification of Code Violation in January 2003 stating that the manufactured home had not been relocated to the approved location.



5. The Appellant then requested a Modification of Administrative Special Use permit to allow the farm worker dwelling to stay where it is. This would require that the maximum setback from the front property line be waived.

6. The Administrator determined that the criteria for waiver are not met under the facts of the case and, on June 30, 2003, denied the Modification requested. The instant appeal is of this denial.

7. The subject property is 7875 Ershig Road within a portion of SW1/4, Sec. 12, T35N, R3E, W.M. It is approximately 7.5 acres in size and is located at the northeast corner of the intersection of Ershig Road and Field Road. The property is designated Agriculture-Natural Resource Lands (Ag-NRL) in the Comprehensive Plan and zoned the same.

8. With one exception, the subject parcel is rectangular in shape. Length is north-south; width is east-west. The exception is a notch carved into the west side on Ershig Road that contains a smaller parcel that is in separate ownership and holds a residence.

9. Existing structures on the subject property are clustered in the northern portion. This complex consists of several barns, an existing concrete pad, and a separate three-sided structure.

10. The appellant's residence along with other outbuildings is situated on a 9.8 acre parcel across the street in the northwest corner of the intersection.

11. SCC 14.16.400(5)(a)(i)(A) establishes a maximum front setback of 200 feet from a public road for the Ag-NRL district. The drawing which was the basis for the original Special Use permit shows the farm worker home adjacent to a concrete pad to the north of the easterly barn on the property and on a line designated "200 foot setback."

12. In asking to change this location, Skagit Surveyors said that placing the mobile home at the 200-foot line as shown would result in its being located within either the corral or the short-term pasture used by cattle that Mr. Frazier works through the barns. They said that this would interfere with the agricultural activities that have historically occurred and are still occurring on the property. In addition, they advised that Mr. Frazier would like to expand the barns and corral.

13. The site requested (and where the home now sits) is set back 305 feet from Ershig Road directly east of the location shown on the initially approved site plan. This is an area of rock fill and concrete. The septic tank and drain field are located nearby.

14. During the processing of the modification request, the neighbor adjacent to the north wrote and said that the mobile home is clearly visible from his house. He



asserted that it is unsightly and interferes with his view. If the home were located within 200 feet of Ershig Road, it would be grouped with the barn complex and would not have a view obstruction effect.

15. Under SCC 14.15.400(5)(a)(i)(A), a waiver to the 200 foot maximum setback can be granted: (1) where critical areas are located within 200 feet of the road, preventing placement of the house within the setback area, and (2) where non-floodplain or non-prime agricultural land is located on the lot outside of the setback area which would provide for a "more appropriate placement" of the house.

16. The Appellant contends that the waiver should have been granted for the 305-foot setback locale because the site is non-prime agricultural land and the placement there does not interfere with agricultural activities around the barns. Moreover, from there the farm hand has a good view of the barn/corral/pasture area and is able to monitor the cows. The location requested, he maintains, is based on his judgment of what will work best for his farming operation.

17. The Administrators position is that the property has areas of non-prime agricultural land that are not outside the setback where the mobile home could be placed and where the potential impact on agricultural activities would be minimized. He recommends a location south of the barns where at present equipment is stored and farming is not being carried out. Location of the worker's home in this area would hide it from the view of the neighbors to the north and from the county road. Under these facts, he concludes, the waiver cannot be granted.

18. Both the Appellant's requested site and the Administrator's proposed site appear to be on non-prime agricultural land. Neither is being farmed. The issue, then is whether the Appellant's request satisfies the "more appropriate placement" criterion

19. The Appellant's belief is that the "more appropriate placement" decision should be based on his own evaluation of the needs of his farm. From the location proposed by the Permit Center, he says, the farm worker would not be able to watch the cattle because the barns would block his view of the corral and pasture area. This would, he asserts, defeat the purpose of having a farm hand live on the property and watch over it.

20. The Administrator's apparent view is that the 200-foot maximum may be waived only when the structure cannot be placed within the setback area without impinging on critical areas, floods plains or prime agricultural land. Here there are no critical areas or flood plains to contend with. The dwelling can be placed within the setback without reducing the amount of land in agricultural production.

21. There are two sub-arguments in the appeal -- one concerning aesthetics and the other concerning the facts of the agricultural operation.



22. The Appellant asserts that the crux of the Administrator's decision is aesthetics. Without doubt the Administrator was influenced by the facts that the mobile home is old and used and, in its present highly visible location, not attractive to look at. The alternate site suggested would not be visible from the residence to the north or from the county road. The alternate location is directly to the behind the parcel in the notch on the west, but the Administrator is convinced that existing trees and shrubs would shield the farm worker's dwelling from the residence on that lot.

23. The Appellant objects to giving these aesthetic considerations any weight. He feels that non-farming concerns should not play a part in the decision on his application.

24. In addition, he contends that his northerly neighbor's aesthetic problems are self-inflicted. He reports that the only reason the mobile home is visible from the house to the north is because the owner tore out a mature intervening orchard and planted the area with younger, smaller trees. In time these new trees will grow and obscure views of the farm worker's dwelling. Furthermore, the present location of the mobile home is not visible from the house in the notch lot. The Appellant thinks that the neighbor in that house might well object if the mobile is moved to the suggested alternate site. In any event, the Appellant has agreed to erect a six-foot slatted fence on his north property line, which should help considerably in minimizing view impacts of the mobile home from adjacent property.

25. The Administrator's Finding #13 casts some doubt on the use of the barn complex for raising cattle. The finding states: "Staff notes that both the planning staff and the code compliance staff have been to this site several times in the past 2 years and have yet to see any cattle or indication that cattle have been on the site."

26. The Appellant filed a separate post-hearing reply to this finding, describing a program that involves the presence of cattle on a periodic basis -- after purchase, or when they are ill or require check-ups, or when his other holdings are not available to provide pasture. One barn currently contains 20 tons of grass hay, 60 tons of pea hay and 20 tons of Timothy hay. There is a cement floor and feeding bunks for approximately 35 to 40 head of cattle. When the Samish River was flooded several years ago, he had to keep up to 30 head of cattle on the property for several months.

27. The Appellant says that when cattle are there and confined they are "somewhat stressed" and need constant supervision to keep them where they need to be. The on-site farm worker serves as a watchman for the barn and its hay and for the tractors and other equipment stored on the property. He also provides supervision of the cattle, when needed.

28. A written reply to the description of the cattle operation was filed on behalf of the Administrator. The reply noted that use of the barn area for cattle is of a temporary nature, but acknowledged that the area plays an important role in the overall farm



operation. Nevertheless, the Administrator remained firm that there is no basis to grant a waiver of the setback maximum for the property.

29. The stated purpose of the Ag-NRL district is "to provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities and operations as the primary use of the district." SCC 14.16.400(1).

30. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and the subject matter of this appeal.

2. The Administrator emphasizes that the manufactured home for farm worker housing was placed on the property prior to obtaining the necessary land use, building and septic approvals, that after-the-fact a different location was applied for and approved, and that now the property owner doesn't want to move the structure.

3. This history has influenced both the Administrator's and the Examiner's evaluation of the Appellant's credibility. Viewing the entire record, the Examiner is not persuaded that the present location of the mobile home is a necessity in order for the farm worker to carry out his occasional duty to supervise cattle or his constant responsibility to watch over the entire property.

4. The Appellant argues that he is entitled to a waiver of the 200-foot maximum to allow him leave the mobile home where it is because, in his opinion, the situation fits the waiver criteria. The current site is not on prime agricultural land and, for his particular operation, he thinks it provides "for a more appropriate placement" of the house.

5. Clearly, he thinks the placement is appropriate or he wouldn't have put the house there in the first place. However, because it is his farm and this is what he thinks does not necessarily make the placement "more appropriate," as those words are used in the setback regulation.

6. The 200-foot maximum is intended to promote the objective of conserving agricultural land. It is a duly enacted limit and compliance with it is the "appropriate placement" as a matter of law. A permitted location outside that limit must be "more appropriate" in terms of the underlying purpose of the law.

7. This means that the 200-foot limit should be enforced except where doing so would damage some value the law seeks to protect -- such as interference with a wetland, obstruction of the flood plain or consumption of prime agricultural land. Otherwise, the



“appropriate” thing is to comply with the limit. Here, the limit can be complied with without damage to any protected value. In such circumstances, putting the home beyond the limit is not “more appropriate.”

8. To some extent, aesthetics are involved in all setbacks. Other purposes, like public health or safety or (as here) land function, may be involved, but inevitably aesthetics are a factor. Therefore, it was not improper for aesthetic considerations to be considered by the Administrator in making the instant decision.

9. Accordingly, under the facts, the Examiner concludes that the Administrator’s denial of the modification of the Special Use Permit should be upheld.

10. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### DECISION

The appeal is denied. The Administrator’s decision is affirmed.



Wick Dufford, Hearing Examiner

Date of Action: September 22, 2003

Copy Transmitted to Appellant: September 22, 2003

### RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 dates after the date of this decision. As provided in SCC 14.06.110(13), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Clerk of the Board within 14 days after the date of the decision, or decision on reconsideration, if applicable.

