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Skagit County Auditor

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SKAGIT COUNTY AUDIT

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

DOCUMENT TITLE: ORDER ON REQUEST FOR RECONSIDERATION IN
APPEAL AP 03 0511

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

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

ASSESSOR PARCEL NOS: P# 112114, 112115, 15448, 15449

LEGAL DESCRIPTION: The project is located at 13459 Dodge Valley Road, Mount
Vernon, WA; within Section 5, Township 33 North, Range 3 East, W.M., Skagit County,
Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of)

**CITIZENS FOR ZONING AND
CODE COMPLIANCE,**)

Appellant,)

v.)

**SKAGIT COUNTY, and
CASCADE AG SERVICES, INC.,**)

Respondents.)

PL03-0511

**ORDER ON REQUEST FOR
RECONSIDERATION**

CASCADE AG SERVICES, INC.,)

Appellant,)

v.)

SKAGIT COUNTY,)

Respondent.)

PL03-0510

The captioned appeals were decided in a written decision entered on December 2, 2003.

Two parties appealed the issuance of a Mitigated Determination of Non-Significance (MDNS) issued in regard to Cascade Ag Services agricultural processing facility on Dodge Valley Road in Skagit County. The two appeals were assigned separate file numbers.

The appeal of Citizens for Zoning and Code Compliance (PL03-0511) attacked the MDNS as improperly issued and urged the preparation of an Environmental Impact Statement (EIS). The appeal of Cascade Ag (PL03-510) did not question the propriety of issuing a negative threshold determination, but sought clarification and amendment of the MDNS conditions.

The two appeals were assigned separate file numbers and were heard sequentially in a single hearing. It is only in the sense that the two matters were heard at one hearing session that the two appeals were consolidated. The two appeals were not made into a single action.



The Citizens for Zoning and Code Compliance (CZCC) filed a Request for Reconsideration of the decision for PL03-0511 only. No request for Reconsideration was made as to the decision for PL03-0510

CZCC asserts that the Hearing Examiner had no authority to hold the appeal hearing because it was a separate appeal of a SEPA threshold determination that did not consider the merits of an underlying permit application. The provisions of State law on this subject are reflected in the State SEPA regulations which are, in turn, adopted by reference in the Skagit County Code. See RCW 43.21C.075(3)(b), WAC 197-11-680(3)(a)(v), SCC 14.12.190.

In this case, the use is permitted outright in the land use district (Rural Reserve -- SCC 14.16.320) and so there is no discretionary development permit required by the County. The only County permit needed is a building permit. No administrative appeal on the merits of the issuance of such a permit is available. Thus, there is no hearing on the merits with which the administrative SEPA appeal could have been combined.

However, SCC 14.12.210(1) provides that a final SEPA threshold determination is administratively appealable as a Level I decision, pursuant to Skagit County Code 14.06. Level I decisions are appealable to the Hearing Examiner and reviewed at an open record appeal hearing. SCC 14.06.110(7). Therefore, the hearing held was authorized under the provisions of the County Code.

CZCC asserts that no appeal to the Board of County Commissioners is available, because the County has adopted by reference the State SEPA rules relating to appeals. WAC 197-11-680(3)(a)(iv) states that an agency shall provide for only one administrative appeal of a threshold determination. Successive administrative appeals on these issues within the same agency are not allowed.

The appeal of Level I decisions normally includes an opportunity to appeal both to the Hearing Examiner (open record) and to the Board of County Commissioners (closed record). See SCC 14.06.110(13). However, upon reflection, the Examiner is inclined to believe that the probable intent of the adoption by reference of the State SEPA rules was to eliminate a second administrative appeal of SEPA threshold determinations at the County level. At best, the County Code is ambiguous on the question.

The "Reconsideration/Appeal" paragraph appended to the Hearing Examiner's decision is not intended itself to be a decision of any contested issue of law but is added solely to carry out a notice function. In this case, that function is not essential, because the Appellants are represented by counsel. Accordingly, because of the ambiguity of the County Code on the matter of a second administrative appeal, the "Reconsideration/Appeal" section that appears in the decision should be stricken.

Counsel for CZCC asks that Conclusion 11 of the decision also be stricken. In that conclusion the Examiner stated that the expert opinion offered by Appellants' lawyer is self-impeaching because of the conflict of roles. The Examiner concedes that in administrative

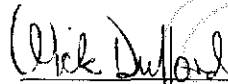


hearings, non-lawyer representatives of parties are sometimes allowed to give expert testimony. In such proceedings, it is also true that lawyers representing parties sometimes are allowed to testify as to factual matters within their testimonial knowledge. However, in the Examiner's view, the role of an attorney, even in these informal proceedings, is inherently at odds with the role of an expert. An expert, whether paid or not, is in theory providing his objective view of matters based on his specialized knowledge. An attorney, on the other hand, is bound by his oath to provide zealous representation in the client's favor. There is, in the Examiner's view an inherent conflict in the roles. Accordingly, the challenged conclusion will remain. Removing it would not change the outcome of the case.

NOW therefore, the Examiner hereby issues the following ORDER:

- (1) This Order relates solely to the Request for Reconsideration on PL03-0511 and affects the appeal period for that case only.
- (2) The "Reconsideration/Appeal" paragraph appended to the decision entered on December 2, 2003, is hereby stricken.
- (3) In all other respects, the Request for Reconsideration is denied.

DONE this 12th day of January, 2004.



Wick Dufford, Hearing Examiner

