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

DOCUMENT TITLE: ORDER ON REQUEST FOR RECONSIDERATION FOR APPEAL AP 04 0541

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: DON and TERI SABEN

ASSESSOR PARCEL NO: P18427

PROPERTY LOCATION: The property is located at 30628 Lake Cavanaugh Road, Mount Vernon, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of the Denial Of an Administrative Decision on Building Permit Application BP03-1161	)	**PL04-0541**
DON AND TERI SABEN, Appellants,	)	**ORDER DENYING MOTION FOR RECONSIDERATION**
v.	)	
SKAGIT COUNTY, Respondent.	)	

PROCEDURE

On December 8, 2004, the Appellants filed a Request for Reconsideration of the Hearing Examiner's decision entered on November 29, 2004. The decision affirmed an administrative determination that resulted in denial of the Appellant's application for a residential building permit.

On December 30, 2004, Skagit County filed a response to the Request for Reconsideration. On January 7, 2005, the Appellants served a reply (received January 11, 2005).

DISCUSSION

The Appellants contend that the County has in the past applied an exception to the prohibition against commercial and residential buildings outside a fire district that is not and never has been reflected in the zoning code. The exception asserted is that building permits may be approved where there exists an agreement with a fire district to provide fire protection.

In support of this contention the Appellants draw attention to the Staff recommendations and the Hearing Examiner decisions made in 1997 in relation to permits for the Frailey Mountain Shooting Range. The shooting range was authorized subject to a condition that called for the execution of an agreement with the Big Lake Fire district for fire protection assistance.

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In the instant case, the Appellants have such an agreement with the Big Lake Fire district. Nevertheless, the County decided they are prohibited by the Code from receiving a residential building permit, notwithstanding other measures taken to provide fire protection.

The Shooting Range site is adjacent to the Appellants' land, and like the Appellants' property is now zoned Industrial Forest – Natural Resource Land (IF-NRL).

In response, the County points out that the shooting range use is different from ordinary residential use and was processed under prior Code provisions different from those applied to the Appellants' proposed residence. The zoning applied to the shooting range proposal was Forestry. In that zone there was no prohibition of shooting ranges, comparable to the blanket ban on residences outside of fire districts in current IF-NRL districts. See SCC 14.16.410(3)(c)((ii). Indeed, shooting ranges were allowed in Forestry zones as unclassified special uses under former SCC 14.04.150(2)(j).

The instant case is about the interplay between the restrictions for a particular zoning district and a general provision relating to all districts – SCC 14.16.410(3)(c)(ii) and SCC 14.16.850(b)(iii). Both concern residential development outside of a fire district. The prior Code as related to the shooting range provides no analog to this.

Accordingly, the earlier decisions on the shooting range do not represent a prior inconsistent county interpretation of the issue in question.

However, at the time the shooting range permits were initially processed, the general rule calling for non-issuance of building permits for residential and commercial structures outside of a fire district was in effect, subject to a variety of exceptions. See former SCC 14.04.190(14). These exceptions were substantially similar to those of present-day SCC 14.06.850(6)(b)(iii). Then, as now, the Code contained no express exception authorizing the approval of residences or commercial buildings where there is an agreement with a fire district to provide fire protection.

Under the circumstances of the shooting range applications, such an exception was apparently implied as to the forerunner of SCC 14.06.850(6)(b)(iii), though without any explicit explanation. Logically, then the same exception could have been implied as to the specific prohibition of SCC 14.06.410(3)(c)(ii). But, the critical thing is that it wasn't.

There is no compelling precedent undercutting the refusal in this case to imply an exception that is not contained in the Code to the implementation of SCC 14.06.410(3)(c)(ii).

Pursuant to SCC 14.06.180, reconsideration should be granted only when a material legal error has occurred or a material factual error has been made that would

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change the previous decision. The Examiner concludes that the Appellants have failed to make the requisite showing of error.

Therefore, the Request for Reconsideration is denied.

Done this 14, day of January, 2005.

Wick Dufford, Hearing Examiner

APPEAL

As provided in SCC 14.06.120(9), the Hearing Examiner's decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision on reconsideration.

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