

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

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|--|---|----------------------------|
| <b>JOHN AND SUSAN VENDELAND,</b>         | ) |                            |
| <b>GILBERT AND LINDA DAWSON,</b>         | ) | <b>PL05-0427</b>           |
| <b>LOIS AYERS, LOYD AND CAROL</b>        | ) |                            |
| <b>MORGAN,</b>                           | ) |                            |
|  | ) |                            |
| <b>Appellants,</b>                       | ) | <b>FINDINGS OF FACT,</b>   |
|  | ) | <b>CONCLUSIONS OF LAW,</b> |
| <b>v.</b>                                | ) | <b>AND DECISION</b>        |
|  | ) |                            |
| <b>SKAGIT COUNTY,</b>                    | ) |                            |
| <b>RON POWER</b>                         | ) |                            |
|  | ) |                            |
| <b>Respondents.</b>                      | ) |                            |
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This matter came on regularly for hearing before the Skagit County Hearing Examiner in the Commissioner’s Hearing Room, 1800 Continental Place, Mount Vernon, Washington, on October 20, 2005.

The case involves the appeal of the administrative approval of a Special Use Permit to allow placement of a temporary manufactured home on property for use as a farm worker dwelling unit.

John Vendeland and Linda Dawson acted as spokespersons for the Appellants. The Skagit County Department of Planning and Development Services was represented by Oscar Graham, Deputy Director. Applicant Ron Power represented himself.

Testimony was taken. Exhibits were admitted. Argument was made. On the record created, the Examiner enters the following:

**FINDINGS OF FACT**

1. On December 30, 2004, Ron Power (applicant) filed an application for a Special Use Permit to place a mobile home on his property temporarily to house a farm worker employee.

2. The subject parcel is approximately 21 acres in size and is located within an area zoned Agricultural – Natural Resource Lands (Ag-NRL). The parcel is part of an overall farming operation that includes approximately 96 acres on which crops of potatoes, corn and wheat are rotated from year to year. An additional 14 acres is in hay.

3. The applicant advised that the land is rented for potatoes and corn, while he raises the wheat and hay himself.

4. The applicant's agent submitted a narrative stating that the land has been used for agricultural purposes for years. Returns for the last six years were:

“1999 – grass/hay produced more than \$200 annual income per acre  
2000 – potatoes produced more than \$200 annual income per acre  
2001 – potatoes produced more than \$200 annual income per acre  
2002 – wheat produced more than \$200 annual income per acre  
2003 – wheat produced more than \$200 annual income per acre  
2004 – potatoes produced more than \$200 annual income per acre  
This year for 2005 will be corn.”

This breakdown does not indicate whether net or gross proceeds are reflected, nor does it show what sort of income the applicant himself derived from the farming operations. Presumably all or most of the proceeds from crop sales on the leased acreage went to the lessees.

5. In his statement for the hearing the applicant provided the following additional information:

“This year I sold about 200,000 pounds of wheat to export. I sell between 1200 and 1500 bales of hay out of the barn each winter. From the wheat stubble I sold 2000 bales of straw.”

6. The evidence does not make an economic case for retaining a farm worker to live on site. However, the preponderance of evidence is that the property is devoted primarily to the production of agricultural commodities for commercial purposes.

7. The 21-acre parcel (P38045) is located adjacent to the west side of District Line Road, north of State Route 20. To the south of the property is a residential neighborhood. Across District Line Road opposite the southeastern portion of the property are a several residences. The nearby residential areas are zoned Rural Intermediate.

8. A cluster of buildings occupies the southeastern part of the 21 acres near the road. There is a sizable enclosed barn beside which is a large shed that is open on two sides. There is also a residence that is currently rented out. The intended farm worker dwelling is a 1983 model mobile home that is currently stored in the shed. When in use it is proposed to be placed on an open grassy area between the shed and the road. The applicant himself lives about a mile north of these buildings.

9. In his statement for the hearing, the applicant said that the housing request was for a part-time employee. However, his agent's narrative stated:

“The total number of employees on site will be 1. His hours will be variable. Hours and days of operation are Monday through Saturday 8 a.m. to 5 p.m. as well as after-hours watchman. Employee shall have Sunday’s off.”

10. The agent’s narrative describes the function of the employee as follows:

“The owners will be growing corn this year. They will need an employee to attend to the normal maintenance and operation of the farm as the produce is maturing. The owner would like the employee to live on site so he will be available at all times to attend to the normal operation of agricultural farming as well as maintaining the farm equipment and acting as a night watchman to safeguard the farming equipment.”

There was no explanation as to why the owner needs an employee to oversee a crop that is being grown by a lessee.

11. In his own statement, after noting the winter hay and straw sales from the barn, the applicant said:

“I need some one to help watch over the hay sales, custom work, and to help with machinery and ground maintenance as well as watch over my thousands of dollars worth of tools and machinery.

The applicant went on to mention that he is pushing 70 years of age and would like to cut back a bit. He said he is worried about becoming ill and wants some extra help in case that happens.

12. The applicant also described some other business operations he is involved with. He has a custom manure pumping business that he said requires a part time employee. He also has a custom hay loading and unloading business. He sells sweet corn and potatoes at a road side stand and does disease research for a local potato company. Some of these activities are clearly separate from the farming operation on the subject acreage.

13. On consideration of the record as a whole, the Examiner believes that the applicant wants an employee who will work part-time on the farm and part-time on the applicants’ separate businesses. The employee’s major function on the farm will be to act as a watchman. The applicant noted that he has been burglarized three times, the latest being this past June.

14. A question was raised about why a watchman is needed when there is a renter of the existing house near the barn. The applicant’s statement says:

“There is another residence on the property, but it is around the corner of the barn and cannot see what is going on. [The renter husband] has a full time job. The wife is terminally ill.”

The inference is that watchman duties cannot effectively be performed by the lessees of the existing house.

15. In the processing of the application, the initial Notice of Application in February was not mailed to all property owners within 300 feet of the project. Therefore, the Notice was redone in late April. There is no evidence of any defect in the notice the second time.

16. A number of comment letters were received during each of the comment periods. Some of the letter writers later became the appellants in this proceeding.

17. On June 23, 2005, the Administrative Official made the decision to approve the Special Use Permit (PL04-0941), subject to a number of conditions. This approval was appealed on July 7, 2005.

18. The legal framework for deciding an application for temporary farm worker housing on a farm is relatively simple:

(a) For Ag-NRL lands, SCC 14.16.400(3)(h) has a listing under “Administrative Special Uses” that allows “temporary manufactured homes as permitted in SCC 14.16.900(3)(b).

(b) SCC 14.16.900(3) lists “Special Uses with Specific Criteria.” Under (b), the text reads:

“Temporary Manufactured Home – Accessory to Farm Dwelling Unit. A temporary manufactured home accessory to a farm dwelling unit on property meeting the definition of a farm in RCW 84.34.020 to accommodate agricultural workers and their families employed on the premises, as provided:

(i) The property must meet the definition of a farm in RCW 84.34.020 (Open Space Taxation),

(ii) Demonstrate compliance with the temporary worker standards in Washington State Law including Chapters 19.27, 70.114A, 49.17, 43.22, and 43.70 RCW.”

(c) “Temporary manufactured home” is a defined term under SCC 14.04.020. The definition reads (in pertinent part):

“A temporary placement of a manufactured home to . . . house 1 farm worker and his immediate family. Documentation . . . that the nature of the employee’s work requires said employee to be immediately

available to the job site is required . . . by the farm owner/lessee. The second temporary dwelling unit must be removed from the property when the . . . farm employee is no longer using the manufactured home.”

(d) In RCW 84.34.020, there is no definition of “farm” per se. There is, however, a definition of “farm and agricultural land” which means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes . . .

(e) A temporary building permit is needed to locate a temporary manufactured home. Chapters 19.27, 70.114A, 49.17, 43.22 and 43.70 RCW deal with building code, occupational safety and health, and public health compliance. These matters are reviewed during the building permit approval process.

(f) After meeting the Specific Criteria, the application must meet the general criteria for Special Use Permits, as set forth in SCC 14.16.900(2)(b)(v):

“(a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.

(b) The proposed use complies with the Skagit County Code.

(c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.

(d) The proposed use will not generate intrusions on privacy of surrounding uses.

(e) Potential effects regarding the general public health, safety, and general welfare.

(f) for special uses in . . . Natural Resource Lands . . ., the impacts on long-term natural resource management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding

areas, or conditions can be established to mitigate adverse impacts on such facilities.”

19. The administrative decision approving the subject application finds that the applicant is proposing to place the manufactured home on the property to house an employee “for the purposes of farm operation and after hours watchman.” Implicitly, the decision concludes that these are both functions consistent with the agricultural or farm worker category.

20. The decision finds, in effect, that the property meets the definition of a farm under RCW 84.34.020 in that the property is more than 20 acres in size and is devoted primarily to the production of livestock or agricultural commodities. The required demonstration of compliance with temporary worker standards is imposed as a condition to be met in the building permit process.

21. The decision reviews the proposal under all of the general criteria of Special Use Permit approval and finds that it is consistent with them all.

22. Twelve conditions of approval are imposed, including a requirement of removal of the home when no longer needed for use “by a farm worker employed by the farm operation on the premises.”

23. The appellants have raised a number of technical issues. Their central assertion, however, is that the need for a resident farm worker has not been shown in the context of this particular farming operation.

24. The comment letters make clear that the appellants suspect that the applicant’s real purpose has little to do with farming. They think he simply wishes to use the mobile home as a means for increasing his income by adding a rental unit. Because of this, they contend that the approval decision allows “backdoor” development that both compromises the rural character of the County and sets a dangerous precedent moving forward. They assert that allowing the permit would violate the spirit, if not the letter, of the law.

25. Insofar as the appellants question his motives, the applicant takes strong exception.

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

## **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over appeals of administrative decisions (Level I). SCC 14.06.110(7).

2. In appeals of Level I administrative decisions the appellant has the burden of demonstrating that the decision of the Administrative Decision is clearly erroneous. SCC 14.06.110(11).

3. The specific criteria of SCC 14.16.900(3)(b) require that the temporary manufactured home be “accessory to a farm dwelling unit” that it meet a statutory definition of “farm” and that it be “to accommodate agricultural workers and their families employed on the premises.”

4. There is no argument that the proposed dwelling is not accessory to an existing dwelling unit on the farm. Rather, the appellants are concerned with the definitions given in RCW 84.34.020. They point out that the statute does not define a “farm.” Instead, it contains of definition of “farm and agricultural land.” While this is true, the only intelligible reading of SCC 14.16.900(3)(b) is that meeting the “farm and agricultural land” definition is what was intended by the language that says “the property must meet the definition of a farm in RCW 84.34.020.”

5. Under the facts, the Examiner concludes that the property here meets the definition intended. It is over 20 acres in size. It is devoted primarily to the production of livestock or agricultural commodities for commercial purposes.

6. As proposed, the Examiner further concludes that the mobile home will “accommodate agricultural workers and their families employed on the premises.” Without question, some of the employment of the worker involved will be on the premises. The criteria do not suggest that worker is disqualified if the employment connected directly to the premises is only part time. The description of the worker’s function includes watchman duties as well as work in tending crops. The Examiner sees no reason why acting as a watchman cannot be viewed as agricultural work if the intent is to protect a farm.

7. The appellants advise that statutory law differentiates between “manufactured homes” and “mobile homes.” They draw attention to definitions in RCW 59.20.030(3) and (4). The definitions refer to whether manufactured dwellings were or were not built to federal standards effective in 1976. There is nothing in the County code to suggest that these state-law definitions have any significance for purposes of the local temporary farm worker housing provisions. The County Staff regards the terms “manufactured home” and “mobile home” as synonymous in the context of the Special Use Permit process. The Hearing Examiner defers to the staff’s interpretation on this point.

8. The appellants emphasize that the administrative approval fails to reflect a consideration of the definition of “temporary manufactured home” in SCC 14.06.020. In their view a valid approval must reflect compliance with the definition.

9. After reviewing the definition, the Examiner concludes that the proposal is consistent with it. The home proposed is for 1 Farm worker and his immediate family.

The nature of the work contemplated self-evidently requires that the employee be immediately available to the job site. There is simply no way for a night watchman to effectively perform his function if he lives somewhere else.

10. The appellants argue that the County code's scheme requires a demonstration of need for an on-site farm worker to meet the demands of the farm operation. The code imposes no such requirement explicitly. If the true intent of the code implicitly dictates such a demonstration, the Examiner is convinced that the applicant here has met the appropriate threshold.

11. The applicant has explained the "need" issue in terms of his desire for a watchman, and his need for some help on the farm as he grows older and seeks to slow down a little. This description does not relate to an objective standard based on analysis of the farm's income. It is an assessment based on the applicant's subjective evaluation of how he would like to run his operation. There is no suggestion in the County code that more is required. If the Staff is to be involved in a detailed economic analysis of every request for temporary farm worker housing, the duty should be clearly imposed.

12. While the placement of the mobile home in the open not far from the road may not be ideal in aesthetic terms, the appellants made no effective demonstration that the action will "compromise the rural character" of the County.

13. In sum, the Examiner concludes that the application meets the existing code requirements. The appellants did not carry their burden to demonstrate that the administrative decision was clearly erroneous.

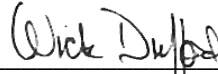
14. Because the proposal is consistent with the code, whether it sets a dangerous precedent is really a legislative question. The appellants have asked that a moratorium be placed on all temporary farm worker housing requests until the code is revised to include "meaningful" standards. Such a moratorium is beyond the authority of the Hearing Examiner to impose. Again, the matter is properly addressed to the legislative arm of County government.

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



**DECISION**

The administrative Special Use Permit approved in response to the application of Ron Power in PL04-0941 is sustained. The appeal is denied.



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Wick Dufford, Hearing Examiner

Date of Action: December 16, 2005

Date Transmitted to Applicant and Appellants: December 16, 2005

**RECONSIDERATION/APPEAL**

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days 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.