BEFORE THE SKAGIT COUNTY HEARING EXAMINER

ROGER E. PEDERSON,	)	
	)	**PL06-0414**
Appellant,	)	
	)	**FINDINGS OF FACT,**
v.	)	**CONCLUSIONS OF LAW**
	)	**AND DECISION**
SKAGIT COUNTY DEPARTMENT	)	
OF PLANNING AND DEVELOPMENT	)	
SERVICES, and	)	
	)	**(Appeal of PL06-0014)**
SKAGIT COUNTY PUBLIC	)	
UTILITY DISTRICT #1	)	
	)	
Respondents.	)	
	)	

This matter came on regularly for hearing on July 26, 2006, before the Skagit County Hearing Examiner in the Commissioners Hearing Room, 1800 Continental Place, Mount Vernon, Washington.

The case involved the appeal of an Administrative Special Use Permit approved for the Public Utility District for the installation of new water line along the south side of Bayview Cemetery Road.

The appellant, Roger E. Pederson, was represented by Devon Shannon, Attorney at Law. Respondent Department of Planning and Development Services (PDS) was represented by Brandon Black, Senior Planner. Respondent Public Utility District #1 (PUD) was represented by Peter Gilbert, Attorney at Law.

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

FINDINGS OF FACT

1. On April 11, 2006, the PUD was issued an Administrative Special Use Permit (PL06-0014) for the installation of approximately 420 lineal feet of waterline along the south side of Bayview Cemetery Road on April 11, 2006. The subject appeal was timely filed on April 25, 2006.

2. The line will be of eight-inch ductile iron pipe running eastward within the County right-of-way. On the west, it will connect with an eight-inch waterline to be constructed along North Bayview-Edison Road. The roadway is relatively flat in the project area. Bayview Cemetery is located approximately 780 feet east of the pipe terminus.

3. The location is within Section 30. T35N, R3E, W.M. The zoning is Rural Reserve.

4. The roadway along the project route borders just three parcels. The County's testimony was that two individuals will be served. From the record it is not clear whether the service is for new or existing residences.

5. The proposed waterline extension was processed as a "minor utility development," defined in SCC 14.04.020 as follows:

> Utility developments designed to serve a small local community, are not manned and would be considered normal utility services for the area.

Minor utility developments are allowed in the Rural Reserve zone, subject to receiving an Administrative Special Use Permit. SCC 14.16.320(3)(b).

6. The project consists of a subsurface waterline that will have no impact on aesthetics, on critical areas, on agricultural or mineral lands or on historic or cultural resources. The project is outside of the jurisdictional boundaries of the Shoreline Management Act and there is no proof that the waterline is likely to result in adverse impacts on shore resources.

7. There was no showing that the planned extension is not within the PUD's service area under the County Coordinated Water System Plan. There was no showing that the proposal would violate the level of service standard for rural public water service and related fire protection.

8. The record is insufficient to support a finding that the instant project should be considered a part of the approval process for PL02-052, the pipeline coming up Bayview Edison Road.

9. The main argument of the appellant was that the waterline extension will violate the Growth Management Act and the County Comprehensive Plan by providing an "urban service" which is not necessary to protect basic public health and safety and the environment. He also asserted that the project will tend to create pressure to urbanize, destructive of rural character. In addition, appellant argued that the procedure

followed was faulty in that the proposal does not meet the definition of "minor utility development" because it would not provide "normal utility services" for the rural area involved.

10. The County maintained that the project is a "minor utility development" which does, indeed, constitute "normal utility service" for the area. As such it is allowed as an Administrative Conditional Use, and the only issue is whether the Special Use Criteria of SCC 14.16.900(2)(b)(v) were met. In the County's view, the underlying growth management concerns raised by the appeal are planning issues that should be addressed through legislation rather that on the individual permit level.

11. The applicant provided no information during the application process on the "necessity" of the project to protect basic public health and safety and the environment.

12. 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 persons and the subject matter of this appeal. SCC 14.06.110(7).

2. A utility development in the Rural Reserve zone requires a Special Use Permit. If it is a "minor utility development," the permit is issued administratively. SCC 14.16.320(3)(b). If it is a "major utility development," the permit requires a decision by the Hearing Examiner after a hearing. SCC 14.16.320(4)(t). The procedural significance of whether a utility development is considered "major" or minor" is in the burden of proof. In the appeal of an administrative permit decision, the burden of proof is on the appellant to prove that the decision of the Administrator was clearly erroneous. For reasons set forth below, the Examiner concludes that the proper procedure was used here and the burden of proof was on the appellant.

3. The appellant focused on the language of the "minor utility development" definition that requires a project to be limited to "normal utility service for the area." The underlying assumption of the argument is that the service proposed in this case is "urban service" and therefore not "normal" for this rural area.

4. In the section on delineating Urban Growth Areas, the Growth Management Act states that in general it is not appropriate for urban services to be extended to rural areas

> except in those limited circumstances shown to be necessary to protect public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. RCW 36.70A.110(4)

5. This idea was picked up in County Wide Planning Policy 1.8 which calls for all growth outside the Urban Growth Area boundaries to be rural in nature except in those limited circumstances described in the above quoted statutory section. However, there is a complementary County Wide Planning Policy 2.3 that states rural development should be allowed in area outside Urban Growth Areas where there is limited impact on agricultural, timber, mineral lands, critical areas, shorelines, historical landscapes or cultural resources. See Comp Plan, p. 6-2.

6. The threshold question, then, is whether the service at issue is "rural" or "urban."

7. The Growth Management Act defines both "rural services" and "urban services." Compare RCW 36.70A.030(17) and 36.70A.030(20). Both definitions include "domestic water systems." The key distinction is whether the service is delivered at an intensity historically and typically provided in rural areas or at a level normal for cities.

8. There is nothing in the record to support a conclusion that any of the Comprehensive Plan policies designed to carry out the County Wide Planning policies relating rural development are violated by the proposed waterline extension. See Comp Plan Policies 6A-3.1, 6A-3.5, 10A-10.2(b).

9. The Comprehensive Plan's Utilities Element incorporates the provisions of the County Coordinated Water System Plan. See Comp Plan, p. 10-1; County Wide Planning Policy 12.10, p. 10-3. The Comprehensive Plan summarizes the Coordinated Water System Plan as a document that defines rural service areas for water purveyors and incorporates a level of service standard for rural water service and related fire protection. Again, there is nothing in the record to support a conclusion that any of these water plan provisions are violated by this proposal.

10. In sum, beyond bare assertions, the appellants offered no proof that the service at issue does not properly qualify as "rural." If the service is viewed as "rural," no additional independent evidence was provided that it is not "normal utility service for the area." Thus, the burden of proof was properly placed on the appellant.

11. Because the County's implicit characterization of the service as "rural" was not shown to be clearly wrong, it follows that on review, the legal requirements for the extension of "urban" service into rural areas do not apply. Accordingly there was no need to analyze whether this case, in fact, presents one of those "limited circumstances shown to be necessary to protect public health and safety and the environment."

12. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(b)(v), as follows:

> (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.

13. The only one of these criteria to which the appellant's case was directed is whether the proposed use complies with the Comprehensive Plan. The County's Plan incorporates the quoted Growth Management Act provision on the limited circumstances justifying the extension of "urban" services into "rural" areas. With the failure to prove that the subject services are "urban," the proposition that the proposal violates the Comprehensive Plan fails as well.

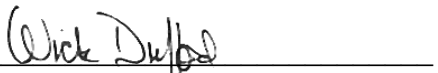
14. The Comprehensive Plan is permeated with concern for preservation of the rural character of rural areas. See, *e.g.*, Comp Plan, p. 6-4. The appellant made some effort to assert that the sort of development proposed here would create pressure to urbanize and create sprawl. Again, the key to the argument was the characterization of the services involved as "urban." However, it should be noted that no particularized evidence was provided concerning the likely effect of this 420 foot pipeline extension on the development of adjacent properties.

15. The appellant failed to meet his burden of proof.

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

DECISION

The Administrative Special Use Permit is affirmed. The appeal is denied.



Wick Dufford, Hearing Examiner

Date of Action: August 31, 2006

Date Transmitted to Parties: August 31, 2006

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 14 days after the date of the decision, or decision on reconsideration, if applicable.