

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of an)	
Administrative Order to Pay Civil)	
Penalties,)	PL 15-0485
)	
SKAGIT COUNTY,)	
)	FINDINGS OF FACT,
Enforcing Agency,)	CONCLUSIONS OF LAW
)	AND ORDER
LORI AND PAUL LINDSAY,)	
)	
Appellants,)	
_____)	

PROCEDURE

On September 14, 2015, Skagit County, through Code Compliance Officer, Sandra Perkins, issued an Administrative Order to Pay Civil Penalties to Paul Lindsay. The Lindsays, through counsel Justin Rothboeck, filed an appeal of this order on September 28, 2015.

A Prehearing Conference was held on October 28, 2015. As a result of the discussions at the Conference, the parties agree to meet and discuss the possibility of settling this matter. After extended negotiations the parties entered into a Voluntary Compliance Agreement, signed on July 12, 2016.

Subsequently the Hearing Examiner was advised that there had been a settlement of all issues but one – the scope of allowed marijuana cultivation. A hearing on this remaining issue was scheduled for October 5, 2016.

At the hearing Justin Rothboeck, Attorney at Law, represented the Lindsays. Ryan Walters, Assistant Director, Planning and Development Services, represented Skagit County.

FINDINGS OF FACT

1. Lori and Paul Lindsay own property at 3432 Old Highway 99 North Road within a Rural Intermediate (RI) zone. Their efforts to grow marijuana on their property have a history.

2. They first met with County planning officials in December of 2013 to discuss development of a marijuana growing operation. They submitted a site plan that included a “grow area” of approximately 30,000 square feet.

3. The County officials then advised that “agricultural processing facilities and greenhouse structures for the use [marijuana growing] are not permitted within the RI zone. Hoop structures would be permitted provided they are open-ended and not permanent. The intent is to allow for outdoor soil-based operations.”

4. Subsequently, on January 9, 2015, the County issued an Administrative Order to Abate Violation requesting the removal of greenhouse structures on the Lindsay property. An appeal of this Order resulted in a Hearing Examiner decision dated April 7, 2015, in which the Examiner affirmed the Order to Abate. The decision ordered removal of greenhouse structures and stated that “temporary hoop structures built from PVC plastic pipe may be used in the growing of marijuana for no more than 180 days during any 12 month period.”

5. The Administrative Order under appeal here, issued by the County on September 14, 2015, stated that a site inspection revealed continued violations and that removal of the prohibited structures had not been completed. The Order also stated that “new structures have been erected contrary to the Administrative Order which provided that any structure may only be in place for 180 days in any 12 month period.”

6. A Voluntary Compliance Agreement was signed by all parties as of July 12, 2016. In relation to the marijuana growing operation it described the violation as “failure to comply with administrative order to abate with respect to removal of marijuana growing hoop structures to ensure that they are not erected more than 180 days in any 12 month period.”

7. In the Voluntary Compliance Agreement, the Lindsays admitted that this condition existed and that it constituted a civil violation. They agreed to remedy the violation. In exchange, the County agreed to waive all accrued civil penalties if the corrective action specified was taken.

8. Paragraph 7 of the specified corrective action included the following:

The hoop structures may not exceed the height (12’) or footprint (7,800 sq ft) of the structures that have already been constructed. Structures may not be lighted or heated. The ends of the structures may not be enclosed. Structures may be constructed of metal or PVC pipe and plastic membrane.

9. On December 15, 2014, the County adopted a moratorium prohibiting marijuana production in certain zones including the RI zone, pending further investigation. Ordinance 020140008. On August 15, 2015, the Commissioners adopted new legislation significantly changing the legal landscape where marijuana production is concerned. (Ordinance 020150005),

10. Under this new regime, the outdoor growing of marijuana was prohibited in all zones. Also prohibited was marijuana production or processing in a greenhouse or any translucent structure. See SCC 14.16.855(d). Marijuana production, as allowed, was confined to non-agricultural zones (except for certain pre-existing facilities not relevant here).

11. The remaining issues in the instant case appear to be growing marijuana under smaller hoop structures installed after the date of the moratorium ordinance and the expansion of the grow operation to include the 30,000 square foot area described in the Lindsays original site plan.

12. At the time of the adoption of the moratorium, the Lindsays had installed various items of infrastructure in furtherance of their grow operation. However, this infrastructure did not include hoop structures over the entire 30,000 square feet. As noted, the County's corrective action order limited them to 7,800 square feet.

13. The moratorium by its terms did not apply to "uses legally established, permits, issued or applications vested" before December 15, 2014. Such uses were subject to the normal regulation of non-conforming uses. SCC 14.16.880.

14. The record here does not demonstrate that, as of December 15, 2014, the Lindsays were actually growing marijuana over a 30,000 square foot area.

15. The most growing area that the Lindsays were entitled at the time of the moratorium appears to be the 7,800 square feet recognized by the County. That much would qualify as a legal non-conforming use, but not more.

16. Hoop structures are relevant here only insofar as their pre-moratorium installation is used as a measure of the area being lawfully used by the Lindsays to grow marijuana. To the extent hoop structures were erected after the moratorium, there is no right to grow marijuana within them.

17. The record does not demonstrate that the Lindsays had established a vested right to a 30,000 square foot grow operation when the moratorium was adopted.

18. The vesting ordinance (SCC14.02.050) relates only to completed applications for development permits. Here the record shows only the presentation of a site plan. The presentation of the plan was not a completed permit application. It was simply a description of what they proposed to do. No development permit was even involved.

19. On June 30, 2016, the County's building codes were amended in regard to "membrane structures" which would include hoop structures. The amendment changed the permit exemption for "membrane structures" to include structures used exclusively for the protection or propagation of plants "other than marijuana." Ordinance #020160005.

20. Therefore, after June 30, 2016, hoop structures for marijuana growing appear to require a building permit. This, however, is totally irrelevant to whatever growing rights may have accrued prior to the moratorium.

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

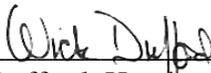
CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.44.290; SCC14.06.110(7).
2. In this appeal, the appellants bear the burden of proving that the administrative decision was clearly erroneous. SCC 14.06.110(11). They have not done so.
3. The administrative order in question was largely resolved by the Voluntary Compliance Agreement. However, that agreement limits the scope of the marijuana growing operation which may be conducted by the Lindsays on their property. That limit is the 7,800 square foot footprint of the constructed hoop structures referred to in the "Agreed Corrective Action."
4. Any marijuana growing operation exceeding that limit is not authorized.
5. As noted, the civil penalties involved in this case have been waived.
6. The Examiner notes that he is limited to construing County ordinances and deciding whether they have been violated. He does not possess any equitable authority to decide on such matters as estoppel or fairness.
7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

ORDER

The Administrative Order in this matter is essentially resolved by the Voluntary Compliance Agreement. That Agreement defines the scope of the allowed marijuana growing operations by the Lindsays. They are required to limit the cultivation of marijuana to the 7,800 square feet agreed to as the footprint for hoop structures.

DONE, this 26th day of October, 2016.



Wick Dufford, Hearing Examiner

RECONSIDERATION/APPEAL

Reconsideration may be requested by filing with Planning and Development Services within 10 days of this decision.

Appeal is to Board of County Commissioners by filing with the Clerk of the Board within 14 days of this decision, or decision on reconsideration, if applicable.