

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

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| CONCRETE NOR'WEST |) | |
| MILES SAND AND GRAVEL, |) | |
| |) | |
| Appellant, |) | PL18-0200 |
| |) | |
| v. |) | ORDER DENYING COUNTY'S MOTION FOR |
| |) | SUMMARY JUDGMENT, GRANTING |
| SKAGIT COUNTY, |) | JUDGMENT TO APPELLANTS, |
| |) | AND ORDERING FURTHER PERMIT |
| Respondent. |) | PROCESSING |
| |) | |
| _____ |) | |

PROCEDURE

Following a conference on August 7, 2019, the Examiner established a schedule for further proceedings in this matter. The schedule allowed the filing of prehearing motions, provided for the Examiner to decide on any motions made, and set a hearing on the case for October 23, 2019.

Pursuant to the schedule Skagit County filed a Motion for Summary Judgment and To Dismiss, dated October 9, 2019. The Appellant, Concrete Nor'West/Miles Sand and Gravel filed a response to the Motion, dated October 16, 2019.

This project involves an application for a Special Use Permit, filed March 7, 2016, (PL16-0097) to conduct a gravel mining operation north of Grip Road. It has a long history of submissions by the Appellant and review by the County. The present proceeding is the appeal, of a decision by the County, dated April 5, 2018, to deny the application on the grounds that the applicant failed to provide necessary additional information to process the application after being requested to do so (PL18-0200).

A Prehearing Conference was convened on May 9, 2018, during the course of which it became known that the Appellant and County were actively engaged in settlement discussions and the Examiner continued the matter while those discussions continued. The case remained in this posture until the above-noted schedule contemplating prehearing motions was entered.

During the interim, the Appellant submitted additional materials and communicated with County personnel. The County sent a letter on February 22, 2019, nearly a year into the process, stating that they still considered the application incomplete. The Appellant sought a written specification of the items the County desired and the Examiner ordered that such a specification be provided.

The County did not comply with this order, but continued to rely on its February 22 letter. Ultimately the Examiner convened another conference on August 7, 2019, which resulted in an order contemplating face-to-face discussions at the staff level and which established the schedule that resulted in the Motion under consideration.

The County has moved for Summary Judgment and to Dismiss, urging that, in effect, the Examiner view the application as frozen in time as of April 5, 2018.

In connection with the motion the Examiner has considered the following:

- A. Skagit County's Motion for Summary Judgment and to Dismiss
- B. Declaration of Julie S. Nicoll and Exhibits 1 through 9 attached thereto.
- C. Concrete Nor'West/Miles Sand and Gravel's Response to Motion for Summary Judgment
- D. Addendum to Response and Exhibits A and B thereto.
- E. Declaration of Dan Cox.
- F. Appeal, dated April 16, 2018, and exhibits thereto.

After reviewing this record, the Examiner concludes that the County's Motion should be denied and that judgment should be granted to the Appellant.

DISCUSSION

This land use permit proceeding has involved an ongoing effort by the Appellant to determine what it is that the County wants to know and to provide it with information sufficient to make a decision on its application. It defies logic and common sense to conclude that the application cannot be supplemented in connection with the appeal process. That process has been largely devoted to trying to figure out what information the County needs and to supplying it. To say now, that this entire effort over the last year and half was a meaningless waste of time smacks of a late-dawning revelation.

At this juncture, after the efforts made, it is no answer to say that the Applicant may reinstate review by submitting a new application. To so require would be merely punitive, considering the quantum of information the County has already received. The overwhelming conviction derived from the record is of an Applicant attempting in every way possible to work with the County to resolve what is essentially an argument about process.

The Examiner is convinced that the Appellant has done what it can to resolve County's perceived informational gap. The County has not identified any current shortcomings in the quantum of information presented. The Examiner concludes that the case should move forward, with the application being evaluated on the basis of the submissions made to date.

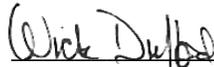
This is a far cry from concluding that the project should be approved. It is merely to say that at some point the merits of this project must be squarely addressed. When that occurs the County can still conclude that the project should be denied. And members of the public can weigh in and present arguments in opposition if they so desire. The recent denial of intervention of the Neighbors group in this procedural appeal was predicated on the understanding that public views on the merits will be heard prior to the final determination on this Special Use Permit application.

ORDER

In light of the above, the following Order is entered:

The County's Motion for Summary Judgment and To Dismiss is denied. The Appeal is granted. The application is deemed complete. The hearing scheduled for October 23, 2019 is cancelled. The County shall prepare a new Staff Report based on the application information presently at hand. Thereafter, a hearing on the merits shall be scheduled in the ordinary course by County Staff.

DONE, this 17th day of October, 2019.



Wick Dufford, Hearing Examiner

Transmitted to the parties, October 17, 2019.

APPEAL

This is a final order which 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 hereof.