

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Bayview Edison Industries, Inc.  
13593 Bayview Edison Road  
Mount Vernon, WA 98273

**File No:** PL06-0007

**Request:** Special Use Permit

**Location:** At the northeast corner of the intersection of State Route 20 and Bayview Edison Road, within NE1/4SE1/4 Sec. 7, T34N, R3E, W.M.

**Land Use Designation:** Rural Business

**Summary of Proposal:** To expand a business by finishing construction of a 6,000 square foot building and adding a new 11,000 square foot building for the manufacture of yachts. The complex may be used in the future as a full service machine shop specializing to tool manufacturing and cabinetry fabrication. With the existing 16,000 square foot building, the facility is proposed to contain up a total of 33,000 square feet.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing On March 22, 2006.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. Bayview Edison Industries, Inc. (BEI) seeks a Special Use Permit to expand a business located in a Rural Business zone.

2. The project will be located at the northeast corner of Bayview Edison Road and State Route 20. The address is 13593 Bayview Edison Road. The property consists of approximately 2.23 acres within NE1/4SE1/4 Sec.7, T34N, R3E., W.M. The parcel number is P103655. The surrounding topography is essentially flat.

3. Currently there is a 16,000 square foot building on the site located near the intersection. Abutting that to the east, a 6,000 square foot building is under construction. A 5,040 square foot barn that was used commercially in the past did occupy the site but is being replaced by the 6,000 square foot building. Giving credit for the barn, the net increase in commercial space up till now was 960 square feet. Such an increase is allowed outright in the Rural Business zone. SCC 14.16.150(2)(c).

4. The present expansion proposal is to expand the complex by adding an 11,000 square foot building abutting the 6,000 square foot building on the east. The new building will initially be used for the manufacture of yachts by a sister company, American Expedition Yachts, Inc.(AEY). This new structure will not exceed 50% of the existing overall footprint.

5. Under SCC 14.16.150(2)(b), the yacht building activity was administratively approved on January 4, 2005, as a change of use from a prior use of the site – the wholesale distribution of wine, beer and water. (PL04-0883). The change of use decision was not appealed. The wholesale distributorship use was shown to date back to 1986.

6. The Staff Report for the instant application says that the administrative change of use decision acknowledged that yacht building would involve engineering, design, tool making and prototype development work. There is nothing in the decision itself which says this.

7. Moreover, the applicant's project description for the proposed expansion states that BEI is a full-service machine shop specializing in tool manufacturing, metal and cabinetry fabrication serving the "marine and other industries." Although the new building will initially be used to manufacture yachts, the plan is for AEY to move out within six months to a year and for the new building then to become the BEI mold shop. The application says that current facilities allow the manufacture of large tooling for the marine industry, but that they require additional floor space to hand finish and stage molds and other tooling. The new 11,000 square feet will provide that floor space when AEY moves out.

8. Eventually the BEI operation will be a component in a development plan that includes a new yacht manufacturing plant at another location. BEI will supply all the tooling for the manufacturing plant. There is a question, however, as to whether BEI's operation will involve supplying anyone else.

9. While it may be that BEI's operations are and will be just a part of an overall yacht building business, the language in the application at least suggests that the present use and the proposed expanded use does and will include a broader range of operations at BEI. It is not clear from the record that the scope of the change of use decision on January 4, 2005 encompasses a "full service machine shop" which serves the "marine and other industries." If that is what was intended by the approval, the decision should be amended to remove any doubt about its scope. If that is not what was intended, authorization for the broad category of general machine shop use should be approved before any permit is issued for the expansion.

10. The application states that BEI currently employs about 15 people, but that the expansion of tool and yacht manufacturing is expected to result in around 45 employees for BEI and AEY at the site by the end of 2006. About 60 BEI employees on site are expected once the facility is fully developed. (Another 120 employees are ultimately anticipated at the separate yacht manufacturing plant.)

11. According to the application the majority of the employees on the subject site work on a four-day schedule, Monday through Thursday, from 6:30 a.m. to 4:30 p.m. No additional information is given about hours of operation, but presumably some employees are on site at other hours and on other days.

12. The applicants say that there is ample space for parking on BEI's land and on an adjacent easement for parking. They predict minimal traffic impact from the expanded operation on State Route 20. They note that their working hours do not coincide with hours of peak volume on State Route 20.

13. There are no buildings directly adjacent to the applicants' facilities. About 400 feet away, across the state highway to the south, is a Shell service station. About 600 feet away, on the southwest portion of the corner, opposite the Shell station, is the Farmhouse Restaurant. About 500 feet away, on the northwest portion of the corner is the Wilber Ellis facility. Otherwise the nearby property is open agricultural land and wetlands.

14. The application contends that the addition of the new building will not significantly alter the visual impact of the overall development as viewed from either State route 20 or Bayview Edison Road. The current buildings have a total length of 210 feet parallel to State Route 20. The new building will add about 90 feet to this length, but will be identical in design to the existing 6,000 square foot building. The assertion is that the added length will result in a more balanced appearance because the length to height ratio will be more normal and will blend better with the surrounding structures.

15. According to the application, operations in the new building will not produce noise, odors, air emissions, heat or significant vibration. In the past, the use of resins in the manufacture of fiberglass molds created offensive odors. Now BEI uses the so-called “vacuum bagging method” by which the resins are entirely confined within a sealed bag which allows no odors or emissions to escape. The method avoids exposure of employees indoors and thereby eliminates odor and fumes outdoors. No heavy vibration-producing machinery will be located in the new building.

16. Few hazardous chemicals are used in the new building, other than polyester and other resins. The potential for spills is small due to the “vacuum bagging method.” Any spills will be contained on site and promptly cleaned up. All hazardous wastes will be disposed of off site according to applicable regulations.

17. The addition of another building and increase in employees will require the installation of a new sewage system. Approval of such a system will be needed before a building permit is issued. In addition a new industrial water facility will be required. The applicant states that the proposal for water supply has been approved by the Skagit County PUD. With appropriate handling of hazardous chemicals, adequate sewage disposal facilities, and compliance with drainage regulations, the potential for surface or ground water pollution will be small.

18. Grading and filling for the building pad and expanded parking area will involve about 500 cu yards of grading and about 1,500 cubic yards of pit run fill material from local gravel pits.

19. The application was routed to various County departments for review. Their comments can be dealt with through Conditions of approval.

20. Public Works stated that a Drainage Report and Plan is needed, prepared by a licensed engineer, and meeting the requirements of the County Drainage Ordinance and the Department of Ecology Stormwater Manual for Western Washington. Approval of the drainage plan will be required prior to issuance of a building permit.

21. Public Works also called for a Hydrogeo Report, an approved Access Permit, septic system approval and water supply approval.

22. The Critical Areas staff noted that a Category II wetland has been identified east of the subject parcel. They said that a complete site plan that identifies this wetland and its 100-foot buffer must be submitted to determine the proximity of the wetland and buffer to the proposal.

23. Notice of Development Application was made on January 26, 2006. On February 13, 2006, a Determination of Non-Significance (DNS) was issued under the State Environmental Policy Act (SEPA). The DNS was not appealed.

24. With respect to existing structures on the site, a code compliance request was filed in February of 2006. The owner of adjacent open property, Dan Mitzel, contended that BEI was allowing uncontrolled stormwater to discharge directly onto his property and to flood it. The complaint was investigated by enforcement personnel and resolved to their satisfaction.

25. Mitzel testified at the hearing on the expansion permit. He said that the existing BEI operation is using an easement that belongs to him and that use of the new areas to be developed will compound this. His earlier drainage complaint stemmed from the prior building permit for the 6,000 square foot addition, but he said he is interested in conferring with the applicant about the flooding to insure that there is an understanding of the existing problem. He urged that the applicant be required to address and solve drainage issues before proceeding to further building.

26. The County responded that the applicants will be required to fully comply with drainage control regulations.

27. 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.

28. The Staff Report analyzes the application in light of these criteria and finds that, as conditioned, the proposal will be consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

29. Special criteria for expanding a business in a Rural Business zone up to a maximum of 50% are given at SCC 14.16.150(4)(d), as follows:

- (i) The expansion will occur on the same lot upon which the existing use is located;
- (ii) The expansion is visually compatible with the surrounding neighborhood and rural area.
- (iii) Detrimental impacts to adjacent properties or to existing easement rights on the property will not be increased or intensified;
- (iv) The expansion does not result in a formerly small operation dominating the area;
- (v) The expansion will not constitute new urban growth in the rural area, except that uses may utilize urban services that are historically already available to the site; and
- (vi) Public services and facilities are limited to those necessary to serve the isolated nonresidential use and are provided in a manner that does not permit low density sprawl.

In addition, the applicant must show that the use was established prior to July 1, 1990.

29. The record demonstrates that the proposed expansion will occur on the same lot as the existing use.

30. In the context of the particular setting, the Examiner finds that the additional building will be visually compatible with the neighborhood. It will improve the perception of appropriate scale to the operation and will not result in a sense that the expanded operation dominates the area. To the extent that easement rights on the property may be infringed by this expansion, the applicant shall take appropriate steps to secure permission.

31. The proposal is for the addition to a business in a small commercial enclave that has been in existence for many years. It is the sort of modest increase contemplated for the zone and does not constitute a type of new urban growth.

32. The road and water supply to be used by the expanded operation are already in existence. The new septic system is not an invitation to sprawl. The record shows that a business use was present on the site as of 1986.

33. 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 proceeding. SCC 14.06.050(1)(b)(2).

2. The requirements of SEPA have been met.

3. As conditioned the proposal will be consistent with the general criteria for approval of a Special Use Permit and with the special criteria for a Hearing Examiner Special Use Permit for the expansion of an existing business in a Rural Business zone. SCC 14.16.900(2)(b)(v), 14.16.150(4)(d).

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

### **CONDITIONS**

1. The project shall be constructed and operated as described in the applications materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all applicable permits prior to the construction of the building expansion. These shall include building, grading, and access permits.

3. Prior to issuance of the Special Use Permit, the applicant shall obtain clarification from Planning and Development Services regarding the scope of the change of use decision issued on January 4, 2005. If the operations ultimately proposed for the new building are not within the scope of that approval, the applicant shall apply for and obtain a new change of use determination that is broad enough to cover the type of commercial operations that will ultimately be carried out on the site. Such an approval shall be a prerequisite to the issuance of a Special Use Permit

4. Prior to obtaining a building permit, the applicant shall submit and obtain approval of a Drainage Report and Plan prepared by a licensed engineer, which addresses water quantity and quality for stormwater and groundwater for the proposed project, and

which complies with Chapter 14.32 SCC (Drainage Ordinance) and the applicable version of the Washington State Department of Ecology Stormwater Management Manual for Western Washington.

5. A maintenance and operation plan shall be provided for all drainage facilities.
6. Prior to building permit approval, the applicant shall obtain approval for a new or enlarged system of on-site sewage disposal and shall install the same. No industrial or chemical waste shall be allowed to enter the on-site sewage disposal system.
7. The applicant shall comply with applicable requirements of the International Fire Code and the Skagit County Coordinated Water System Plan to the satisfaction of the Fire Marshal.
8. Prior to applying for a building permit, the applicant shall provide Planning and Development Services with a revised site plan that identifies the boundaries of the nearby Category II wetland and its associated buffer and shows that the development will not interfere with the wetland or the buffer.
9. Prior to applying for a building permit, the applicant shall submit a letter of water availability from the Skagit County PUD. Any requirements of the PUD shall be met prior to the approval of the building permit.
10. Any chemicals in use or stored upon the property shall be contained, stored, used and disposed of as directed by the Health Department and applicable state and federal regulations.
11. A hydrogeo report satisfying Chapter 14.24 SCC shall be submitted.
12. The operation shall comply with Chapter 173-60 (Noise) and the performance standards of SCC 14.16.840 for noise, vibration and light conditions.
13. The operation shall comply with state water quality standards for surface and ground waters, per Chapters 173-201A and 173-200 WAC.
14. The applicant shall submit evidence showing either that the project is having no detrimental effect on any easement owned by another or that permission has been granted for the use of such an easement.
15. When and if the business grows beyond the one-time 50% expansion limit or any other parameters established by this Special Use Permit, it shall be relocated to a zoning classification that permits the activity.

16. Planning and Development Services shall be notified of any change of ownership of the business or parcel by letter referencing PL06--0007. The notification shall be submitted within 30 days of the change.

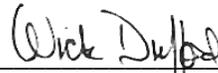
17. The Special Use Permit shall be void if work is not started within two (2) years of the date of this order, or if the use is abandoned for a period of one (1) year.

18. Prior to issuance of the Special Use Permit, all planning review fees shall be paid in full.

19. Failure to comply with any condition may result in permit revocation.

### **DECISION**

The application is approved, contingent on obtaining approval as described in Condition 3 above, and subject to compliance with all other conditions set forth above.



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Wick Dufford, Hearing Examiner

Date of Action: May 4, 2006

Date Transmitted to Applicant: May 4, 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 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.