

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

GEORGE AND RITA TEREK,)	
)	
Appellants,)	
)	Notice of Appeal, PL06-0064
v.)	
)	
SKAGIT COUNTY, and)	SCHEDULING ORDER
JAMES PAULSON,)	
)	
Respondents.)	
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On January 26, 2006, Notice of Appeal PL06-0064 was filed on behalf of the Appellants. The appeal challenged building permit revisions in BP04-0857. The appeal referred to revisions which were asserted to have been made on January 12 and 20, 2006.

On March 2, the Planning Director wrote to the Appellants’ representative asserting that the Hearing Examiner is without jurisdiction to consider the appeal and that, therefore, he was not forwarding the appeal to him. Alternative bases for the jurisdictional conclusion were put forward. It was asserted that:

a) The permit was issued on December 15, 2004, and therefore the appeal was untimely. The letter noted that a “revised site plan” had been accepted, but stated that none of the changes affected the approval of the original permit. The acceptance of the revised site plan was said to have been in the context of a Code enforcement action and not an amendment to the building permit. Thus, the letter asserted, acceptance of the revised site plan was not an appealable decision under Chapter 14.06 SCC, since the revised plan was not submitted in support of a permit application and its “approval” was not a decision on a development permit.

b) Alternatively, the matter was not appealable under the enforcement procedures of Chapter 14.44 SCC because the Appellants are without standing to appeal the resolution of an enforcement proceeding to which they were not a party.

On March 6, the representative for the Appellants wrote to the Hearing Examiner, with copies to all parties, and forwarded a copy of the appeal to him. He stated that under SCC 14.06.110(11), the Examiner must hold an open record hearing on the appeal and decide the case within 90 days of receipt of the Notice of Appeal.

The Hearing Examiner then requested input from the Planning Director to the Hearing Examiner’s office on the jurisdictional question. The Planning Director responded by letter of March 17, 2006, stating that informants lack standing to pursue an appeal of an enforcement action that was settled amicably and that therefore the

Appellants' complaint was not being processed as an appeal. He asked that the Notice of Appeal be returned to the Appellants without action.

On March 23, 2006, the Appellants' representative responded to the Planning Director's allegations in a letter to the Hearing Examiner. He said that Planning and Development Services approved voluntary revisions to the subject building permit sometime after January 12, 2006 as reflected on revised site plans. He said these plans were approved as in compliance with zoning, shorelines and critical areas regulations in Title 14 SCC, and that the appeal asserts that these land use determinations in fact do not so comply.

He raised factual issues about the extent of change in the initial approval brought about by the revisions. He alleged the changes required that a shoreline variance and shoreline substantial development permit be obtained. He quarreled with the characterization of the revisions as a code enforcement matter. Even if it were, he argued, the Tereks would have standing to challenge it.

After considering these exchanges, the Examiner has made the following determinations:

A. The appropriate course here is for the Examiner to determine the jurisdictional question within the normal hearing process. This is the only way that the issue can be reviewed in a contested-case setting in which both sides have an opportunity to be heard.


B. The County's letters are construed as, in effect, a Motion to Dismiss, to which the Appellants have responded. The Examiner would benefit from additional evidence and argument from the parties on the jurisdictional issue and therefore hereby schedules presentations on that issue as the first order of business in the hearing.

C. The Examiner would, in particular, appreciate argument on the applicability of SCC 14.06.040(4) – administrative decisions – to the permit revision process in this case.
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D. Should the Motion be denied, the hearing on the merits should and will immediately follow.

E. The Examiner hereby schedules the hearing on this appeal for May 3, 2006, at 10:00 a.m. in the Board of County Commissioners Hearing Room, 1800 Continental Place, Mount Vernon, Washington.

SO ORDERED this 29th day of March, 2006



Wick Dufford, Hearing Examiner