

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of)	
)	
WILLIAM WOODING,)	PL21-0421
)	
Appellant,)	ORDER GRANTING APPEAL
)	
SKAGIT COUNTY,)	
)	
Respondent.)	
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This matter was presented through written submissions. Steven Taylor, Mining Consultant, represented the Appellant. Jason D’Avignon, Deputy Prosecuting Attorney, represented the County.

The appeal is of the County’s denial of a Special Use Permit application to expand a gravel mine near Lake Erie. The denial was based on the Appellant’s failure to provide a Geologically Hazardous Site Assessment within 120 days as provided by SCC 14.06.105(1).

FINDINGS

1. William Wooding filed Application No. PL16-0556 for a special use permit to expand his Lake Erie gravel mine on December 2, 2016, almost five years ago. In the interim substantial technical information has been submitted and reviewed. After a hearing on August 26 and October 14, 2020, the Hearing Examiner approved the application with conditions.
2. On appeal, the Board of County Commissioners remanded the matter to the Hearing Examiner to determine if a Geologically Hazardous Site Assessment is needed. The Hearing Examiner ordered Planning and Development Services (PDS) to direct Wooding to provide such an assessment.
3. The 120 days provided by SCC 14.06.105 for submittal of the information expired on July 21, 2021. On July 20, 2021, the day before the expiration date, Wooding’s agent sent an email stating that a contract with a consultant had been entered and requesting a further extension of time for submitting the required information.
4. PDS denied the extension request and denied Wooding’s special use permit application for failure to timely supply requested information.
5. In arguing on Wooding’s behalf his consultant stated that he had been hospitalized three times in 2021 and that this had made it difficult for him to pursue the application.

6. He said that when the information was asked for in March of 2021, no one was available to provide the requested assessment. Thereafter, experts he consulted advised him that such an assessment would need to cover all of the seasons of the year. Another year was requested to complete the work.

7. Wooding's consultant further noted that the proposed mining would be conducted in phases with fill and replanting occurring after each phase, thus limiting the open areas of the mine and controlling surface water absorption. He explained that the purpose was for a gradual expansion of the mine, not an increase in production.

8. He also noted that six reports referencing the hydrology of the site have already been produced, supporting the conclusion that the site has no perched aquifers and that the groundwater flow is to the northeast.

9. The County simply stated that their denial was based on a failure to supply requested information within the time allowed under SCC 14.06.105(1). The County emphasized that the denial could have been avoided by a timely request for extension and that no such request was timely made.

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

DISCUSSION

This case is a classic example of "coming to a nuisance," where the character of an area has been changed by recent development that is arguably at odds with the traditional allowed land use. Under this circumstance the historic use is not required to cease.

Continuation of the mining operation near Lake Erie is not now subject to any explicit regulatory oversight. Significantly, no reclamation program presently governs the operation.

Allowing the mining to proceed essentially unregulated presents obvious risks. The issuance of a Special Use Permit for the mine would lead to resolution of presently unanswered questions about what is to occur in the future. The answers would essentially remove environmental concerns about the end state of the property.

If the preparation of a Geologically Hazardous Site Assessment reveals risks that need to be and can be addressed, the applicant can do so in prosecuting his permit. If the assessment reveals risks that cannot be avoided, then the permit can be denied.

Given the amount of time and effort that has been expended on this application and the large amount of information that has been generated, it seems unnecessarily punitive to require the applicant to submit a new application.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this appeal. SCC 14.16.050(1)(a).
2. A dismissal for failure to meet the 120 day time limit for submitting additional information is explicitly made appealable by SCC 14.06.105(3). This must mean that a compelling explanation can excuse the lateness.
3. The Examiner is persuaded that such an explanation has been provided in this case and concludes that the time limit should be extended as set forth in the Order below.

ORDER

The denial of Application No. PL16-0556 is reversed. The application shall remain in good standing through September 2022. During this time the Applicant shall have a Geologically Hazardous Site Assessment prepared and shall submit the same prior to the end of September 2022.

SO ORDERED, this 15th, day of October, 2021.



Wick Dufford, Hearing Examiner

Transmitted to: Interested parties on October 18th, 2021.