



200304040137

Skagit County Auditor

4/4/2003 Page

1 of

5 11:46AM

AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER OF DISMISSAL
APPEALS AP 02 0725 and AP 02 0711

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANTS: CASCADE AG SERVICES, INC. and CITIZENS FOR ZONING AND
CODE COMPLIANCE

ASSESSOR PARCEL NO: P112114 and P112115

ABBREVIATED LEGAL DESCRIPTION: The subject property is located at 13459 Dodge
Valley Road, Mount Vernon, WA; a portion of Section 25, Township 33 North, Range 03
W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeals of)
)
CASCADE AG SERVICES, INC.) PL 02-0725
and)
CITIZENS FOR ZONING AND) PL 02-0711
CODE COMPLIANCE)
)
Of an Administrative Interpretation)
Regarding Permissibility of an)
Agricultural Storage and Processing Facility)
In the Rural Reserve Zoning District)
_____) **ORDER OF**
DISMISSAL
)
In the Matter of the Application of)
)
CASCADE AG SERVICES, INC.) PL 02-0541
)
For a Special Use Permit to Operate)
an Agricultural Storage and Processing)
Facility in the Rural Reserve Zoning District)
_____)

PROCEDURE

On January 29, 2003, the Hearing Examiner consolidated the above appeals and special use permit application into a single proceeding.

By Order dated February 12, 2003, the Examiner scheduled a telephone conference to discuss scheduling in the consolidated matters to take place on March 5, 2003.

On February 26, 2003, the Board of County Commissioners adopted Interim Ordinance 020030006. The Ordinance states that the following uses, among others, are permitted outright in the Rural Reserve zone: (a) agriculture, (b) agricultural accessory uses, (c) agricultural processing facility. In addition the Ordinance contains amendments to the definitions of "agricultural accessory use," and "agricultural processing facility."

On February 28, 2003, the Planning and Permit Center forwarded copies of the Interim Ordinance to the Examiner and the parties and asked that it be reviewed prior to the March 5, 2003 hearing. The Staff said it thought the Ordinance rendered the subject appeals irrelevant.



200304040137

Skagit County Auditor

On March 4, 2003, Cascade Ag by letter advised the Examiner and the parties that it agreed with the Staff that the adoption of the Ordinance rendered the appeals moot, but suggested a three-month's continuance because "the dust has not yet settled on this adoption." Cascade Ag asked for dismissal of the appeals if a continuance was not acceptable.

The telephone conference on March 5, 2003, occurred as scheduled, participating with the Examiner were: Gerald Steel, Attorney for appellants Citizens for Zoning and Code Compliance; Phil Olbrecht, Attorney for Cascade Ag Services Inc.; Linda Kuller, Senior Planner, and John Moffat, Deputy Prosecutor, for the County. The Examiner entertained argument on whether the appeals should be dismissed in light of the adoption of the Interim Ordinance. No objection was then raised to considering this question.

At the close of the teleconference, the Examiner orally announced his intention to dismiss the appeals, subject to revival should the Ordinance cease to be effective.

On March 6, 2003, the Examiner was apprised of a letter from appellant's counsel, apparently composed on the previous day following the conference. The letter urged that fair process had not been followed, stating that the Examiner did not notify appellants of his intent to hear argument on dismissal of the appeals at the March 5 conference. The letter said, "Citizen's feels ambushed by the Examiner choosing to dismiss Citizen's appeal without giving Citizen's reasonable notice and reasonable opportunity to prepare argument."

The letter then went on to expand on the argument made orally for the appellants during the teleconference.

On March 6, 2003, Cascade Ag filed a letter asserting that appellants' protest regarding notice was untimely and therefore waived. On the substance, it asserted that determining whether Cascade Ag is involved in a "processing" activity would now serve no purpose since "processing" is clearly allowed under the new ordinance.

DISCUSSION

As to the procedure followed, the Examiner is convinced that there was no lack of fairness.

Reasonably interpreted, the Planning and Permit Center's letter of February 28, 2003, is a request that the effect of the Interim Ordinance be taken up on March 5, coupled with a motion for dismissal. Notice thereof was made five (5) days in advance of hearing, which is generally regarded as adequate notice for a motion. See CR 6(d).



The responsive letter of Cascade Ag, dated March 4, anticipated that the effect of the Ordinance would be taken up at the conference and included an alternative motion.

Moreover, during the conference, argument on this matter lasted over half an hour, the largest share of which was taken up by counsel for appellants. In light of all this, the Examiner does not agree that the appellants were ambushed.

Nevertheless, the Examiner has considered the additional argument made by appellants in their post-conference letter and has considered the response thereto by Cascade Ag.

Finally the Examiner points out that a Motion for Reconsideration is available to the appellants after dismissal is entered. Any prior defect of notice should be cured by this additional opportunity for argument.

Therefore, having concluded that further pre-decision argument is not needed, the Examiner hereby memorializes the dismissal announced orally at hearing.

The Interim Ordinance is itself an authoritative interpretation of what the zoning code means on the issues under consideration. By the terms of its preamble, the Ordinance is intended as a clarification of prior language. It therefore describes what the code was intended to mean.

Among other things, the appellants sought review of a determination that the past use by Cascade Ag was "storage." Their argument was that such use was in fact "processing" and that "processing" was not allowed in the Rural Reserve zone. The Interim Ordinance makes clear that both "storage" and "processing" are permitted uses.

The Examiner is bound by the legislatively-adopted understanding. So, whether the past behavior was "processing" makes no difference. It was not intended to be disallowed. The legislative authority has effectively decided the question. The appeal which seeks confirmation of a contrary meaning is moot.

It is, of course, possible that the Interim Ordinance will be overturned or will eventually simply lapse. The issues raised in the instant proceeding would then, arguably, once again become questions requiring resolution. Should that occur, the appeals should be revived without cost or prejudice and the subject special use permit application should be reinstated.



200304040137

Skagit County Auditor

3 4/4/2003 Page

4 of

5 11:46AM

ORDER

The above captioned consolidated matters are hereby dismissed, subject to revival should the Interim Ordinance 020030006 cease to be effective.

DONE this 13th day of March, 2003,

Wick Dufford

Wick Dufford, Hearing Examiner

Copies Transmitted to Parties: March 13, 2003.

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 dates after the date of this decision. As provided in SCC 14.06.110(13), the decision 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 of the decision, or decision on reconsideration, if applicable.

