

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of)
)
AVIS LLC and SCOTT WALDAL,) PL 08-0688
)
From a Notice and Order to Abate in)
Relation to Activities at 7705 State) **ORDER OF DISMISSAL**
Route 9, Sedro-Woolley.)
_____)

This Order is a ruling on Skagit County’s Motion to Dismiss Administrative Appeal, dated February 17, 2009. The appellants herein (AVIS, LLC and Scott Waldal) responded to this Motion on February 27, 2009. Skagit County filed a reply on March 2, 2009. The filings were accompanied by exhibits and declarations.

UNCONTESTED FACTS

1. On November 13, 2008, Skagit County Planning and Development Services (PDS) mailed a Notice and Order to Abate to AVIS LCC and Scott and Debbie Waldal, relating to activities at 7705 State Route 9, Sedro Woolley. The notice and order was sent by certified mail to P. O. Box 25, Arlington, WA 98223
2. On December 5, 2008, an appeal of this notice and order was filed with PDS. The appeal was filed by counsel on behalf of “Scott Waldal, owner of Skagit Hill Recycling.”
3. The appeal was filed 22 days after the notice and order was mailed.
4. The property in question is owned by AVIS LLC. Scott Waldal is both the owner of Skagit Hill Recycling, Inc., and a governing person for AVIS LLC. Waldal has, on applications and official listings, identified “P.O Box 25, Arlington” as his mailing address and that of AVIS LLC.
5. Under the County’s enforcement scheme, a Notice of Violation is a precursor to a Notice and Order to Abate. On September 9, 2008, PDS sent a Notice of Violation by certified mail to “Scott and Debbie Waldal – Avis LLC” in regard to substantially the same asserted violations at the same locale as identified in the subject Notice and Order to Abate. The Notice of Violation was directed to P. O. Box 25 in Arlington. It was signed for by Debbie Waldal on September 12, 2008.
6. The certified mail envelope for the Notice and Order to Abate was returned to PDS, unopened on December 4, 2009, imprinted with “Return to Sender – Unclaimed –

Unable to Forward,” and bearing handwritten annotations indicating that certified mail notices had been placed in the box on November 14, 19, and 29.

7. Waldal asserts that he did not receive actual knowledge of the Notice and Order to Abate until December 4, 2008, through his legal counsel.

CONCLUSIONS

1. SCC 14.44.110 provides procedures for the issuance of a Notice and Order to Abate. The notice and order may be directed to the “owner or operator of the source of the violation.” The notice and order may be served “either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested.”

2. The address to which the Notice and Order to Abate was mailed was not shown to be an improper address for purposes of notification of persons to whom the notice and order was directed.

3. Under SCC 14.44.110(2)(b), the failure of the persons identified in the notice and order “to receive such notice shall not affect the validity of any proceedings taken under this Section.” Further, “service by certified mail in the manner herein provided shall be effective on the date of mailing.”

4. SCC 14.44.110(2)(a) (v)(C) says that a notice and order shall contain:

A statement advising that the order shall become final unless, no later than 15 calendar days after the notice and order are served, any person aggrieved by the order files an appeal to the Hearing Examiner pursuant to SCC 14.44.120.

5. SCC 14.44.120 states:

Appeal to the Hearing Examiner. Appeals of the notice and order must be made in writing within 14 calendar days of the receipt of the notice and order and shall be in accordance with Chapter 14.06 SCC.

6. For administratively issued permits, SCC 14.06.110(7) provides for appeals to the Hearing Examiner “within 14 days of the date the Notice of Decision was issued.” Issuance of a Notice of Decision is the functional equivalent in the permit context of the mailing of a Notice and Order to Abate.

7. Appellants argue that the relevant date for when the appeal period starts to run is the date of “receipt” of the notice and order, citing SCC 14.44.120. By this, they mean

the date of actual knowledge. The County asserts that the appeal period begins on the date the notice and order were mailed.

8. The Examiner has determined that the provisions of SCC 24.44.110 and 120 must be read together and harmonized in order to derive the intended meaning of the provisions relevant to appeals. Under this approach, he concludes that “service” and “receipt” are to be understood as referring to the same moment in time. That moment is explicitly stated for “service” as being “the date of mailing.” Therefore, “receipt” in context is “constructive receipt” and takes place, as a matter of law, at “the date of mailing.”

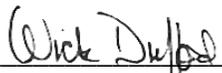
9. This textual interpretation is the only approach that makes sense of the entire scheme related to notification and appeal of a Notice and Order to Abate. Moreover, it is consistent with the appeal provisions for administrative permits under Chapter 14.06 where the appeal period starts to run at the time the decision is issued, rather than at the time when it is physically received by interested parties.

10. Accordingly, the subject appeal was untimely, and the Motion to Dismiss must be granted. The Hearing Examiner is without jurisdiction to entertain appeals that are untimely.

ORDER

The County’s Motion to Dismiss is hereby granted.

SO ORDERED, this 6th day of March, 2009.



Wick Dufford, Hearing Examiner