

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

GEORGE and RITA TEREK,)	
)	
Appellants,)	PL06-0064
)	
v.)	ORDER DENYING MOTION
)	FOR RECONSIDERATION
SKAGIT COUNTY, and)	
JAMES PAULSON,)	
)	
Respondents.)	
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On April 28, 2006, the Hearing Examiner entered an Order Dismissing Appeal in the captioned matter based on material presented by the parties previous thereto.

On May 3, 2006, the Appellants filed a Motion for Reconsideration, together with eight reconsideration exhibits. Subsequently on May 8, 2006, the Appellants served a Supplement to Motion for Reconsideration.

On May 4, 2006, Skagit County filed a Reply Re Petitioner’s Motion for Reconsideration. Thereafter, the County also made a Motion to Exclude the reconsideration exhibits submitted by the Appellants.

The Examiner has considered these submissions and enters the following:

1. Reconsideration of a final decision by the Hearing Examiner is permitted pursuant to SCC 14.06.180. Under that section reconsideration can be granted only “when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.”

2. In the context of Chapter 14.06, reconsideration is a review of the information initially presented for decision, not an opportunity to expand the record. New evidence should be allowed only where the information involved was not reasonably available at the time of the initial presentation of evidence.

3. The information presented in the reconsideration exhibits was reasonably available before the ruling on the Motion to Dismiss. To the extent that the reconsideration exhibits present new evidence, they are excluded.

4. Chapter 14.06 SCC is addressed to the process of application, review and approval for development permits. “Development Permits” by definition are “land use discretionary or environmental permits.” SCC 14.04.020. Administrative decisions on development permits may be appealed to the Hearing Examiner. SCC 14.06.110(7).

5. The structural aspects of constructing buildings are governed by the International and Uniform Building Codes adopted by the County under Chapter 15.04 SCC. A system of appeals for building code issues that is entirely separate from the Hearing Examiner system is established by Chapter 15.16 SCC.

6. Land use regulations are contained in Title 14 SCC, the Unified Development Code. In the course of building permit processing, questions of land use compliance are referred to the land use staff and a determination is made as to whether the proposed building as planned will be consistent with the various land use regulations, including both zoning and Shoreline Master Program (SMP) requirements.

7. The administrative approval of a building permit includes a determination that land use requirements are met. See SCC 14.06.050(1)(a)(vi). The appeal of a building permit under SCC 14.06.110(7) extends only to land use issues.

8. The Hearing Examiner has no jurisdiction to enforce provisions of the building codes.

9. In this case, land use compliance issues were not timely appealed to the Hearing Examiner after the issuance of BP04-00857. No timely appeal was made under SCC 14.06.110(7) or under Section 13.01 of the SMP.

10. No formal Statement of Exemption from requirements for a shoreline permit was issued in this case and therefore no appeal under the SMP was ever available. The issuance of the building permit represented the County’s determination that no shoreline permit was needed, but the SMP does not make this sort of determination appealable absent an application for and receipt of a Statement of Exemption.

12. Even if the issuance of the building permit is viewed as the functional equivalent of a Statement of Exemption, any appeal of the applicability and coverage of the SMP in this case would have to have been made at the time of the initial building permit issuance. The subject appeal comes far too late.

13. The later acceptance of a revised site plan was not a separate appealable action under either Chapter 14.06 SCC or the SMP. Under Chapter 14.06, the appeal of an “administrative decision” lies when such a decision follows an application for the determination and a ruling thereon.

14. Further, acceptance of the revised site plan cannot accurately be characterized as an “administrative interpretation” under the SMP. The Administrator is

given authority under SMP Section 8.02(2)(c) to make “administrative decisions and interpretations of the principles and policies of this program and the Shoreline Management Act.” The acceptance of the site plan was not an interpretation of “principles and policies” and, thus, not the kind of decision made appealable under SMP Section 13.01(2).

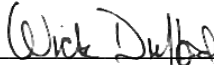
15. The fact that the revised site plan did not correct code violations does not prove that it was not accepted in the context of the code enforcement effort. The Examiner continues to accept the County’s version of the facts in this regard.

16. The Examiner concludes no material legal error has occurred and that no factual issue in the record considered has been overlooked that would change the previous decision. The Examiner is without jurisdiction to consider the appeal.

ORDER

The Request for Reconsideration is denied.

DONE this 12th day of May, 2006.



Wick Dufford, Hearing Examiner