

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

LEO AND LARRY CLARK,)	
)	
Appellants,)	PL06-0660, 06-0661
)	
v,)	FINDINGS OF FACT,
)	CONCLUSIONS OR LAW
SKAGIT COUNTY DEPARTMENT)	AND DECISION
OF PLANNING AND DEVELOPMENT)	
SERVICES,)	
)	
Respondent.)	
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These matters, appeals of Notices and Orders to Abate, came on for hearing on September 6, 2006, before the Skagit County Hearing Examiner in the Commissioners Hearing Room, 1800 Continental Place, Mount Vernon, Washington.

Two cases, concerning properties on opposite sides of Clark Road, Marblemount, were heard together. One involved 8209 Clark Road(CE06-127); the other concerned 8116 Clark Road (CE06-0135).

The appellants, Leo and Larry Clark, were represented by Bradford Cattle, Attorney at Law. Respondent Department of Planning and Development Services (PDS) was represented by Carolyn Spies, Enforcement Officer.

Testimony was taken. Exhibits were admitted. Argument was heard. On the record created, the Examiner enters the following:

PRELIMINARY RULING

The County in their Memorandum on the Notice and Order to Abate relating to 8116 Clark Road devoted considerable space to a prior enforcement case pertaining to the property. The case involved the question of whether fill should be removed from an area mapped by FEMA as floodway. The County Commissioners remanded that case, directing County Planning and Development Services to “work with Appellants to try to settle and resolve contested issues in this matter outside the administrative procedures for appeals of this kind.”

At the instant hearing the Examiner learned that discussions pursuant to this directive had been suspended. On motion of the Clarks, the Examiner excluded testimony on the issue of the fill from the instant proceeding and limited the hearings to the violations charged in the Notice and Order to Abate. The Examiner directed the

parties to re-enter negotiations upon the fill issue. If negotiations do not prove successful, the Examiner scheduled a hearing on the remand for November 15, 2006. The Commissioners' direction to the Hearing Examiner on remand was to "consider new evidence the appellants have obtained, namely, the survey completed on November 3, 2004."

FINDINGS OF FACT

1. Leo and Larry Clark are brothers who own the properties at 8209 Clark Road and 8166 Clark Road, Marblemount. Larry Clark manages affairs related to the 8209 property. Leo manages affairs related to the 8166 property. The properties are zoned Rural Reserve.

8209 Case (#PL06-0661)

2. On May 23, 2006, the County issued a Notice of Violation to Leo and Larry Clark regarding the property at 8209 Clark Road. The Notice charged a violation of SCC 14.16.320(2)(d), specifically as follows:

Two or more recreational vehicles on site constitutes a primitive campground. A primitive campground (PCVP) is a permitted use on land zoned Rural Reserve if there is a vaulted or chemical toilet on site.

The Notice ordered the following corrective action:

Obtain the required permits from the Skagit County Health Department for a Primitive Camping Vehicle Park – also submit documentation that garbage service is supplied and submit all documents by June 2, 2006 – **OR** – Remove one of the recreational vehicles from the property by June 23, 2006.

3. On June 30, 2006, the County issued a Notice and Order to Abate to Leo and Larry Clark regarding the property at 8209 Clark Road. The document specified the same violation as in the prior Notice of Violation. The corrective action ordered was also the same, except that the compliance date was changed to July 30, 2006.

4. The Notice and Order to Abate went on to note that a civil penalty could be assessed for each day of violation after the required compliance date, and stated that the notice and order could be appealed within 14 calendar days of receipt.

5. A Notice of Appeal was timely filed on July 14, 2006. The notice asserted that there is no factual basis for the cited violation.

6. Under SCC 14.16.320(2)(d) primitive campgrounds are permitted outright in the Rural Reserve zone. The violation alleged by the County presupposes that the activities on the site do not meet the definitions for this allowed activity.

7. “Campground” is defined in SCC 14.04.020 as

An area of land developed for recreational use in temporary occupancy, such as tents and recreational vehicles.

“Campground, primitive” is defined as

A campground with a minimal level of amenities, including at a minimum, vault or chemical toilets and garbage service, and which may include running water.

8. The County presented photographs taken on May 11, 2006, showing a deteriorated house and two RV trailers on the property. The RV’s have wheels and appear to be road-ready.

9. The County’s implicit message was that the conditions shown in the photographs are ongoing and had not been “corrected” as of the July 30, 2006 compliance date.

10. John Hadman, County Health Department, testified that when there are two or more self-contained RV’s on a property, his Department construes the operation as a primitive camping vehicle park and requires a permit to operate. Requirements for operation under such a permit would include posting a sign noting the lack of sanitary facilities and providing solid waste receptacles.

11. Larry Clark testified that the RV’s shown are presently on the property. However, he said they belong to family members (a daughter and a son-in-law). He said the intent was not to develop a campground but to provide space strictly for family use. The property is part of a family farm where cattle are run on about 65 acres. The family members who occupy the trailers help on the farm.

12. Larry Clark noted that the RV’s on site are fully self-contained with their own water and sewage systems, and that the units are taken off-site to dump waste water. He said that were brought in in the late Spring and will be taken away before the winter, probably in late September. Use is primarily confined to weekends. He said that no charge is made to the family members who are using the RV’s on the property.

13. The use in 2006 was said to represent the pattern of use. The declarations of four neighbors were admitted into the record. Each of them declared that he or she is in a position to regularly observe the property and that the RV’s were there in 2005 only from

early May to sometime in October. During the winter there were no recreational vehicles on the property.

14. The County's enforcement officer could not verify that she had observed the RV's on the property during the winter.

15. On behalf of the Clarks it was argued that the activities on the site do not meet the definition of "campground" in that the land is not "developed for recreational use." It was contended that the use by family members only without charge should take the activities out of the "campground" category and, thus, legitimize the use that is in fact going on.

16. The record discloses no adverse physical impacts of the presence of the two RV's on the property.

8116 Case (#06-0660)

17. On May 23, 2006, the County issued a Notice of Violation to Leo and Larry Clark regarding the property at 8116 Clark Road. The Notice charged a violation of SCC 14.34.160(2)(b)(i) and (ii), as follows: "Three (3) recreational vehicles located in a floodway." The Notice ordered the following corrective action:

Recreational vehicles shall not be used as permanent dwelling units. When located in flood hazard areas designated as A, A1-10, A12, A14, A16, A18, A21-22, V1, V4, AO and AH, the vehicle shall: (i) Be on site for fewer than 180 consecutive days; or (ii) Be fully licensed and ready for highway use, be on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions. Remove all three recreational vehicles from site by June 7, 2006 as they have been on site for over two (2) years.

18. On June 30, 2006, the County issued a Notice and Order to Abate to Leo and Larry Clark regarding the property at 8116 Clark Road. The document specified the same violation as the prior Notice of Violation. The corrective action ordered was also the same, except that the compliance date was changed to July 30, 2006.

19. The Notice and Order to Abate went on to note that a civil penalty could be assessed for each day of violation after the required compliance date, and stated that the notice and order could be appealed within 14 calendar days of receipt.

20. A Notice of Appeal was timely filed on July 14, 2006. The notice asserted that there is no factual basis for the cited violation.

21. SCC 14.34.160(2) relates to RV's in areas of special flood hazards. RV's are not to be used as permanent dwelling units. When they are in designated flood hazard areas, they are subject to the limitations shown as (i) and (ii) in Finding 17 above.

22. The County presented photographs showing two RV trailers on the property on August 8, 2003, June 19, 2005, and August 29, 2006. No third RV was shown to have been on the property.

23. For the purposes of this proceeding, the Clarks stipulated that the RV's on site are in a floodway, constituting one of the flood hazard areas listed in SCC 14.34.160(2)(b).

24. The County conceded that the RV's appear to be road-ready. They are on wheels and have no permanently attached additions. The County alleged however that the units have been there for three years.

25. The photographic evidence was limited to the summer months, and the County's enforcement officer had no record of observations of the RV's on site during any winter period.

26. The County had no evidence that the vehicles are not licensed. The enforcement officer said that they appear to be ready for highway use.

27. Leo Clark testified that the two RV's in the photos are presently on the property. He said that they were brought to the site in May of 2005 and removed in the fall. During the winter of 2005/06 they were stored at his sister's in Arlington. He said his intention was to remove them from the site again this fall.

28. One of the RV's is used by Leo Clark and his wife. The other is used by his sister or his son-in-law. They are typically used on summer weekends. The idea is to use them in the summer and store or repair them in the winter. Leo Clark said that they had never been kept on the site over the winter. His testimony was that they are "typically" there less than 180 days. He said that they are licensed.

29. The declaration of Les Smith was admitted. Smith declared that he is a neighbor of Jenny Baker, Leo Clark's sister, in Arlington. He said that he knows Leo Clark and is familiar with the two RV's in question. He observed that one of the vehicles was stored at the Baker property throughout the 2004/05 winter. He observed that both of the vehicles were stored at the Baker property during the 2005/06 winter.

30. Jenny Baker also testified. She said that she allows Leo to keep the RV's at her house during the winter and that he in fact has done so.

31. On behalf of the Clarks it was argued that the County did not prove that the recreational vehicles were kept permanently on the site, that they were there for more than 180 days, or that they did not meet requirements for licensing and road-readiness.

32. Again, the record discloses no adverse impacts from the presence of the RV's on the property.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding.

2. In enforcement matters, the County has the burden of showing the alleged violations in fact occurred.

3. The County did not meet its burden in either of the instant matters.

8209 Case (#PL06-0661)

4. The Health Department's concerns are with the administration of Chapter 12.20 SCC, Camping Vehicles. Under that chapter a permit is needed for a "Camping Vehicle Park (CVP)" which is defined therein as "any land in Skagit County occupied by two or more inhabited independent or dependent vehicles as defined in this Chapter."

5. Technically, the Clarks are not charged with a violation of Chapter 12.20 SCC. That chapter is enforced by the County Health Officer. Moreover, the definition of a "Camping Vehicle Park" under the Health Code is not the same as the definition of "Campground, primitive" under the Development Code. The former does not mention toilets. The latter does not specify any particular number of tents or RV's.

6. To be a "primitive campground," a facility must first meet the meaning of "campground." A "campground" is an area "developed for recreational use," even if the level of development is minimal. The common sense inference is that "development" in this context means making the property available to third parties for a fee. Limiting the property to family use at no charge is not consistent with this idea. Further, the operation of a family farm is not what would normally qualify as "recreational use."

7. The Examiner concludes that on this record the property at 8209 Clark Road was not shown to be a "campground" and therefore is not required to meet the standards for a "primitive campground."

8116 Case (#PL06-0660)

8. Even if the RV's on the property at 8116 Clark Road are within a flood hazard area, it was not shown that they have been used for permanent habitation or that any of the limitations of SCC 14.34.160(2)(b) were violated. It was not proven that the RV's were on site 180 consecutive days or more. It was not proven that the RV's were not fully licensed, unattached to the site, and ready for highway use.

9. The County's apparent view is that for the 8116 property to be used as it has been used, a permit from the Health Department would be required. The Examiner need make no ruling on this subject, but commends an examination of Chapter 12.20 SCC to the Clarks.

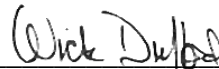
10. The County further asserted that removal of the fill on the property is a prerequisite to obtaining the needed permit. The question of the legality of the fill is a separate question from whether flood damage prevention regulations were violated by the presence of RV's, as charged in this case.

11. The Examiner concludes that no violation of SCC 14.34.160(2) was shown on this record for the property at 8116 Clark Road.

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

DECISION

The appeals are granted. The Notices and Orders to Abate (CE06-0127 and CE06-0135) are reversed and shall be of no further force or effect.



Wick Dufford, Hearing Examiner

Date of Action: September 27, 2006

Date of Transmittal to Parties: September 27, 2006

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.110(130), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Clerk of the Board within 14 days after the date of the decision, or decision on reconsideration, if applicable.