

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Penn Cove Shellfish, LLC)	
)	
Appellant,)	Interpretation, PL 17--0536
)	Appeal File, PL17-0620
v.)	
)	FINDINGS AND DECISION
Skagit County,)	
)	
Respondent.)	
_____)	

This is an appeal of an administration interpretation that shellfish processing and storage is not a permitted use within the Agricultural Natural Resource Lands zoning designation. A conference was held at the County's offices in Mount Vernon on January 17, 2018. Ian Jefferds, General Manager, represented appellant Penn Cove Shellfish. Brandon Black, Senior Planner, represented Respondent Skagit County.

After discussion the parties agreed that the Hearing Examiner should decide the appeal on the written record consisting of the Administrative Decision and the Appeal document.

FINDINGS

1. Penn Cove Shellfish, LLC, (appellant) seeks to use an existing storage barn for shellfish processing and storage.
2. The barn, at 6206 Farm to Market Road, is situated on uplands zoned Agricultural – Natural Resource Lands. (Ag-NRL)
3. The appellant's plan is to retain the existing footprint of the barn and enclose the north end. Metal siding and roofing similar to the existing structure would be used on the exterior. Insulated panels would be installed on the inside so that the building could be refrigerated. The barn, previously used for processing and storing peas, is approximately 5,280 square feet in size.
4. The shellfish to be processed and stored would come from aquatic lands on Samish Bay which are leased to the applicant. The harvest area is about two miles from the storage barn.

5. Proposed operations are described as follows:

. . .[T]he remodeled barn would have 4 to 6 persons working there to grade and pack shellfish following the monthly low tides schedule. During the runs of harvestable low tides, a truck and crew would arrive following the harvest to drop off live shellfish [and] begin grading and packing. The packed product would be picked up by truck once to four times per week . . . Days and hours of operating are dependent upon low tides, which typically run in 5 to 9 day cycles throughout the year. Low tides are usually in the daylight hours from spring to fall and in the night hours during fall to spring. Product would be brought to the facility following harvest [at] low tide on an annual basis.

6. Seafood and shellfish processing are not among the allowed uses specifically mentioned in the definition of Agricultural Natural Resource Lands. See SCC 14.04.020. Further, neither seafood nor shellfish processing are listed as permitted uses in the Ag-NRL zoning section, SCC 14.16.400.

7. However, seafood and shellfish processing are uses expressly allowed in the Natural Resource Industrial (NRI) zone. SCC 14.16.160(2)(c).

DISCUSSION

1. SCC 14.16.020 governs the administrative interpretation of uses. The appellant asked for a code interpretation that shellfish processing and storage as proposed may be regarded as permitted within Ag-NRL lands

2. The appellant argues that its proposed use of the barn is not aquaculture.” but rather would constitute the storage, grading and packing of “farmed shellfish, an agricultural product.” Appellant notes that a wide variety of uses are deemed appropriate for Ag-NRL land including production of “animal products.”

3. While “farmed shellfish” is not specifically listed as an agricultural use, appellant asserts that such use is “substantially similar” to uses that are listed and, therefore, it ought to be allowed under SCC 14.16.020(3)

4. This argument would be persuasive were seafood and shellfish processing not specifically listed among the uses allowed in another zone. But, SCC 14.16.020(3) explicitly states, “. . . [In] no instance shall a use specifically identified in any zoning district be allowed in another zoning district where that use is not specifically listed.”

5. Therefore, under the unambiguous terms of the Unified Development Code, the appellant’s position cannot be sustained.

6. It is possible that this factual situation presents a case in which the letter of the law is at odds with its spirit. The appellant might want to pursue a legislative change that would make its project possible at the location proposed.

ORDER

The appeal (PL17-0620) is denied. The Administrative Decision (PL17-0536) is affirmed.

DONE, this 6th day of February, 2018.



Wick Dufford, Hearing Examiner

Transmitted to parties of record, February 6, 2018.

RECONSIDERATION/APPEAL

Reconsideration of this Order may be requested by filing with Planning and Development Services within 10 days of this decision. This Order may be appealed to the Board of County Commissioners by filing a written notice of appeal to the Clerk of the Board within 14 days after the date of the decision or decision, or reconsideration if applicable.