

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Larry Jensen
15356 Produce Lane
Mount Vernon, WA 98273

Agent: David Hough
17483 W. Big Lake Blvd.
Mount Vernon, WA 98274

File No: PL08-0058

Request: Special Use Permit Modification
(Modification to SPU80-012)

Location: 18172 State Route 20, at the intersection of SR 20 and
Pulver Road, within a portion of the SW1/4NW1/4 Sec. 6,
T34N, R4E, W.M.

Parcel No: P23636

Land Use Designation: Agricultural – Natural Resource Land (Ag-NRL)

Summary of Proposal: The applicant proposes to change the operation of Skagit's
Own Fish Market from a seasonal to a year-around
business and to install a larger sign. Also requested is
authorization to sell nursery products in addition to the
previously approved seasonal produce, flowers, espresso,
and seafood.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on January 28, 2009.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Larry Jensen seeks to modify Special Use Permit #80-012 to allow Skagit's Own Fish Market to operate for longer daily hours on a year-around basis, to install more square footage in signs, and to sell nursery products.

2. The location is 18172 State Route 20 at the intersection of SR20 and Pulver Road, with a portion of the SW1/3NW1/4 Sec. 6, T34N, R4E, W.M.

3. The Comprehensive Plan and Zoning designation for the property is Agricultural-NRL (Ag-NRL). Seasonal roadside stands not exceeding 5,000 square feet are permitted in this zone by Hearing Examiner Special Use Permit. SCC 14.16.400(4)(k).

4. The market was given initial approval by the County Planning Commission in September 1980 as a seasonal produce, flower and seafood sales stand. In 1995, the permit was modified to allow for an espresso stand and construction of a green house. Year- around operation was also requested, but that request was denied.

5. The conditions placed on the 1980 permit as modified in 1995 were:

(1) The Department of Planning and Community Development shall be notified of any change of ownership or operator and the acceptance of the conditions of the permit by the new owner or operator. Lack of notification or acceptance shall be cause for immediate cancellation of this permit.

(2) Hours of operation shall be limited to 8:00 a. to 9:00 p.m., seven days a week. Months of operation shall be limited to April through November.

(3) Any additional construction shall require modification of this special use permit by approval of the hearing examiner.

(4) Permanent signing shall be limited to 24 square feet. Any signs shall be limited to placement on the subject property.

(5) The operation shall be limited to the sale of seafood and unprocessed produce and flower items grown on agricultural land and the sale of espresso drinks from the portable stand as proposed.

(6) The proposed greenhouse shall be no larger than 900 square feet.

(7) The applicant shall maintain adequate area for nine (9) parking spaces.

(8) The permit shall become void if the project is abandoned for more than 180 days.

6. The Staff Report explains that over the years the definition of this type of business has changed. Initially roadside stands were defined as temporary seasonal operations, with the idea that they would be open during the warmer months when most crops and flowers are grown. Current Code, SCC 14.04.020, defines "seasonal roadside stand" as a

small retail establishment accessory to an actively managed, ongoing agricultural operation dedicated exclusively to the sale of agricultural products and agricultural promotional items. A majority of the agricultural products must be grown on-site or be a product of the primary agricultural operation located in Skagit County. All agricultural promotional products shall be directly related to the agricultural operation and located solely within the stand. Signage is allowed per SCC 14.16.820.

7. In both the 1980 and 1995 decisions the stand was limited to operating only during a selected part of the year based on the interpretation of “seasonal.” Under the current definition, the Staff views “seasonal” not as referring to a time of year, but rather as referring to the type of products that are offered for sale at different times. Under this interpretation, a stand can be open year-around with “seasonal” items offered during the season they are available; for example, the December sale of Christmas trees.

8. Due to the widening of SR 20, the original market structures have been torn down and are being replaced with a new retail barn. The barn covers 2,352 square feet with 1,872 square feet enclosed and 480 square feet in covered porch. The formerly free standing espresso stand is incorporated into the new building. Surrounding the barn are fields for berries, Christmas trees, dahlias and various other crops. The site plan submitted with the building permit application was approved on June 23, 2008.

9. The market operation occupies about seven acres of a 15-acre parcel. The portion of the property used by the operation measures 245 feet on the west (Pulver Road), 577 feet on the north (SR 20), 622 feet on the east and 777 feet along the south property line.

10. The new barn is about 120 feet from SR 20 and 315 feet from Pulver Road. There are access points from both. From Pulver Road there are no restrictions on ingress and egress. The Washington State Department of Transportation has issued an access permit that allows for a right turn only access off of and onto SR 20.

11. The applicant supplied a list of products that would be “in season” at some point in the winter months. These include many types of fish and shellfish and certain plant products such as potatoes, carrots, onions, squashes, flower bulbs, Christmas trees, and nursery stock.

12. The new hours sought by the applicant are daily from 6 a.m. to 9 p.m. Before or after regular working hours (particularly in the summer) there will be crews on-site picking flowers or working the fields, employees stocking shelves, and customers wanting to engage in u-picking. The applicant wants to be able to make sales if anyone wishes to make purchases during these periods.

13. Under current County Code, SCC 14.16.820(7), seasonal roadside stands may have signs on site that collectively are no greater than 32 square feet. The applicant wishes to be released from the 24 square foot sign limitation of the present permit in order to improve the site's signage, taking advantage of the increase in square footage.

14. The request to sell nursery products in addition to other items offered at the stand would include bedding plants, hanging baskets, evergreen shrubs and trees. Allowing such sales would still keep the business within the relevant definition.

15. Under the Staff's analysis, the expansion of time the operation is open and the expansion of products offered would not have any significant adverse environmental impacts. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued with both the 1980 and 1995 permits. The Staff concluded that the present proposal would not create any greater impacts than those that have already been reviewed. Thus, no new SEPA threshold determination was deemed necessary.

16. According to the testimony of Tana Skaugrud, a participant in the market, operation under the expanded time and product limits requested is likely to have a beneficial impact on employment.

17. The application was routed to various County Departments for review and comment. Their responses did not necessitate the inclusion of any new conditions of approval. Necessary infrastructure approvals have been obtained.

18. Since there is no specific provision for Special Use Permit modifications under the current Code, the application was reviewed under the general criteria for new Special Use Permits. The criteria are set forth at SCC 14.16.900(1)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.

(f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

19. The Staff Report analyzes the application in light of the above criteria and finds that, as conditioned, the requested modifications to the Special Use Permit will be consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

20. There was no public comment on this proposal, either in writing or at the hearing.

21. 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. SCC 14.06.050(1)(b).

2. The requirements of SEPA have been met.

3. The Examiner accepts the Staff's interpretation of the term "seasonal."

4. The proposed changes in operation are within the definition of "seasonal roadside stand" (SCC 14.04.020) and may be approved.

5. The approved site plan describes an operation that meets the criteria for a Special Use Permit under SCC 14.16.900(1)(b)(v). With the proposed changes in conditions, the operation will continue to conform to these criteria.

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

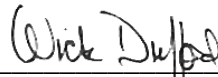
CONDITIONS

1. The approved site plan shall be adhered to.
2. The applicant shall obtain all other applicable permits.
3. The applicant shall comply with the provisions of SCC 14.16.1870, Notification of Development Activities on or Adjacent to Designated Natural Resources Lands.
4. All conditions set forth in Special Use Permit #80-012 as modified in 1995 shall remain in effect, except as the same may be modified by these conditions.
5. Hours of operation shall be limited to 6:00 a.m. to 9:00 p.m., seven days a week, 12 months a year.
6. The collective square footage of permanent signs shall be no greater than 32 square feet. Any signs shall be limited to placement on the subject property.
7. Nursery products, including bedding plants, hanging baskets, evergreen shrubs and trees may be offered for sale, in addition to the other approved items.
8. The business shall promote and market agricultural products grown or processed in Skagit County through local branding.
9. The required notification of change of ownership of the property or operator shall be made within 30 days after any such change and shall be by letter to the Planning Director referencing SPU#80-012 and PL08-0058.

DECISION

The requested modifications (PL08-0058) to Special Use Permit #80-012, subject to the conditions set forth above.

DONE this 13th day of February, 2009.



Wick Dufford, Hearing Examiner

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 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.