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BEFORE THE SKAGIT COUNTY HEARING EXAMINER

CONCRETE NOR'WEST/MILES SAND AND GRAVEL,

Appellant,

v.

SKAGIT COUNTY,

Respondent.

NO. PL-18-0020

DECLARATION OF DAN COX

Dan Cox declares under penalty of perjury under the laws of the State of Washington as follows:

Introduction:

1. I am over the age of 18, competent to testify, and make this declaration based on personal knowledge.
2. I am a General Manager for Miles Sand & Gravel Company ("Miles"). In that capacity, I have acted as the point person for the company on its Special Use Permit Application (PL16-0097) ("Application") for its gravel mine north of Grip Road, which was submitted to Skagit County on March 7, 2016.
3. Since spring 2018, we have been waiting for a clear understanding of what the County is requiring.

1 determination of incompleteness was based in large part on comments and
2 requirements that were never previously made to Miles.

3 **Hearing Examiner Orders County to Provide Written Request:**

4 10. On March 22, 2019, Mr. Lynn wrote to the Hearing Examiner, requesting
5 that this matter be scheduled again for hearing, with a prehearing conference as an
6 initial step. In the letter, attached as **Exhibit F**, Mr. Lynn wrote:

7
8 You will recall that we had a prior prehearing conference and, on the
9 same day we came before you, met with the County attorney and staff
10 and reached an agreement on a path that would produce all the
11 information the County found necessary for its review. Since that time,
12 the Applicant has made several submittals to the County. In the 5
13 months after submittal, we received no written comments, only a
14 February 22 letter stating that the Application was incomplete, in large
15 part on the basis of comments never previously made by the County. The
16 Applicant has been forced to shoot in the dark.

17 11. In response, on March 29, 2018, the Hearing Examiner sent a
18 Memorandum to the parties, attached as **Exhibit G**, that stated the following:

19 [I]n consideration of the present impasse and to get matters moving,
20 Examiner has decided to accept the Applicant's suggestion that the
21 County be required to forward a formal written request to the Applicant
22 stating the "specific requirements" still needed for a complete
23 application.

24 Despite this clear directive, the County did not provide Miles with a formal written
25 request stating the "specific requirements."

26 12. On April, 25, 2019, Mr. Lynn wrote a letter to the County, attached as
Exhibit H, stating:

To date, we have heard nothing from the County. When I emailed Ms.
Nicoll on April 18th asking for an update on the status of the document
complying with the [March 29, 2019] Order I received a response stating
that it had been sent and referring me back to the February 22, 2019
letter from the County. I immediately replied on April 18th reminding Ms.
Nicoll that the Hearing Examiner (after the February 22, 2019) letter had

1 issued the March 29th Order. Since that time I have received absolutely
2 nothing from the County.

3 This lack of responsiveness on basic questions is deeply troubling. It is
4 particularly disturbing since the neighbors are objecting the Applicant's
5 lack of responsiveness.

6 **Further Efforts to Move Process Along:**

7 13. The County failed to respond to the April 25, 2019 letter, requiring Mr.
8 Lynn to again write to the Hearing Examiner on May 17, 2019, stating:

9 We have not received that written request, though we have continued to
10 request it since your order was issued....

11 Nonetheless, in the interest of avoiding further delay, we will accept the
12 [County's] February 22, 2019 letter as being the County's "best effort" to
13 explain what it is looking for and will respond accordingly.

14 This letter is attached as **Exhibit I**.

15 14. The May 17, 2019 letter also requested that Miles be permitted to
16 communicate with County Staff directly, to allow the normal kinds of staff-to-staff
17 communications that predominate in normal application review.

18 15. On August 7, 2019, the parties attended a conference with the Hearing
19 Examiner to review the status of the matter. At the conference, the Hearing Examiner
20 set dates for motions and the hearing, and the parties agreed to engage in face-to-face
21 discussions at the staff level in an effort to produce a resolution regarding application
22 completeness.

23 16. On August 14, 2019, I, along with John Semrau P.E. of Semrau
24 Engineering and Surveying, met with Betsy Stevenson, who had just recently replaced
25 John Cooper as the County's lead planner on the application, and with Michael Cerbone,
26 who is a long-range planner for the County. To help bring Ms. Stevenson up to speed on
the project, I provided her with an overview of the project and a historical review of the

1 application process to date. This included review of the revised Special Use Narrative,
2 which is attached as **Exhibit J**. Ms. Stevenson indicated to me that many of her
3 questions had been answered through this review, but that it would still take her some
4 time to get fully caught up.

5 17. At the August 14, 2019 meeting, Ms. Stevenson made two requests. First,
6 she asked me to provide a "Report List" summarizing all the most recent reports and
7 submittals for the project. Second, she indicated that she had several questions with
8 regard to Miles' Noise and Vibration study prepared by Ramboll US Corporation
9 ("Ramboll") and asked if we could set up a conference call with Ramboll so that she
10 could get clarification directly from them. Before leaving the meeting, I told Ms.
11 Stevenson that I would follow through on both of these requests.

12 18. Two days later, on August 16, 2019, I sent Ms. Stevenson a Report List,
13 summarizing the applicant's most recent studies and submittals. A copy of the Report
14 List is attached as **Exhibit k**.

15 19. On August, 23, 2019, I received an email from Ms. Stevenson that
16 addressed three issues. First, the email discussed a schedule for the Alternative Road
17 Standard Request site visit with Skagit County Public Works and Skagit County Fire
18 Marshal. Second, it discussed a schedule for a call with Kristen Wallace from Ramboll
19 regarding the Noise and Vibration study. And third, in the email Ms. Stevenson
20 committed to providing Miles a summary of any outstanding items County Planning
21 needed to finalize review of Mile's Special Use Permit Application by August 30, 2019. A
22 copy of this email is attached as **Exhibit L**.

1 20. On August 27, 2019, I met with officials from Public Works and the Fire
2 Marshall on site regarding the Alternative Road Standard Request, which is related to
3 the project's internal haul road. At that meeting, both Public Works and the Fire
4 Marshall provided Miles with verbal approval of the Alternative Road Standard Request
5 with two conditions. First, they requested that Miles pave the area directly before and
6 after the one-lane bridge that crosses Black Creek. Second, they requested that Miles
7 post signage to alert bridge users that: "In Case of Emergency Dial 911 and Miles Sand
8 & Gravel 360.757.3121." Otherwise, both Public Works and the Fire Marshall approved
9 the Alternative Road Standard Request. These conditions are acceptable to Miles.
10

11 21. On September 3, 2019, I initiated a conference call with Kristen Wallace
12 from Ramboll and Betsy Stevenson. During the call, Ms. Stevenson raised all of the
13 concerns she had regarding the Noise and Vibration Study with Ms. Wallace. Ms.
14 Wallace told Ms. Stevenson that she would address those concerns and submit an
15 updated Noise and Vibration Study.
16

17 22. On September 17, 2019, I left a voice message for Ms. Stevenson, asking
18 if there is anything else that she needs from Miles.

19 23. The next day, on September 18, 2019, I spoke with Ms. Stevenson by
20 phone. During that call, Ms. Stevenson affirmatively recognized that Public Works and
21 the Fire Marshall had verbally confirmed their intent to approve the Alternative Road
22 Standard Request with the conditions discussed above.
23

24 24. Ms. Stevenson also told me during the September 18, 2019 call that she
25 had reviewed the updated Traffic Report prepared by DN Traffic Consultants, along with
26 the most recent addendum to the report, and said that she was satisfied with the report

1 and the traffic figures contained in the report. A copy of the updated Traffic Report with
2 addendum is attached as **Exhibit M**.

3 25. Finally, Ms. Stevenson indicated to me on the September 18, 2019 call
4 that she had the information she needed to complete review of the application, but that
5 she had questions for County attorney Julie Nicoll regarding Ms. Nicoll's August 7, 2019
6 letter to Miles, in which Ms. Nicolls made a broad and vague statement that Miles'
7 submittals do not address all of the County's requests for additional information. A copy
8 of the August 7, 2019 letter is attached as **Exhibit N**. According to Ms. Stevenson, she
9 was confused by Ms. Nicoll's statement and was unsure what other information the
10 County needed.
11

12 26. On October 1, 2019, Miles submitted an updated Noise and Vibration
13 study prepared by Ramboll in response to the questions Ms. Stevenson raised during the
14 September 3, 2019 conference call. Ms. Stevenson reviewed the updated study and had
15 one further request for clarification.
16

17 27. On October 4, 2019, I initiated a final conference call with Kristen Wallace
18 from Ramboll and Ms. Stevenson so that Ms. Stevenson could make her request directly
19 to Ms. Wallace.
20

21 28. With clear understanding of what Ms. Stevenson was looking for, Ramboll
22 made the requested edits and Miles submitted an updated Noise and Vibration study to
23 Ms. Stevenson on October 7, 2019. A copy of the last updated Noise and Vibration study
24 is attached as **Exhibit O**.

25 29. On that same day, October 7, 2019, I called Ms. Stevenson to ask if there
26 were any outstanding items that the County needed from Miles. Ms. Stevenson could

1 not think of any other information that the County needed for review. However, she also
2 told me that she was overwhelmed by other projects and commitments and thus would
3 not be able to complete her review by the time of the October 23, 2019 hearing on the
4 completeness of Miles' application.
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6 Dated this 16 day of October, 2019.

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9 Dan Cox
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