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File No. 16-150
B-No. 6188.0012

Patrick D. Spurgin
Hearing Examiner
Yakima County Public Services
Planning Division
129 N. 2nd Street
Yakima, WA 98901
pds@spurginlawoffice.com

Re: Case No. CUP2016/SEP2016-00007
Applicant: Fryslan Ranch

Authority of Hearing Examiner to Deny Application Based on Inadequate
Environmental Review and Inadequate Environmental Mitigation Conditions

Dear Mr. Spurgin:

At the hearing last week, you requested legal authority for the proposition that a hearing examiner has authority to deny an application based on inadequate environmental review and inadequate environmental mitigation conditions. This letter provides that authority.

YCC 16B.08.050(1) provides:

- (1) Following the open record public hearing, the Hearing Examiner shall approve, conditionally approve, or deny the application, or recommend approval or denial of the application. The Hearing Examiner shall approve a project or approve with the modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the Yakima County Code. The applicant carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall deny the application.

(Underling added.)

Accordingly, Yakima County Hearing Examiners have the authority to deny an application and has the authority to deny an application, and has authority to approve an application only if the applicant carries the burden of proof to demonstrate that the proposal applies to applicable design criteria.

In making this determination, the Hearing Examiner is a "Reviewing Official" under the Yakima County Code (YCC). YCC 16B.02.095:

"Reviewing Official" means Administrative Official, Building Official, Hearing Examiner, or Board of County Commissioners, when engaged in any review of decision-making procedure under the provisions of the Titles of Yakima County Code listed in Section 16B.01.020 of this Title.

(Underling added.)

The "application decision criteria" of the YCC include project review and project consistency provisions found in YCC 16B.06.010, entitled "Scope of Project Review/Project Consistency" provides:

- (1) Fundamental land use planning choices made in the adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations and the adopted comprehensive plan shall serve as the starting point for project review. Land use permit review shall not reanalyze these land use planning choices in making a permit decision.
- (2) The Reviewing Official may determine through the local project review process that existing requirements including mitigation measures in applicable development regulations and plans and other applicable laws provide adequate mitigation for some or all of a project's specific adverse environmental impacts.
- (3) Project review shall be used to :

- (a) Review and document consistency with comprehensive plans and development regulations;
- (b) Provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level;
- (c) Ensure accountability by local government to applicants and the public for requiring and implementing mitigation measures;
- (d) Identify specific project design and conditions relating to the characteristics of a development;
- (e) Identify specific adverse environmental impacts of the proposal not previously analyzed; and
- (f) Address the details of site plans, curb cuts, drainage swales, transportation demand management, or other measures to avoid or otherwise mitigate a proposal's probable adverse environmental impacts.

(Underlining added.)

- (4) Nothing in the Title limits the authority of the County to approve, condition, or deny a project as provided in its adopted development regulations and in its policies adopted under RCW 43.21C060 (SEPA) and Chapters 90.58 (Shoreline Management Act) and 36.70 RCW (Growth Management Act).

Accordingly, the Hearing Examiner as a Reviewing Official has authority and is required to rule under the standards and criteria of YCC 16B.06.010. Those criteria provide the authority to "approve, conditionally approve, or deny the application" based on "applicable decision criteria" which include:

1. Whether or not the conditions proposed by the staff “provide adequate mitigation for some or all of a project’s specific adverse environmental impacts” (YCC 16B.06.010(1));
2. Whether the staff recommendations, in the absence of an EIS under the circumstances shown by the evidence “Ensure[s] accountability by local government to applicants and the public for requiring and implementing mitigation measures” (YCC 16B.06.010(s)(c));
3. Whether the staff’s recommended conditions satisfies the requirements to “Identify specific adverse environmental impacts of the proposal not previously analyzed” (YCC 16B.06.010(2)(e));
4. Whether the staff’s recommended conditions satisfy the requirement that the review “Address the details of site plans, curb cuts, drainage swales, transportation demand management, or other measures to avoid or otherwise mitigate a proposal’s probable adverse environmental impacts.” (YCC 16B.06.010(2)(f)). Underlining added.

Accordingly, a Hearing Examiner clearly has authority, as a “Reviewing Official”, to deny the application for insufficient environmental review (including failure to require an EIS) and also if the mitigation proposed is insufficient to mitigate the project’s probable adverse environmental impacts.

Sincerely,

Brian J. Iller

BJI/cf

cc: Brendan Monahan (via email brendan.monahan@stokeslaw.com)
Mensonides Dairy, LLC