

BEFORE THE BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

In Re the Matter of,)	
)	SUPT 010195
)	APPL 010195
TransAlta Centralia Mining)	
)	Order
)	
)	

This matter came before the Board of Thurston County Commissioners (Board) on December 16, 2002 as a result of an appeal timely filed by Transalta Centralia Mining (Applicant). The Applicant is appealing a final Hearing Examiner's Decision issued October 24, 2002, which denied the Applicant's application for a Special Use Permit (SUP) to expand an existing mineral extraction operation onto an adjacent 40-acre parcel. The Hearing Examiner found that the proposed mineral extraction expansion is (1) consistent with the underlying comprehensive plan and complies with the use specific standards for mineral extraction; (2) would not result in substantial or undue adverse effects on adjacent properties; (3) would be visually compatible with the surrounding rural areas; and (4) would not result in detrimental impacts. Nonetheless, the Hearing Examiner determined that the proposed mineral extraction expansion does not comply with standards for expansion of nonconforming uses, pursuant to TCC 20.54.070 (23.5). Accordingly, the Hearing Examiner denied the SUP.

The Board reviewed the Hearing Examiner's Decision, the evidence presented to the Hearing Examiner, listened to the audiotapes and conducted a site visit.

Based on the record, the Board concludes that the Hearing Examiner erroneously interpreted the applicable County codes. Specifically, the Board determined that the Hearing Examiner erroneously interpreted TCC 20.54.020 when he concluded that TCC 20.54.070(23.5) applies to the Applicant's SUP application for the following reasons:

- (1) A nonconforming use is defined in the Thurston County Code as an "activity that was lawfully established prior to the adoption of the ordinance . . . but because of the application of the ordinance. . . does not conform to the provisions of the ordinance. . . TCC 20.03.040(88.1)." The Applicant's existing mineral extraction operation is not a nonconforming use as defined by TCC 20.03.040(88.1) because:

- (a) Mineral extraction operations are allowed in RRR 1/5 zones, the zoning district where the Applicant's existing mineral extraction operations are located. Therefore, the existing mineral extraction operation conforms to the allowable use in the RRR 1/5 district. If the Applicant was trying to expand its mineral extraction operation in a zoning district that does not allow mineral extraction, such as RR 2/1, then perhaps the provisions of TCC 20.54.070(23.5) would be applicable. But that is not the case here.
 - (b) Mineral extraction operations are specifically regulated pursuant to the County's Mineral Extraction Code, chapter 17.20 TCC. Pursuant to this chapter, all mines, even those mines that were in existence prior to its adoption and do not have a preexisting Special Use Permit, must nonetheless comply with its requirements.
- (2) TCC 20.54.070(23.5) a general provision governing nonconforming uses, does not apply to the proposed expansion because the zoning code, in the same chapter, contains a more specific regulation governing mineral extraction pursuant to TCC 20.54.070 (21). In this case, the more use specific standards governing mineral extraction found in TCC 20.54.070(21) controls the review of this SUP, and not the more general use specific standards found in TCC 20.54.070 23.5.

IT IS HEREBY ORDERED BY A MAJORITY OF THE BOARD AS FOLLOWS:

The Hearing Examiner's Decision is reversed and the Special Use Permit shall be issued to the Applicant with the condition that the Applicant complies with the conditions listed in the Development Services Report and the MDNS.

DATED this ____ day of _____, 2002.

BOARD OF COUNTY
COMMISSIONERS

ATTEST:

Thurston County, Washington

Clerk of the Board

Chairman Cathy Wolfe

Commissioner Kevin J. O'Sullivan

Commissioner Diane Oberquell