

BEFORE THE BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

In Re the Matter of,

Mike Wood

No. 2007105168

DECISION

THIS MATTER came before the Board of County Commissioners (Board) on July 14, 2008, as a result of an appeal by Harold Hillesland, Gary Miller, Dennis and Shannon Gubser, Andrew Wright and Lisa Fitkin (collectively “Neighbors”) The Neighbors appealed the hearing examiner’s decision, dated May 15, 2008, which dismissed their appeal on the basis that he did not have jurisdiction to review a determination made by the Department on the legal nonconforming status of the Wood gravel mine.

BACKGROUND:

On April 1, 2008 the County, through Robert Smith, issued a Memorandum to Interested Parties (Memorandum) regarding the “Wood Gravel Mine,” and a letter to Mike Wood (Letter) regarding “Gravel Mining on Tax Parcel 22624001600.”

The Memorandum to Interested Parties, i.e. Neighbors, states in relevant part:

Please find attached a copy of a letter mailed to Mike Wood concerning the status of the gravel mining operation. Based upon review of the pre1980 aerial photos and discussions with Mr. Wood and his representatives, Thurston County believes the mining operation is a grandfathered use.

...

If you wish to appeal this determination, please do so in writing on the enclosed administrative appeal form, accompanied by a nonrefundable fee of \$550.00.

The Letter to Mike Wood primarily addressed compliance issues under the Mineral Extraction Code, and the continued use of the rock crusher. The letter also addressed the legal nonconforming status of the mine.

On April 15, 2008, the Neighbors timely appealed the Memorandum *and* Letter to the hearing examiner. The appeal stated in relevant part:

This is an appeal of the administrative determination by the Thurston County Development Services Department of April 1, 2008 that the Wood & Sons mineral extraction operation on Bald Hills Road has nonconforming use or “grandfathered” status. . . .

*The determination here appealed is embodied in the letter dated April 1, 2008 from Robert Smith to Mike Wood and **in the memorandum** dated April 1, 2008 from Robert Smith to*

“Interested Parties”, both of which are attached. These documents express two bases for this administrative determination: (a) that land uses in existence prior to the adoption of the Thurston County Zoning Ordinance in 1980. . are considered to be legal nonconforming uses, and (b) that aerial photographs and discussions with the mine owner show that the mining operation was active before 1980. See Memorandum dated April 1, 2008 from Robert Smith to “Interested Parties.”

Emphasis supplied.

On May 5, 2008, Mike Wood moved to dismiss the Neighbors’ appeal. The essence of Mr. Wood’s motion was that the Neighbors’ appeal was not timely, since the county issued its initial decision about the mine’s nonconforming status in 2007, when it signed off on a Department of Natural Resources Form SM-6.

HEARING EXAMINER’S DECISION

The hearing examiner rejected Mr. Wood’s theory that the appeal was not timely.

Instead, the hearing examiner dismissed the Neighbors’ appeal on the basis that the administrative determination in the *Letter* did not address the status of the mine as a nonconforming site, but rather addressed compliance issues with the Mineral Extraction Code. Hearing Examiner’s Decision at 5.

As reflected in the record, the Department made two determinations on April 1, 2008: (1) one determination regarding the nonconforming status of the mine issued in the Memorandum; and (2) determinations regarding compliance of the mine with the mineral extraction code, the continued use of the rock crusher, and the nonconforming status of the mine issued in the Letter. The hearing examiner’s erroneous conclusion that the only administrative determination issued by the Department was contained in the Letter led to his ultimate and erroneous conclusion that the issue of nonconforming status of the mine was not properly before him.

Furthermore, the hearing examiner erroneously ruled the Neighbors did not appeal the determination in the Memorandum. However, the Neighbors clearly did reference the Memorandum in their Notice of Appeal, and they attached a copy of the Memorandum to their Notice. In addition, the Neighbors clearly articulated that they were challenging the administrative determinations in both the Letter and the Memorandum. The hearing examiner’s finding to the contrary is not supported by the record.

Pursuant to TCC 20.60.060(1), an aggrieved party may appeal to the hearing examiner “any order, requirement, permit, decision or determination made by an administrative official in the administration or enforcement of this title. . .” Emphasis supplied. When an appeal is filed of “any” administrative determination regarding the zoning code, the hearing examiner has authority to hear such appeals. *Id.*

The Department squarely made a determination that the mine was a legally nonconforming mine site in the Memorandum, and in the Letter. Therefore, the hearing examiner had authority to hear the Neighbors' appeal.

IT IS HEREBY ORDERED AS FOLLOWS:

The hearing examiner's decision is reversed, and this matter is remanded for a hearing on the issue of whether or not the mine is a legal nonconforming mine site.

Dated: July 21, 2008

ATTEST:
Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington

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