

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the matter of the application of)
)
RINKER MATERIALS) **FILE NO. 96 106551 LU**
)
Major revision to a conditional use permit to expand)
and increase the size of the existing vertical excavation)
within the existing boundaries)

DATE OF DECISION: September 6, 2007
PROJECT NAME: *Rinker Materials – Arlington Pit*
DECISION (SUMMARY): The application is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

LOCATION: The subject property is an aggregate mining pit known as the Arlington Pit located at 23605 State Route 9, Arlington, a quarter mile north of Arlington City limits on the east side of State Route 9 along the north bank of the North Fork Stillaguamish River. More specifically, the subject site is bordered on the north by Lake Armstrong Road, on the west by the Centennial Trail right-of-way, on the northeast by the Washington State Department of Transportation gravel pit, and on the south and east by the Whitehorse Trail.

ACREAGE: 132-148 acres

ZONING: Mineral Conservation (MC) (w/ MRO)

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Rural Residential (1 du/ 5 acre – Basic)

SCHOOL DISTRICT: Arlington

FIRE DISTRICT: No. 18 and 21

INTRODUCTION

The applicant filed the Master Application on August 15, 2006. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 26, 27 and 28)

A SEPA determination was made on June 15, 2007. (Exhibit 25) No appeal was filed.

The Examiner held an open record hearing on August 22, 2007, the 149th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on August 22, 2007 at 10:05 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. The applicant, Rinker Materials (hereinafter "Rinker"), was represented by Wendell Johnson of Reid-Middleton, Inc. Snohomish County was represented by Erik Olson. No member of the general public appeared at the hearing.
3. Pre-hearing letters of concern were submitted by vicinity residents Keith and Sally Graves (Exhibit 40), Rick and Candi Nicholas (Exhibit 41) and Carmela Mabbutt (Exhibit 42). Their concerns include (1) a belief that the maximum size and depth of the excavation was set by the existing conditional use permit, (2) objection to any increased level of noise, dust, airborne chemicals or asphalt smells, and (3) objection to any increased threat to water quantity or quality in Lake Armstrong, the underlying aquifer, area wells, or affecting the Stillaguamish Tribal salmon hatchery. The three letters had been submitted a year ago in September 2006.
4. Letters of inquiry or concern were submitted by the City of Arlington (Exhibits 44, 48), the Snohomish Health District (Exhibit 46), the Stillaguamish Tribe (Exhibit 47), and the Tulalip Tribes (Exhibits 45, 52). The applicant's representative, Wendell Johnson, responded to the concerns of each of those government entities and to the three above-mentioned vicinity families by letter of May 7, 2007 (Exhibit 51). The staff report (Exhibit 50, p. 3) also responds to the referenced concerns.

The hearing concluded at 10:59 a.m.

NOTE: For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein.
3. The applicant, Rinker Materials (Rinker) filed an application for a major modification to a conditional use permit (CUP) to expand and increase the size of the existing vertical excavation (now of 40-year duration) within the existing boundaries. Rinker points out (Exhibit 3) that it intends the application to permit only continuance of the mining at approximately the same level of intensity as had been anticipated at the time of issuance of the current conditional use permits No. 96-106551 and 96-108512. That intention addresses many of the concerns expressed by parties with concern or opposition. (See "Public Hearing", above.) That is, there will be no increase in hours of operation, dust, noise, traffic, batch plant operation, smells or other indicia of related activity.
4. The purpose of the application is to revise the decision of the Hearing Examiner issued April 25, 2002 and the decision of the Snohomish County Department of Planning & Development Services (PDS) issued March 8, 2006 in order to allow Rinker to continue to mine proven aggregate reserves located in roughly the western half of the property by excavating to a depth of 50 feet below mean sea level. That excavation will extend below the water table, which is 45 feet above mean sea level. Thus, the lake will be approximately 95 feet deep at the longitudinal center of the excavation. (Exhibits 2, 23) Aptly, this proposal is referred to as the "lake proposal".
5. Operation will continue fundamentally as at present. That is, a Sauerman-type dragline will be used to mine aggregates from the lake excavation. Large bulldozers, front-end loaders, excavators and/or conveyor systems will be used to move the materials from the excavation site to stockpiles and processors. Some material will be placed in crushers and some will be directly loaded into dump trucks for removal from the site. (Exhibit 2, Operations Plan) The referenced Operations Plan describes in detail the three continuous phases of the excavation, storm drainage and erosion control and site reclamation.
6. The City of Arlington nearly a year ago in October 2006 expressed substantial concerns about the proposal because Arlington is the purveyor of water to more than 15,000 people and obtains 70% of its water supply from wells less than one-half mile from the Rinker mine. Thus, the City describes its concerns as those of "*...a risk-averse steward of the health and welfare of an entire community.*" (Exhibit 44) Arlington raises issues concerning (1) the need to monitor arsenic levels in the water, (2) protection of the regional aquifer from risks of penetrating an aquitard or mixing of aquifers, (3) the need for reclamation materials to be pollutant free and of the same characteristics as the native material, (4) the need for monitoring wells sampled quarterly for at least 10 years to assess arsenic, mercury, pH, redox potential, total dissolved solids, depth to water, and temperature "*...to identify early on if there are significant increases in these parameters.*" Also, focused on Arlington's Haller well field, the City enumerates asserted liabilities of Rinker (a) if arsenic, mercury or other pollutants are released, (2) if

treatment is a viable option, (3) if the water table drops and (4) if the water temperature of the Stillaguamish River rises. (Exhibit 44)

7. Some of the issues raised by the City of Arlington had been raised two years ago in a memorandum dated June 24, 2005 by Ken W. Crossman, Senior Drainage Plans Examiner for Snohomish County. (Exhibit 3) But Mr. Crossman's concerns include additional issues not directly raised by the City of Arlington. He raises concerns about the hydrologic impact to the existing and created wetlands mitigation project and about an avulsion from the river, seismic events, and contaminants from roadways. His comments on the current application are not in the record but apparently challenge the model used in the hydrogeologic evaluation report, based on responses to his concerns set out by the applicant at Exhibit 51.
8. Largely in response to the concerns of the City of Arlington after a series of meetings between that City and the applicant, the applicant commissioned Shaw Environmental, Inc. to prepare a study titled: "Groundwater Sampling, Analysis, and Quality Assurance Plan" dated May 1, 2007. (Exhibit 23) The City accepted that study as responsive to the City's concerns and expresses agreement with Rinker that a sound monitoring plan is adequate defense against the risk of contamination of the ground water. (Exhibit 48) However, the City of Arlington asks for the assurance of Rinker's commitment to that May 1, 2007 Plan. The Examiner requires that commitment as a condition upon approval of this conditional use permit. But for that Plan, the Examiner would have reopened this record for submittal into the record of the written comments of Ken W. Crossman about the current proposal.
9. The only critical area on or near the site is Wetland A identified in the original conditional use permit. That critical area will not be impacted by the proposed expansion of the vertical excavation.
10. Consistency of the proposal with the General Policy Plan of the Comprehensive Plan is described thoroughly in the staff report, focused on Goal LU 9 concerning mineral resource lands and Objective 9.A thereunder. The 13 separate Policies 9.A.1 – 13 are presented in detail in that report. The Examiner notes that Policy 9.A.11 provides that retention of pre-existing conditional use status shall not exclude county monitoring, review or certification of the operation based on updated policies and rules developed after the effective date of the Growth Management Act.
11. The subject site is zoned Mineral Conservation and, of course, in that zone the requested activity is permitted as a conditional use. As such, the application is subject to the requirements of the Mineral Conservation Zone set out at SCC Chapter 30.31D as well as the general conditional use criteria set out at SCC 30.42C. The Examiner finds that the application contains all of the information and documents required by SCC 30.31D.200 and that none of the decisional criteria by which denial is authorized at SCC 30.31D.210 are demonstrated in this record. Further, the Examiner finds that the conditions recommended by the staff report are allowed by SCC 30.31D.220 as well as by SCC 30.41C.
12. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition.

2. The PDS Traffic Section recommends that the request be approved as to traffic use subject to specific conditions.
3. Pursuant to the decision criteria for a conditional use permit at SCC 30.42C.100, the Examiner concludes that the request is consistent with the Comprehensive Plan for all of the reasons stated in the staff report and in the findings of fact above herein.
4. Further, the proposal is shown by the evidence of record to comply with the applicable requirements of Title 30 in that the use is permitted in the underlying zoning and the proposal meets the specific requirements for mineral resource activity set out at SCC 30.31D.
5. As conditioned herein, the proposed revision of the existing conditional use will not be materially detrimental to uses or property in the immediate vicinity because of the monitoring plan established as part of the Groundwater Sampling, Analysis and Quality Assurance Plan (Exhibit 23) and because the revision is only to allow excavating an existing area to greater depth, resulting in minimal intensification of adverse impact of any type.
6. As described in the findings of fact above, the proposal incorporates specific features so that it responds appropriately to the existing or intended character and physical characteristics of the site and surrounding property.
7. In summary, the proposed revision to the conditional use permit should be approved subject to conditions specified below.
8. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a major revision to the existing conditional use permit is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS

- A. All conditions previously imposed by the Hearing Examiner, as set forth in his June 9, 1997 decision on CU 96-106551 (CSR Associated, Inc.), and his October 19, 1998 decision on CU 97-108152 (BNI), and the conditions imposed by the Deputy Hearing Examiner Pro Tem in his April 25, 2002 (Rinker Materials, successor to Barclays North, Inc. (BNI) and to CSR Associated; and Washington State Department of Transportation) decision shall remain in effect for the respective permits, except as the same may be modified by the conditions herein.

- B. The revised set of drawings received by PDS on June 6, 2007, Exhibit 36, shall be the official operational plans for this major revision; any discrepancy between the content and the performance standards of Chapter 30.42C SCC shall be resolved in favor of the standards contained within Title 30 SCC. Revision of official site development plans is regulated by SCC 30.42C.110.
- C. The applicant will obtain approval from the Washington Department of Natural Resources for a revised reclamation plan and provide a copy of the approved plan to PDS.
- D. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. Prior to initiation of site disturbance, the applicant shall mark with temporary marks in the field the boundary of all Native Growth Protection Areas required by Title 32.10 SCC, or the limits of the proposed site disturbance outside of the NGPA. The temporary markers shall be orange barrier fencing, or similar material acceptable to the county.
 - iii. The buffer along Lake Armstrong Road shall be maintained at no less than 50 feet. At the end of the north boundary the buffer shall be maintained at a width to match the buffer of the WSDOT pit.
 - iv. An annual water monitoring report shall be submitted to Snohomish County PDS and the City of Arlington Department of Public Works by April 1st of each year. The report shall be a compilation of monitoring data that is collected at a minimum of quarterly for the prior year. In the event any quarterly data shows an anomaly that would have an impact to the ground water of the area and or to the City of Arlington's water supply the applicant shall contact the county and city immediately. All water monitoring shall adhere to, and follow as direction and guidance, the specific recommendations and general policies set out in the Groundwater Sampling, Analysis, and Quality Assurance Plan dated May 1, 2007 (Exhibit 23).
- E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 6th day of September, 2007.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **SEPTEMBER 17, 2007**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with

the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 20, 2007** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Erik Olson

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>
