

WHATCOM COUNTY HEARING EXAMINER

RE: Administrative Appeal) APL2010-001
Application for)
)
Sound Pacific Resources, Inc.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPEAL AND DECISION

Appeal: The Appellants, Sound Pacific Resources, Inc., have appealed a Final Decision of the District Manager of the Birch Bay Watershed and Aquatic Resources Management District in reference to a service charge adjustment request filed on behalf of the Appellants, challenging the rate charged to the Appellants for impervious services on the Beachwood Resort parcel, located at 5001 Helweg Road, Blaine, Washington, near the Birch Bay State Park and Birch Bay.

Decision: The Decision of the District Manager is upheld and the Appeal is denied.

FINDINGS OF FACT

I.

Background Information

Appellant: Sound Pacific Resources, Inc.

Owner of Record: Sound Pacific Resources, Inc.

Street Address: 5001 Helweg Road, Blaine, WA 98230

Assessor’s Parcel Number: 395101 415468; Section 01, Township 39, Range 1 West

Legal Description: Beachwood Resort N 1/2 NE-less rds-exc ptn daf-that ptn of N 1/2 NE daf-beg at SE cor of NW NE- th N 88 deg 01'53" W alg S li of NW 1/4 194.29 ft-th N 01 deg 53'19" E 145 ft-

Property Location: West of Jackson Road, between Bay and Helweg Roads

BBWARM Rate Category: Other Developed Parcel – Recreational Vehicle Park

Zoning: Urban-Residential Medium Density – URM6

Comprehensive Plan Designation: Urban Growth Area – Birch Bay

Total Annual Fee Assessment: \$55,813.68

Exhibits:

- 1 Appeal Form, with Cover Letter, dated March 26, 2010, from Brad Swanson, and Applicant's Appeal Statement, tax bill, map of Beachwood Resort, and selected individual unit ownership summaries attached
- 2 Letter, dated February 25, 2010, from Kraig Olason, Senior Stormwater Planner
- 3 Birch Bay Watershed Aquatic and Resources Management District: Service Charge Adjustment Decision Form, Decision dated February 25, 2010
- 4 Graph showing Beachwood Resort, Stormwater Division 2009, Impervious Surface Areas shaded
- 5 Staff Email Correspondence re: scheduling
- 6 Staff Report, dated May 21, 2010, with attachments (6-a) Cover Letter dated March 26, 2010 from Bradley Swanson with Administrative Appeal and Statement attached; (6-b) Site Plan
 - 6-1 Birch Bay Watershed and Aquatic Resource Management District 2009 Annual Report
 - 6-2 Whatcom County Draft funding Plan for the Birch Bay Stormwater Program
 - 6-3 Whatcom County Birch Bay Stormwater funding Issue Paper No. 1: Rate Structure
 - 6-4 Vicinity Map
 - 6-5 Beachwood Resort, Impervious Surface Chart
 - 6-6 Chapter 100.07, Birch Bay Watershed And Aquatic Resources Management District funding Mechanism
- 7 Memorandum in Support of Appellant, dated June 7, 2010, submitted by Douglas Robertson and Bradley Swanson
- 8 Whatcom County Real Property Tax Statement, 2009, for Sound Pacific Resources
- 9 Whatcom County Property Tax Statement, 2010 for Sound Pacific Resources
- 10 Declaration by Heather Calloway, dated June 9, 2010, with attachment
 - 10-1 Whatcom County Assessor's List of Property Owners for Tax Parcel ID No. 395101 415468 through 395101 415468 0365.
- 11 Whatcom County Property Tax Statement, 2009-2010, for Maureen Cadden, Park Model 85, APN 395101 415468 0004

- 12 Whatcom County Agenda Bill No. 2008-369/Resolution No. 2008-081, County-wide Flood Control Zone District
- 13 Beachwood Resort, County Public Works-Stormwater Division 2009, impervious surface chart
- 14 Whatcom County Agenda Bill No. 2008-260/Resolution No. 2008-049, Authorizing a charge for the furnishing of service to those who are receiving or will receive benefits from stormwater control facilities or programs and those who are contributing to an increase in surface water runoff in the Birch Bay Watershed and Aquatic Resources Management District
- 15 Site Plan, Sound Pacific Resources, Inc.
- 16 County's Post-Hearing Brief, dated June 11, 2010
- 17 Response to County's Post Hearing Brief, dated June 17, 2010, with Declaration of Service attached

Parties of Record

Mike McLeod
Sound Pacific Resources, Inc.
5001 Bay Road
Blaine, WA 98230

Douglas Robertson and Bradley Swanson
Belcher Swanson Law Firm, PLLC
900 Dupont Street
Bellingham, WA 98225

Dan Gibson
Assistant Chief Civil Deputy Prosecutor

Kraig Olason, Manager
Senior Stormwater Planner
County Public Works
2211 Young Street, Ste 201
Bellingham, WA 98225

II.

On February 25, 2010, Kraig Olason, Senior Stormwater Planner, with Whatcom County Public Works Department, issued a Final Determination as Manager of the Birch Bay Watershed and Aquatic Resources Management District. This Determination denied a request by Sound Pacific Resources, Inc. that certain individual park members within the Beachwood Resort be billed

individually for stormwater assessments. The assessments are determined pursuant to WCC 100.07. This Chapter of the Whatcom County Code allows appeals of the Manager's Determination to the Hearing Examiner.

The Manager denied the request of the Appellants that the Manager bill the "Founding Members" individually for fees due based on the impervious surfaces on the property unit that the individual "Founding Member" has sole access and use of, per the member's contract with Sound Pacific Resources, Inc.

III.

Beachwood Park is located on an approximately 80-acre parcel which was approved through a Master Development Plan Permit in 1992. Use of the resort is available only to private members. There are more than 3,000 members and two types of memberships. The use is recreational.

There are 373 "Founding Members." Each Founding Member has the right to exclusive use of a pad area for the location of the member's park model unit. The right to use the land unit contracted to that member is a right in perpetuity and it can be sold or transferred to another person or entity.

Less than 50% of the 80-acre parcel consists of these recreational home sites and the roads to access them.

The second type of members is "Charter Members." There are over 3,000 Charter Members. Charter Members have the right to use a separate section of the park which consists of RV and tent camping areas located outside the area available to the Founding Members. Members of both types have access to the common areas of the site, which includes a swimming pool, playground, hot tubs, a restaurant, pool house, and tennis courts. The Birch Bay Watershed and Aquatic Resources Management District, hereinafter referred to as the District, was established pursuant to State law by the Whatcom County Council. In 2008, the Whatcom County Council, acting as the County-wide Flood Control Zone District Board of Supervisors, adopted Resolutions 2008-049 and 2008-050. These Resolutions set up a funding mechanism for the District. The Funding Mechanism Resolutions are codified in WCC 100.07. This Chapter sets out the criteria for determining service charges and grants the Manager of the District authority to make decisions on requests for service charge adjustments from property owners within the District.

IV.

Underlying title to the 80-acres containing the Beachwood Resort is retained by Sound Pacific Resources, Inc., the Appellant herein. The service charges assessed to the Appellant for the year 2009 were \$55,877.76. This is over \$20,000 greater than the property tax imposed on the parcel for the same year. Sound Pacific requested a service charge adjustment from the Manager, arguing that the 373 Founder Member sites should individually be charged an assessment, leaving the Appellant with the responsibility for the assessments on the remainder of the parcel. After review of this

request, the District Manager denied the request and this Appeal followed.

V.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The Birch Bay Watershed and Aquatic Resources Management District was established by the Whatcom County Flood Control Zone District Board of Supervisors pursuant to RCW 86.15.025, which allows the FCZD to assess fees and rates associated with services.

Decisions of the Manager on requests for service charge adjustments are final unless appealed to the Whatcom County Hearing Examiner within 30-days of the date of the decision. The Appellants herein filed a timely appeal and a review of the Manager's decision is properly before the Whatcom County Hearing Examiner. [WCC 100.07.070.G]

The authority of the Hearing Examiner to hear appeals is stated as follows:

The Hearing Examiner shall review appeals to determine if the Manager made errors in the application of the rules, definitions, and requirements of this Chapter.

This section gives the Hearing Examiner limited jurisdiction to review and rule on appeals of decisions made by the Manager, pursuant to Chapter WCC 100.07.

II.

The Appellants raised three grounds for appeal.

First, the Appellant argues that the Manager erred when he failed to tax the 363 Founder Member units as separate parcels.

Secondly, the Appellant argues that the Resolution resulting in WCC 100.07 is unfair because it assesses different parcels using different formulas and excludes some parcels, such as County and State roads, from any assessment.

Thirdly, the Appellant argues that the funding mechanism set forth in WCC 100.07 is contrary to State law.

The second and third arguments are similar in that they challenge the legality and fairness of WCC Chapter 100.07 of the Whatcom County Code. The argument relies on an attempt to show that WCC 100.07 is contrary to State law.

However, neither the Manager nor the Hearing Examiner is granted any authority by WCC 100.07 to rule on the legality or fairness of the adopted funding mechanism.

III.

The only issue properly before the Hearing Examiner is a determination as to whether the District Manager committed a reversible error in denying the Appellant's request for a service charge adjustment.

The Hearing Examiner has been given no authority to determine the legality of the action of the District's Board of Supervisors in adopting the funding mechanism and therefore has no jurisdiction to rule on the legality of the funding mechanism.

IV.

The issue that is properly before the Hearing Examiner involves the Determination of the District Manager, pursuant to WCC 100.07, setting or determining the assessment applied to the parcel containing The Beachwood Resort.

The Manager determined that the Beachwood property met the definition of "other developed property," set forth in WCC 100.07.040.L, and which reads as follows:

L. "Other developed parcel" means a parcel that contains impervious surface area and is not a single-family residence, including at a minimum commercial, industrial, multifamily apartment, and public property.

To be assessed as an "other developed parcel," the property in question must meet the definition of "Parcel," must contain impervious surface, and cannot be a single-family residence.

Parcel is defined in WCC 100.07.040.M as follows:

M. "Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries and surface area which are documented for real property purposes, and a tax account number assigned by the Whatcom County assessor-treasurer.

The Appellant argues that since the Founding Members' spaces are identified individually in the Master Development Plan; since each Founding Member owns a specific site to which he has the right to use in perpetuity and which no other member has the right to use; and since most, if not all of

these sites, are the permanent sites for a park mobile home and the park mobile home is taxed by the Whatcom County Auditor as real property and has an individual tax number; the result should be that each individual Founding Member parcel assessment should be levied on the Founding Member and not on Sound Pacific Resources, Inc. Sound Pacific Resources, Inc. acknowledges that the common areas and the campground areas should be assessed to Sound Pacific Resources, Inc.

The District Manager argues that, under the definition of “Parcel” [set forth above], the parcel in this case is the entire approximately 80-acre parcel containing The Beachwood Resort and that this parcel is owned by Sound Pacific Resources, Inc. As the Manager points out, the real property taxes for the entire parcel are taxed to Sound Pacific Resources, Inc. The Whatcom County tax number assigned to the park model on each unit is a real property tax on the park model home, but not on the underlying land within the site.

V.

The Hearing Examiner concludes that, under the definition of parcel, the District Manager properly assessed the stormwater assessment for the entire 80-acres comprising The Beachwood Resort to Sound Pacific Resources, Inc. Sound Pacific Resources, Inc. is the identified owner for the real property taxes of the entire parcel. Sound Pacific Resources, Inc. is assessed the real property taxes for the value of the land in the entire parcel. The individual units of land identified in the Master Development Plan have determinable boundaries and surface area, but they are not documented as separate parcels of land for real property purposes and no tax account number is assigned to each of these individual units of land by the Whatcom County Assessor-Treasurer.

The tax account numbers assigned to the individual park model homes on the sites apply to the park model home only and not to the underlying land.

The Hearing Examiner concludes that the District Manager properly applied the definition of parcel to determine that the stormwater assessment for the entire 80-acres of land, which has a single tax number, and which is owned by Sound Pacific Resources, Inc., is the proper parcel on which to base the stormwater assessment. Sound Pacific Resources, Inc., as the owner of this parcel, is liable for the stormwater assessment.

VI.

There is no evidence in the file that the amount assessed was in error if it is accepted that the entire 80-acre parcel owned by Sound Pacific Resources, Inc. constitutes the parcel to be assessed.

The Appellant has raised interesting and possibly persuasive arguments about the inequity of the assessment system and its possible conflict with the State laws which authorize it. However, the Hearing Examiner does not have the authority to address these issues and it would have been inappropriate for the District Manager to take these issues into account when setting the assessed amount.

The District Manager can only grant a request for a service charge adjustment if any one of the number of situations or conditions set forth in WCC 100.07.070 have been shown to exist. The Hearing Examiner concludes that none of these grounds for the modification of the assessment have been met by the Appellant and that the District Manager properly denied the requested service charge adjustment.

VII.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

The Determination of the District Manager of the Birch Bay Watershed and Aquatic Resources Management District denying the requested adjustment of assessed service charges for impervious surfaces is DENIED and the Decision of the Manager is UPHELD.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is a Final Decision unless appealed pursuant to the laws of the State of Washington governing such Appeals.

DATED this 30th day of June 2010.

Michael Bobbink, Hearing Examiner