

REPORT AND DECISION

FILE NO: 03CU012 (Hearing Examiner File No. 36-03)

APPLICANT: San Juan County

SUMMARY OF REQUEST:

A request for a Conditional Use Permit (CUP) in order to develop a solid waste facility on a 6.84-acre parcel of land generally located at the northeast corner of the intersection of Roche Harbor Road and Sutton Road.

LOCATION:

The property is located at 1258 Roche Harbor Road, San Juan Island, WA.

DECISION OF THE EXAMINER:

The request is approved, subject to conditions.

PUBLIC HEARING:

After reviewing the San Juan County Permit Center's report and viewing the site, the Examiner conducted a public hearing on the application on August 22, 2003.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. San Juan County (hereinafter “applicant”) is requesting a Conditional Use Permit (CUP) in order to develop a solid waste facility on a 6.84-acre parcel of land generally located at the northeast corner of the intersection of Roche Harbor Road and Sutton Road (1258 Roche Harbor Road).

2. The proposed solid waste facility referred to by the applicant as “Trash to Treasures” would consist of the following elements:

- a. An 8,400 square foot combined Thrift Store, Builder’s Exchange and Moderate Risk Waste (MRW) facility near the north property line;
- b. A 1,500 to 1,800 square foot storage building for the Builder’s Exchange immediately west and across the parking lot from the Thrift Store/Builder’s Exchange;
- c. A 5,000 to 6,000 square foot recycling plaza centrally located on the site that would include a tipping floor and trailer bay;
- d. A transfer station that would receive garbage, including two scales to weigh vehicles and a cashier’s booth situated between the scales;
- e. A 200 square foot portable building to be used as an employee office; and
- f. Twenty-five parking spaces, including an Americans Disability Act (ADA) space serving the Thrift Store/Builder’s Exchange, along with loading areas proximate to the building, and two employee parking spaces.

The Thrift Store/Builder’s Exchange, MRW facility, a storage building, recycling center and associated parking and internal circulation drives would be constructed first, with the transfer station coming at a later second phase of development.

3. The proposed facility would be located immediately west and adjacent to the applicant’s existing solid waste facility that virtually all parties agree is an unsatisfactory solid waste facility much in need of replacement.

4. Access to and from the proposed facility would be limited to Roche Harbor Road, except for tractor/trailer entry and emergency access, which would substantially improve traffic circulation and safety over that associated with the current solid waste facility, which employs Sutton Road as its principal access route. See Exhibit 1 at 111-113.

5. The 6.84-acre project site consists of varying terrain ranging from relatively flat to steep hillsides covered with mature growth forest. The subject site is situated topographically down slope from the existing County solid waste facility to the northeast.

6. Surrounding land uses, in addition to the existing solid waste facility located to the northeast, including a large open area to the south owned by the San Juan County Land Bank; rural density single-family residential, animal raising and wetlands to the north, west and south. Further, to the east, beyond the County's existing solid waste facility is a medium density single-family residential neighborhood known as "Hillview Terrace."

7. The applicant has received approval from the County's health authority to use a composting toilet on the site and proposes to use a holding tank to collect wastewater from a bathroom sink. Another holding tank is proposed to contain wash down water from the transfer facility. Stormwater runoff from the facility, which is expected to be the same as typical urban stormwater runoff, is to be directed to a detention/sedimentation pond located adjacent to Roche Harbor Road before discharge off site. The storm drainage plan for the project has been developed in accordance with the 2001 Department of Ecology Stormwater Management Manual for Western Washington (hereinafter "DOE Stormwater Manual"), and any discharge from the site will require a National Pollution Discharge Elimination System (NPDES) permit which may include a provision for monitoring the water quality of the discharge. The County's existing solid waste facility generates noises that cause disturbance to nearby residents, including scraping, loud banging, truck back up warning signals; noises associated with breaking glass, and truck engine noise. In the location and design of the proposed facility, noise attenuation was considered. The following elements have been incorporated into the plans that are expected to substantially reduce noise impacts from the facility on nearby residents when compared to the existing facility:

- a. The new site is located down slope from the current facility in relation to the Hillview Terrace neighborhood;
- b. A substantial forested buffer would be maintained along the east portion of the site;

- c. The existing building at the current facility is open, while the new buildings are to be fully enclosed buildings;
- d. The current trailer bay requires trucks to back up a ramp, which requires them to rev their engines and employ back up warning signals. The new trailer bay would allow trucks to drive through at a level grade with no backing of trucks required; and
- e. The handling of recyclables in the proposed facility would occur entirely within the enclosed building which contrasts with the outside handling of those materials at the existing solid waste facility.

9. Portable water for the new facility will require authorization by the County's health authority before the project is permitted to proceed. The applicant intends to either use water from wells drilled on the Land Bank property south of the project site (See Exhibit 3) or from a well drilled on the project site. Either alternative is reasonably feasible and is reasonably able to be accomplished by the applicant.

10. The proposed solid waste facility site is situated within an Agricultural Resource Comprehensive Plan land use district. Solid waste facilities, such as being proposed here, are prohibited from locating within an Agricultural Resource district. *San Juan County Code* ("SJCC") 18.30.040, Table 3.2.

11. However, "essential public facilities" are permitted to be located in land use districts where they would otherwise be prohibited upon a finding by the Board of County Commissioners that no practicable alternative exists. SJCC 18.30.050.E.3. Both State law (RCW 36.70.K.200(1)) and the SJCC 18.20.050 classify solid waste facilities as "essential public facilities."

12. Pursuant to SJCC 18.30.050.E, the San Juan County Board of Commissioners undertook an evaluation of five potential sites for a new solid waste facility. After a great deal of study and after considering the evaluation criteria for siting "essential public facilities" set forth at SJCC 18.30.050.E, the Board of County Commissioners selected the subject site and in so doing determined that no practicable alternative existed to locating a new solid waste facility in a land use district that did not permit such use. Exhibit 1 at 75-79. (Board of County Commissioners' Resolution No. 2003.)

13. After the Board of Commissioners makes a site selection, "essential public facilities" provisions require review by the County's Hearing Examiner pursuant to conditional use procedures. SJCC 18.30.050. Criteria applicable to CUP's are set forth below:

- a. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
- b. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located;
- c. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
- d. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;
- e. The proposal will be served by adequate facilities including access, fire protection water, stormwater control, and sewage disposal facilities;
- f. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
- g. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipate traffic in the neighborhood;
- h. The proposal complies with the performance standards set forth in Chapter 18.40 *SJCC*;
- i. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
- j. The proposal conforms to the development standards in Chapter 18.60 *SJCC*.

SJCC 18.80.100.D

14. Upon a finding of no practicable alternative to locating the County's solid waste facility by the Board of County Commissioners, location of the solid waste facility in an Agricultural District conforms to San Juan County comprehensive plan provisions concerning proper siting of "essential public facilities." See Appendix 2 of the San Juan County Comprehensive Plan -- Policies for Siting Essential Public Capital Facilities of County or State-wide Significance." The proposal does exceed the amount of land allowed to be converted to non-agricultural use (twenty percent of the parcel – SJCC 18.30.070.B – verses the applicant's proposal for one hundred percent conversion) and the amount of impervious surface (ten percent of the site – SJCC 18.60.050, Table 6.2 – verses forty percent proposed by the applicant). Application of the foregoing standards would, in effect, preclude the proposed use on this parcel. Locating the facility on a site large enough to accommodate the facility and provide compliance with the foregoing provisions would be impracticable.

15. Under San Juan County's land use program, agricultural resource lands are to be primarily devoted to agricultural activities. A solid waste facility is not consistent with such purpose or the County's goals and policies designed to preserve agricultural lands for agricultural activities. Application of these goals and policies to this "essential public facility" would preclude the facility at the selected location. The proposed solid waste facility has been designed to minimize impacts on surrounding agricultural and residential areas through vegetated buffers, improved traffic circulation, noise reduction measures (See Finding 8), stormwater management in accordance with the DOE Stormwater Manual and NPDES Permit requirements (See Finding 7), proper handling of wastewater (See Finding 7), and limitation on hours the facility will be open to the public.

16. It has not been shown on this record that the proposed facility would have significant adverse impacts on the human or natural environments that cannot be adequately addressed. Of particular note in this regard is that a Determination of Non-Significance ("DNS") was issued by the County's responsible official for compliance with RCW 43.21.C, State Environmental Policy Act ("SEPA"), after consultation with agencies with interest and expertise, and no appeal was taken from that determination.

17. Since the proposal involved an "essential public facility", subject to the siting requirements for such uses and it would likely be the only solid waste facility on San Juan Island, cumulative impacts of like uses is minimal if non-existent.

18. The facility can and would be served by all services and facilities necessary to support the project. The only matter not fully resolved is the precise source of water serving the facility. It has been shown on this record that several feasible and acceptable alternatives for

providing water exist (See Finding 9). The applicant has agreed to a condition requiring provision of an adequate water supply, and both the Permit Center and County health authority indicate that neither agency would approve building permits for the facility until an approved water source is provided. The Hearing Examiner is satisfied that sufficient guarantees are in place to insure that the proposed facility, if permitted, would be properly served by an appropriate water supply.

19. The location, size, and height of buildings, and considering the vegetated buffers and other design elements proposed, would not cause the facility to unreasonably interfere with allowable uses for development on neighboring properties.

20. All parties generally agree that the revised traffic circulation for the proposed solid waste facility would constitute a substantial improvement over that currently used at the existing facility, and that it would improve traffic safety by eliminating a limited sight distance condition that presently exists at the intersection of Sutton and Roche Harbor Roads.

21. Compliance with applicable performance standards, as set forth at SJCC 18.40, would be determined at the time of building permit review. No violation of the referred-to standards has been shown on this record.

22. The project site is not located near an airport or airfield. Apparently, during the “essential public facility” siting process, several potential sites were eliminated due to the proximity to airfields and the potential air hazards associated with locating the solid waste facility in such areas.

23. As earlier found (See Finding 14), the proposed facility does not conform to the maximum impervious surface requirements of SJCC 18.60.050, Table 6.2.

24. The San Juan County Permit Center has, after review and analysis of the proposal, found it to comply with applicable San Juan County land use plan regulations relating to “essential public facilities,” and recommends approval, subject to conditions relating to providing a geo-technical report, drainage plans, compliance with applicable development standards, stormwater management, parking and loading requirements, concurrency, screening and vegetation, and ingress and egress. See Exhibit 1 at 21, 22 and Exhibit 9. At hearing, the Permit Center staff suggested that activity at the solid waste facility should be generally limited to between the hours of 8:00 a.m. and 5:00 p.m.

25. Appearing at hearing in support of the proposal was a member of the County Solid Waste Advisory Committee who testified that the subject site was the only practicable site for the facility; that substantial barriers were proposed to visually screen the facility from surrounding

properties; that, for the most part, adjacent properties were heavily forested; and that the nearest residence was approximately one-quarter mile from the site.

26. Also appearing at hearing and testifying in support of the subject CUP, was a resident of the Hillview Terrace neighborhood and a member of its community association, who testified that the new facility was much needed; that the site represented the only feasible site; and the revised traffic circulation from the new solid waste facility would improve traffic flow in the area.

27. Appearing in writing and in person at the hearing was a nearby resident who raised the principal concerns that are summarized below:

- a. The stormwater drainage plan prepared for the project does not conform to the DOE Stormwater Manual;
- b. The drainage plan does not provide sufficient detention for Phase 2 development;
- c. There is no proposal for testing and monitoring stormwater runoff from the site, and no remedial steps are identified for dealing with runoff, should it be determined to be carrying any pollutants;
- d. A Type 1 Wetland is located within an eighth of a mile of the site and impacts from stormwater drainage from the site on that wetland have not been evaluated;
- e. The possibility of runoff from the site contaminating nearby wells has not been studied;
- f. The proposed solid waste facility is not a low impact use, and the amount of impervious surface proposed is well in excess of the maximum allowed in agricultural resource districts; and
- g. The applicant has not evaluated the effect of traffic growth in the area of the site.

28. Several persons testified regarding concerns relative to the County's process for siting and approving essential public facilities. These concerns included:

- a. How compliance with applicable development regulations are dealt with;
- b. Lack of compliance of the proposal with development regulations runs afoul of the CUP criteria that requires such compliance;
- c. Does the essential public facilities site selection process trump otherwise applicable development regulations;
- d. Also, concerns were raised relative to last minute information being submitted by the applicant;
- e. No portable water supply being specifically identified; and
- f. Violation of the maximum impervious surface limitations applicable to agriculture resource lands.

29. Also, testifying was a resident of the Hillview Terrace neighborhood who complained of noise disturbances from the County's existing solid waste facility, and suggested, to avoid similar disturbances from the new facility, that activity at the facility be limited to between the hours of 8:00 a.m. and 5:00 p.m.

30. In response to the objections and concerns raised, the applicant presented the following:

- a. Storm drainage for the project has been designed using the latest DOE Stormwater Manual;
- b. Storm drainage and wastewater discharges from the site are highly regulated and monitoring would likely be required by an NPDES permit regulating off-site discharges;
- c. Stormwater runoff from the site is expected to be typical urban runoff with pollutants of concern being sediment and petroleum;
- d. The County has yet to complete its essential public facilities planning mandated by the State's *Growth Management Act (GMA)*, RCW 36.70.A., but this circumstance should not prevent the development of this sorely-needed use solid waste facility;

- e. Numerous improvements have been designed into the proposed facility to minimize noise impacts (See Finding 8.); and
- f. While the proposed facility would only be opened to the public between the hours of 8:00 a.m. and 5:00 p.m., it is necessary for activity to occur outside these hours. This is so because the movement of solid waste off site is entirely dependent on the ferry schedule as well as mainland transportation constraints. Limitation in regard to on-site activity to the hours of 8:00 a.m. to 5:00 p.m. would preclude development of the facility.

31. A Determination of Non-Significance (DNS) was issued for the proposal on July 16, 2003. A 14-day comment period was extended until July 31, 2003. No appeal was taken from that determination.

32. The report of the San Juan County Permit Center, designated as Exhibit 1, to the extent that it sets forth the issues, general findings of fact, applicable policies and provisions and departmental recommendations of this matter, is incorporated herein by reference as though fully set forth.

33. Notice of hearing was mailed to surrounding property owners, posted on or near the site, and published, in accordance with applicable County code provisions.

34. Any conclusion hereinafter stated which might be deemed to be a finding herein is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction in the subject matter. *SJCC* 18.80.100.

2. Requests for CUP's are reviewed for consistency with the criteria set forth at *SJCC* 18.80.100.D. See Finding 13. The applicant bears the burden to establish, by a preponderance of the evidence, that its application for the CUP is consistent with the cited criteria.

3. There is no dispute in these proceedings that the solid waste facility here proposed by the County is an "essential public facility" as defined by State law and the County's Uniform Development Code ("UDC").

4. Thus, the following provisions of RCW 36.70.A.200(5) apply:

. . . {n}o local comprehensive plan or development regulation may preclude the siting of essential public facilities.

5. The County's Board of Commissioners, pursuant to its own code (SJCC 18.30.050.E), after substantial study, selected the subject site as the only practicable site on which to locate a new solid waste facility. Issues relative to the appropriateness of that site selection are not properly before the Hearing Examiner in these proceedings. The Board of County Commissioners, under SJCC 18.30.050.E, is solely vested with the authority to site essential public facilities.

6. One of the primary issues presented in these proceedings is the applicability of the agricultural resource land regulations concerning maximum conversion of agricultural lands to non-agricultural use (twenty percent) and maximum impervious coverage (ten percent). The applicant argues that application of such agricultural land development regulations to the proposed facility would, in effect, preclude its development. Those in opposition pointed to the following language of the essential public facilities process:

Siting of Essential Public Facilities. The Growth Management Act directs that no comprehensive plan or development regulation may preclude the siting of essential public facilities (RCW 36.70A.200(2)). The location and permitting of essential public facilities shall be guided by the policies of the Comprehensive Plan, and subject to the following procedures:

* * *

3. In land-use districts where the uses are prohibited, or within resource lands, environmentally sensitive areas, or special lands, essential public facilities may be allowed and located, but only if no practicable alternative exists, and then only to the minimum extent possible and in accordance with applicable regulations. In such cases, the final selection of a site, including where necessary a determination that no practicable alternative exists, shall be made by the board of County commissioners.

Only if no practicable alternative exists, and then only to the minimum extent possible and in

accordance with applicable regulations, may such facilities be located where the uses are prohibited or within resource lands, environmentally sensitive areas, or special lands. The final selection of a site, including where necessary a determination that no practicable alternative exists, shall be made by the board of County commissioners. (Emphasis added)

* * *

SJCC 18.30.050.E.3, and the following CUP criterion:

Conditional Use Permits – Criteria for Approval. A conditional use permit shall be granted by the County only if the following criteria are met:

* * *

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;

* * *

SJCC 18.80.100D.1, suggesting that these code provisions expressly mandate compliance with both the maximum land conversion and maximum impervious surface coverage requirements of the agricultural resource zone.

7. After a careful reading of the County’s UDC, the Hearing Examiner is satisfied that the maximum land conversion and maximum impervious surface coverage requirements were not designed or intended to address the development of an essential public facility such as the one hear proposed that is industrial in nature. The Hearing Examiner is also satisfied that the application of these two requirements to the proposal would preclude its development, in that there is no reasonable and practicable way to satisfy these requirements. Thus, under the prohibition set forth in RCW 36.70A.200(5), these regulations cannot be applied to this essential public facility. This does not mean that the County can waive any regulation under the guise of siting of an essential public facility, and it has not been so suggested in these proceedings. The Washington State Court of Appeals in the case of *Des Moines v. Puget Sound Reg’l Coun*, 108 Wn.App 836, 988 P.2d 27 (1999), upholding a Growth Management Board Decision, provides the following guidance:

The Definition of “Preclude”

To determine the precise meaning of the word “preclude” in RCW 36.70A.200, the Board referred to a previous decision which defined it as “render impossible or

impracticable.” The Board focused on the word “impracticable,” because the Legislature would have used the word “prohibit” instead of “preclude” if it had intended to allow the Cities’ plans to fall just short of rendering the siting absolutely impossible. Using *Merriam Webster’s Collegiate Dictionary*, the Board defined “impracticable” as “incapable of being performed or accomplished by the means employed or at command.” The Board therefore interpreted “preclude” to mean “incapable of being accomplished by the means at the Port’s command.” The Cities claim that under this “expansive definition,” an EPF proponent can “unilaterally control what ‘precludes’ its project, by claiming that contested comprehensive plan provisions simply would be too costly or time-consuming to comply with.” This is not a tenable reading of the Board’s decision.

At the time the Board and the trial court considered this issue, the Des Moines plan intended to “oppose” construction of the third runway. Now that the plan has been amended to allow construction, but to require mitigation of its adverse effects, the Cities are correct that the Port will have to comply with the Cities’ reasonable permitting and mitigation requirements. The fact that these requirements may make the expansion more costly does not relieve the Port of these obligations.

At 847. Thus, only those regulations shown to have preclusive effect are to not be applied to an essential public facility and not those that compliance would merely cause greater expense or time.

The precise interplay between the County’s development regulations and essential public facilities in general is best left to legislative efforts to develop additional Code provisions relating to that subject.

8. Finally, the Hearing Examiner concludes that, with conditions imposed herein and the design features of the project as represented by the applicant, the proposal would adequately mitigate adverse impacts associated with this essential public facility and would conform to applicable CUP criteria.

9. Accordingly, the CUP should be approved, but only subject to the following conditions:

- a. Development of the site shall be in strict conformance with the site development plan submitted to the San Juan County Permit Center on May 12, 2003. The director/designee may allow deviations to this

plan consistent with the applicable development regulations. No new or additional land uses associated with Trash To Treasures facility are permitted without the processing of a new conditional use permit and/or compliance with the San Juan County Code, as amended.

b. The proposal shall comply with all applicable development standards of the San Juan County Code, except as provided herein. See Conclusion 7.

c. Prior to the issuance of any building permit for the proposed essential public facility, a geo-technical report, which discusses the existence of critical area erodible soils on site, shall be submitted to the San Juan County Permit Center for review and approval.

d. Prior to the issuance of any building permit, two copies of a drainage plan shall be submitted to the Permit Center for review and approval by the Permit Center and the San Juan County Public Works Department. The storm drainage for the project shall comply with the DOE Stormwater Drainage Manual, and all off-site discharge of storm and wastewater shall be in accordance with NPEDS requirements.

e. The proposed essential public facility shall be in strict conformance with the noise standards identified in WAC 173-60 and the San Juan County Noise Ordinance. Additionally, those noise mitigation measures designed into the project and described by the applicant (See Finding 8), shall be implemented by the applicant.

f. The stormwater facility noted on the site development plan near Roche Harbor Road shall be a water quality treatment/detention pond unless approved otherwise by the San Juan County Public Works Department, and shall be sized in accordance with the DOE Stormwater Drainage Manual.

g. Prior to the issuance of any building permit for the Thrift Store, Builder's Exchange, Moderate Risk Waste facility, E-waste area and/or Builder's Exchange storage area, the applicant shall demonstrate compliance with Section 18.60.140 of the Uniform Development Code, Off Street Loading Space

Requirements. The off street loading space shall be illustrated on the site development plan submitted with the building permit application.

h. Development authorized through this conditional use permit shall be completed within five (5) years of the date of approval or the conditional use permit shall become null and void.

i. All disturbed areas of the site which are not to be paved or constructed upon shall be restored immediately and planted with native vegetation similar to that removed from the site.

j. The full width of required setbacks from all public/private roads shall be retained and maintained in their native vegetated state.

k. No structures may be placed in required front or road setbacks other than a fence, gate and/or driveway. Fences shall not be placed on any property line fronting a public/private road but rather shall be screened from view through retention of a 20 foot-wide strip of native vegetation that meets the Screen-C described in Section 18.60.160 of the Uniform Development Code. Native vegetation may be enhanced to achieve compliance with this condition of approval.

l. A restoration landscaping plan shall be submitted at the time any land moving or construction activity occurs on site for review and approval by the Permit Center. Compliance with this requirement shall be demonstrated at the time a building permit and/or clearing and grading permit is requested for the site.

m. Ingress/egress to the site is restricted to the proposed site entry on Roche Harbor Road. The two southerly access points to the site from Sutton Road shall be used only for ingress by transfer trailers and emergency access only.

n. Prior to issuance of a building permit for the project, plans for providing a source of water for the facility shall be finalized and approved by the County's health authority and Permit Center.

o. The proposed essential public facility shall comply with the concurrency standards identified in the Unified Development Code, as amended.

10. Any finding hereinbefore stated which might be deemed a conclusion herein is hereby adopted as such.

From these Conclusions is made the following:

DECISION:

The request is hereby approved, subject to the conditions set forth in Conclusion 9 herein.

DATED this _____ day of September, 2003.

RODNEY M. KERSLAKE
HEARING EXAMINER, PRO TEMPORE