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LAW OFFICES
J. RICHARD ARAMBURU

July 26, 2007

Mr. Michael Stanzel
6224 – 114th Avenue Court East
Puyallup, WA 98372

RE: Resolution of a Water Service Dispute Involving Michael Stanzel and the City of Puyallup

Dear Applicant:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

MARK E. HURDELBRINK
Deputy Hearing Examiner

MEH/dd

- cc: Parties of Record
- PIERCE COUNTY PLANNING AND LAND SERVICES
- PIERCE COUNTY CODE ENFORCEMENT
- PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
- PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
- TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
- FIRE PREVENTION BUREAU
- PIERCE COUNTY PARKS AND RECREATION
- PIERCE COUNTY COUNCIL
- PIERCE COUNTY RESOURCE MANAGEMENT



OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: Resolution of a Water Service Dispute Involving Michael Stanzel a the City of Puyallup

APPLICANT: Michael Stanzel
6224 – 114th Avenue Court East
Puyallup, WA 98372

AGENT: Richard Aramburu
Attorney at Law
Suite 209, College Club Building
505 Madison Street
Seattle, WA 98104

SUMMARY OF REQUEST:

The applicant is requesting that the Pierce County Hearing Examiner require the City of Puyallup to provide water service and a water availability service letter for the property located at 6224 – 114th Avenue Court East (Parcel No.: 0420228038) located within the City of Puyallup's exclusive Water Service and Urban Growth Areas.

SUMMARY OF DECISION:

Denied.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on April 4, 2007 at 9:02 a.m.
A continuance was granted and hearing was reconvened on June 20, 2007 at 9:03 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Hearing Briefs from the County
- EXHIBIT "2" - Hearing Briefs from Ms. Lake
- EXHIBIT "3" - Briefs from City of Puyallup
- EXHIBIT "4" - Mr. Aramburu's opening June 6, 2007
- EXHIBIT "5" - City of Puyallup Memo in Opposition June 6, 2007
- EXHIBIT "6" - Reply of Memo June 13, 2007
- EXHIBIT "7" - City of Puyallup Reply Memo June 13, 2007
- EXHIBIT "8" - Comprehensive Plan for City of Puyallup
- EXHIBIT "8a" - Marked Version of Exhibit No. 8
- EXHIBIT "9" - Map of City of Puyallup Water Service
- EXHIBIT "10" - Co-Ordinated Water System Plan
- EXHIBIT "12" - Photo of Fire Hydrant and Church Building
- EXHIBIT "13" - Letter from Hienecke & Utterbeck
- EXHIBIT "14" - Letter Requesting Water Availability June 25, 2004
- EXHIBIT "15" - Septic Design
- EXHIBIT "16" - Water Availability Letter
- EXHIBIT "17" - Letter from City of Puyallup to Mr. Bitten
- EXHIBIT "18" - Letter from City of Puyallup December 16, 2006
- EXHIBIT "19" - Letter from Mr. Stanzel to Mt. View Water
- EXHIBIT "20" - Estimate for Water Tank
- EXHIBIT "21" - Timely and Reasonable Criteria for Water Service Plan
- EXHIBIT "22" - August 9 Letter from Mr. Stanzel to Mr. Heinecke

The hearing was commenced on April 4, 2007.

Appearing was BRETT VINSON, the City of Puyallup representative, who objected to the hearing taking place and requested a continuance.

Appearing was RICHARD ARAMBURU who responded to Brett Vinson's objection to having this matter heard on April 4, 2007. He had sent Mr. Vinson an email a week ago regarding the hearing today. Mr. Vinson did not respond to his email. Mr. Aramburu would not have an objection to continuing the matter if two (2) stipulations were satisfied. First, he would like the continuance to be for a relatively short time, within thirty (30) days. Second, he would like two (2) individuals, to make themselves available to testify at the next hearing date. Tom Heinecke and Tom Utterback. If those people can be in attendance, then he does not object to setting this over.

Reappearing was BRETT VINSON who did acknowledge that he did receive the email from

Mr. Aramburu. He was unable to respond due to computer problems. He is unsure of the availability of the two (2) individuals that Mr. Aramburu wants to be present at the next hearing. He did not want to agree to a continuance until after he spoke to them. Mr. Vinson agreed that more than likely he could work out a time for them to be present at the hearing. He did ask whether the Hearing Examiner was compelling the attendance of these two (2) individuals. He was not going to agree to compelling their attendance. Mr. Vinson attempted to call the witnesses, but he was not able to reach either one of them to confirm a hearing date. He felt that this matter could be heard on briefs and pleadings without a public hearing.

Reappearing was RICHARD ARAMBURU who stated that he would still like the two (2) individuals to be present at the hearing.

Appearing was STEVE KAMIENIECKI, the County representative, stated the continuance would be fine with the County. He did not know how the Hearing Examiner could compel their attendance.

Reappearing was BRETT VINSON who said that the Hearing Examiner should allow for additional briefings. He also asked if the Hearing Examiner believes that after receiving the briefs that another hearing would not be necessary, then that hearing could be stricken.

Reappearing was RICHARD ARAMBURU who stated that he would like there to be communication regarding when the two (2) individuals could be present.

A continuance was granted and a suggestion was made to the attorneys to work out available dates.

The hearing was reconvened on June 20, 2007. Briefs were received from both sides and marked as Exhibits.

Appearing was RICHARD ARAMBURU who addressed the issue of the individuals not attending this hearing. Neither Tom Heinecke nor Tom Utterback were present at the hearing.

Appearing was BRETT VINSON who stated that he never agreed to those individuals being present for this hearing. He renewed his objection to there being a hearing on the underlying request. The objection was reserved and the hearing was commenced. The City again objected to continuing with the hearing. They wanted the jurisdictional issue decided initially.

Appearing was STEVE KAMIENIECKI who stated that the County is disappointed because it was their understanding that this date was set because Mr. Heinecke and Mr. Utterback could be present.

Reappearing was BRETT VINSON who stated that he never agreed to have those individuals being present.

Reappearing was RICHARD ARAMBURU who stated that he is prepared to go forward. He acknowledged that without these individuals that they may be headed to Superior Court. He expressed his frustration because he thought it was very clear that these individuals needed to be present and this date was chosen for that reason.

The Examiner himself stated that he was also of the understanding that the witnesses would appear today. There was a phone conference between the parties and this date was partially chosen because of the two individual's schedules.

Reappearing was STEVE KAMIENIECKI who stated that the County's position has not changed. They have no additional information to add to the Examiner.

Reappearing was RICHARD ARAMBURU who gave his opening statement. He believes that the Examiner does have jurisdiction. Mr. Stanzel just wants to be provided water. His property is located within the service area of the City of Puyallup. There is no other place that Mr. Stanzel can get water other than from the City of Puyallup. He already gets water from them. It makes no sense why they will not provide water now. He made an offer of proof regarding what Mr. Heinecke and Mr. Utterback would say if they were here. The only reason the City is denying service is they want Mr. Stanzel to agree to a pre-annexation agreement. They also want Mr. Stanzel to not be a thorn in their side any longer.

Reappearing was BRETT VINSON who stated that this issue is a matter of law rather than a matter of fact. He wanted the Examiner to take notice of the May 26, 1999, decision regarding another piece of property of Mr. Stanzel.

Reappearing was STEVE KAMIENIECKI who was asked questions by RICHARD ARAMBURU. Mr. Kamieniecki acknowledged that he does not believe that a private well would be possible on this parcel. It is not feasible. He also believes there are no other private purveyors close enough to provide water. There were specific provisions within the Coordinated Water System Plan that were discussed. BRETT VINSON asked more questions. Mr. Kamieniecki said that he believed that Mr. Stanzel was being denied a water availability letter. There was discussion about the legality of annexation agreements.

Appearing was the applicant, MICHAEL STANZEL, who was asked questions by RICHARD ARAMBURU. He bought this property approximately three (3) years ago. The prior decision dealt with a different piece of property. This piece of property is referred to as the church property. There is a church building on it. There is also a paintball field and

other recreational amenities. He is currently provided water by the City of Puyallup and pays a monthly bill. This property is located within the City of Puyallup water service area. Exhibits were entered into the record. There was discussion about the standard service agreements and what they stated, along with wordings in other documents. There were some other Exhibits submitted. Mr. Stanzel needs fire flow now. His use will be commercial. He wants to add a game room and provide additional restrooms. That will be the only change in use. He has been trying for years to get water service. He hired an engineering firm to design his drain field. He only needs a water availability letter to do the expansion. The water line runs right outside of his property. There will be no change in what the City provides. They may require a different meter, but nothing else. Letters from City Representatives were discussed. Letters were received from Mr. Utterback and Mr. Hienecke regarding Mr. Stanzel's water service inquiry. This concerned the previous piece of property that was already subject to a Pierce County Decision. That piece of property was removed from their water service area. Mr. Stanzel has sent letters to the City to try and get a water availability letter. He was just sent copies of the Puyallup City Code. There has been an election requesting that this area be annexed into the City of Puyallup. That failed. They are continuing to try and annex this property. There were many other Exhibits entered into the record. He has looked into other possible sources for water. He could obtain a tank, but it is cost prohibitive. The closest other water purveyor just isn't close enough to make it feasible for him to be provided water. There was another piece of property in this area that was allowed to be provided water by the City of Puyallup despite not annexing. He does not understand why he was not allowed water. The location of this particular property in relation to other properties was discussed. The other water purveyor is approximately three quarters of a mile away under railroad tracks. He needs these additional bathrooms and the expansion of the game room. His use is really limited to summertime months now. He needs a water availability letter to allow the expansion. Upon questioning of BRETT VINSON, Mr. Stanzel does acknowledge that his name is not on the standard service agreement. He reiterated that he just wants the City to provide him water.

Reappearing was RICHARD ARAMBURU who gave closing arguments.

Reappearing was BRETT VINSON who gave the City's closing arguments.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded June 20, 2007 at 12:12 p.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, viewed the property, and taken this matter under advisement.
2. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. The date and time of the hearing was published two (2) weeks prior to the hearing in the official Pierce County newspaper.
3. The applicant has a possessory ownership in property located at 6224 – 114th Avenue Court East. The property is currently improved with an existing building, and recreational facilities. The applicant wishes to construct and rebuild a building on his property for commercial purposes. This piece of property is subject to Pierce County zoning requirements. It is not located within the City of Puyallup. The construction would be consistent with Pierce County zoning.
4. In 1977 the Washington State Legislature adopted the Public Water System Coordination Act of 1977, which is presently codified in ch. 7.116 RCW. The Act requires that service area boundaries be established by written agreement among the purveyors. Pursuant to this Legislation, Pierce County adopted the Pierce County Coordinated Water System Plan ("CWSP"), which established water service boundaries within Pierce County. According to Section 1 of the CWSP, the objective is to assist water purveyors to effectively plan by establishing exclusive water service areas, thereby ensuring the most cost effective supply service to all properties within the County.
5. It is undisputed that the City of Puyallup is the exclusive water provider to this particular parcel. The City of Puyallup signed a standard service area agreement on August 29, 1994. As noted above, this particular parcel is outside of the city limits of Puyallup, but it is within the service area. The property is currently being provided water by the City of Puyallup. Pierce County is requiring a water availability letter to allow the commercial construction project to be commenced.
6. The applicant has requested numerous times that the City provide a water service availability letter to his property so that he can proceed with his commercial development. The City of Puyallup has refused to provide that water availability letter. The undisputed facts are that the City believes that the applicant must satisfy all Puyallup Municipal Code requirements prior to the City of Puyallup being required to provide water to his site. The main provision within the Puyallup Municipal Code relates to signing a pre-annexation agreement. The applicant, according to the City, must sign the pre-annexation agreement prior to him receiving water. The applicant refuses to sign this agreement. It is also undisputed that the applicant cannot reasonably receive water from any other source. A private water tank would be cost prohibitive for this particular parcel of property. The nearest

other water purveyor is over ¾ mile away and cannot provide water service to this site. This is not an extension of water service because this particular property is already being serviced by the City of Puyallup.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant did not go through the normal dispute resolution process because in a previous Decision issued on January 12, 2006 (Plexus Investments LLC – Ted Spice), the Hearing Examiner stated that properties located outside of the City of Puyallup, yet in their exclusive water service provider area, could go directly to the Examiner for the resolution of disputes. Pierce County Code (PCC) Section 19.D.140.090 (F) (2) states in part:

Unresolved timely and reasonable service disputes shall be referred by the lead agency to the Pierce County Hearing Examiner for final resolution of non-land use matters pursuant to Pierce County subsection 1.22.080(B)(2)(k).

PCC Section 19D.140.090(H) states as follows:

Boundary Line Adjustment Based Upon Determination of Untimely or Unreasonable Service. If the Hearing Examiner finds that a purveyor is unable or unwilling to provide timely and reasonable service within its exclusive water service area boundary, the Hearing Examiner shall readjust the purveyors boundaries to an area that the purveyor would be able and willing to provide service and/or provide reasonable conditions pursuant to Pierce County Codes subsection 1.22.080(C), to ensure timely and reasonable service. The Hearing Examiner's determination on readjustment of a water service area boundary and/or imposition of reasonable conditions shall be supported by substantial evidence in the record.

The above quoted sections authorize the Examiner to readjust the city's boundaries and/or impose reasonable conditions to ensure timely and reasonable service. The Hearing Examiner's previous Decision is consistent with the Code sections.

3. The City of Puyallup requested that the Hearing Examiner dismiss the case on jurisdictional grounds. The City argues that they were not properly served a Summons and Complaint. This is not a case of the type that encompasses a summons and complaint; rather it is a water service dispute that has been allowed to go directly to the hearing examiner. The City of Puyallup was provided ample notice of hearing. The hearing was continued for a couple months to provide more time for the City to respond. The City also argues that the applicant failed to exhaust all administrative remedies. As noted in the Findings, in a previous decision involving the City of Puyallup that was not appealed properties in similar situated areas such as Mr. Stanzel's could go directly to the examiner for relief.
4. Initially the issue is whether the requirement that a pre-annexation agreement be signed prior to obtaining water on this particular parcel is appropriate. If it is appropriate, then the applicant would be required to sign it and then go through the process of applying for water service through the City. The Pierce County Code does not require a potential customer to sign a pre-annexation agreement. PCC Section 19B.140.100 states:

Pre-annexation agreements were not contemplated in the designation of exclusive water service area boundaries by the Water Utility Coordinating Committee at the time of service area boundary designation and furthermore are not necessary for the provision of timely and unreasonable service within a purveyor exclusive water service area boundary. Therefore, a requirement that a potential customer enter into a pre-annexation agreement or a waiver of any statutorily or constitutional guaranteed right as a condition of service may be challenged as unreasonable through the dispute resolution process.

This section does not authorize a property owner to challenge a city's ability to require a pre-annexation agreement, and therefore does not conflict with R.C.W. 35.92.200. However, said section does allow a property owner to challenge the pre-annexation agreement from the limited perspective of "timely and reasonable service." A successful challenge, while not affecting the city's authority to require a pre-annexation agreement, would allow an applicant to seek an alternative water supply and/or other relief.

5. In this particular case, requiring the applicant to execute a pre-annexation agreement to receive water from the City is not reasonable because this is not an extension or significant expansion of water service. The applicant is already receiving water service from the City of Puyallup for residential use. The applicant

is requesting a commercial use on his property. There will be very limited improvement on the site. The increased water requirements, if any, will be very limited. This is a situation where water is already being provided and there will be no substantial increase in use levels. While the City is correct in that a municipality cannot be compelled to provide water outside its corporate limits, the City is already providing water service to this property. The City of Puyallup also agreed in 1994, in the Standard Service Agreement establishing water utility service area boundaries, that the City would provide water service to this particular piece of property. The City actually has provided water to this property. The requirement that the applicant must sign a pre-annexation agreement, is not reasonable given these circumstances.

6. The Hearing Examiner only has that authority which is granted to it by the Pierce County Code. The Hearing Examiner agrees with the county and city officials that there is no specific authority allowing the Hearing Examiner to compel the City of Puyallup to provide water service to the applicant's property. Requesting the City of Puyallup to provide water service goes too far to be considered an "imposition of reasonable conditions" which is allowed under PCC 19D.140.190 (f) (2). If a court determines the Hearing Examiner does have authority to order this type of relief, then in this particular case, the Hearing Examiner would order the City of Puyallup to provide the service given these specific facts.

DECISION:

The request of the applicant to compel the City of Puyallup to provide water service is denied because the hearing examiner does not believe that he has authority to grant that specific relief. The applicant is allowed to seek alternative sources for water and/or be removed from the City of Puyallup's service area if desired.

ORDERED this 26 day of July, 2007.



MARK E. HURDELBRINK
Deputy Hearing Examiner

TRANSMITTED this 26th day of July, 2007, to the following:

APPLICANT: Michael Stanzel
6224 – 114th Avenue Court East
Puyallup, WA 98372

AGENT:

Richard Aramburu
Attorney at Law
Suite 209, College Club Building
505 Madison Street
Seattle, WA 98104

OTHERS:

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PO Box 969
Sumner, WA 98390

S. Schell
Puyallup Herald
822 E. Main Street
Puyallup, WA 98372

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
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**CASE NO: Resolution of a Water Service Dispute
Involving Michael Stanzel and the City of
Puyallup**

NOTICE

1. **RECONSIDERATION:** Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION:** The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.