

Cami Petersen - Taylor Shellfish Co. SDP Application (No. 961372 SSDP) - Communication from Jules Michel

EXHIBIT 52

From: "Thomas Bjorgen" <ThomasBjorgen@bjorgenbauer.com>
To: "Cami Petersen" <PetersCs@co.thurston.wa.us>
Date: 03/12/2012 2:57 PM
Subject: Taylor Shellfish Co. SDP Application (No. 961372 SSDP) - Communication from Jules Michel
Attachments: Correction Fwd Taylor Mussel Raft Standing.htm

Dear Parties and Staff:

I received today the attached communication from Jules Michel, sent March 11, 2012. Mr. Michel's written comments have been admitted into the record as part of Exhibit 15. Mr. Michel asks whether the comments he submitted as part of Ex. 15 grants him "legal standing" and the right to submit a post hearing brief. I believe the proper response to this question is clear under the law. Therefore, in the interests of efficiency I'll answer it in this e-mail without further procedural steps, even though Mr. Michel did not apprise any other parties of his request.

In court judges typically do not make rulings on questions such as this, since hearing from all sides on every such question would take an inordinate amount of time, and procedural rules and directions are deemed to be adequate guidance on them. Hearing Examiner proceedings are "quasi-judicial". Decisions are made in the same manner in which a court would make them, but in a way that is less formal and, one hopes, more accessible to those without legal representation.

A decision on a person's party status could be made only after all other parties had the opportunity to express their opinion. If I were to make this determination for Mr. Michel, I would need to be ready to make an individualized decision also for every other individual who submitted comments. This potentially would consume many hours of party, attorney, and Hearing Examiner time, with commensurate expense. Fortunately, a prior e-mail ruling dealing with a prehearing matter, found at Exhibit 4, addresses the issue of party status. Therefore, this question may be best addressed by referring all interested persons to it, without making any ruling on this or other questions of party status.

At the open public hearing on February 17, 2012 in this matter, I stated that all persons with party status would be allowed to submit post-hearing briefing. Thus, in more technical terms, the question is not one of standing, but one of party status. Ex. 4 referred to Chapter I, Section 1 of the Hearing Examiner Rules, which defines "party of record" as either:

- "a. a person who testifies at a hearing;
- b. the applicant;
- c. persons submitting written testimony about a matter pending before the Examiner.
- d. Persons who have signed a sign-up sheet at the hearing."

Of these, Categories a, b and d are self-explanatory. Exhibit 4 noted that Category c is restricted to those submitting "testimony", which is defined by Black's Law Dictionary (5th Ed.) as "evidence given by a competent witness under oath or affirmation", including evidence delivered under oath at trial or by affidavit or deposition.

These are the ways in which one may have status as a party of record and submit post-hearing briefing.

Mr. Michel's attached e-mail dated March 11, 2012 and this e-mail will be made part of the record. The attachments to Mr. Michel's e-mail contain different transmissions of Mr. Michel's comments, which are part of Ex. 15. The e-mail itself describes the nature of those transmissions. Because the record is closed, except for post-hearing briefs, the comments by Mr. Michel which are admitted as part of Ex. 15 stand as his official comments. For these reasons, the attachment does not need to be admitted. Anyone who would like to review Mr. Michel's e-mail or attachment should contact Ms. Petersen.

Ms. Petersen, please forward this e-mail to Mr. Michel, Ms. Kisielius, Mr. Plauche, Mr. Donkers, Mr. Fancher, Mr. Smith, and any others who have supplied you with e-mail addresses.

Thank you.

Tom Bjorgen
Thurston County Hearing Examiner