

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
V-16-0401)	DECISION AND
Agro-Synergies, LLC)	CONDITIONS OF APPROVAL

THIS MATTER, having come on before the Grant County Hearing Examiner on January 13, 2017, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. This is a request for a Variance to the 10 acre lot size requirement defined in GCC 23.08.370(a)(1) for fertilizer storage facilities.
2. The applicants are Agro-Synergies, LLC, Attn: David Gonzalez, PO Box 1027, Royal City, WA 99357 and Soil Basics, Julie Sannar & Jim White, PO Box 1208, Royal City, WA 99357.
3. The owner of the property is Ronald & Patricia Hellend, 11445 E Via Linda Ave, Suite 2-454, Scottsdale, AZ 85259
4. The project location is 4928 W. Hwy 26, Royal City, WA. The site is located approximately 1.5 miles southeast of Royal City, WA.
5. The parcel number of the subject property is 16-0087-000.
6. The legal description of the subject property is NE quarter of Section 08, Township 16 North, Range 26 East, WM, Grant County, WA (Parcel #16-0087-000).
7. This matter is not in urban growth area (UGA).
8. The Comprehensive Plan Designation is Irrigated AG.
9. The zoning designation is Agriculture.
10. The property to the north is zoned Agriculture.
11. The property to the south is zoned Urban Heavy Industrial.
12. The property to the east is zoned Agriculture.
13. The property to the west is zoned Urban Commercial 3.

14. The project site was found to be in a potential High Geologic Hazard Area. However, according to the Soil Survey book of Grant County the potential for erosion on site is moderate and potential for runoff is medium. The site has also been disturbed with other structures and the planting of grass. It is for these reasons that no Geologic study was required. No other Critical Areas were found to be located on site.
15. A Public Notice containing information on this project was published in the Columbia Basin Herald on December 7, 2016, was mailed to property owners within 300 feet of the subject properties, and was posted on site, where visible to the Public. The following agencies provided comments:
 - 15.1 Grant County Building Official responded on December 12, 2016
 - 15.2 Grant County Fire Marshal responded on December 12, 2016
 - 15.3 Grant County Public Works Department responded on December 13, 2016
 - 15.4 Grant County Assessor's Office responded on December 13, 2016
 - 15.5 WA State Department of Transportation responded on December 13, 2016
 - 15.6 Quincy Columbia Basin Irrigation District responded on December 22, 2016
 - 15.7 US Bureau of Reclamation responded on December 22, 2016
16. The following agencies were notified but did not respond:
 - 16.1 Grant County Health District
 - 16.2 Grant County Emergency Management
 - 16.3 Grant County Auditor
 - 16.4 Grant County Sheriff's Office
 - 16.5 Grant County Treasurer's Office
 - 16.6 Grant County Fire District #10
 - 16.7 Grant County PUD
 - 16.8 Grant County Weed District #52
17. **Agency Comments:** The following is a summary of comments received:
 - 17.1 **Grant County Building Department comments:**
 1. Real development must comply with all federal, State and local codes for fire & life safety.
 - 17.2 **Grant County Fire Marshal comments:**
 1. No adverse comments or concerns in regards to the variance. That does not exempt the business from following the requirements for storage and handling requirements of the International Fire Code Chapter 50 that may apply.
 - 17.3 **Grant County Public Works comments:**
 1. Access is onto State Route 26, access permit shall be obtained from WSDOT.
 - 17.4 **Grant County Assessor Office comments:**
 1. Parcel 16-0087-000 is a 6.92 acre parcel with a shop, general purpose building and airplane hangar; owners are Ronald & Patricia Helland.
 - 17.5 **WA Department of Transportation comments:**
 1. Thank you for the opportunity to comment on the above referenced application. WSDOT has no issue with the Variance request, however the application states that the

property was purchased with the sole intent of manufacturing and distributing/selling to customers in the geographical area. SR 26 is classified as a "Partial Control Limited Access Highway" per RCW 47.52 and WAC 468-58-030, no commercial approaches shall be permitted. Access to the property for the intended use is not allowed per the RCW and WAC referenced. For further discussion, please contact Frank Sblendorio at 509-667-3061.

17.6 **Quincy-Columbia Basin Irrigation comments:**

1. The location sketch in the application dimensions the new structure 125 feet from a canal. Our records indicate that the Federal Right of Way extends 140 feet from the centerline of the Crab Creek Lateral Extension as it was originally constructed. In all cases of requests for placement of buildings the dimensioning should be indicated from the edge of the Federal Right of Way to clearly indicate that the applicant is honoring the federal right of way and the setback requirements in the same manner as they would honor the county or state road right of ways.

17.7 **U.S. Bureau of Reclamation comments:**

1. We appreciate the opportunity to review and comment on the subject proposal. This letter is in response to your request for comments due December 29, 2016. Construction storm water or runoff of any type from a construction site should not enter any of the Bureau of Reclamation's facilities at any time and must be contained on site. Surface water runoff resulting from construction activities can potentially enter Project facilities and adversely affect water quality. A General Construction Storm Water Permit from the Washington State Department of Ecology will be needed for any project one acre or greater. Construction should be conducted in a manner that minimizes adverse effects to the lands, operations, waters facilities, and resources of the Project. Upon completion of construction activities, no connections to Project facilities will be allowed that would collect or discharge storm water or any other non-agricultural discharges.

We noted that the existing outbuilding is depicted as being within the Crab Creek Lateral Extension canal right-of-way. Landowners should be aware of existing Reclamation and the District rights of construct, reconstruct, operate, and maintain Project facilities as necessary. Reclamation and the District must review and approve any work that will involve these facilities or the existing rights-of-way prior to commencing such work. Structures are prohibited from encroaching upon existing rights-of-way corridors without Reclamation's and the District's prior approval. This includes, but is not limited to, temporary improvements such as on-site sewage disposal systems, drain fields, domestic wells, paving, fencing and landscaping. It is important to note that Reclamation's concurrence with this proposal is conditioned upon the assumption that there are no encroachments upon Project facilities or rights-of-way. For further information regarding the encroachment, you may contact Mr. Anthony Ortiz, Realty Supervisor, at 509-754-0218.

Should the proponent develop the property with the intent of installing a well for public or private use, please be advised that such a well providing groundwater to the public will typically have a wellhead overlap Reclamation rights-of-way or interfere with Project operations, since they would constrain the District's ability to apply aquatic and terrestrial herbicides needed to maintain Project facilities. The District must be able to operate and maintain Project facilities in order to accomplish Project objectives.

The proponent and planning department should be aware that the Crab Creek Lateral Extension, Red Rock Coulee Wasteway, DCC1 Wasteway, and Red Rock Lake drain into a natural waterbody (Crab Creek) approximately 5 miles to the south. Crab Creek has been designated as critical habitat by the National Marine Fisheries Service for ESA list fish species (Chinook Salmon and steelhead). Reclamation established the presence of the previously mentioned spawning ESA species in the Red Rock Coulee Wasteway in the document, Anadromous Salmonid Habitat in Three Watersheds of the Columbia Basin Project, written by Mark D. Bowen and published in February, 2003.

The Farm Unit map depicting Reclamation's facilities, associated rights-of-way, and farm unit boundaries for the subject property is located with Irrigation Block 85, Sheet 20, Quincy Columbia Basin Irrigation District.

18. The application was determined to be technically complete on December 06, 2016.
19. This proposal was processed as a Type III Quasi-Judicial Decision, in accordance with Chapter 25.04 "Permit Application and Review Procedures" and Chapter 25.08 "Conditional Uses and Variances" of the Grant County Unified Development Code.
20. This proposal was reviewed for compliance with Chapter 24.08 "Critical Areas and Cultural Resources" of Grant County Unified Development Code. No Critical Areas were found to be located on the parcel.
21. The project is not located within a city's UGA.
22. No agency submitted comments that would prohibit the variance from being approved.
23. On December 13, 2016 a comment was received from the Washington State Department of Transportation (WSDOT) which stated that there was no issue with the approval of the variance but stated that no commercial approaches are permitted on SR 26 because it is classified as a "Partial Control Limited Access Highway". The comments were sent to the applicant on December 13th stating the issue needs to be addressed. Conversations with neighboring property owners are currently taking place, however, the applicant will need to rectify access issues with WSDOT or obtain legal access from a county road with approval from the Grant County Public Works Dept. prior to approval of a Discretionary Use Permit and Building Permit.
24. A new site plan was received on January 3rd, 2017 ensuring the new proposed structure will be located outside the 140-ft. USBR canal right-of-way satisfying the QCBID comments.
25. Notification was provided in an email to Jim White (Soil Basics) on December 30th providing the comments and contact information for the USBR to address concerns about an encroachment in the canal right-of-way.
26. Planning Staff did not receive any public comments regarding this proposal.
27. A site visit was conducted on December 28, 2016 in which it was discovered that the site was already being used for fertilizer storage. The applicant was notified on December 30th that the variance, DUP and SEPA approvals were necessary prior to utilizing the site for storage of

fertilizer. The applicant stated they would make an effort to get the fertilizer inside the existing building prior to the hearing.

28. The proposed variance would be for this parcel only and does not authorize approval of the use of the property for fertilizer storage.
29. The applicant has the burden of proof to demonstrate compliance with all of the criteria set forth in GCC 25.08.060(b).
30. In support of criteria 25.08.060(b)(1), the applicant stated:
 - 30.1 At the time of purchase of this property, there were four entities involved in the sale and purchase: 1) seller, Red Beierle (Owner of Royal Ag Air); 2) purchasers, Ron & Patti Helland (owner of SOBEC Inc.); 3) Agro-Synergies (licensed to manufacture SOBEC project, and logistics company, with Soil Basics Corporation as a client; 4) Rich & Kelly Callahan. This land would be essentially unusable for the functionality of Agro-Synergies, so there was a property line adjustment made and that larger portion of the parcel was sold to the Callahans. The remaining 6.92 acres or "Parcel A" was leased to Agro-Synergies. All of these transactions were made to promote the most "effective utilization of land." (GCC 22).
 - 30.1.1 According to the applicant's statement, the applicant was involved in the partitioning of the subject property and the creation of this particular lot. There are no other particular special characteristics of the property which would prohibit the applicant's use of the property, as they desire except for the lot size. It was stated at the open record hearing by the applicant's testifying representative, that at the time of the applicant's acquisition of the property and the division of the property into the individual lots, that the applicant was not aware of the 10 acre minimum lot size for this proposed use.
 - 30.1.2 The Hearing Examiner does not have the authority to contest the reasons why the legislative authority set a minimum 10 acre lot size for this particular use. Presumably, the minimum lot size was set for this particular use to protect the public.
 - 31.1.3 The applicant has not submitted facts sufficient to support the Hearing Examiner making a finding of compliance with GCC 25.08.060(b)(1).
 - 30.2 The applicant stated the following in support of their compliance with 25.08.060(b)(2):
 - 30.2.1 GCC 23.08.370 states that a minimum of ten acres is required for the storage and sale of fertilizer, pesticides, herbicides, soil sterilants and fumigants. Agro-Synergies lot is seven (7) acres, yet we are able to economize and efficiently utilize our space in the current building and the remaining lot area in such a manner that we have un-used space. The only reason that we need to add another warehouse is to protect inventory from the weather- extreme heat or cold. We also want to eliminate any unsightly appearances from the Highway traffic, so another storage building would keep excess containers and equipment indoors rather than out in the open and visible. This would help stay in the intent and spirit with paragraph 3 of GCC 23.08.370 "All such facilities shall be designed

and located with full consideration of their proximity to adjacent uses, their effect upon adjacent property, and to the reduction of nuisance factors.”

Paragraph 4 of GCC 23.08.370 states that “the obnoxious characteristics of the process or activity has been or shall be eliminated sufficiently as not to constitute a nuisance or be detrimental to the health, safety, comfort or general welfare of persons residing or working in or passing through the area.” We have been operating in this facility for almost two years and have the following improvements: 1) remodeled the upstairs apartment for the resident employee; 2) cleaned debris and old equipment, including old pesticide containers from previous owner; 3) installed a higher volume septic system; 4) built & installed advanced technology manufacturing equipment for microbial mineral digestion; 5) installed new well pump, water storage and new water lines to the building; 6) as part of due diligence prior to purchase, had a Phase 1 Environmental Study conducted; 7) upgraded all the electrical capacity, including new pole and transformer; 8) removed the old airstrip that was adjacent to the highway; 9) installed new insulation in the existing warehouse.

As we are striving to improve the facility and property, the proposed additional building would help use operate in harmony and intent of paragraph 5 of GCC 23.08.370, “The owner or operator of such a use shall have continuous obligation to prevent the creation of a nuisance or hazard.” Additional storage will allow us to keep the containers and equipment indoors and out of sight from the surrounding areas, as well as allowing us to keep the inventory in a contained and locked facility.

30.3 We are requesting a variance to paragraph 1 GCC 23.08.370 “A minimum lot of ten (10) acres is required.”

30.3.1 This property was purchased with the sole intent of manufacturing and distributing a biological soil amendment to existing customers in the Pacific Northwest and also to warehouse liquid fertilizers manufactured by Soil Basics Corporation to sell to its customers in this geographical area. The cost of trucking and coordinating logistics from California was becoming prohibitive for both companies involved. The opportunity to re-purpose an existing airplane hangar, which was centrally-located, provided a solution to several problems. The neighboring farmers want the excess property because of its location to their circle.

We could have kept the parcel as it was, however, due to the odd shape; we could have never utilized the land efficiently. We felt the best solution was to accommodate our neighbors by arranging the sale of that portion to them, this leaving us with a functional (yet still odd-shaped) 6.92 acres. This is more than sufficient for what we need and still not be a “nuisance.” We were unaware of the ten acre minimum requirement at the time and based our decision on the fact that our parent company, Soil Basics Corporation, operates a much more involved facility on eight acres.

- 30.4. We are requesting a variance to paragraph 1 GCC 23.08.370 "A minimum lot of ten (10) acres is required."
- 30.4.1 This property was purchased with the sole intent of manufacturing and distributing a biological soil amendment to existing customers in the Pacific Northwest and also to warehouse liquid fertilizers manufactured by Soil Basics Corporation to sell to its customers in this geographical area. The cost of trucking and coordinating logistics from California was becoming prohibitive for both companies involved. The opportunity to re-purpose an existing airplane hangar, which was centrally-located, provided a solution to several problems. The neighboring farmers want the excess property because of its location to their circle.
- We could have kept the parcel as it was, however, due to the odd shape; we could have never utilized the land efficiently. We felt the best solution was to accommodate our neighbors by arranging the sale of that portion to them, this leaving us with a functional (yet still odd-shaped) 6.92 acres. This is more than sufficient for what we need and still not be a "nuisance." We were unaware of the ten acre minimum requirement at the time and based our decision on the fact that our parent company, Soil Basics Corporation, operates a much more involved facility on eight acres.
- 30.5 We do not believe that the granting of this variance will be viewed as a special privilege by others in this industry. The distributors which market and sell our products all operate facilities on smaller acreages, both within and out of Grant County.
- 30.6 The only portion of GCC Title 23.08.370 which Agro-Synergies is out of compliance with is paragraph 1, which requires a minimum of ten acres for the facility site. We would consider it a great relief to our business to be granted a variance on this requirement.
- 30.7 We do not foresee any significant negative impacts or any way that this variance would cause the operations of Agro-Synergies to be materially detrimental to the public welfare or injurious to the rights of other property owners in the vicinity. We have done everything in our power to make improvements to the property and this trying to be a benefit to the community.
- 30.8 The variance will not permit a use prohibited by GCC Title 23 in the district in which the subject property is located.
- 30.8.1 The only use we request is the storage and selling of fertilizer and the manufacturing of organize soil amendment. We will not be utilizing the property for any other use, especially something prohibited by GCC Title 23.
31. The open record public hearing was originally scheduled for January 13, 2017. However, a severe winter storm occurred in the Grant County area the morning of January 11, 2017, which made travel to the hearing dangerous for the Hearing Examiner and applicants. By written Order, the Hearing Examiner continued this hearing to Friday January 13, 2016.
32. An open record public hearing was held on January 13, 2017.

33. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
34. Appearing and testifying on behalf of the applicant was David Gonzalez. Mr. Gonzalez testified that he is the facility manager for the applicant. Mr. Gonzalez testified that he was the agent authorized to appear and speak on behalf of the applicant and the property owner. Mr. Gonzalez indicated that he was filling in for the principals of the applicant who were not available to attend this continued hearing. Mr. Gonzalez indicated that at the time of the applicant's acquisition of the property, they were not aware of the 10 acre lot size minimum. He stated that the use of the property would be onsite storage of a food source for microbiology aquatically harvested on the site. He testified that the applicant had no objection to any of the proposed conditions of approval.
35. Following the hearing, the Hearing Examiner agreed to keep the record open until 5 p.m. Friday January 20, 2017. The record is kept open exclusively for the purpose of allowing the applicant and the County to submit whatever additional factual information or legal argument they deem advisable to demonstrate satisfaction of the variance criteria.
36. In response to the Hearing Examiner's invitation for the applicant to submit additional documentation, the applicant submitted a letter to the Hearing Examiner dated January 11, 2017 with attachments. This document is admitted into the record.
37. No member of the public testified at this hearing.
38. The Grant County Code does not make a distinction between storage of liquid fertilizer and dry fertilizer.
39. The Grant County Hearing Examiner considered all evidence within the record in rendering this decision.
40. This proposal is not consistent with GCC 25.08.060(b)(1), (2), (4), (5).
41. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Decision.
2. This proposed use is not consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. This proposal does not conform to the standards specified in the Grant County Code.
4. The proposed use is contrary to the intent or purposes and regulations of either the Grant County Code or the Comprehensive Plan.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, request for variance, V 16-0401 is hereby **DENIED**.

Approved this 25th day of January, 2017.

GRANT COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Grant County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.