

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR FRANKLIN COUNTY

SEA-MAR FARMWORKER AND
COMMUNITY HOUSING
DEVELOPMENT, a Washington
nonprofit corporation,

Petitioner/Plaintiff

v.

CITY OF PASCO and ARGUS
INVESTMENT,

Respondents/Defendants

LAND USE PETITION AND
COMPLAINT FOR DECLARATORY
JUDGMENT
AND INJUNCTIVE RELIEF

For its Land Use Petition and Complaint for Declaratory Judgment and Injunctive Relief, petitioner Sea-Mar Farmworker and Community Housing Development alleges as follows:

The land use decision at issue was made by the City of Pasco.

Decision

By letter dated December 20, 2002, David McDonald, City Planner, City of Pasco, informed petitioner that the City was refusing to accept petitioner's building permit application.

In response to petitioner's written request to Mr. McDonald to confirm whether Mr. McDonald's decision was subject to administrative review, petitioner received a letter dated January 7, 2003 from Richard J. Smith, Director, Community and Economic Development for the City. The letter rejects petitioner's request for administrative review.

Pursuant to the requirements of RCW 36.70C.040(2), petitioner has made Argus Investment a party respondent to this proceeding. Petitioner seeks no relief against Argus Investment.

Facts Demonstrating that the Petitioner has Standing to Seek Judicial Review Under RCW 36.70C.060

Petitioner is the applicant for the building permit which defendant City of Pasco refuses to process. Petitioner has option rights on the property. Petitioner is a Washington nonprofit corporation whose purpose includes improving the health, security, and life environment of minority and disadvantaged groups by creating and promoting safe and healthy housing in the State of Washington. Petitioner's purposes include also improving accessibility, availability and quality of housing resources in urban and rural areas to minorities and disadvantaged groups through the implementation of innovative approaches and concepts. Petitioner currently operates a hotel known as the Sea Mar Motel located within the C-1 zone and central business district of Pasco.

Petitioner is aggrieved by defendant City's refusal to process and grant its building permit application because the refusal prevents petitioner from renovating and improving the property so that its hotel rooms can be used as housing for farmworker families as intended and desired by petitioner. Petitioner has applied for United States Department of Agriculture (USDA) grant assistance for this intended use.

Because petitioner was the applicant, defendant City of Pasco was required to consider petitioner's interests when it made the decision to refuse to process petitioner's building permit application.

A judgment in favor of petitioner would eliminate the prejudice to petitioner, because such a judgment would enable petitioner to proceed with the intended improvements which petitioner desires and intends to make of the property.

Petitioner has exhausted its administrative remedies to the extent required by law. Petitioner has applied for a building permit and has been informed that defendant City of Pasco will not accept or process the application. There are no administrative appeals available to petitioner.

Respondent City of Pasco erred in the following respects:

- The City erred in refusing to accept, process, and grant petitioner's building permit application.
- The City erred in refusing to accept, process, and grant petitioner's application on the basis that housing and transient hotels are not permitted uses in this zoning district.
- The City erred in determining that petitioner's proposed use is a "transient hotel or motel" within the meaning of Pasco Municipal Code §§ 25.12.156 and 25.12.457.
- The City erred in applying terms and provisions of its Municipal Code to petitioner's proposal which are vague and unconstitutional.
- The City's action denies petitioner due process of law.
- The City's action denies equal protection of the law to petitioner.

Pasco Municipal Code Sections 25.12.156, 25.12.457, and 25.45.040(A) are unconstitutionally vague and void on their face.

Pasco Municipal Code Sections 25.12.156, 25.12.457, and 25.45.040(A) have no rational relationship to the public health, safety, or welfare insofar as they purport to preclude petitioner's proposal, and therefore exceed the City's authority and are unconstitutional both on their face and as applied to petitioner.

The City's overlay zoning, including Pasco Municipal Code Sections 25.12.156, 25.12.457, and 25.45.040(A), is unconstitutional on its face, and therefore cannot be used as a basis to refuse to accept, process, and grant petitioner's building permit application.

The City's action violates the right of privacy of petitioner and the persons who will patronize petitioner's hotel.

The City's action violates the federally protected right to travel of petitioner and the persons who will patronize petitioner's hotel.

Concise Statement of Facts Upon Which the Petitioner Relies to Sustain the Statement of Error

On December 18, 2002, petitioner submitted a building permit application for renovation, Phase I, of the Sea-Mar Travel Inn Hotel through its architect and agent for the project, Rod Butler, AIA, NCARB, Zeck Butler Architects of Spokane. The City received the application on December 19, 2002. The application was complete. The application included a completed building permit application form, three sets of contract drawings and specifications, and a check for \$391.75. The intent and purpose of petitioner's proposal is to renovate existing hotel rooms to provide low-income farm worker housing.

Petitioner has received commitments from various state and federal funding agencies to support its project. The City refused to accept and process petitioner's

application. The City's refusal was communicated by letter dated December 20, 2002 from City Planner David McDonald to Rod Butler.

The City has not and does not apply PMC §§ 25.12.156, 25.12.457, and 25.45.040(A) to other types of facilities to which these sections arguably could be applied.

Request for Relief

Petitioner requests the following relief:

- A determination and declaration by the Court that petitioner's proposal is a lawfully permitted use and that petitioner's application for a building permit should be granted.
- An order directing respondent City of Pasco to accept, process, and grant petitioner's application for a building permit.
- Declaratory judgment pursuant to Chapter 7.24 RCW that Pasco Municipal Code Sections 25.12.156, 25.12.457, and 25.45.040(A) are unconstitutional on their face and as applied to petitioner.
- An injunction prohibiting the City of Pasco from applying its Code Sections 25.12.156, 25.12.457, and 25.45.040(A) to petitioner and others, ordering the City to process and grant petitioner's building permit application, and providing such other equitable relief as the Court deems necessary.
- Leave to amend this complaint, if petitioner so moves, to include claims for money damages or compensation and other appropriate claims that by law petitioner is allowed but not required to join in the same complaint with the Land Use Petition,

and which claims are not subject to the procedures and standards, including deadlines, which apply to a Land Use Petition, under RCW 36.70C.030(1)(c).

- An award of petitioner's costs and disbursements, including reasonable attorneys' fees and expenses, to the fullest extent authorized by law.
- For such other relief as the Court deems just and necessary.

Dated this _____ day of January, 2003.

Respectfully submitted,

GENDLER & MANN, LLP

By:

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