

# Appeals court agrees to hear Oysterville case

## Oysterman hopes for an end to legal purgatory

By NATALIE ST. JOHN  
EO Media Group

OLYMPIA, Wash. — It ain't over yet. Oysterville Sea Farms owner Dan Driscoll's long-running legal dispute with Pacific County is going to the state Court of Appeals.

In a statement earlier this month, justices granted the county's request for review, saying they have concerns about how a Pacific County Superior Court judge handled an appeal of a previous South District Court decision in Driscoll's case.

While the appeals court review will take more of his time and money, Driscoll hopes it will provide some much-needed clarity about how local ordinances and zoning rules apply to the retail seafood shop he runs on the site of his family's historic Oysterville cannery.

"I hope this is moving forward," Driscoll said. "The state of purgatory has bothered me more than anything else. All I've wanted is to

know what I can do and can't do."

### History of the case

In June 2014, the county Department of Community Development cited Driscoll for violations of county ordinances and zoning rules. Officials alleged that by expanding the store's inventory and offering food, beer and wine, he overstepped the terms of the "grandfathering agreement" that allows his business to operate in a zone where commercial activity isn't allowed. The county alleges that Driscoll's business could harm the surrounding environment, and create a pathway for other businesses to set up shop along the ecologically sensitive shoreline of the Willapa Bay.

Driscoll asked for a hearing in South District Court, in hopes of getting a definitive answer about what he was and wasn't allowed to do. In fall 2015, Judge Doug Goelz upheld the county's citations, and fined Driscoll \$300. However, he also ruled that Driscoll did have the legal right to continue operating the shop, with certain limitations.

Acting at the direction of the county commissioners

and the Department of Community Development, Prosecutor Mark McClain tried to appeal the ruling in Pacific County Superior Court, arguing that a District Court judge did not have the legal authority to make land-use decisions. In January, visiting Superior Court Judge William Faubion dismissed the county's request for an appeal. But Driscoll also asked for, and was granted, an appeal.

In a July decision, Faubion reversed the citation conviction, and determined that Driscoll's business was not in either of the restrictive land-use zones the county believed it to be in. Furthermore, Faubion called many aspects of the county's rationale for pursuing legal action against Driscoll "erroneous," and said he did not see any evidence that Driscoll's business activities posed a threat to the environment.

### Justices weigh in

The county asked the appeals court to review Faubion's ruling, arguing that Faubion broke with standard

protocol for appeals cases. When hearing an appeal, a judge is only supposed to consider whether the evidence supported the lower court's findings. Instead, the county said, Faubion considered the evidence "de novo," meaning that he essentially started fresh, and heard the case again. The county also argued that the District and Superior Courts inappropriately used an infraction hearing to make decisions about a land-use issue.

The justices agreed with the county, saying, "The Superior Court's rulings appear to be de novo considerations of the factual issues before the District Court, rather than considerations of whether the record supported the District Court's findings. By making such de novo decisions, the Superior Court departed from accepted and usual course of a court sitting in an appellate capacity." Furthermore, the justices said the Superior Court "... sanctioned the District Court's departure from the accepted and usual course of judicial proceedings ..." by allowing it to

make a land-use decision — something that only Superior Courts can do.

"Obviously, I am pleased that the Court of Appeals has agreed with our review of the law as it relates to this case, but the most important aspect of this case, at least for me as the attorney representing the county, is that decisions are made which are consistent with our local land-use code," McClain said in an email.

### Driscoll and McClain respond

The appeals court has yet to set a date for hearing the case, but there isn't likely to be a new ruling any time soon. It can take several months for justices to hear arguments in a case. Then, a year or more can pass before the judges issue a decision.

If the justices uphold the Superior Court decision, it could finally bring an end to the legal dispute. However, if they overturn the decision, more legal wrangling is likely.

"It really is progress. I am happy that we're moving forward at least," Driscoll said. However, he is frustrated that his business plans will remain in limbo for the foreseeable future. Although Faubion's

ruling was largely favorable to Driscoll, it did not obligate the Department of Community Development to give him the food establishment license that he needs to operate legally. So, he still can't operate the business as he'd envisioned.

"I feel that all of this is being done for something that's already been determined," Driscoll said. "It's frustrating for people to jump through all the hoops to operate a business, but it's particularly frustrating to jump through all the hoops they've already jumped through."

In his statement, McClain said he had continued to pursue the case because the county commissioners felt it was extremely important to make sure that courts uphold local land-use laws.

"The county has, and certainly will, continue to attempt to solve these zoning issues so that Mr. Driscoll can operate his business while complying with the code. Hopefully, that will be the course in the future, rather than this protracted suit — but those are issues left to the Department of Community Development, the Board of Commissioners, Mr. Driscoll and his attorney," McClain said.

## Astoria pot store developer pulls permit application

By ERICK BENGEL  
The Daily Astorian

A business developer who sought to open a pot shop in a condominium complex near Pier 39 has withdrawn his permit application a week after the Astoria City Council turned down the project.

"At this time, the project will not be moving forward at this site," Julie Yuill, executive secretary to the city manager, said in a release Tuesday.

A special City Council meeting to hold a final vote, which was scheduled for Thursday, has been canceled.

Last week, the council unanimously overturned a Planning Commission deci-

sion allowing Daryl Bell to open the medical-recreational dispensary, called West, in the Cannery Lofts condos, Building A, on Abbey Lane.

The prevailing opinion of the Planning Commission was that Bell and his associates would be using the space as it was zoned for, namely, as a non-tourist retail establishment. Though the upper floors are residential units, the ground-floor spaces are mixed-use.

But, in response to an appeal brought by Heather Hansen, who lives in the condos, the City Council reversed the Planning Commission's decision.

The councilors agreed with Hansen, Clatsop Coun-

ty's community development director, that West would have been incompatible with the residential character of the property.

Cannery Lofts residents had also feared that the store would attract vagrants, create parking problems and increase security concerns on the premises.

After the City Council's initial vote, Bell said he would probably not appeal the council's decision to the state Land

Use Board of Appeals. The degree of opposition from condo residents did not sit well with him, Bell said, and he and his associates did not want to set up the store where they were not wanted.


Bell's project was the first proposed pot shop to get rejected by the city. Astoria has five marijuana dispensaries, but Bell's would have been the first at a mixed-use building with residents.

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