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**COMMUNITY PLANNING &  
ECONOMIC DEVELOPMENT DEPARTMENT**

Joshua Cummings, Director

*Creating Solutions for Our Future*

## MEMORANDUM

**TO:** Thurston County Planning Commission  
**FROM:** Amelia Schwartz, Associate Planner  
**DATE:** July 5, 2023  
**SUBJECT:** Work Session #3: CPA-21 Pogue Site-Specific Land Use Plan and Rezoning Amendment

### SUMMARY & DECISION POINTS

This is work session #3 on this topic. The Planning Commission has held a public hearing on June 21, 2023. At this work session, staff will present information requested by the Planning Commission.

Staff requests the following from the Planning Commission:

- Recommendation on the Pogue Site-Specific Land Use Plan and Rezoning Amendment (CPA-21).

### BACKGROUND

The applicant requests a site-specific land use and associated zoning amendment of approximately 1.5 acres (parcel 11606210300) located at 12625 Old Highway 99 SE, southwest of Offutt Lake and east of Millersylvania State Park. The request is to change the current land use designation and associated zoning from Rural Residential/Resource 1 Unit per 5 Acres (RRR 1/5) to Neighborhood Convenience Commercial (NC). Staff has presented the Planning Commission with three options to review and consider for recommendation to the Board of County Commissioners.

**Purpose of RRR 1/5** – to maintain the rural character of the county, buffer sensitive areas, and allow primarily for low-density single-family residential, resource-oriented uses, and open space.

**Purpose of NC** – to provide for the location of very small businesses that serve nearby residents with everyday convenience shopping goods and services.

A detailed staff report was provided to the Planning Commission on May 17, 2023 outlining the three options and considerations for each. Please reference the staff report for additional background and consistency with the Comprehensive Plan. The [Staff Report and Attachments](#) is listed on the project webpage on [thurstonplanning.org](http://thurstonplanning.org). The Planning Commission held a public hearing on June 21, 2023 and received two (2) written comments in support.

## SUMMARY OF CHANGES

If a land use amendment is approved, this proposal would amend the associated property or properties from RRR 1/5 to NC in the Thurston County Comprehensive Plan Future Land Use Map (Map L-1), Table 2-3 on p. 2-12 within Chapter 2 “Land Use,” and the “Official Zoning Map for Thurston County, Washington.”

## UPDATES TO COMMISSIONER FEEDBACK

### CONSISTENCY WITH COMPREHENSIVE PLAN AND ADDITIONAL CONSIDERATIONS

The May 17, 2023 Staff Report includes a section describing consistency with the Thurston County Comprehensive Plan on pages 5-7. The information from the staff report is copied below:

#### May 17, 2023 Staff Report

##### Land Use Designations: Attachment A

**Purpose of RRR 1/5** – to maintain the rural character of the county, buffer sensitive areas, and allow primarily for low-density single-family residential, resource-oriented uses, and open space.

**Purpose of NC** – to provide for the location of very small businesses that serve nearby residents with everyday convenience shopping goods and services.

- “Neighborhood convenience in rural areas should not exceed one acre in size. They commonly serve a population of less than 5,000.”
  - *The proposal would be consistent with the population size it should serve according to the land use designation description. The Census block (Block Group 1, Census Tract 126.10) that contains the area, including Offut Lake, has a population estimate of less than 1,500. Traffic counts for Old Highway 99 from 2017 indicate an average of 5,656 daily trips.*
  - *This proposal would be inconsistent with the maximum size in the land use designation description for NC in the Comprehensive Plan. The project parcel is approximately 1.48 acres in size, and the parcel adjacent to the south is 2.2 acres. The existing two parcels designated as NC currently exceed 4 acres in total. According to Thurston County Geodata, there are currently ten (10) sites of Neighborhood Convenience Commercial that are under the maximum 1-acre size. Sixteen (16) NC sites exceed this maximum.*

- “Most neighborhood convenience areas will consist of only one business. However, the various types of neighborhood convenience uses serving a given area should be clustered together in small, planned centers or around existing single businesses to avoid the development of commercial strips or many small businesses strung out along arterial roads.”
  - *Option 3, which includes the applicant’s parcel (11606210300 ) as well as the adjacent southern parcel (11606210400) in the rezone, would cluster businesses and commercial development. Option 2 may cause the appearance that businesses are “strung out along arterial roads.”*
  
- “The area has minimal natural resource management potential. Development of the area will have little detrimental impact on nearby agriculture, forestry, aquaculture, mineral deposits, or other natural resource uses.”
  - *Based on the review of environmental characteristics mapped in Thurston County Geodata, this site would likely not have a detrimental impact on nearby natural resource uses if converted to NC. Environmental regulations would also still apply upon application for development. The proposed change in land use designation does not alter or eliminate any environmental health or environmental protection requirements.*
  
- “Neighborhood convenience commercial areas should be located on a collector or arterial roads. New designations should be sited at intersections and at locations that are or can be freed of congestion problems resulting from topography or poor road design. Their siting should not result in significant traffic impacts on local streets serving residential areas. Utility service, including on-site, should be at a level appropriate to serve the intensity of proposed commercial activity.”
  - *Redesignating this site as Neighborhood Convenience Commercial would be consistent with the above statement, as Old Highway 99 is defined as an arterial road. The level of traffic and utility service will be reviewed upon application for development as that is use-dependent.*
  
- “In rural areas, neighborhood convenience uses may be located as needed for convenience and should be more widely separated than in urban growth areas.”
  - *Expanding the NC designation would maintain this standard, as even with the potential additional parcels, the location of NC sites would still be more separated than in Urban Growth Areas. (See Attachment B)*
  
- Design Standards (TCC 20.22): Min. Lot Size: 0.5 acres; Min. Lot Width: 100 ft
  - *The proposed parcel would be in accordance with the lot width and size standards for individual lots within the NC zoning district (TCC 20.22).*

Goals and Policies

*Land Use: Chapter 2, Thurston County Comprehensive Plan*

- **Goal 1 A.9.** Neighborhood convenience commercial uses should be permitted throughout rural areas, located at road intersections, and taking access from a collector

or arterial roads. Generally, other types of commercial uses should locate in the urban area, rural towns, or rural commercial centers.

- *The proposal to change the designation to NC is consistent with the requirement for NC to be located along an arterial road.*
- **Goal 1 B.10.** Rezoning of any parcel with a rural designation to a different designation should only occur when:
  - a. Circumstances have substantially changed since the current land use designation/zoning was adopted, and the definition, characteristics, or locational guidelines for the current district no longer apply;
  - b. The rezone would promote the general welfare of the affected community;
  - c. The rezone would maintain or enhance environmental quality; or
  - d. Thurston County pursues a legislative rezone.
    - *This proposal is a legislative rezone and would support the neighboring community.*

*Housing: Chapter 4, Thurston County Comprehensive Plan*

- **Goal 2 A.1.** The county should encourage that within rural areas, a variety of diverse residential development types and housing mixtures should be available, such as detached single-family housing, cluster housing, duplexes, and a residence in conjunction with commercial uses in neighborhood convenience centers.
  - *This proposal with the optional additional parcel would maintain consistency with this policy to have mixed development such as commercial and residential used together in the NC designation.*

*Economic Development: Chapter 8, Thurston County Comprehensive Plan*

- **Goal 1 D.9.** The county should encourage that, in rural parts of the county, priority business activities should be:
  - Home occupations and home-based industries;
  - Neighborhood convenience stores and rural commercial centers;
  - Industries associated with agriculture and/or the natural resource base;
  - Industries that are dependent upon a rural setting without urban services;
  - Agritourism and Tourism.
    - *This proposal would maintain consistency with this policy as it will allow for neighborhood convenience stores within the rural part of the county it is located in.*

**Additional Information**

In addition to the May 17, 2023 Staff Report, staff has gathered the following information on consistency with state and local code:

- RCW 36.70A.011 “a county should foster land use patterns and develop a local vision of rural character that will:
  - Help preserve rural-based economies and traditional rural lifestyles;

- Encourage the economic prosperity of rural residents;
- Foster opportunities for small-scale, rural-based employment and self-employment;
- Permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns;
- Be compatible with the use of the land by wildlife and for fish and wildlife habitat; Foster the private stewardship of the land and preservation of open space; and
- Enhance the rural sense of community and quality of life.”

*The NC designation could help to preserve the commercial uses existing on the adjacent property and their related employment and economic impact, as well as encourage additional rural-based economic opportunities which keeping small-scale.*

*The NC designation is specifically intended for small-scale, rural-based economic activity (TCC 20.22.010: The purpose of this district is to provide for the location of small businesses which have a high degree of compatibility with rural residential areas and are characterized by: (1) small buildings; (2) low traffic generation; and (3) operations with little late night activity. Its purpose is to serve the everyday personal needs of the rural neighborhood area.)*

- Rural Character is defined in RCW 36.70A.030(14) as “the patterns of land use and development established by a county in the rural element of its comprehensive plan:
  - (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
  - (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
  - (c) That provide visual landscapes that are traditionally found in rural areas and communities;
  - (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
  - (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low density development;
  - (f) That generally do not require the extension of urban governmental services; and
  - (g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.”

*The NC designation is intended to foster rural-based economies, employment, and service opportunities for the nearby rural community. Neighborhood Commercial does have a limit on the square footage of new buildings - up to 3,000 sq ft. Future development of the site for neighborhood commercial is compatible with adjacent uses which include other commercial sites to the south, railroad to the west, Old Hwy 99 to the east, and low density residential to the north.*

- TC CP Ch. 2 Pg. 10: “Desires of the citizenry for certain types of land uses over other types should be an important consideration in making land use decisions. Citizen

preference is important, for example, when deciding to give weight to one factor over another, or in deciding among conflicting factors.”

*Consideration should be given to the public comment received by members of the public familiar with the area.*

### **COMMISSIONER DISCUSSION ON 6/21/2023**

- Public Comment was in support of the change to NC, no comments against.
- The Planning Commission discussed the following findings of fact at the June 21, 2023 meeting:
  - Option 2 and 3 are inconsistent with the Neighborhood Commercial designation because both options are in excess of the 1-acre guideline.
  - The majority of NC areas within Thurston County are in excess of 1 acre, and the County should re-evaluate the size limitation as part of the periodic update.
  - A designation of Neighborhood Commercial would be more consistent for the existing businesses and commercial use occurring on the southern parcel.
  - The location is suitable for Neighborhood Commercial because it is directly between an active railroad and Old Highway 99 SE that conjoins into a triangle with commercial at the southern end. Therefore, this area could be better for commercial rather than residential.
  - The location directly supports a local community as the Neighborhood Commercial designation is intended.

### **HEARING EXAMINER DECISIONS FOR PREVIOUS SPECIAL USE PERMITS**

Previous commercial uses were approved via Hearing Examiner for Special Use permits in 1995 and 2006 for parcel 11606210400. Other commercial uses currently allowed by Special Use permits (TCC 20.54, Table 1) include (but are not limited to) daycare centers, greenhouses, kennels, and veterinary clinics. With consideration to changing policies and regulations, the Planning Commission requested to review the former Hearing Examiner decisions. Two previous decisions are attached in Attachment C.

### **ATTACHMENTS**

- Attachment A – Public Comment Matrix and Written Comments
- Attachment B – Not provided in mailing, please use link: [May 17, 2023 Staff Report and Attachments](#)
- Attachment C – Hearing Examiner Decisions for Special Uses on Parcel 11606210400



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Navigate Financial

June 2, 2023

Thurston County Community Planning & Economic Development

Attn: Amelia Schwartz, Project Planner

2000 Lakeridge Dr. SW, Bldg. 1

Olympia, WA 98502

DELIVERED VIA EMAIL: [Amelia.Schwartz@co.thurston.wa.us](mailto:Amelia.Schwartz@co.thurston.wa.us)

RE: Thurston County Public Hearing, June 21, 2023

Pogue Site-Specific Land Use and Rezoning Amendment

Dear Amelia Schwartz,

Thank you for the opportunity to provide comment for consideration by the Thurston County Community Planning Commission on the 2022-2023 Docket Item #CPA-21 Pogue: Site-Specific Map, Land Use Plan, and Rezoning Amendment.

This letter is in support of applicant's land-use application request for a zoning-change for this 1.48-acre parcel to be changed from Rural Residential Resource 1/5 to Neighborhood Commercial.

The Thurston Economic Development Council is very familiar with this area of rural Thurston County through our long-standing and on-going efforts in support of Thurston's rural communities through our South Thurston Economic Development Initiative (STEDI).

This small section of Old Highway 99 SE, at Offutt Lake Road, has a concentration of neighborhood commercial businesses, including a gas station/convenient store, a road house/eatery, and drive-thru coffee stand, which serve both residents of the area, as well as tourists venturing into our rural Thurston to explore amenities such as our Thurston County Bountiful Byway. As the property in consideration is directly adjacent to both the highway and these other commercial businesses, the EDC sees this location as appropriate for the addition of another small, locally-owned commercial venture.

The EDC is also very familiar with the applicant, Tom Pogue, and know him to be an engaged resident and small business owner, in good standing within our community. Mr. Pogue provides leadership in rural South Thurston, sitting on the board of the Tenino Area Chamber of Commerce. He owns just the kind of small, local businesses the residents of the area value, such as the beautiful Lady of the Lake restaurant and the Offutt Lake resort, which create cherished amenities, enriching the lives of locals, and also act as destinations to bring tourism dollars into this rural part of Thurston County.

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We are in support of Mr. Pogue's requested zone change and look forward to his addition of another small, locally owned business to serve nearby residents with a valued service, while maintaining the rural character of the county. And so we seek the County's favorable consideration to move the proposal forward.

Thank you for your consideration. Please do not hesitate to contact me should you have any questions on our support of this proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Cade".

Michael Cade  
Executive Director

## Amelia Schwartz

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**From:** Jens Jorgensen <donotreply@wordpress.com>  
**Sent:** Friday, June 9, 2023 3:06 PM  
**To:** Amelia Schwartz  
**Subject:** Incoming Comment on the Pogue Land Use and Rezone Amendment

# You got a new response!

**Name:**

Jens Jorgensen

**Email:**

jens@jorgensentimber.com

**Comments:**

Amelia Schwartz, In response to the Pogue family request to rezone 12625 Old Highway 99 SE to Neighborhood Convenience Commercial (NC), I am in FULL SUPPORT. We own five parcels on Offut Lake starting in the 80's, raised our kids here and have enjoyed the convenience of the Chevron "always busy", the long term food and bar establishment and of course the family owned coffee stand. The reason is its convenient and it saves the need to drive to Tumwater or Tenino for these services. Highway 99 and the intersection of the arterial of Offut Lake Rd is a logical area to expand the (NC) zoning designation as there are other services needed in this rural area that would be welcomed. The current use on the existing businesses is heavy from the locals so I assume the carbon topic is a consideration in the need to provide services close to the community?? Should you have any questions please let me know and I truly hope the County will approve (NC) zoning so the Pogue family can assist in providing further services close to our rural local population. Jens Jorgensen

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Time: June 9, 2023 at 10:06 pm

IP Address: 50.245.134.14

Source URL: <https://thurstoncomments.org/comment-on-the-pogue-land-use-rezone-amendment/>

Sent by an unverified visitor to your site.

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**HEARING EXAMINER**

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2006101216 (Kick Start Espresso)
	)	
<b>Geronimo Subia and Lisa Reese</b>	)	FINDINGS, CONCLUSIONS
	)	AND DECISION
For a Special Use Permit.	)	
_____	)	

**SUMMARY OF DECISION**

The request for a Special Use Permit to establish an espresso stand within the RRR 1/5 zone is **GRANTED**, subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Geronimo Subia and Lisa Reese (Applicant) requested a Special Use Permit (SUPT) to establish an espresso stand within the RRR 1/5 zone. The subject property is located at 12717 Old Highway 99 SE, Tenino, Washington, and is identified as Assessor Parcel Number 11606210400.

**Hearing Date:**

An open record hearing on the request was held before the Hearing Examiner of Thurston County on September 5, 2006.

**Testimony:**

At the open record hearing the following individuals presented testimony under oath:

- Kim Pawlawski, Associate Planner, Development Services Department
- Arthur Saint, Roads and Transportation Department
- Lisa Reese
- Geronimo Subia

**Exhibits:**

At the open record hearing the following exhibits were admitted into the record:

EXHIBIT 1 Development Services Planning & Environmental Section Report including the following attachments:

- Attachment a Notice of Public Hearing
- Attachment b Zoning Map
- Attachment c Special Use Permit Application, dated May 23, 2006
- Attachment d Narrative Summary, dated July 26, 2006
- Attachment e Site Plan, dated July 26, 2006
- Attachment f Site Plan generated by Thurston County Development Services Department Staff, dated August 22, 2006
- Attachment g Memorandum from Tom Gibbs, Thurston County Public Health & Social Services Department, dated July 20, 2006
- Attachment h Memorandum from Arthur Saint, Thurston County Roads & Transportation Services Department, dated July 10, 2006
- Attachment i Site photos, dated August 22, 2006

Upon consideration of the testimony and exhibits admitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

#### FINDINGS

1. The Applicant requested a SUPT to establish an espresso stand within the RRR 1/5 zone. The subject property is located at 12717 Old Highway 99 SE, Tenino, Washington, and is identified as Assessor Parcel Number 11606210400. *Exhibit 1, Staff Report, page 1; Exhibit 1, Attachments b, c, and d.*
2. The subject property is zoned Rural Residential Resource – One Dwelling Unit Per Five Acres (RRR 1/5). *Exhibit 1, Staff Report, page 2.* The purpose of the RRR 1/5 zone is to “encourage residential development that maintains the county's rural character; provides opportunities for compatible agricultural, forestry and other rural land uses; is sensitive to the site's physical characteristics; provides greater opportunities for protecting sensitive environmental areas and creating open space corridors; enables efficient road and utility systems; and does not create demands for urban level services.” *TCC 20.09A.010.* “Neighborhood Convenience Commercial” land uses are allowed in the RRR 1/5 zone with approval of a SUPT, provided that the use complies with the standards of the Neighborhood Convenience zone (TCC 20.22), and that the developed site does not exceed 2.5 acres. *TCC 20.54, Table 1; TCC 20.54.070(22).* Section 20.22.020 of the Thurston

County Code (TCC) identifies an espresso stand -- with or without a drive through -- as a Neighborhood Convenience land use. *TCC 20.22.020*.

3. The subject property is 2.2 acres in area. The proposed development site is the easternmost 8,400 square feet of the subject property. *Exhibit 1, Staff Report, page 1*.
4. Surrounding land uses include commercial development to the south and west, a single-family residence to the north, and Old Highway 99 SE to the east of the subject property. *Exhibit 1, Staff Report, page 2; Exhibit 1, Attachment b*. The espresso stand would be set back 120 feet from the north property line, and there is an existing buffer of trees between the project area and the residence. *Exhibit 1, Attachments d and i; Testimony of Ms. Pawlawski*.
5. The proposed espresso stand would be 120 square feet in area, and would be designed for drive through customers. There would be no interior seating area. *Testimony of Ms. Pawlawski; Exhibit 1, Attachments d and f*.
6. Neighborhood Convenience zoning standards require a minimum building setback of 35 feet from the edge of the right-of-way of an arterial street. Although the edge of the right-of-way has not been surveyed in the area of the subject property, stakes have been placed in the approximate right-of-way location -- 16 feet from the edge of the pavement. The Applicant proposes to set the espresso stand back 35 feet from the staked right-of-way line, or 51 feet from the edge of the pavement. Thurston County Roads and Transportation Department staff has approved the inferred right-of-way location and the proposed building location. In the event that a future survey indicates a wider right-of-way, the espresso stand could be moved without difficulty. *Exhibit 1, Staff Report, page 5; Exhibit 1, Attachments f and i; Testimony of Ms. Pawlawski; Testimony of Mr. Saint*.
7. Access to the espresso stand would be from a looped access drive from Old Highway 99. The espresso stand would be located such as to provide adequate vehicle circulation and stacking space. *Exhibit 1, Attachments d and f; Testimony of Mr. Saint*.
8. Thurston County parking standards do not identify a parking requirement for an espresso stand use. It is anticipated that the espresso stand customers would drive to the site, because the highway location is not pedestrian-friendly. Staff recommended that the Applicant provide a total of three parking spaces on site, including one employee parking space, one customer parking space, and one disabled parking space. Although the Applicant has not yet identified the parking spaces on the site plan, staff submitted that there is adequate area on site for the parking spaces.<sup>1</sup> *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachment f; Testimony of Ms. Pawlawski*.

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<sup>1</sup> The Applicant had originally proposed to use the parking spaces associated with a home-based industry that had previously been approved on the subject property (SUP-94-014). The home-based industry had been conducted in a building located 24 feet west of the proposed espresso stand. The building is still standing, but County staff has determined that the home-based industry permit has expired. Consequently, there are no longer parking spaces that can be shared with the espresso stand use. *Exhibit 1, Staff Report, page 2; Exhibit 1, Attachments d and f*.

9. Section 20.45.040 of the Thurston County Code requires commercial uses to provide a minimum five-foot landscaped buffer strip along all public rights-of-way and adjacent to residential districts or uses. The Applicant proposes to provide a five-foot-wide landscaped buffer strip consisting of rhododendrons and other plants between Old Highway 99 and the espresso stand. The existing trees along the northern property line provide adequate buffering between the espresso stand and the residential use to the north of the subject property. *Exhibit 1, Attachments d, e, and i; Exhibit 1, Staff Report, page 3.*
10. The Neighborhood Convenience design standards (TCC 20.22.040) require a minimum open space set-aside of 15 percent. *TCC 20.22.040.* For the 8,400-square-foot development site, 1,260 square feet of open space is required. The current site plan does not identify the required open space area. *Exhibit 1, Staff Report, page 4; Exhibit 1, Attachment f.*
11. Planning staff submitted that the designated open space must be developed as either active or passive recreation space per TCC 20.32.030 (Dedication criteria). *Testimony of Ms. Pawlawski.* This code section includes a provision that “thirty percent of the dedicated open space area shall be suitable for active recreation”<sup>2</sup>, but allows the amount of active recreation to be reduced to zero if “(A) inclusion of buffers or environmentally lands such as wetlands would better meet the open space needs of the residents of the subdivision; or (B) meeting the standard would require substantial grading or other disturbance of the natural setting.” *TCC 20.32.030.* The proposed development site consists of a gravel parking area with small grassy areas along the northern property line and between the two vehicular access points from Old Highway 99. Staff submitted that it would be reasonable to reduce the active recreation space requirement to zero, and require instead that the 1,260 square feet of open space area be used for passive recreation purposes.<sup>3</sup> The installation of benches or picnic tables could satisfy the passive recreation requirement. The open space would not be dedicated to the County. *Exhibit 1, Staff Report, page 4; Exhibit 1, Attachment i; Testimony of Ms. Pawlawski.*
12. There would be no restroom facilities on the site. The Applicant has obtained permission for employees of the espresso stand to use the restroom facilities of a business to the east of the subject property. *Exhibit 1, Attachment d.*
13. The Thurston County Environmental Health Department reviewed the proposal and recommended approval, on condition that the Applicant obtain plan review approval from the Food and Environmental Services Section, which would address sewage disposal methodology and the proposed water supply. *Exhibit 1, Attachment g.*
14. The proposed development is exempt from review under the State Environmental Policy Act (SEPA) because the gross floor area of the use would be less than 8,000 square feet,

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<sup>2</sup> The TCC defines active recreation as “leisure activities, usually performed with others, often requiring equipment and taking place at prescribed places, sites or fields.” *TCC 20.03.040(111).*

<sup>3</sup> The TCC defines passive recreation as “low intensity recreation activities including, but not limited to, hiking, canoeing, viewing, nature study, photography and fishing.” *TCC 20.03.040(111.5).*

and the associated parking facilities would be designed for less than 30 automobiles. *Exhibit 1, Staff Report, page 2; WAC 197-11-800.*

15. Notice of the open record hearing was mailed to properties within 500 feet of the site on August 22, 2006, posted on site on August 24, 2006, and published in *The Olympian* on August 25, 2006. *Exhibit 1, Staff Report, page 2; Exhibit 1, Attachment a.*

## **CONCLUSIONS**

### Jurisdiction:

The Hearing Examiner is granted jurisdiction to hear and decide applications for Special Use Permits pursuant to Chapter 36.70 of the Revised Code of Washington and Section 20.54.015 of the Thurston County Code.

### Criteria for Review:

The Hearing Examiner may approve an application for a Special Use Permit only if the standards set forth in TCC 20.54.040 are satisfied:

1. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws or plans.
2. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
3. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
  - a. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though the adverse effects may occur.
  - b. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

Conclusions Based on Findings:

1. With conditions of approval, the proposal would satisfy the criteria for a SUPT.
  - a. The proposal would be consistent with all applicable laws and plans. The policies of the Thurston County Comprehensive Plan are implemented through the regulations of the Thurston County Code. As described in detail below, the proposal would be consistent with these regulations. The proposed development is exempt from review under the State Environmental Policy Act. *Finding No. 14.*
  - b. The proposal would comply with the purposes and intent of the RRR 1/5 zone, and with the development standards applicable to Neighborhood Convenience land uses, as required by TCC 20.54.070(22). This project would be compatible with surrounding rural residential land uses and would not create a demand for urban level services. The developed site area would be less than 2.5 acres. The espresso stand building would comply with the setback standards of the Neighborhood Convenience zone. The landscaping would comply with TCC 20.45.040. *Findings Nos. 2, 3, 4, 6, and 9.*

There is adequate area on site to accommodate the open space standard of the Neighborhood Convenience zone. This open space must be designated on the site plan, but need not be developed as active or passive recreation space. Although from the definitions set forth in TCC 20.03.040 it is apparent that all recreation space must be either passive or active, it is not apparent that all open space must be recreation space. Although TCC 20.32.030 contains an active recreation space requirement (which may be reduced to zero), it does not explicitly require the remainder of the open space to be used for passive recreation. In addition, TCC 20.32.030 does not appear to be applicable to the type of development proposed. TCC 20.32.030 contains standards for “dedication” of open space, and makes numerous references to residential development. It also states, “this title does not require the installation of recreational facilities.” The open space on the subject property would not be dedicated to the County, and the development is not a residential subdivision. It would be unusual, and likely contrary to the public health, safety, and welfare, to require this drive through espresso stand to provide either active or passive recreational amenities. The site is a gravel parking area off the highway, with only limited grassy areas. There would be no restroom facilities and only one non-disabled customer parking space. Customers should not be encouraged to stay on this site for recreation purposes. The proposed development would comply with the open space standard of the Neighborhood Convenience zone if 1,260 square feet of the site were designated as open space on the site plan. *Findings Nos. 8, 10, 11, and 12.*

- c. The proposed use would be appropriate in the location for which it is proposed.
      - i. The proposed use would not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting

the public health, safety and welfare. The espresso stand would be screened from the nearest residential use by an existing buffer of trees. The espresso stand would not require modification of the natural environment. The three parking spaces recommended by staff would provide adequate parking. *Findings Nos. 4, 7, 8, and 9.*

- ii. The use would be adequately served by, and would not impose an undue burden on, utilities. *Findings Nos. 12 and 13.*

### **DECISION**

Based upon the preceding Findings and Conclusions, the request for a Special Use Permit to establish an espresso stand within the RRR 1/5 zone at 12717 Old Highway 99 SE is **GRANTED**, subject to the following conditions:

- A. All development on the site shall be in substantial compliance with the approved site plan and landscape plan. Any expansion or alteration of this use beyond that initially approved by the Hearing Examiner will require approval of a new or amended Special Use Permit. The Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
- B. The proposed development will require a commercial building permit from the Thurston County Development Services Department.
- C. Future applications for signs for the espresso stand shall comply with TCC 20.40 as amended.
- D. Prior to issuance of a building permit, the Applicant must obtain plan review approval from the Food and Environmental Services section of the Thurston County Public Health & Social Services Department. A portion of that review and approval process will include approval of a sewage disposal method and system. Additionally, that review will include verification of the public water system approval by the Washington State Department of Health.
- E. Prior to issuance of Final Occupancy of the commercial structure, the Applicant shall designate a total of three parking spaces on site, including one employee parking space, one customer parking space, and one disabled parking space.
- F. Prior to issuance of Final Occupancy of the commercial structure, the Applicant shall designate 15 percent of the development site as open space per TCC 20.22.040, and identify such open space on the site plan.

Decided this 18<sup>th</sup> day of September 2006.

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LeAnna C. Toweill

ORIGINAL

RECEIVED

FEB 17 1995

THURSTON CO. PLANNING DEPT

**OFFICE OF THE HEARING EXAMINER FOR THURSTON COUNTY**

<b>RE:</b> Special Use Permit	)	
Application of L.E. and	)	<b>FILE NO. SUP-94-014</b>
Marlene Adelhart to	)	
establish a business	)	
buying and selling	)	<b>FINDINGS, CONCLUSIONS,</b>
antiques and new and used	)	<b>AND DECISION</b>
appliances as a home-	)	
based industry on 2.24	)	
acres zoned Rural	)	
Residential/Resource -	)	
One Dwelling Unit Per	)	
Five Acres	)	

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** L.E. and Marlene Adelhart are seeking to establish on 2.24 acres zoned Rural Residential/Resource - One Dwelling Unit Per Five Acres (RRR-1/5) and situated at 12717 Old Highway 99 Street a home-based industry consisting of a business buying and selling antiques and new and used appliances.

**Decision:** Approval, subject to conditions.

**PROJECT AND SITE INFORMATION**

The Hearing Examiner hereby adopts the description of the site, the request, and the surrounding area and the zoning history of the site stated in the Community Development Department Report and Recommendation, attached hereto as Exhibit 1.

**BACKGROUND AND PROCEDURAL INFORMATION**

**Hearing Date:** January 3, 1995

**SEPA:** Exempt

**Testimony:**

Amy Kurtenbach, Thurston County Planning Department, presented the Planning Department Report and Recommendation (Exhibit 1). In addition, she testified to the following: The staff does not believe that this proposal will result in the creation of a non-residential cluster because the area in which the property is situated, defined by Old Highway 99 and the railroad track, is already non-residential in character. This proposal is compatible with the existing non-residential uses.

Some changes need to be made to the recommended conditions of approval. A new condition limiting the number of employees should be added. Condition F should be amended to state that the hours of operation shall be limited to 8 a.m. to 5 p.m. Mondays through Saturdays, excluding holidays, on which there shall be no business operations.

The Planning staff recognizes that recommended Condition C presents some enforcement problems. Originally, the condition stated that no more than 25% of the business operations could be dedicated to the sale of appliances. Staff felt that it would be too difficult to determine whether more than 25% of the business was dedicated to the sale of appliances. Staff concluded that a better standard was a preponderance of the business. Condition C is intended to prohibit the sales of appliances becoming the preponderant element of the business.

Art Starry, Thurston County Health Department, testified to the following: The water supply for the business must be a community water supply. The septic system must be designed for the special use. The Health Department will not issue any permit for the buildings until the water system is in place and a septic system has been approved for the use.

L.E. Adelhart, applicant, testified to the following: He has read the Planning Department Report and Recommendation and concurs with it. He will comply with all County standards. The building he is proposing is as large as he could get approved. When the area inside that is needed for an office and for bathrooms is taken away, he will have about 3,000 square feet of floor area available for sales and display activities. He does not know how many customers he will have per day since he is just starting this business. He hopes it will eventually be 25 to 30. The location of the proposed driveway is based on the Department of Transportation approval. He included on his application the possibility that he might sell appliances just to cover the possibility. He does not expect that the sales of appliances and used furniture and similar items or the floor area dedicated to such items would at any time exceed 50%. He does not plan on having any employees. He would like to have the ability to open

the store on Sundays, but he could live with the restriction if necessary.

Amy Kurtenbach, testified in response to a question by the Hearing Examiner that the other businesses in the immediate vicinity of the site have hours of operation that include Sundays.

**Exhibits:**

1. Planning Department Report and Recommendation and attachments thereto.
2. Site Plan
3. Title Report showing shared driveway easement with the property to the south

**DISCUSSION**

This proposal does not raise any significant issues. The Hearing Examiner agrees with the Planning Department that this proposal will not result in the creation of a non-residential cluster in this residentially zoned area because the property is in a fairly well established and defined area of commercial uses, that is to say, the area between Old Highway 99 Street and the railroad track. These boundaries can and do define a reasonable area where commercial uses may be limited.

The Hearing Examiner does not believe that it is significant whether the applicant sells antiques or new and used appliances. There is no reason to believe that the general character of the business and the off-site impacts it would create would change based on what sort of items were sold. The applicant has indicated that the primary purpose of the business is to buy and sell antiques. For these reasons, the Hearing Examiner believes that recommended condition C in the Planning Department Report and Recommendation is an appropriate one.

The Planning Department has recommended that the applicant not be allowed to open the business on Sundays. The applicant has indicated that he would like to have the authority to operate the business on Sundays. According to the staff, the existing businesses in the area have Sunday business hours. Therefore, this decision will allow the applicant to have Sunday business hours.

## **FINDINGS AND CONCLUSIONS**

The Hearing Examiner hereby adopts the findings and conclusions of the Planning Department as stated in its Report and Recommendation without changes or additions.

### **DECISION**

The Hearing Examiner hereby **APPROVES** the Special Use Permit Application of L.E. and Marlene Adelhart to establish a home-based industry selling antiques and new and used appliances at the property situated at 12717 Old Highway 99 Street (Case No. SUP-94-014). Approval is subject to the following conditions recommended by the Planning Department in its Report and Recommendation:

- A. Prior to or in conjunction with the issuance of any building permit, all regulations and requirements of the Thurston County Environmental Health Division, Thurston County Roads and Transportation Services Department, Thurston County Fire Marshall, and the Thurston County Planning Department shall be met.
- B. No outside storage of materials shall be permitted.
- C. Approval of the special use permit is for an antique business. Appliances may be sold on site if they are subordinate to the antique business. The Planning Department will determine if the merchandise sold meets the intent of this Special Use Permit as an antique business and; if the distribution of retail merchandise has changed to an extent that is substantial enough that Hearings Examiner approval would be required.
- D. The applicant will need to secure a business license to operate an antique store. The business license will need to be renewed yearly for as long as the store is in operation.
- E. One sign with a maximum size of 32 square feet per side will be allowed; or alternatively, two signs attached to the building below the roof line, or placed close to the building, with a combined size not to exceed 32 square feet. Signs shall be unlit and shall use nonflashing, nonreflective materials. Colors shall be nongarish and consistent with residential character.
- F. The hours of operation shall be limited to 8:00 a.m. to 5:00 p.m. seven days a week.
- G. The site shall contain a minimum of eighteen (18) marked

parking gravel parking spaces. All parking spaces shall be marked with paint, wheel chocks, curbing, bumper stops, or other similar devices. Bumper stops or similar devices shall also be provided to prevent any vehicle from damaging or encroaching upon any sidewalk or upon any building where adjacent.

- H. With the exception of access points, a vegetative buffer shall be planted along the north and south property lines and along Old Highway 99. The buffer shall be a minimum of five feet wide. The north and south property lines shall be densely planted with shrubs or trees at least four feet high at the time of planting and which are of a type that may be expected to form a dense year-round screen within three years. The buffer shall be planted no later than the next appropriate planting season. The buffer shall be maintained so long as the special use is located on the site. The buffer along Old Highway 99 can be aesthetic and need not be sight obscuring. Grass and low shrubs would be adequate. No planting is required along the railroad right-of-way.
- I. A minimum of 10 percent of the parcel shall be designated as open space. The open space may include the buffers and stormwater detention or retention areas.
- J. Lighting shall be designed and shall function in a manner which shields direct light from adjoining streets and properties.
- K. The site shall be maintained in a neat and orderly manner at all times.
- L. A new site plan will need to be submitted which contains all of the conditions set forth in this permit subject to Hearings Examiner approval. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use will require approval of a new or amended Special Use Permit. The Planning Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DATED this 17<sup>th</sup> day of February, 1995.

  
\_\_\_\_\_  
**Campbell H. D. Kintz**  
**Hearing Examiner for Thurston County**

A copy or notice of this Decision was transmitted on the 17<sup>th</sup> day of February, 1995, by the Thurston County Planning Department to the following:

L.E. and Marlene Adelhart  
12743 Old Highway 99 Street  
Tenino, WA 98589

**APPEAL OF HEARING EXAMINER'S DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_.

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearings Examiner's decision:

**(If more space is required, please attach additional sheet.)**

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearings Examiner:

- 1. Zoning Ordinance \_\_\_\_\_
- 2. Platting and Subdivision Ordinance \_\_\_\_\_
- 3. Comprehensive Plan \_\_\_\_\_
- 4. Sub-Area Plan \_\_\_\_\_
- 5. Shoreline Master Program \_\_\_\_\_

AND FURTHERMORE, prays that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearings Examiner's decision.

**RECONSIDERATION OF HEARINGS EXAMINER'S DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearings Examiner's decision hereby requests that the Hearings Examiner take the following additional information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

\_\_\_\_\_  
SIGNATURE OF APPELLANT

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_

Filed with the Planning Department this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**THURSTON COUNTY**  
**HEARING EXAMINER APPEAL PROCEDURE**

Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 21st day after the date of the decision.\*

(The Examiner renders decisions within twenty (20) days following a hearing unless a longer period is mutually agreed to by the Examiner and applicant.)

**NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).**

There are two (2) ways of obtaining reconsideration of Hearing Examiner decisions:

**A. RECONSIDERATION BY THE HEARING EXAMINER**

1. Any aggrieved person or agency who disagrees with the decision of the Examiner may request reconsideration.
2. Written request for reconsideration must be filed with the Planning Department within twenty (20) days of the written decision. The form is provided for this purpose on the opposite side of this notification.
3. There is no fee required for reconsideration.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of appeal and a filing fee must be filed with the Planning Department within twenty (20) days of the date of the Examiner's written decision or within ten (10) days of the date of the Examiner's decision on a reconsideration request. The appeal must concisely specify the error or issue the Board is asked to consider on appeal. The form is provided for this purpose on the opposite side of this notification.
3. An appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of appeal shall concisely specify the error or issue which the Board is asked to consider on appeal, and shall cite in the notice of appeal or accompanying memorandum, by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. Issues which are not so identified need not be considered by the Board. The notice shall be accompanied by any written memorandum which the appellant may wish considered by the Board. Memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the appeal hearing will be mailed to all parties of record, which include all persons who (a) gave oral or written comments to the Examiner or (b) listed their names, as persons wishing a copy of the decision, on a sign-up sheet which is available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the site, no one other than County staff may accompany the Board members during their view.

**C. APPEAL REQUESTS.** If you wish to appeal this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of \$200. Any appeal must be received in the Planning Department office on the second floor of Building #1 in the Thurston County Courthouse complex no later than 5:00 p.m. on 3-9-95 (twenty (20) days from the date the decision is ordered). Postmarks are acceptable. If your application fee as well as completed application form is not filed by this time, you will be unable to appeal this determination. This deadline may not be extended.

\* Shoreline Permit decisions are not final until a 30-day appeal period to the state has elapsed following the date the local decision becomes final.

CASE NO. SUP-94-014

LE AND MARLENE ADELHART  
12743 OLD HIGHWAY 99  
TENINO WA 98589

DOREEN MILWARD  
P.O. BOX 187  
OLYMPIA WA 98507

ROADS & TRANSPORTATION  
DEVELOPMENT REVIEW

BILL RIPPLE  
THE TACOMA NEWS TRIBUNE  
P.O. BOX 1100  
TACOMA WA 98411

BUILDING & FIRE SAFETY

SANDY SNELL  
KQEU RADIO  
P.O. BOX 48  
OLYMPIA WA 98507

SANDRA STEFFLER  
- - -  
*W/STAFF REPORT*

KGY RADIO  
P.O. BOX 1249  
OLYMPIA WA 98507

BOARD OF COUNTY  
COMMISSIONERS--  
SUSAN SYGITOWICZ

THE OLYMPIAN  
ATTN: JOEL COFFIDIS  
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OLYMPIA WA 98507

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TRPC

ROADS & TRANSPORTATION  
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ENV HEALTH DEPT  
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