



COUNTY COMMISSIONERS

John Hutchings  
District One

Gary Edwards  
District Two

Tye Menser  
District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2019100401
	)	
<b>YWAM, Faith Harvest Helpers</b>	)	<b>SUPPLEMENTAL FINDINGS</b>
	)	<b>AND CONCLUSIONS</b>
	)	<b>ON REMAND FROM BOARD OF</b>
For a Reasonable Use Exception	)	<b>COUNTY COMMISSIONERS</b>
_____	)	

**SUMMARY OF REMAND RECORD**

**Request**

Following a June 17, 2020 decision denying the above-captioned reasonable use exception application, Applicant Faith Harvest Helpers appealed the denial to the Board of Thurston County Commissioners. After its hearing on the matter, the Board remanded the application to the County’s Hearing Examiner on September 22, 2020 to answer the following three questions:

- 1) Is the subject property within the Agritourism Overlay District (AOD), Chapter 20.08.G?
- 2) If the subject property is within the AOD, does TCC Chapter 20.08 exempt the requested structures from compliance with either the general critical areas ordinance at TCC Title 24 or the agricultural activities critical areas ordinance at TCC Chapter 17.15?
- 3) Based on the findings and conclusions entered in response to the questions above, are the requested structures exempt from the critical areas ordinance, and if not has the Applicant satisfied the criteria for RUE?

-

In order to address these questions, an Order Reopening the Record Following BOCC Remand was issued in order to supplement the record. Consistent with that order, the following documents were submitted:

**Exhibits**

The following supplemental exhibits were admitted into the record:

- Exhibit 5      Memorandum to the Examiner from Brett Bures, County Building and Planning Manager, dated October 21, 2020 with the following attachments:
1. Thurston County Geodata map depicting the subject parcel’s boundaries within the Agritourism Overlay District
  2. Thurston County Geodata map depicting the subject property’s location within the Agritourism Overlay District
- Exhibit 6      Applicant’s memorandum in response to County’s memorandum, dated October 27, 2020

Also included in the record are the following:

- Board of County Commissioner’s Remand Order, dated September 22, 2020
- Order Reopening the Record Following BOCC Remand, dated September 29, 2020

Based upon the record developed at the open record hearing together with the supplemental information gathered on remand, the Hearing Examiner enters the following supplemental findings and conclusions intended to be appended to the original June 17, 2020 Decision (Decision).

**SUPPLEMENTAL FINDINGS**

*Question 1: Is the subject property within the Agritourism Overlay District?*

1. At the virtual open record hearing on May 26, 2020, Applicant representatives argued for the first time<sup>1</sup> the following: that the subject property was within the Agritourism Overlay District (AOD); that because of its location in the AOD and the allegedly agricultural nature of activities conducted on site, site activities should be evaluated for compliance with the critical areas ordinance at TCC Chapter 17.15, Agricultural Activities Critical Areas, rather than Title 24, Critical Areas; that therefore the structures which Applicant sought to retain did not in fact require reasonable use exception; and that the permit that was the subject of the hearing should not have been required. *See Decision, Finding 16.*

---

<sup>1</sup> Note that, from the record presented at hearing, the County has been engaging the Applicants regarding neighbor complaints resulting from onsite activities since 2016, and the May 2020 public hearing was the first time this agricultural activities argument was forwarded.

- 
2. One neighboring property owner, in public comment, submitted copies of County AOD mapping, contending that the subject property was not inside the AOD, and that even if it were within the AOD, the activities pursued on site amount to construction of a missionary campus, construction and operation of a cannery, and construction and inhabitation of staff and volunteer housing, which would require land use review and permitting even within the AOD. *See Decision, Finding 23.*
  
  3. At hearing, Planning Staff responded to the Applicant's AOD-exemption/ TCC Chapter 17.15 argument, contending that the question of whether the site is within the mapped AOD is not relevant to these proceedings, which are solely for the purpose of determining whether the criteria for RUE can be met. Staff indicated that the proposed uses, even if in the AOD, would still require review for compliance with the same critical areas standards and would require land use permits, some perhaps special use permits, if allowed at all. *See Decision, Finding 24.* Staff did not submit mapping during the hearing process, and the undersigned undertook to discover publicly available County mapping of the AOD upon which firm findings could be entered addressing whether the property was within the AOD. *See Decision, Finding 27.*
  
  4. On Remand following Applicant's appeal of RUE denial, the Board of County Commissioners (Board) determined that the Decision (specifically Finding of Fact 27) was ambiguous as to whether or not the subject property is within the designated Thurston County Agritourism Overlay District (AOD). Finding 27 stated as follows:
    27. County mapping available online appears to show that the AOD does not extend north of Maytown Road. <https://www.co.thurston.wa.us/permitting/agriculture/agriculture-tourism.html>; <https://www.co.thurston.wa.us/permitting/agriculture/docs/agritourism-update-2014-map.pdf> (map dated January 23, 2014); <https://www.co.thurston.wa.us/permitting/agriculture/docs/bountiful-byway-map.pdf> (map dated February 6, 2014). The subject property appears to be more than 1,000 feet north of Maytown Road. *Google Maps site view.*

*See Decision, Finding 27.* This finding was based on the undersigned taking judicial notice of publicly available mapping from the County website, which showed the AOD boundary did not extend north of Maytown Road.
  
  5. In response the Order Reopening the Record Following BOCC Remand, County Staff submitted mapping depicting the subject property is within the AOD, and confirmed that the property is located within the AOD.<sup>2</sup> *Exhibit 5, 5.1, and 5.2.*

*Question 2: If the subject property is within the AOD, does TCC Chapter 20.08 exempt the requested structures from compliance with either the general critical areas ordinance at TCC Title 24 or the agricultural activities critical areas ordinance at TCC Chapter 17.15?*

---

<sup>22</sup> The County's response does not shed any light on the discrepancy between the mapping attached to its response (Exhibit 5, Attachments 1 and 2) and the mapping referenced in the original Decision Finding 27. In fairness to staff, the Order Reopening the Record Following BOCC Remand did not expressly request the discrepancy to be addressed.

6. In the County response to the Order Reopening the Record Following BOCC Remand, Community Planning and Economic Development Staff submitted the following:

The fact that the subject property is within the Agritourism Overly District (AOD) does not change the department's position. [...] The AOD (Chapter 20.08G TCC) does not address or even mention critical area requirements, let alone direct whether TCC 17.15 or TCC 24 applies. The AOD has no bearing on the Hearing Examiner's review of the applicant's request for a RUE.

While the AOD may exempt certain agritourism uses where such use may be prohibited under applicable zoning, it does not serve as a blanket exemption from all County requirements. The AOD exempts several agritourism "uses," such as farm tours, roadside farm sales, small scale commercial uses, and short-term events from needing to acquire additional land use approval (TCC 20.08G.030 & 040). For example, where zoning may prohibit commercial use, a property owner in the AOD would nonetheless be entitled to use their land for some limited commercial purposes as prescribed under TCC 20.08G. However, all permissible land uses under Title 20 still need to meet other requirements in County code. This is clearly confirmed in the AOD chapter. "AOD activities shall comply with all applicable county health, resource stewardship [CPED] and public works department requirements and standards." TCC 20.08G.020(4), General Standards. Other requirements would include CPED's critical area requirements and other departmental requirements outside of Title 20.

Again, certain agritourism activities are permissible uses under zoning, but such uses still need to meet all other CPED requirements, such as those that ensure building safety or environmental protection. Regardless of the underlying "use," the AOD does not exempt buildings from needing to follow other requirements that are under the County's responsibility. The AOD has no bearing on the Hearing Examiner's earlier decision. ....

The fact that the subject property is within the AOD does not transfer RUE review from TCC Title 24 to TCC Chapter 17.15. Whether the applicant was misdirected in applying for a RUE under Title 24, in the first place, is not within the scope of the BoCC's remand. However, for sake of clarity, the following explanation is offered. The proposed project is subject to Title 24 since it involves structures that have never been permitted before. The breakdown for when Title 24 is applied versus Title 17 lies within the State definition for "agricultural activities" in the Shoreline Management Act. Both Title 24 and Title 17 reference a Growth Management Act definition, which in turn references the definition of "agricultural activities" in RCW 90.58. See the following sequence of references:

*TCC 24.01.025 - Applicability of critical areas regulations.  
The provisions of this title for regulating critical areas shall apply to all land, all water areas and all structures, and all uses irrespective of lot lines in the unincorporated territory of Thurston County, Washington, except for agricultural activities (new and existing). Agricultural activities meeting the requirements of TCC Section 17.15.110 shall be regulated by Chapter 17.15 TCC.*

When you jump to the referenced section in Title 17, you find:

*TCC 17.15.110 - Applicability.  
A. This chapter shall apply to agricultural activities (new and existing) as defined in the Growth Management Act, as amended (RCW 36.70A.703).*

B. *The Thurston County Critical Areas Ordinance (Title 24) applies to all other uses, structures, and lands not defined as agricultural activities in the Growth Management Act, as amended (RCW 36.70A.703).*

*RCW 36.70A.703*

*"Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.*

*RCW 90.58.065*

*"Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation; (emphasis added)*

A new structure or use that is proposed where there was no ag structure or use prior will be reviewed under Title 24. This is because "agricultural activities," as defined in state law above, does not include construction of new buildings or new development. Only repairs/replacement of existing legally established ag structures can be reviewed via Title 17.

It is also worth noting that it is unknown whether the three structures in the applicant's proposed project would be used for "agricultural" operations in the first place. The application provided during the Title 24 RUE process did not include this information.

*Exhibit 5.*

7. In their response to Exhibit 5, the Applicants agreed that the property is within the AOD and reiterated the arguments forwarded at hearing. Arguing that TCC Chapter 17.15 applies in place of TCC Title 24, the Applicant cited TCC 17.15.110.A's inclusion of "new and existing agricultural activities" as regulated by TCC 17.15. They asserted that per RCW 36.70A.703, incorporating by reference RCW 90.58.065's definition of agricultural activities as including "maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility." *Exhibit 6, page 5, highlighted.* They argued that "agricultural facilities" includes "farm residences and associated lands, equipment, and facilities." *Exhibit 6, page 6, highlighted.*

*Question 3: Based on the findings and conclusions entered in response to the questions above, are the requested structures exempt from the critical areas ordinance, and if not has the Applicant satisfied the criteria for RUE?*

This question calls for conclusion, rather than findings.

## SUPPLEMENTAL CONCLUSIONS ON REMAND

### Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exceptions pursuant to TCC 2.06.010(F) and TCC 24.45.030.

### Conclusions Based on Findings

1. The supplemented record shows that the subject property is within the AOD. *Findings 1, 2, 3, 4, and 5.*
2. These proceedings originate from - and are properly limited to - the decision of whether the application materials demonstrate compliance with reasonable use exception criteria. As stated in conclusion 1 of the June 17, 2020 Decision,

The application under consideration is for reasonable use exception. The Hearing Examiner's jurisdiction in permit applications is limited to the determination whether the materials submitted show compliance with permit criteria for approval and applicable development standards. The County's Hearing Examiner lacks authority to, on the request of an applicant for permit A, decide that permit B - or process B - should have been implemented and require the Planning Department to take alternative action. This argument is outside the scope of these proceedings. *Decision, Conclusion 1.*

With sincere respect, the Board's second question asks the County's examiner to opine in the first instance - outside the appellate capacity of an appeal of an administrative decision issued by the Community Planning and Economic Development Department - what procedures should apply to a given set of facts outside the scope of a permit application under consideration. This is something the County's examiner has never done in 16 years as the County's examiner<sup>3</sup> and is extremely reluctant to do.

Washington courts have reasoned, "[a]n agency acting within the ambit of its administrative functions is best qualified to interpret its own rules[.]" *D.W. Close Co., Inc. v. Dept. of Labor and Industries*, 143 Wn. App. 118, 129 (2008). Deference in this context is based on the recognition that "the agency has the expertise and insight gained from administering the regulation that. . . the reviewing court do[es] not possess." *Silverstreak, Inc. v. Dept. of Labor and Indus.*, 159 Wn.2d 868, 884 (2007). The undersigned respectfully submits that the County's examiner does not have greater claim to such expertise than reviewing courts have. Rather, the County's Planning Department, as the agency to whom deference is owed, is the body with authority to say which procedures apply in the first instance.<sup>4</sup>

---

<sup>3</sup> Nor has she done so as examiner in any other jurisdiction.

<sup>4</sup> Respectfully, the County's examiner would argue that not even the Board has authority to decide this question in the first instance, but only after a decision has been issued by CPED, which is then appealed to the examiner, whose decision is then appealed to the Board, would the Board have authority to weigh in on this question. In other words,

The question of whether the buildings sought to be retained through the instant RUE could instead be retained under an alternate theory of exception pursuant to TCC 20.08G is neither ripe (no such application having been submitted) nor within the scope of the instant RUE decision. However, because the Board has expressly addressed this question to the examiner in an Order, the following additional conclusions are entered.

3. In review of the record as a whole, it is not abundantly clear that the activities pursued within the three structures proposed are properly considered agricultural activities. First, the characterization of the activities as agricultural came four years after the County first began engaging with the Applicant in 2016 regarding neighbor complaints. If they were conceived of and pursued by the Applicant as agricultural activities, would this not have been mentioned earlier? Evidence in the record makes it abundantly clear that the Applicant conceived of and advertised the subject property as a religious campus. The activities pursued were primarily and repeatedly characterized as actions in furtherance of the Applicant's religious mission, without reference to the AOD or agritourism until the May 26, 2020 hearing. *See Decision, Conclusion 2.*
4. The Applicant had already applied for and obtained an administrative reduction to the wetland buffer width in 2016. The AOD-exemption was apparently not raised at that time; or if it was, it was not decided in favor of the Applicant. The County's 2016 approval was not appealed and is a final land use decision. The Applicant did not perform the remediation required by that permit and installed further site improvements inconsistent with that approval. The instant alternate theory of agricultural exemption seeks to set aside that final 2016 decision. Notably, the structures for which permission is sought - under either or both the RUE and the alternate AOD-exemption theory - are closer to the regulated critical areas than previously existing structures. *See Decision, Finding 11.* On the record presented, it is clear that at least two of the three structures for which permission is now sought were installed closer to the regulated critical area than previously existing uses on site (which may or may not appropriately be characterized as agricultural activities). The act of installing these structures in the wetland buffer following the County's 2016 permit issuance is not consistent with that permit, and, if considering the alternate theory of AOD-based exemption from TCC Title 24, is not consistent with TCC 17.15.110's adoption of "agricultural activities" definitions via RCW 36.70A.703 and RCW 90.58.065. In weighing the record's relative lack of evidence in support of exemption based on "agricultural activities," it is necessary to consider the CPED position on whether TCC Chapter 17.15 should be applied instead of TCC Title 24. In the opinion of the undersigned, deference is owed to the interpretation of the Department.

---

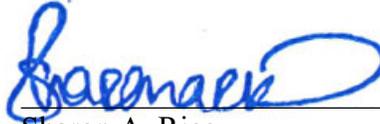
jurisdictional authority starts with a permit application, and we do not have any application to consider except the RUE.

-

**DECISION ON REMAND**

Based on the preceding supplemental findings and conclusions, the new information submitted on remand does not persuade the undersigned that the RUE should be granted, nor that an alternate process should excuse the Applicant from compliance with the requirements of TCC Title 24.

**DECIDED** November 4, 2020.



---

Sharon A. Rice  
Thurston County Hearing Examiner

**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**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).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

**The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).**

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

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 the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. 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 by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The 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 who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made 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 subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$750.00** for a Request for Reconsideration or **\$1,041.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
---

**Check here for:**                    **RECONSIDERATION OF HEARING EXAMINER DECISION**

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

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

**Check here for:**                    **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
 on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_, 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 Hearing Examiner decision:

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

1.     Zoning Ordinance \_\_\_\_\_
2.     Platting and Subdivision Ordinance \_\_\_\_\_
3.     Comprehensive Plan \_\_\_\_\_
4.     Critical Areas Ordinance \_\_\_\_\_
5.     Shoreline Master Program \_\_\_\_\_
6.     Other: \_\_\_\_\_

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

AND FURTHERMORE, requests 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 Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
APPELLANT NAME PRINTED

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

Address \_\_\_\_\_

\_\_\_\_\_  
Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$750.00 for Reconsideration or \$1,041.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.