



COUNTY COMMISSIONERS

Carolina Mejia-Barahona  
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 Applications of	)	NO. 2020102143 Manor House
	)	
<b>MK58, LLC</b>	)	DECISION ON RECONSIDERATION:
	)	VACATION, REMAND, AND ORDER
	)	TO RECONVENE HEARING
For a Preliminary Plat,	)	
Planned Residential Development, and	)	
<u>Forest Land Conversion</u>	)	

#### **Reconsideration Request**

Following a November 29, 2021 open record public hearing in the above-captioned matters and after due deliberation, the Manor House Preliminary Plat, Planned Residential Development, and Forest Land Conversion applications were denied by the Thurston County Hearing Examiner in a decision issued January 10, 2022 (Decision).

On January 20, 2022, counsel for Applicant MK58 LLC timely requested reconsideration of the denial, offering new and revised evidence, as well as modifying the proposed number of lots. The motion was forwarded to the Examiner on January 21, 2022. Items submitted by the Applicant included: motion for reconsideration, the reconsideration form (signed / undated) together with a scanned copy of the paid fee, and a declaration by Mark Steepy, dated January 20, 2022, with attachments including: 1) a matrix offering direction to the location in the previously submitted record of information identified in Findings and Conclusions as missing; 2) a revised logging site plan (dated 3/12/2021) and forest practice permit application (replacing the documents in the record as Exhibits 1.Z and 1.AA) omitted from the previous record; 3) a newly obtained Thurston PUD letter dated January 19, 2022; 4) revised (red-lined) site plans marked up post-hearing by Applicant agents to address issues with the site plan identified in the Decision; and 5) a letter from Applicant's critical areas consultant dated January 28, 2020 omitted from the record presented at hearing. The declaration acknowledged that the density calculation in the permit applications and site plans reviewed at hearing (for 505 total lots) was based on an error, and requested approval instead of 488 lots, with the red-lined revised site plans showing which lots would be removed. The declaration and the motion for reconsideration requested that the record be supplemented with these additional items of information and evidence and that the project be

approved with conditions consistent with the revised/supplemented record. In the alternative, the motion requested that the matter be set for additional public hearing.

Consistent with Hearing Examiner Rule of Procedure Rule 9.4(b)(2), the Examiner requested a response to the motion for reconsideration from the County by January 26th and conveyed an intention to render a decision on the motion by January 28, 2022 via the Hearing Clerk by email.

Legal counsel for the County submitted a response to the reconsideration request, which was forwarded to the Examiner on January 26, 2022. In its response, the County submitted that while some portions of Applicant's request fit within the streamlined reconsideration process, overall the request amounted to a modification of its original application, which would require further County review. The County requested that the Applicant be directed to submit a revised/amended application that would continue to be tracked under the original project number and would be reviewed more quickly than a new application due to significant portion of review already having been completed. The County waived any additional application fees. The County requested that the Decision denying the applications be vacated, that the matter be remanded for additional development by the Applicant and review by the Community Planning and Economic Development Department, and that it then be set for further public hearing.

### **Decision On Reconsideration**

Based on the record submitted in the previous hearing process, the requested applications could not be approved. However, in light of the submission of some of the previously missing information, and with the density issue resolved in a manner that clearly comports with zoning, on reconsideration, the undersigned has determined that with limited additional information, the record could be sufficient to support approvals. Given the efforts already undertaken by all parties, and given the authority conferred in Hearing Examiner Rule 7.5(g), it is in the interests of efficiency and wise use of resources to provide the parties an opportunity to complete the record. The Decision denying the permits is therefore vacated and these applications are remanded to the parties for further development, review, and hearing.

In review of the record submitted in the previous hearing, a list of items needing clarification and specific missing information came to light, which the undersigned finds must be addressed. The parties are advised that the following items are specifically of interest in the future proceedings.

#### **A. Clarification:**

The following clarifications of the previous submitted record are requested.

1. The subject property contains the source well for one Group A water system and abuts another source well for a different Group A water system located along Kagy Street. The identities of the two wells are not perfectly clear in the record. These findings assume Thurston PUD/Pattison-500/Christmas Tree Well are all one facility located on site, and that the well along Kagy Street is the Holiday Ranchettes source well. The final decision should be able to identify both with accuracy.
2. In public comment, Linda Friedman testified that the PUD operates the pump house and uses the standpipe reservoir on her property, but once they build out their new reservoir, their

infrastructure within the easement would no longer have any commercial use. The future relationship between these two water systems should be clarified.

3. As noted in footnote 4, the number and type of lots in each phase was not stated in the record and was inconsistent among the various site plans and narrative documents. The numbers and types of units per phase and definitive information about the proposed lot dimensions is requested. If flexibility is requested to allow some of these final figures to be determined at a later stage, a narrative expressing the desired range of dimensions and numbers, and the contemplated timeframe for final decision, would support accurate findings.
4. As noted in footnote 5, the number of proposed townhouse lots in the previous proceedings was inconsistent in the materials, ranging from 104 to 147, and minimum lot widths for detached single-family lots were inconsistent in the materials, ranging from 26 to 34 feet. Now, the number of townhouse lots is proposed to be reduced. In order to make findings capable of supporting conclusions for approval, the numbers of each type of unit and proposed lot dimensions should not be unclear.
5. The Applicant's requested condition revisions sought 10-year permit approvals, while the County recommendations were for five-year approvals (with extensions as allowed by code). In order that the final decision is not based on assumptions, the Applicant may wish to clarify expectations. Citations to code upon which the expectations and/or recommended conditions for approval are based would improve the record.
6. As noted in footnote 8, the record contains no discussion of why the 30-foot incompatibility screening buffer is not proposed in the locations of the road stubs, considering those roads are not anticipated to be continued off site in the foreseeable future. The record lacked information on the manner in which these portions of the perimeter of the site would be left. There was no discussion addressing whether road stubs are/are not incompatible with larger off-site parcel sizes for the purposes of TCC 21.80.055. Please clarify and provide analysis.
7. As noted in footnote 13, in the various exhibits, the capacity of the future PUD reservoir is stated as either 200,000 or 260,000 gallons. Please provide accurate information. [This may be addressed in the Thurston PUD letter attached to the Mark Steepy Declaration, but if not, please address.]
8. As noted in footnote 19, the County biologists reference a "Critical Areas Report & Mitigation Plan, Habitat Management Plan and Narrative", which they say was submitted to the County in June 2020. No such document was in evidence. Biologist Staff could possibly have meant the May 11, 2020 critical areas report, but this seems unlikely, because it is simply titled Critical Areas Report and it does not contain a section entitled "Narrative." Please clarify whether there was an additional report to which they are responding and/or whether the County Biologists' review dated July 20, 2020 included Exhibit 1.JJ, Mazama Pocket Gopher Screening and Prairie Plan Survey, dated July 25, 2020.
9. The parties are invited to correct or clarify any other items stated in the January 10, 2022 findings, including provision of additional necessary evidence.

## B. Requested Additional Information

1. According to the Applicant, an additional tax parcel (11836330401, 0.99 acres) is included within the overall site area; it houses a Thurston PUD production well. The application materials assert this separate tax parcel is under the same ownership as the encompassing parcel and was presumably created for tax purposes only. This 10th parcel is not identified on the plans. Please provide its location with Assessor information and clearly explain its ownership and relationship to the instant proposal.
2. Addressing the required per-lot private open space rather than having the project conditioned would provide better evidence of compliance with PRD standards.
3. The record lacks adequate evidence to enter findings and conclusions on compliance with parking for townhome units, which are required for PRD approval in TCC 21.60.120 and Chapter 21.72. More explicit plans or a recommended condition sufficient to ensure provided off-street parking satisfies applicable requirements is requested.
4. There is no County analysis or recommendation in the record with regard to the Applicant's proposal to provide the inner 10 feet of the 30-foot screening buffer required pursuant to TCC 21.80.055 in the form of a 10-foot easement across adjacent private lots. County analysis of whether this is allowed under code is requested, including any conditions necessary to support a potential County recommendation of approval, if forthcoming.
5. The Applicant requested to be required to only improve the southern portion of the on-site Marvin Road needed by the project for internal circulation and to defer construction of the remaining portion until the connection down from Mullen Road is finalized. There is no response to this request by the County in the record, and a response is requested, including any conditions necessary to support a potential County recommendation of approval, if forthcoming.
6. Accurate and current information on the number of water connections available should be provided for the record. [This may be adequately addressed in the attachment to the Mark Steepy Declaration, but the parties are advised that this issue is of concern.]
7. This may be the first project in which the review comment memoranda from Environmental Health and Public Works were not submitted in support of a Thurston County staff report. If they exist, they should be added to the record.
8. As noted in footnote 15, Exhibit 1.W states that the Thurston County Site Inspection Protocol and Procedures for Mazama Pocket Gopher are appended at Appendix E; however, the protocol is not attached to the report and it does not appear to be anywhere in the record. This protocol is also referenced in Exhibits 1 and 1.RR. It should be added to the record.
9. As noted in Finding 43, the logging site map at Exhibit 1.ZZ contained a former site plan that has been superseded by a later final site plan. While a revised logging site plan was attached to the Steepy declaration, the Applicant is advised to ensure that the logging site plan

provided in the final record addresses the requirements of TCC 17.25.400 noted in conclusion 1 of the January 10, 2022 Decision.

10. The undersigned acknowledges the January 28, 2020 letter from the Applicant's critical areas consultant that was not (and should have been) provided in the record of the previous proceeding.<sup>1</sup> This previously missing information addresses a portion of the lacking critical areas information identified in conclusion 2 of the January 10, 2022 Decision. However, the Applicant is requested to ensure that the record at the reconvened hearing addresses all other points raised in conclusion 2, as well as those items raised in this order. Finally, County analysis of compliance with code of all new/additional/previously-provided-by-Applicant-but-omitted-from-the-previous-record critical areas information is requested to be provided through the reconvened hearing process.
11. Given the weight assigned to their comments in Exhibit 1.RR by the undersigned, the County is requested to offer updated review comments from County Biology Staff.
12. The plans need to be revised to satisfy the requirements of TCC 17.25.400(5) and TCC 24.55.060, and any other changes the Applicant desires to make in order to demonstrate compliance with the PRD, subdivision, and critical areas ordinance.

### **ORDER**

The January 10, 2022 Decision is vacated and these applications are remanded to the parties for preparation of an accurate, complete record, to be addressed with witness testimony in a reconvened public hearing.

The Applicant is directed to submit revised application(s) and site plans depicting the amended proposal to the County.

The County is directed to expedite review of the amended proposal to the maximum extent possible.

While there is understandably pressure from both sides to get to hearing as soon as possible, the parties are advised that more care should be taken in ensuring all necessary documentation is provided in the record of the future proceeding.

For the reconvened hearing, it would be preferable to start completely over with an entirely new exhibit list containing only current documents.

Once review is complete, the matter shall be set for additional public hearing. Notice of the reconvened hearing is required to be provided to all parties of record consistent with County Code and Hearing Examiner Rule 9.4(b)(4).

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<sup>1</sup> The undersigned will take this opportunity to reiterate, as was stated in conclusion 2.b of the January 10, 2022 Decision, that it was the lack of response to the concerns stated in Exhibit 1.RR that raised any question of credibility in the Applicant's critical areas documentation.

In an abundance of caution to ensure due process requirements are satisfied, there will be an opportunity for verbal and written public comment at the reconvened hearing, but there is no requirement for additional pre-hearing written public comment period.

The revised submitted record shall be posted online at the earliest opportunity, and thus be made available to the interested public, not later than the date notice of the reconvened hearing is sent to all parties of record.

When the parties are ready to schedule the hearing, they are instructed to advise the Hearing Clerk. The first possible hearing date that is mutually available among Applicant representatives, required County representatives, the Hearing Clerk, and the undersigned will be selected. (This need not be restricted to a second or fourth Tuesday of the month, but may fall on a standard hearing calendar.)

Issued January 28, 2022.



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Sharon A. Rice  
Thurston County Hearing Examiner