



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Request of)	NO. 2021102013
)	
)	
Ryan Griffin)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	
<u>For Innocent Purchaser Status</u>)	

SUMMARY OF DECISION

The request for innocent purchaser status relating to a 4.91-acre parcel addressed as 237 Wright Road SE, Tenino, in unincorporated Thurston County, Washington is **APPROVED**.

SUMMARY OF RECORD

Request

Ryan Griffin (Applicant) requested innocent purchaser status pursuant to Thurston County Code 18.04.045.L relating to a 4.91-acre parcel addressed as 237 Wright Road SE, Tenino, in unincorporated Thurston County, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on December 14, 2021. The record was held open through December 16, 2021 to allow members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted, and the record closed on December 16, 2021.

Testimony

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

Lacy Garner, Associate Planner, Thurston County Community Planning & Economic Development Department

Sherri Heilman-Fennel, Applicant Representative

Exhibits

At the hearing the following exhibits were submitted as part of the record of this proceeding:

- Exhibit 1 Community Planning & Economic Development Department, Land Use & Environmental Review Section Staff Report, with the following attachments:
- A. Notice of Public Hearing
 - B. Master and Innocent Purchaser Applications, received April 21, 2021
 - C. Site Plan
 - D. Notice of Application, mailed July 21, 2021
 - E. Notarized Innocent Purchaser Statement from Ryan Griffin, dated November 2, 2021
 - F. Assessor Field Book Page for Tax Parcel 12615420300
 - G. Statutory Warranty Deed, recorded November 15, 1972, under Thurston County Auditor's File No. 8784431 (vol 595/Pg 497 of Deeds). Sundown, Inc. to Ashes & Logans
 - H. Real Estate Contract, recorded October 14, 1975, under Thurston County Auditor's File No. 949018 (vol 709/Pg 235 of Deeds). Ashes & Logans to Moons
 - I. Real Estate Contract, recorded December 31, 1984, under Thurston County Auditor's File No. 8412310058 (vol 1302/Pg 459 of Deeds); Moons to Allens
 - J. Statutory Warranty Deed, recorded September 2, 2015, under Thurston County Auditor's File No. 4463722; Shirley Allen to Eric Nixon
 - K. Quit Claim Deed recorded June 21, 2016, under Auditor's File Number 4507205; Eric Nixon to Ryan Griffin
 - L. Thurston County Assessor's Cost Valuation Report 2016-2021
 - M. Thurston County Assessor's Market Value Information 2013-2022

After considering the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Ryan Griffin (Applicant) requested innocent purchaser status pursuant to Thurston County Code 18.04.045.L relating to a 4.91-acre parcel addressed as 237 Wright Road SE, Tenino, Washington.¹ *Exhibits 1, 1.B, and 1.C.*

¹ The legal description of the subject property is a portion of the Northwest quarter of the southeast quarter of Section 15, Township 16N, Range 2W, W.M.; also known as Tax Parcel Number 12615420300. *Exhibit 1.*

2. The Applicant submitted the application for innocent purchaser status on April 21, 2021 and signed an affidavit addressing the innocent purchaser criteria on November 2, 2021. *Exhibits 1.B and 1.E.*
3. The subject property is zoned Rural Residential Resource, one dwelling unit per five acres (RRR-1/5). The RRR-1/5 zone requires a minimum lot area of five acres. With an area of 4.91 acres, the subject property is consistent with the area of other lots in the vicinity, and the County considers it to be conforming with respect to lot area. *Exhibit 1; Thurston County Code (TCC) 20.09A.050(2).*
4. The subject property is undeveloped and partially forested. It does not contain critical areas but may potentially contain portions of buffers associated with regulated wetlands on adjacent parcels. *Exhibits 1 and 1.C.*
5. Based on review of available documents, including real estate contracts and deeds found in Thurston County Assessor archives, there is no evidence that the lot was legally created consistent with the legal lot criteria set forth in TCC 18.04.045. The subject property was first sold in its current configuration to Rulon and Maureen Moon on October 9, 1975 (Exhibit 1.H) by sellers David and Judith Ash and Glen and Mildred Logan, who had acquired a larger parcel that included the subject property in 1972 (Exhibit 1.G). However, there is no documentation of a subdivision of the larger parcel between the 1972 acquisition and the 1975 sale to the Moons. Since the 1975 sale, the subject property has been transferred three times, including in 1984 (Exhibit 1.I), in 2015 (Exhibit 1.J), and finally to the Applicant on June 20, 2016 (Exhibit 1.K). *Exhibits 1, 1.G, 1.H, 1.I, 1.J, and 1.K; Lacy Garner Testimony.*
6. The Applicant purchased the subject property in June 2016 for \$40,000, which the Applicant submitted was market value at the time. The Assessor's Market Value Total for the parcel in 2016 (based on 2015 assessment) was \$10,700, and the Market Value Total for 2017 (based on 2016 assessment) was \$65,550. Although the sales price was generally consistent with the assessed value during that time period, at \$8,163 per acre it was lower than the range of \$11,046 to \$22,500 per acre for sales of other undeveloped parcels in the area during the months immediately before and after the sale. *Exhibits 1.E, 1.K, 1.L, and 1.M.* Planning Staff submitted that while lower than other sales, the Applicant's purchase price was within a reasonable market range. *Exhibit 1; Lacy Garner Testimony.*
7. In his affidavit, the Applicant submitted that he believed the subject property to be a legal lot at the time of purchase due to the assigned tax parcel number and the taxes assessed and paid on the parcel. During the County review of the innocent purchaser application and the public hearing process, no evidence was found or submitted to the contrary. The Applicant learned of the illegal status of the lot after purchase when he submitted

building and septic permit applications to the County. *Exhibits 1 and 1.E; Testimony of Lacy Garner and Sherri Heilman-Fennel.*

8. Based on the Applicant's affidavit and the County's research, the Applicant has not previously been granted innocent purchaser status. *Exhibits 1 and 1.E.*
9. Notice of the application was mailed to property owners within 500 feet of the site on July 21, 2021 providing a 20-day comment period ending on August 4, 2021. No written comments were submitted in response to the notice of application. Notice of the public hearing was published in *The Olympian* on December 3, 2021. *Exhibits 1, 1.A, and 1.D.*
10. Having reviewed the available information, Planning Staff submitted that it is the position of the Community Planning and Economic Development Department that the application satisfies the innocent purchaser criteria established at TCC 18.48.030(B). Staff recommended unconditional approval. *Exhibit 1; Lacy Garner Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to make determinations of innocent purchaser status after public hearing pursuant to TCC 18.48.030.B.

Criteria for Decision

The Board of Commissioners authorized the Hearing Examiner to grant innocent purchaser status following a public hearing if findings can be entered that the lot was not created in a legal manner and that innocent purchaser status should be granted. However, there are no criteria in the Thurston County Code for making the determination of innocent purchaser status. The innocent purchaser provision in the County Code states:

TCC 18.48.030 Relief for an innocent purchaser for value

...

B. A lot not created in a legal manner and subsequently acquired by an innocent purchaser, as so determined by the Thurston County Hearing Examiner after a properly noticed public hearing, is deemed legal, wherein such purchaser files a notarized affidavit with the Thurston County Development Services Department attesting to the following:

1. The lot was purchased at market value not reflecting the illegal division;
2. The purchaser exercised reasonable diligence but did not know of the illegal division; and
3. The purchaser has not previously been granted innocent purchaser status by Thurston County.

Additional Applicable Code Provisions

TCC 18.04.045 - Legal lot criteria for building or transfer of ownership.

Thurston County will presume the validity of a lot if it meets any one of the criteria listed below. It shall be the responsibility of the applicant to provide the necessary information. The department shall review the submitted materials to determine completeness and authenticity. If determined to be complete and authentic, the lot is deemed legal. Further review is not required unless an appeal is filed or an innocent purchaser claim is made. Any lot created in a legal manner as described below or through innocent purchaser status, remains a separate legal lot regardless of nonconformity, or contiguous ownership. (emphasis added)

Exception: Contiguous shoreline lots in the same ownership that were not in conformance with the shoreline master program for the Thurston region on May 21, 1976 are deemed single, undivided lots; except that if each lot contained a dwelling on that date, they remain separate legal lots.

Even though a lot may be deemed legal, it is buildable only if it also meets the definition of "building site" in Section 18.08.080.

- A. Surveys for the purpose of land division recorded with the Thurston County auditor from June 9, 1937 through July 28, 1974;
- B. Surveys recorded with the Thurston County auditor from June 9, 1937 through September 28, 1981 for any number of lots, all of which are five acres and larger in size with access from an opened county road;
- C. Surveys recorded with the Thurston County auditor from June 9, 1937 through September 28, 1981 for four or fewer lots, all of which are over five acres in size with access from a private road or unopened county right-of-way;
- D. Subdivision with more than five lots created from July 29, 1974 through September 28, 1981 through the non-platted-street process as described in Thurston County Ordinance 4748, in which all lots are five acres and larger in size, and where all lots are located on a private road or an unopened county right-of-way;
- E. Lots created through a deed recorded with the Thurston County auditor from June 9, 1937 through July 28, 1974;
- F. Lots created through a deed for love and affection for which there was no monetary or other valuable consideration exchanged, and that was recorded with the Thurston County auditor from June 9, 1937 through July 29, 1981;
- G. Court ordered divisions for adverse possessions or divorces in which the adverse possession or divorce decree is dated August 23, 1993 through September 18, 1995.
- H. With the following exceptions, lots created prior to June 9, 1937, whether platted or unplatted, are not legal. Exceptions: Lots created through testamentary division; contiguous lots in different ownership as of July 29, 1974; contiguous lots in the same ownership if each lot was separately developed as of June 9, 1937; or platted lots that are at least five acres or one-one hundred twenty-eighths of a section;
- I. Navigable sections of the Black, Chehalis, Deschutes, Nisqually and Skookumchuck Rivers always create legal property boundaries. The ordinary high water mark is the property line;

- J. Any public or railroad right-of-way (opened or unopened) create legal property boundaries. Note: If the right-of-way is vacated and parcels on both sides are in same ownership, the lots are consolidated unless there is evidence of an action or intent to divide prior to the vacation;
- K. Lots created after June 9, 1937 through the methods set out in the Thurston County Platting and Subdivision Ordinance (TCC Title 18), as amended.
- L. Divisions of land exempted by TCC Section 18.04.040 or property transferred to a bona fide innocent purchaser for value pursuant to TCC Section 18.48.030.

Conclusion Based on Findings

- 1. The subject property was not created through a deed recorded with the Thurston County auditor between June 9, 1937 and July 28, 1974, nor does it meet any other exemption identified in TCC 18.04.045. *Finding 5.*
- 2. While the Applicant's June 2016 purchase price was approximately 25% below the low end of the range of sales price paid per acre for other undeveloped parcels in the County, it does fall within the assessed value range of the subject property between the 2015 and 2016 assessments. The record contains no evidence the lack of legal subdivision factored into the sales price, nor evidence supporting a conclusion that the Applicant should have been aware of the illegal subdivision based on the sale price. *Findings 6 and 7.*
- 3. The evidence supports that the Applicant, using reasonable diligence, did not know of the illegal land division. The Applicant had no reason to question the status because it had been transferred multiple times over 40 years in its current configuration and had its own tax parcel number. *Findings 5 and 7.*
- 4. There is no evidence that the Applicant has previously been granted innocent purchaser status. *Finding 8.*

DECISION

Based on the preceding findings and conclusions, the request for innocent purchaser status is **APPROVED**.

Decided December 28, 2021.



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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** 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.



Project No. _____
Appeal Sequence No.: _____

☐ 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 ☐ \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.