



COUNTY COMMISSIONERS

John Hutchings  
District One

Gary Edwards  
District Two

Bud Blake  
District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2011101482
	)	
<b>Pacific Rainier Contractors</b>	)	<b>Plat of Carrington Place II</b>
	)	
For a Preliminary Plat Amendment and Administrative Variance	)	FINDINGS, CONCLUSIONS, AND DECISION
	)	

**SUMMARY OF DECISION**

The request to amend the Carrington Place II preliminary plat to subdivide a designated 0.43-acre future development tract into three townhouse lots and a 0.08-acre open space tract, and requested variance to reduce the required 25-foot front yard setback to 20 feet for the townhouse lots, are **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

Pacific Rainier Contractors (Applicant) requested an amendment of the preliminarily approved Plat of Carrington Place II to subdivide a designated 0.43-acre future development tract into three townhouse lots and a 0.08-acre open space tract. Associated with the request for a preliminary plat amendment was a request for an administrative variance to reduce the required 25-foot front yard setback to 20 feet for the townhouse lots.

**Hearing Date**

The Thurston County Hearing Examiner conducted an open record public hearing on the request on March 6, 2017.

**Testimony**

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

- Tony Kantas, Associate Planner, Resource Stewardship Department
- Arthur Saint, P.E., Development Review Department
- Dawn Peebles, R.S., Public Health & Social Services Department
- Bob Presley, Pacific Rainier Contractors LLC, Applicant

Chris Merritt, Olympic Engineering, Applicant Representative

**Exhibits**

At the open record public hearing, the following exhibits were admitted in the record:

EXHIBIT 1 Resource Stewardship Department Report including the following attachments:

Attachment a Notice of Public Hearing

Attachment b Thurston County Master Application, submitted August 9, 2016

Attachment c Thurston County Division of Land Application, submitted August 9, 2016

Attachment d Thurston Variance Application, submitted August 9, 2016

Attachment e Preliminary Plat Map

Attachment f 2015 Aerial

Attachment g Zoning Vicinity Map

Attachment h Notice of Application, Mailed on January 10, 2017

Attachment i January 30, 2017 comment letter from Washington State Department of Ecology

Attachment j December 2, 2016 comment letter from Dawn Peebles, Thurston County Environmental Health Department

Attachment k January 20, 2017 Memorandum from the Arthur Saint, Thurston County Public Works Department

Attachment l December 2, 2011 comment letter from North Thurston School District

Attachment m Thurston County Hearings Examiner Decision of Carrington Place II, dated July 13, 2012

Based upon the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions.

**FINDINGS**

1. The Applicant requested amendment of the preliminarily approved Plat of Carrington Place II to subdivide a designated 0.43-acre future development tract into three townhouse lots and a 0.08-acre open space tract. Associated with the request for preliminary plat amendment is a request for an administrative variance to reduce the

required 25-foot front yard setback to 20 feet for the townhouse lots. The subject property is located at 1743 Abernathy Road NE in Thurston County, Washington. *Exhibits 1, 1.B, 1.C, and 1.D.*

2. The subject property is located in the Lacey Urban Growth Area and is zoned Moderate Density Residential (MD 6-12), a zone that requires a minimum density of six dwelling units per acre and a maximum density of twelve dwelling units per acre. With the proposed townhouse lots, the density of Carrington Place II would be 6.8 dwelling units per acre. Townhouses are an allowed land use in the MD 6-12 zone. *Exhibits 1 and 1.G; Thurston County Code (TCC) 21.61.030.*
3. The Thurston County Hearing Examiner approved the Carrington Place II preliminary plat on July 13, 2012. The approved preliminary plat consisted of six lots on 1.17 acres, including five single-family residential lots and one lot reserved for future subdivision into three townhouse lots (Lots 6, 7, and 8). The townhouse lots were required by the County for the project to comply with the MD 6-12 density standard, but could not be subdivided until such time that the City of Lacey could provide water connections for the three lots. The three water connections are now available. *Exhibits 1 and 1.M.*
4. The subdivision design standards applicable to the townhouse development include a minimum lot area of 1,600 square feet and a minimum lot width of 20 feet. *TCC 21.61.040.C.* Each of the proposed lots would satisfy these standards; the smallest would be 4,590 square feet in area and 30 feet wide. *Exhibits 1 and 1.E.*
5. The tract proposed for subdivision contains stormwater ponds and associated drainage easements developed in conjunction with the adjacent Carrington Place I subdivision. These encumber the central and northern portions of the proposed lots, thereby limiting the area available for townhouse development to the southern portion of the lots. *Exhibits 1, 1.D, and 1.E.*
6. The townhouse development standards contain requirements that, when combined with the constraints posed by the drainage easements, would result in an unreasonably small townhouse building footprint. These standards include a minimum building setback from the right-of-way of 25 feet and a minimum private yard area of 300 square feet per unit. The townhouse lots have frontage on 17<sup>th</sup> Way NE, and the easternmost lot is also bordered by Abernathy Road NE. The Applicant proposes to provide the required 300 square feet of private yard area behind the units, between the north edge of the building envelope and the south edge of the drainage easement, and the full 25-foot setback from Abernathy Road NE. To create additional building footprint, the Applicant requests a five-foot reduction in the setback from 17<sup>th</sup> Way NE. The proposed 20-foot setback is the same as the setback required for the single-family residences within the plat pursuant to the approved plat, consistent with MD 6-12 zoning standards. *Exhibits 1, 1.D, and 1.E.* The townhouse development standards also require that not more than two abutting townhouse units in a cluster share the same setback and that each pair of townhouse units must share a common curb cut. *TCC 21.61.040.E and .K.* There was no testimony or site plan information addressing the requirement of subpart E to vary setbacks. However, the

Applicant representative indicated that it was likely that two of the units would share a driveway onto 17th Away NE. *Merritt Testimony.*

7. City of Lacey water and sewer utilities are available to serve the subdivision. The conditions of approval recommended by the County Public Health and Social Services Department require both utilities to be extended through the subdivision prior to final plat approval. *Exhibit 1.J.*
8. There are two off-site single-family wells within 100 feet of the subdivision. The 100-foot protective radii for the wells extend over small portions of the northwest and southwest corners of Townhouse Lot 6. The conditions of approval recommended by the County Public Health and Social Services Department require non-public restrictive covenant forms to be recorded prior to final plat approval. *Exhibit 1.J.*
9. The Thurston County Public Works Department reviewed the development for compliance with Thurston County Road Standards, the Drainage Design and Erosion Control Manual, and the City of Lacey Development Guidelines, and found that all of the preliminary requirements have been satisfied. The Public Works Department recommended approval of the subdivision, subject to conditions. *Exhibit 1.K.*
10. North Thurston Public Schools identified mitigation requirements for the Carrington Place II subdivision in a letter dated December 2, 2011. The mitigation analysis conducted in 2011 included the three townhouse lots presently under review. Having been notified of the instant proposal, the School District did not submit any additional comments. *Exhibit 1.L; Kantas Testimony.*
11. Pursuant to TCC 17.09.055, developments of nine or fewer residential units are categorically exempt from review under the State Environmental Policy Act. *TCC 17.09.055.*
12. Written notice of the public hearing was sent to all owners of property within 300 feet of the site on February 21, 2017. Notice of hearing was published in The Olympian and posted on-site on February 24, 2017. *Exhibits 1 and 1.A.* There was no public comment on the applications.
13. The Resource Stewardship Department recommended approval of the preliminary plat amendment and administrative variance, subject to the conditions identified by the Public Works and Public Health Departments, the conditions of the original Carrington Place II approval, and additional conditions designed to ensure compliance with the County's landscaping and design requirements. In addition, the Department recommended that the Applicant be required to demonstrate adequate school capacity or enter into a mitigation agreement with the North Thurston School District prior to final plat approval. *Exhibit 1; Kantas Testimony.* The Applicant concurred with the recommended conditions of approval. *Merritt Testimony; Presley Testimony.*

## CONCLUSIONS

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for preliminary plats pursuant to RCW 36.70.970, TCC 2.06.010(A), and TCC 18.12.090.

The Hearing Examiner is granted jurisdiction to hear and decide administrative variances pursuant to TCC 21.81.050, which allows permit requests to be consolidated and reviewed under the highest-level review process, which in this case is the process for the preliminary plat amendment.

### **Criteria for Review**

#### *Preliminary Plat Amendment*

The amended preliminary plat must satisfy the criteria for preliminary plat approval contained in TCC 18.12.090:

1. Appropriate provisions are made for the public health, safety, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
2. The public use and interest will be served by the platting of such subdivision and dedication.

#### *Administrative Variance*

Pursuant to TCC 21.90.020, the Resource Stewardship Department (in this case, Hearing Examiner) may grant a modification of up to fifty percent from the front, side and rear setback requirements in residential zones provided the following criteria set forth in TCC 20.07.050(2) are satisfied:

- a. Such variance for a structure, including any porch, deck or stairway over thirty inches above grade, will not reduce any required yard by more than fifty percent and no roof overhang will extend more than thirty-three percent into the reduced setback.
- b. Special conditions and circumstances exist which are peculiar to the land, such as size, shape, topography or location, or which are created by public action such as condemnation, not applicable to other lands in the same district and that literal interpretation of the provisions of this title would result in a practical difficulty, as described in subsection (3) below<sup>1</sup>, for the property owner not commonly experienced by other properties similarly situated in the same district under the terms of this title.

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<sup>1</sup> Subsection 3 states: "Practical Difficulty. A practical difficulty is present where the harm to the applicant denied a variance will be greater than the probable effect on neighboring properties if the variance is granted. The department shall consider the following factors in making a determination of practical difficulty: the nature of the zone in which the property lies, the character of the immediate vicinity and the uses intended therefor, and whether, if restrictions were removed, neighboring property would be seriously affected, and whether, if

- c. The special conditions and circumstances are not the result of deliberate actions of the applicant.
- d. Granting of the variance request will not confer a special privilege to the property that is denied other lands in the same district.
- e. Granting of the variance will be in harmony with the general purpose and intent of this title and will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and neighborhood in which the property is situated.
- f. The reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.

*Townhouse Development Standards*

TCC 21.61.040 - Development standards.

- A. Density. The density of the underlying zone governs unless a density increase is granted as provided in this chapter.
- B. Density Increase. ... (not applicable because not proposed)
- C. Lot Area and Width of Each Townhouse Unit. A townhouse lot shall contain a minimum area of one thousand six hundred square feet and a minimum lot and building width of twenty feet.
- D. Height. The maximum height of any townhouse shall not exceed that allowed in the district in which the development is located.
- E. Setback Variation. No more than two abutting townhouses or townhouse cluster within the townhouse project site shall have a common front building setback. Variations in the setback of front building faces shall be at least four feet.
- F. Right-of-Way Setback. No townhouse dwelling unit shall be located closer than twenty-five feet to any public right-of-way nor within fifteen feet of a private drive, access road or common open parking area to the front or rear of such a dwelling unit.
- G. Rear Yard Requirements. The minimum rear yard requirement shall be fifteen feet to the rear property line. Provided, that townhouses with a rear load may have garages within three feet of the rear lot line or paved alley.

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restrictions were not removed, they would create unnecessary hardship for the owner in relation to efforts to make normal improvements given the property's permitted use. An applicant's mere desire for a variance, even when motivated by economic reasons, does not constitute a practical difficulty.”

- H. Private Yard Area. Every lot containing a townhouse must provide a private yard of at least three hundred square feet, oriented to either the building rear or side, enclosed visually by fences or walls at least five feet in height or plantings to screen first level views from adjacent units.
- I. Side Yard Requirements. The minimum side yard requirement shall be the same as the underlying zone.
- J. Minimum Distances Between Townhouse Groups. (not applicable because not proposed)
- K. Access. When the only driveway is from the street, each pair of units must share a common curb cut.
- L. Conversion. (not applicable because not proposed)

### **Conclusions Based on Findings**

1. With conditions, the proposed plat amendment makes appropriate provisions for public health, safety, public ways, potable water supplies, sanitary wastes, schools and school grounds and all other relevant facts. The amendment would implement the design contemplated in the 2012 preliminary plat approval. The amended plat would continue to satisfy applicable road, drainage, and public health requirements. Utilities are available to serve both the original and additional lots. As conditioned, impacts to schools would be mitigated. *Findings 3, 7, 8, 9, 10, and 13.*
2. With conditions of approval, the public use and interest will be served by the amendment of the subdivision. The creation of townhouse lots and subsequent development would satisfy applicable zoning and design standards, with the approval of the variance as described below. *Findings 2, 3, 4, and 6.*
3. The criteria for approval of an administrative variance are satisfied.
  - a. The request does not reduce the required yard by more than 50 percent. *Findings 1 and 6.*
  - b. The extensive drainage easements are a special circumstance warranting the variance, which are not generally applicable to other properties in the area. Due to the limited building area allowed by the drainage easements, requiring the full 25-foot setback from 17th Way NE would result in a practical difficulty for the Applicant, in that the harm to the Applicant would exceed the effect on neighboring properties if the setback were reduced. In this case, the proposed 20-foot setback would be compatible with the setback applicable to surrounding single-family residential properties. *Findings 5 and 6.*

- c. The special circumstances are not the result of the deliberate actions of the Applicant, in that the townhouse development was required to satisfy the MD 6-12 density standard and resulted in a wider setback standard than is required for detached residences in the zone (see TCC 21.15.050). *Findings 2 and 3.*
  - d. Granting the variance does not confer a special privilege, in that the variance represents the minimum needed to create a reasonable building envelope and will result in the same building setback as adjacent detached residences. *Finding 6.*
  - e. Approval of the variance is in harmony with the purpose of the zoning ordinance and will not be materially detrimental to the public welfare or injurious to surrounding properties. *Finding 6.*
  - f. The requested variance is the minimum needed for the townhouse development. *Finding 6.*
4. The only standard from which the proposed variance sought relief was the 25-foot setback requirement specific to townhouse development. No request was made and no evidence was presented addressing the requirement to vary setbacks if more than two units are adjacent established in TCC 21.61.040.E, nor the requirement that each pair of townhouse units must share a driveway in TCC 21.61.040.K. A condition of approval would require compliance with all development standards imposed in TCC 21.61.040 except subpart F. *Finding 6.*

### **DECISION**

Based on the preceding findings and conclusions, the requests to amend the Carrington Place II preliminary plat to subdivide the 0.43-acre future development tract into three townhouse lots and an open space tract, and to reduce the required minimum 25-foot front yard setback to 20 feet for the townhouse lots, are **GRANTED** subject to the following conditions:

#### Public Works Conditions:

1. The proposed roadway in concept and design shall conform to the Road Standards and the City of Lacey standards and development guidelines.
2. A construction permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction.
3. All access points with sight distance issues or abutting arterial or collector roadways shall be installed prior to final approval.
4. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works – Development Review Section Staff to obtain the most current Thurston County guidelines.

5. County forces may remove any traffic control device constructed within the County right-of-way not approved by this division and any liability incurred by the County due to non-conformance by the applicant shall be transferred to the applicant.
6. The storm water management system shall conform to the Drainage Design & Erosion Control Manual.
7. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
8. Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.
9. Because proper landscaping is vital to the performance of the stormwater system, the Landscape Plan (if required) shall be signed/sealed by a WA licensed civil engineer (preferably the engineer who designed the stormwater system).
10. The proposed water and sewer system shall be designed in accordance with the standards and specification of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.
11. Proposed utility work within the Thurston County Right of Way shall conform to the Road Standards and Chapter 13.56 Thurston County Code. These standards do not address specific city design requirements but rather only items such as restoration of the County right of way and traffic control.
  - a. Placement of utilities within the County right of way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
  - b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.20' of asphalt concrete pavement.
12. Permanent survey control need to be placed to establish all public street centerlines, intersections, angle points, curves, subdivision boundaries and other points of control.
13. Permanent survey control monuments shall be installed in accordance with the standards provided by the Thurston County Public Works – Survey Division. The Survey Division can be reached at 360-867-2378.
14. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.

15. Development within the City of Lacey urban growth boundary, requiring review by both Thurston County and the corresponding city jurisdiction, shall be designed to the more stringent standards of the two jurisdictions.
16. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and Drainage Design & Erosion Control Manual.
17. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section for a final inspection.
18. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.
19. Prior to receiving final approval from this department, the following items shall be required:
  - a. Receive and accept Engineer's Construction Inspection Report Form (Appendix I-C, Volume I of the Drainage Design and Erosion Control Manual).
  - b. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual).
  - c. Approve the Final Plat Map.
  - d. Property owners articles of incorporation and covenants in accordance with Volume I, Section 2.4.11 of the Drainage Design and Erosion Control Manual.
20. The final plat map shall note or delineate the following:

Required Plat Notes

- a. "ATTENTION": Thurston County has no responsibility to build, improve, maintain or otherwise service private roads or driveways within or providing access to property described in this plat. The building, maintenance, repair, improvement, operation or servicing of the storm water facilities outside the county rights of way are the responsibility of the property owner(s).
- b. Increased storm water runoff from the road(s), building, driveway and parking areas shall be retained on site and shall not be directed to roadway ditches adjacent to Abernathy Road NE and 17<sup>th</sup> Way NE.
- c. If seasonal drainage crosses subject property, no filling or disruption of the natural

flow shall be permitted.

- d. Private roads are required to remain open at all times for emergency and public service vehicle use. Any future improvements (gates, fencing, etc.) that would not allow for “open” access will need to be approved by all applicable departments of Thurston County.
- e. The owner and/or Homeowners Association shall be responsible to operate and maintain the streetlights until such time the property is annexed to the city.
- f. Approval of this subdivision is conditioned upon payment of City of Lacey Traffic Mitigation Fees in the amount of \$\_\_\_\_\_ per lot. This fee increases on July 1 of each year in accordance with the increase in the Engineering News Record Construction Cost Index and the amount is determined at the date of payment. Payment is required prior to the issuance of a water meter for those lots served by the Lacey Water Utility and prior to building permit issuance for those lots not served by such Utility.
- g. Per Thurston County Resolution 14820, impact fees shall be paid prior to issuing any building permits associated with this project.
- h. This plat is subject to the RESIDENTIAL AGREEMENT TO MAINTAIN STORMWATER FACILITIES AND TO IMPLEMENT A POLLUTION CONTROL PLAN”, as recorded under Auditor’s File No.\_\_\_\_\_.
- i. Easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on the plat for subdivision\_\_\_\_\_ including unrestricted access for Thurston County staff to any and all storm water system features for the purpose of routine inspections and/or performing maintenance, repair and/or retrofit as may become necessary. No encroachment will be placed within the easements shown on the plat which may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities and drainage facilities shall be the responsibility of the Property Owners’ Association as established by covenant recorded under Auditor’s file number \_\_\_\_\_.
- j. The property described herein is required to accommodate storm water runoff from frontage improvements to Abernathy Road NE and 17<sup>th</sup> Way NE and all natural tributary areas abutting said property.
- k. Maintenance of the landscaping and roadside drainage and stormwater facilities such as ditches, swales and ponds within the public right of way is the sole responsibility of the (property owners) or (homeowners association) within this subdivision. Thurston County has no responsibility to maintain or service said landscaping or roadside stormwater facilities.

- l. Provide language on the plat describing the drainage design requirements for runoff from buildings and parking surfaces for individual building lots (drywell design/sizing storm drain connection points, etc.).
- m. Delineate the access restrictions by showing a "no access" strip, written and hatched, between the County approved access points along the frontage of Abernathy Road NE on the final plat map.
- n. Please clearly label all public and private roads.

Health Conditions:

21. Prior to final approval, copies of signed, notarized and recorded non-public restrictive covenant forms must be submitted for the two neighboring single family wells located within 100 feet of the property.
22. Prior to final approval, City of Lacey water and sewer utilities must be extended through the subdivision. Confirmation of final water and sewer construction approval from the City of Lacey must be provided.

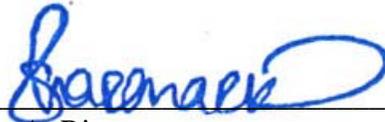
Planning Conditions:

23. Comply with all conditions of the Thurston County Hearings Examiner Decision of Carrington Place II, dated July 13, 2012 (Attachment m).
24. Street addresses, lot size and dimensions for each lot shall be shown on the final map.
25. The final design of this subdivision and future development of lots shall conform with all minimum standards of the Zoning Ordinance (i.e. lot size, lot dimension, setbacks, etc.), the Platting and Subdivision Ordinance, and the Townhouse Developments Standards in TCC 21.61.040 with the exception of the approved variance reducing the minimum front yard setback to 20 feet.
26. All open space and landscaping and tree preservation shall comply with:
  - a. New trees on individual residential lots shall be planted at a rate of one (1) tree for every four thousand (4,000) square feet of lot area at the time of building permit application.
27. Prior to final plat approval, the Applicant shall submit evidence to the Resource Stewardship Department that adequate capacity exists in affected North Thurston School District schools or that the applicant has entered into an agreement with the North Thurston School District to mitigate the impact the plat will have on the district schools.

If the agreement requires payment of mitigation fees or other actions after the final plat is recorded then such conditions shall be noted on the final plat map.

28. The following notes shall be shown on the final plat map:
- a. This subdivision was reviewed and approved based on standards and allowances of the Moderate Density Residential District (MD 6-12) (TCC 21.15).
  - b. New trees on individual residential lots shall be planted at a rate of one (1) tree for every four thousand (4,000) square feet of lot area at the time of building permit application.
  - c. All townhouse dwelling units must receive approval of an administrative site plan review permit and an administrative design review permit, prior to Thurston County Resource Stewardship issuing a building permit. All townhouses must be in compliance with the design requirements of TCC 21.70.
29. All development on the site shall be in substantial compliance with the approved plat. Any alteration of this site plan will require approval of a new or amended plat. The Planning and Environmental Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

**DECIDED** March 16, 2017.



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Sharon A. Rice  
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.



**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 Resource Stewardship 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 **\$669.00** for a Request for Reconsideration or **\$890.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance 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> _____
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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  \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_

Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.