

FILED  
SUPERIOR COURT  
THURSTON

'09 FEB 27 P2:43

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON**

MIKE WOOD, dba WOOD LAND  
INVESTMENTS, L.L.C., and WOOD AND  
SON EARTHWORK &  
UTILITY CONTRACTORS, L.L.C.,

Petitioners,

v.

THURSTON COUNTY, HAROLD AND JEAN  
HILLESLAND, ANDREW WRIGHT AND  
LISA FITKIN, GARY MILLER, AND DENNIS  
AND SHANNON GUBSER,

Respondents.

No. 08-2-01946-0

ORDER

This matter comes before the Court on an appeal by Petitioners under the  
Land Use Petition Act, Chap. 36.70C RCW, from a decision by the Thurston  
County Board of Commissioners dated July 21, 2008. In that decision the Board

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of Commissioners reversed a decision by the Thurston County Hearing Examiner,  
1 which had dismissed an administrative appeal by Respondents Hillesland, Wright,  
2 Fitkin, Miller and Gubser (hereinafter Hillesland). In this administrative appeal,  
3 Hillesland had challenged the administrative determinations issued by the County  
4 staff on April 1, 2008, which deemed the bulk of a surface mine owned by  
5 Petitioners to be a nonconforming use.  
6

7  
8 Under RCW 36.70C.130 (1) the court may grant relief under the Land Use  
9 Petition Act

10 "only if the party seeking relief has carried the burden of establishing that  
11 one of the standards set forth in (a) through (f) of this subsection has been  
12 met. The standards are:

- 13 (a) The body or officer that made the land use decision engaged in  
14 unlawful procedure or failed to follow a prescribed process, unless the  
15 error was harmless;
- 16 (b) The land use decision is an erroneous interpretation of the law,  
17 after allowing for such deference as is due the construction of a law  
18 by a local jurisdiction with expertise;
- 19 (c) The land use decision is not supported by evidence that is  
20 substantial when viewed in light of the whole record before the court;
- 21 (d) The land use decision is a clearly erroneous application of the law  
22 to the facts;
- 23 (e) The land use decision is outside the authority or jurisdiction of the  
24 body or officer making the decision; or  
25

(f) The land use decision violates the constitutional rights of the party seeking relief."

The Court has reviewed the administrative record from the proceedings below and the briefing by the parties and has considered oral argument presented by the parties on January 23, 2009.

On the basis of that review, this Court concludes that the Petitioners have not met their burden of establishing that at least one of the standards set forth in RCW 36.70C.130 (a) through (f), set out above, has been met.

Therefore, the decision by the Thurston County Board of Commissioners of July 21, 2008 here on appeal is AFFIRMED and this matter is remanded to the Thurston County Hearing Examiner for proceedings consistent with that Board of Commissioners' decision.

Dated this 27<sup>th</sup> day of February, 2009.

  
HONORABLE RICHARD D. HICKS

PRESENTED BY:

1 BJORGEN BAUER PITMAN BAUER, P.L.L.C.

2  
3 

4 Thomas R. Bjorgen

5 WSBA No. 10829

6 Attorneys for Respondents Hillesland, Wright, Fitkin,  
7 Miller and Gubser

8 EDWARD G. HOLM

9 THURSTON COUNTY PROSECUTING ATTORNEY

10  
11  for

12 Elizabeth Petrich

13 Deputy Prosecuting Attorney

14 WSBA No. 18713

15 Attorney for Respondent Thurston County

16 Signed by telephonic authorization 2-9-09

17 APPROVED FOR ENTRY AND FOR FORM:

18  
19 CUSHMAN LAW OFFICES, P.S.

20 *waived presentation*

21  
22 Ben D. Cushman, WSBA #26358

23 Attorney for Petitioners

24  
25 ORDER

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