



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.	IPUR 2019101123
)		
)		
Timberland Savings Bank)		
)	FINDINGS, CONCLUSIONS,	
)	AND DECISION	
)		
<u>For Innocent Purchaser Status</u>)		

SUMMARY OF DECISION

The request for innocent purchaser status is **APPROVED**.

SUMMARY OF RECORD

Request

Timberland Savings Bank (Applicant) requested innocent purchaser status pursuant to Thurston County Code 18.04.045.L relating to a 7.78-acre parcel at 8909 Winslow Drive SW in Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner held an open record hearing on the request on September 10, 2019.

Testimony

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

Scott McCormick, Associate Planner, Development Services Department
Jeff Pantier, Hatton Godat Pantier, Applicant Representative
Edwin Kern, Applicant Representative

Exhibits

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

EXHIBIT 1 Community Planning & Economic Department Environmental Review Section Staff Report, with the following attachments:

- Attachment a Notice of Public Hearing
- Attachment b Master Application, received March 15, 2019
- Attachment c Application for Innocent Purchaser, received March 15, 2019
- Attachment d Applicant's Affidavit, signed March 7, 2019
- Attachment e Site Plan
- Attachment f Applicant's Exhibits A – Legal Description
- Attachment g Applicant's Exhibit B – Assessed property values 1982-2019
- Attachment h Applicant's Exhibit C – Chain of title for adjacent parcel no. 13816340200
- Attachment i Applicant's Exhibit D – Chain of title for parcel no. 13816340400
- Attachment j Applicant's Exhibit E – Chain of title for adjacent parcel no. 13816340301
- Attachment k Applicant's Exhibit F – Chain of title for subject parcel no. 13816340300
- Attachment l Letters from Thurston County, dated November 2, 2015 and February 22, 1991
- Attachment m Letter from Thurston County, dated July 27, 1984
- Attachment n Thurston County Assessors Field Sheet of subject property
- Attachment o Notice of Application, dated June 6, 2019 with list of adjacent property owners within 500 feet dated May 20, 2019

EXHIBIT 2 Photos of notice of public hearing posting on site

EXHIBIT 3 Missing page of Exhibit K

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS

1. Timberland Savings Bank (TSB, the Applicant) requested innocent purchaser status pursuant to Thurston County Code (TCC) 18.04.045.L relating to 7.78 acres of property located at 8909 Winslow Drive SW in Olympia, Washington just south of Winslow Drive SW and State Highway 8.¹ *Exhibits 1, 1.C, and 1.D.*
2. The subject property has a current zoning designation of 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. The subject parcel is conforming with respect to minimum lot size. *Exhibit 1; Thurston County Code (TCC) 20.09A.050(2).*
3. According to Thurston County Assessor records, the subject property is developed with a 512 square foot general purpose building built in 1982 but is otherwise undeveloped. *Exhibit 1.*
4. The subject parcel was originally part of a larger parent parcel, which was conveyed to Nelson and Phyllis Hansen in August 1962. According to records submitted by the Applicant, the Hansens segregated the parent parcel four times by recording real estate contracts and deeds with legal descriptions attached. The first piece was segregated from the parent parcel in March 1976; this parcel is known as Tax Parcel 13816340200. The second parcel, known as Tax Parcel 13816340400, was segregated in December 1976. The third segregation, creating what is now known as Tax Parcel 13816340301, occurred in September 1982. The fourth segregation, creating the parcel subject to the instant application known as Tax Parcel 138163400300, also occurred in September 1982. *Exhibits 1, 1.D, 1.G, 1.H, 1.I, 1.J, and 1.K; Jeff Pantier Testimony.*
5. In 2005, the Applicant provided financing to a borrower in the principal amount of \$135,000 for the purchase of the subject property, which was recorded July 14, 2005

¹ The legal description of the subject property is a portion of Section 16, Township 19 North, Range 3 West, W.M., also known as Tax Parcel Number 13816340300. *Exhibit 1.* A complete legal description is found in the record at *Exhibit 1.F.*

under Auditor's File No. 3750464. When the borrower defaulted, the Applicant obtained the property through a foreclosure/ trustee sale in July 2017. *Exhibits 1, 1.D, 1.F, and 3.*

6. The Applicant submitted a document reflecting the assessed tax value of the subject property annually since 1982. At the time that the \$135,000.00 loan was made to the purchaser in 2005, the assessed value of the parcel was \$75,150.00. Following the national economy, the value of the subject property rose, fell, and rose again until in 2017 it was assessed at \$106,100.00. In 2019, its tax assessed value is \$131,400.00. *Exhibit 1.G; Jeff Pantier Testimony.*
7. Regarding the "due diligence" exercised by the bank when it made the loan in 2005, an Applicant representative testified that the bank would have required and reviewed a title report and an appraisal. Bank Vice President Edwin Kern testified that none of the typical borrower and property background check mechanisms turned up anything unusual about the subject parcel and the bank had no knowledge that it had not been legally created. *Edwin Kern Testimony; Exhibit 1.D.*
8. Based on the Applicant's submitted information and County Staff research, there is no documentation proving that the subject parcel meets any of the legal lot exemption standards criteria found in TCC 18.04.045. Over the years, the County has had opportunity to issue letters to previous owners of the subject property indicating that the parcel in question is not a legal lot as it does not meet the legal lot criteria established in TCC 18.04.045. The Applicant was unaware of these letters. *Exhibits 1, 1.L, and 1.M; Jeff Pantier Testimony.*
9. Planning Staff submitted the position that because the parcel meets minimum size requirements for the RRR 1/5 zoning district, there would be minimal impact to the surrounding area if innocent purchaser status is approved. *Exhibit 1; Scott McCormick Testimony.*
10. The Applicant submitted that the value of the defaulted mortgage reflected then-current property values at the time of the 2005 loan and also that the loan also approximates the current assessed value of the subject property, arguing that this demonstrates that the parcel was "purchased at market value not reflecting the illegal division." *Exhibit 1.D; Jeff Pantier Testimony.*
11. The Applicant submitted an affidavit and the testimony of Vice President Kern indicating that Timberland Savings Bank has not previously been granted innocent purchaser status. After reviewing available County record, Planning Staff concurred that it does not appear the bank has ever been the recipient of this status. *Exhibits 1 and 1.D; Edwin Kern Testimony.*

12. The instant proposal involves no development or ground disturbance on the subject property and is therefore exempt from review for compliance with the State Environmental Policy Act. Critical areas are not a factor in determining legal lot status. *Exhibit 1.*
13. Notice of public hearing was sent to all property owners within 300 feet of the site and was published in The Olympian on August 30, 2019. The notice was posted on site on August 28, 2019. *Exhibits 1 and 1.A.*
14. Public comment from two adjacent property owners was received regarding whether the subject property would be subdivided and whether a bank would be built. Staff responded that the property is not zoned for subdivision and no bank was proposed for the site. *Exhibits 1 and 1.P.* There was no public comment at hearing.
15. Based upon staff review of the available information, Planning Staff submitted the position that the application satisfies the innocent purchaser criteria established at TCC 18.48.030(B) and therefore recommended unconditional approval. *Exhibit 1; Scott McCormick 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.

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. *Findings 1, 2, 3, 4, 5, and 8.*
- 2. The value reflected in the loan made in 2005 for \$135,000.00 reflects current fair market value of the parcel. While the Applicant did not incur this cost in obtaining the property, its position as lender entitled it to collect that value from a third party, meaning it stood to lose that amount in the event of default. These circumstances satisfy the second innocent purchaser standard. *Findings 4, 5, 6, and 10.*
- 3. Although specific evidence of the actual “due diligence” exercised by the lender in the 2005 loan was not offered, there is no evidence in the record to show that the Applicant failed to review the 2005 borrower or the legal status of the property consistent with industry standards. An inference of due diligence is supported by the consistency between the assessed values and the amount of the loan. *Findings 4, 5, 6, 7, 8, 9, and 10.*
- 4. There is no evidence that the Applicant has previously been granted innocent purchaser status. *Finding 11.*

DECISION

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

Decided September 24, 2019.



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 **\$1,020.00** 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 ☐ \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.