



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 Request of	)	NO. 2021105079
	)	
	)	
<b>Samuel and Oma Venable</b>	)	
	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
	)	
<u>For Innocent Purchaser Status</u>	)	

#### **SUMMARY OF DECISION**

The request for innocent purchaser status relating to a 0.87-acre parcel addressed as 8533 Rich Road SE, Olympia is **APPROVED**.

#### **SUMMARY OF RECORD**

##### **Request**

Samuel and Oma Venable (Applicants) requested innocent purchaser status pursuant to Thurston County Code 18.04.045.L relating to a 0.87-acre parcel addressed as 8533 Rich Road SE, Olympia in unincorporated Thurston County, Washington.

##### **Hearing Date**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on August 23, 2022. The record was held open through August 25, 2022 to allow members of the public who experienced technology-based barriers to 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 August 25, 2022.

##### **Testimony**

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

Scott McCormick, Associate Planner, Thurston County Community Planning & Economic Development Department

Chris Pierce-Wright, Attorney, Applicant Representative  
Oma Venable, Applicant

**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 including the following attachments:
- A. Zoning / Vicinity Map (undated)
  - B. Master Application, received October 1, 2021
  - C. Application for Innocent Purchaser, received October 1, 2021
  - D. Affidavit, signed September 2, 2021
  - E. Site Plan
  - F. Applicant's response by Phillips Burgess PLLC, dated September 7, 2021
  - G. Applicant's Exhibit A – Real Estate Contract 1980
  - H. Applicant's Exhibit B – Statutory Warranty Deed 1997
  - I. Applicant's Exhibit C – Special Warranty Deed 2000
  - J. Applicant's Exhibit D – Quit Claim Deed 2000
  - K. Applicant's Exhibit E – Statutory Warranty Deed 2012
  - L. Applicant's Exhibit F – HUD Settlement Statement
  - M. Applicant's Exhibit G – HUD Appraised Value Disclosure
  - N. Applicant's Exhibit H – Addendum to the Manufactured Home Appraisal
  - O. Applicant's Exhibit I – No HUD Warranty Document
  - P. Applicant's Exhibit J – Closing Agreement and Escrow Instructions
  - Q. Notice of Application, dated May 25, 2022 with list of adjacent property owners within 500 feet, dated May 24, 2022
  - R. Emailed comments from the Squaxin Island Tribe, dated June 1, 2022.
  - S. Comment letter from the Nisqually Indian Tribe, dated May 27, 2022
  - T. Email from Joseph Brassfield, dated June 15, 2022
  - U. Email from Rose Quinby Cates and Mark Cates, dated June 14, 2022
  - V. Notice of Public Hearing, issued August 12, 2022
- Exhibit 2      Letter from Chris Pierce-Wright, Phillips Burgess PLLC in response to public comment, dated August 18, 2022

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

### **FINDINGS**

1. Samuel and Oma Venable (Applicants) requested innocent purchaser status pursuant to Thurston County Code (TCC) 18.04.045.L relating to a 0.87-acre parcel addressed as 8533 Rich Road SE, Olympia in unincorporated Thurston County, Washington.<sup>1</sup>  
*Exhibits 1, 1.B, 1.C, and 1.F.*
2. The innocent purchaser application, which included a notarized affidavit addressing the criteria set forth in TCC 18.48.030, was received by the County on October 1, 2021.  
*Exhibits 1.B, 1.C, and 1.D.*
3. The subject property is zoned Rural Residential Resource, one dwelling unit per five acres (RRR-1/5). Because the RRR-1/5 zone requires a minimum lot area of five acres, the subject parcel, at 0.87-acre, is nonconforming as to area. *Exhibits 1 and 1.A; Thurston County Code (TCC) 20.09A.050(2).*
4. The subject property contains a manufactured home that was placed in 2004, and a garage that was constructed in 1970. There was a different residential structure on the subject property prior to the 2004 manufactured home. *Exhibit 1; Oma Venable Testimony.*
5. The Applicants purchased the subject property from relatives Steve and Janet Miller in 2012, who own the neighboring parcel to the west (Tax Parcel Number 39909900101). The purchase price was \$160,000. The appraised value at the time was \$185,000. The Applicants argued, and County Staff concurred, that the purchase price represented market value. *Exhibits 1, 1.F, 1.L and 1.M.*
6. Based on review of available documents, there is no evidence that the lot was legally created in accordance with the legal lot criteria set forth in TCC 18.04.045. The subject property was originally part of the neighboring parcel to the west but was assigned its own tax parcel number by the Assessor's Office as part of a senior citizen tax exemption process, which process did not result in a subdivision of land. *Exhibit 1; Scott McCormick Testimony.* It is not clear from the record when the parcel number was created, except that it occurred after 1980 and prior to 1997, as demonstrated by the following chain of title:
  - On February 8, 1980, Hershel C. Miller and Oma Miller entered into a real estate contract with James Ryckman, personal representative of the estate of August and Pearl Anvik, to purchase "the south 152.03 feet as measured along the east boundary

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<sup>1</sup> The legal description is: Section 17 Township 17 Range 1W Plat CHAMBERS PLAT DIV 1 PTN LT 99 Document 009/022 BEING S 152.03F OF E 260F LESS ROW 4420929; also known as Tax Parcel 39909900100. *Exhibit 1.*

of Tract 99 of chambers as recorded in Volume 9 of Plats, page 22.” *Exhibit 1.G.*

- On September 2, 1997, in fulfillment of the 1980 real estate contract, Walter James Ryckman and Carley Ryckman conveyed the property to Hershel C. Miller via statutory warranty deed. The legal description was substantially the same as in 1980, except that it noted “Tax Parcel Nos: 3990-99-00100 (465) and 3990-99-00101 (465).” *Exhibit 1.H.*
- The property was conveyed to Steve Miller via special warranty deed on September 1, 2000, who in turn conveyed it to himself and to Janet Miller to create community property on September 7, 2000. In both instances the same legal description with two parcel numbers was used. *Exhibits 1.I and 1.J.*

7. Ownership of the two tax parcels was not split until the Applicants purchased the subject property from the Millers in 2012. The statutory warranty deed transferring the parcel to the Applicants described the property as follows:

The East 260 feet of the South 152.03 feet of Tract 99 of Chambers, as per Plat recorded in Volume 9 of Plats, page 22.

Situate in the County of Thurston, State of Washington.

Subject to Exhibit “A” hereto attached and incorporated herein.

Tax Parcel Number(s): 39909900100

*Exhibits 1.K and 1.F.*

8. The Applicants resided on the subject property as tenants prior to purchase. In 2006, the manufactured home was appraised. An addendum to the appraisal included the following: “The subject site is 0.91 acres and is considered a legal nonconforming (Grandfathered Use).” *Exhibits 1.F, 1.N, and 2.*
9. Prior to their 2012 purchase, the Applicants completed the steps required by the Department of Housing and Urban Development (HUD) to obtain a Federal Housing Administration (FHA) loan, including title services and a second appraisal. Neither of these actions revealed an illegal subdivision. *Exhibits 1.F, 1.O, and 1.P.*
10. Based on the Applicants’ affidavit and the County’s research, the Applicants have not previously been granted innocent purchaser status. *Exhibits 1 and 1.D.*
11. Notice of the application was mailed to property owners within 500 feet of the site on May 25, 2022. Notice of the public hearing was mailed on August 5, 2022 and published in *The Olympian* on August 12, 2022. *Exhibits 1, 1.Q, and 1.D.*
12. Public comment on the application included objections to the request out of concern that it would represent a rezone and would change the rural character of the community. *Exhibits 1.T and 1.U.* The Applicant argued in response that the comments do not address the criteria for approval of innocent purchaser status. The proposal would not

rezone the parcel and would not change the residential density of the neighborhood. A separate residence on the subject parcel has been inhabited for 20 years. *Exhibit 2; Christopher Pierce-Wright and Oma Venable 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 Applicants purchased the subject property at or near market value not obviously reflecting the illegal land division. *Finding 5.*
2. The Applicants exercised reasonable diligence and did not know of the illegal land division. Based on the tax parcel number, the presence of a residential structure, the separate address, and the results of multiple appraisals, and a federal loan including title services, it was reasonable for the Applicants to believe that the parcel was a legal lot. *Findings 4, 8, 9, and 12.*
3. The Applicants have not been previously granted innocent purchaser status. *Finding 10.*

### **DECISION**

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

Decided September 9, 2022.



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Sharon A. Rice  
Thurston County Hearing Examiner





**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

<b>NOTE:</b> 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).
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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 **\$804.00** for a Request for Reconsideration or **\$1,093.00** 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 ☐ \$804.00 for Reconsideration or \$1,093.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.