



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. 2016106262
)	
Washington Tractor)	
)	DECISION ON CITY OF LACEY'S
For a Special Use Permit)	REQUEST FOR RECONSIDERATION
)	

A hearing in the above-captioned application was conducted on October 10, 2017. The subject property is located within the Lacey Urban Growth Area in unincorporated Thurston County. City of Lacey submitted comments dated October 9, 2017 opposing approval. No representative of the City appeared at the hearing. The record was held open through October 20, 2017 to allow both County Staff and the Applicant an opportunity to respond to Lacey's comments. On November 3, 2017, the application was approved with conditions.

On November 20, 2017, the Examiner received the request for reconsideration timely submitted by the City of Lacey of the November 3, 2017 Washington Tractor SUP decision. Pursuant to Hearing Examiner Rules of Procedure, Rule 9.4(b)(2), the undersigned requested responses to the detailed reconsideration request from the Applicant and the County. These responses were timely submitted.

Summary of Request

The reconsideration request alleged (paraphrased) procedural and substantive error as follows:

Findings 7 and 8: It was due process error to allow the County and Applicant to propose changes to the site plan in post hearing submittals in response to City of Lacey's (Lacey's) October 9, 2017 comments without allowing Lacey to respond. This allegation in the reconsideration specifically claimed "interested party" status for Lacey.

Finding 8: It was error to allow "additional erroneous information" to be submitted in the post-hearing submittals by the parties that was relied on in entering finding 8. On reconsideration Lacey argued that a boundary line adjustment that was not in the record affects the proposed additional pedestrian facilities.

Finding 11: It was error to approve the SUP without also completing the design review process, per TCC 21.70.040.B.

Finding 15: It was error for this finding to state that the existing driveway access off 3rd Street SE shown in the submitted site plan is compliant with Thurston County Road Standards, because that site plan shows the driveway approximately five feet from the front property line which is Ranger Drive SE and Thurston County Road Standards Section 7.03(A) requires that access points be a minimum of 130 feet from an intersection measured from the property corner nearest to the intersection.

Finding 14: It was error to approve landscaping and pedestrian improvements in the right-of-way of Ranger Drive SE without requiring vacation of the right-of-way. It was also error to allow retention and use of an existing monument sign within the right-of-way of Ranger Drive SE.

Finding 6: It was error to approve of a setback of greater than 15 feet in the MHDC zone. The additional pedestrian features proposed by the Applicant in correspondence dated October 20, 2017 were not included as part of the application submittal and it therefore procedural due process error to allow them. It was error to allow surrounding nonconforming setbacks to form a basis of comparison or consideration when reviewing the instant proposal for setback in excess of 15 feet.

Finding 5: The staff report lacks clear and transparent rationale analyzing the site design standards of the Mixed Use High Density Corridor and "approval of a special use permit without analysis or rationale in the staff report of how this application and site plan is designed to be in conformance with the standards of the zone, designed to accommodate the pedestrian emphasis of the zone based of [sic] the definition of "pedestrian oriented frontage" (TCC 21.06.625), and the intent of the zone as enumerated in TCC 21.35.010 provides no reason or basis and this is arbitrary."

The request for reconsideration was submitted with four documents that were not introduced prior to the close of the record, including:

- BLA4568837, recorded June 14, 2017;
- Grant of Easement and Easement Agreement No. 4434331, recorded March 10, 2016, relating to tax parcels 78720000100 and 78720000200;
- Letter from Sarah Schelling/City of Lacey to Tony Kantas/Thurston County, dated April 27, 2015; and
- Letter from Brandon Miles and Joyce Phillips/City of Lacey to Tony Kantas/Thurston County, dated June 11, 2002

Jurisdiction

Pursuant to Thurston County Code (TCC) 2.06.060,

Any aggrieved person ... who disagrees with the decision of the Examiner may make a written request for reconsideration by the Examiner within ten days of the date of the

written decision. The request for reconsideration shall be filed with the Development Services Department upon forms prescribed by the Department. If the Examiner chooses to reconsider, the Examiner may take such further action as he or she deems proper and may render a revised decision ...

Rule 9.4, Procedure for Reconsideration and Reopening Hearing

....

b. Reconsideration.

- 1) Any party of record may file a written request with the Hearings Examiner for reconsideration within ten (10) days of the date of the Hearings Examiner's recommendation or decision. The request shall explicitly set forth alleged errors of procedure or fact. The request may also include direction to a specific issue that was inadvertently omitted from the Hearings Examiner's recommendation or decision.
- 2) Additional evidence may only be submitted upon a Request for Reconsideration if it is new evidence not available at the time of the public hearing, upon a showing of significant relevance and good cause for delay in its submission. At the Examiner's discretion, parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- 3) The Hearings Examiner shall respond to the request for reconsideration by either denying the request or approving the request by modifying or amending the recommendation / decision based on the established record or setting the matter for an additional public hearing.

Discussion

Due Process re: Lacey's Right to Respond: Lacey does not forward a persuasive argument that they had a right to respond to the post-hearing submittals of the County and Applicant. Had the City moved for "interested person" or "party of interest" status prior to the close of the record, additional accommodations might have been arranged, perhaps including the opportunity for a response to the parties' post-hearing submittals. Lacey was apprised of the hearing date and sent no representative to the hearing, nor undertook prior to the hearing, to assert such status. After close of the record and issuance of the decision, such a request is untimely. There has been no due process error.

New evidence: The four new documents attached to Lacey's reconsideration request are dated prior to the October 10th hearing. Lacey submitted three comments for the record and had every opportunity to forward the arguments based on these documents prior to or at the hearing. The reconsideration request makes no argument as to good cause for their untimely submittal. According to Hearing Examiner Rule 9.4(b)(2), the four documents cannot be admitted. Arguments premised on late submitted evidence cannot be considered.

Inadequacy of the Staff Report: Citing finding 5, Lacey contends that the staff report contained insufficient analysis of the site design standards of the Mixed Use High Density Corridor. The undersigned does not disagree that the analysis in the staff report is light; however, other

evidence offered, including testimony from County Staff and the Applicant and the post-hearing submittals contained sufficient analysis for the entry of findings and conclusions.

Interpretation of the County Code and Road Standards: The remaining arguments forwarded in the request reconsideration dispute the County's interpretations of its zoning code, design review, and road standards requirements. Washington courts have held that in disputes over interpretation of local regulations and standards, the local government is entitled to deference, especially when the interpretation is a matter of preexisting policy. Based on testimony offered at hearing and on the statements made by those charged with applying the County Code and the County road standards in response to the reconsideration request, such deference applies in this case. Lacey's arguments regarding the interpretation of County ordinances and adopted standards do not persuade the undersigned that reconsideration is appropriate.

Decision

Reconsideration is, respectfully, denied.

Decided December 8, 2017.



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR APPEAL TO BOARD
AFTER HEARING EXAMINER RECONSIDERATION

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 after reconsideration, you may file an appeal. The appeal process is described in A below. Unless appealed, decisions of the Hearing Examiner after reconsideration become final on the 11th day after the date of the reconsideration decision. **The Board of Thurston County Commissioners renders decisions within 60 days following a notice of appeal unless the Board, the applicant, and the appellant mutually agree to a longer period.

An appeal of a SEPA decision must be filed in Superior Court pursuant to the Land Use Petition Act, RCW Chapter 36.70C. An appeal of a decision relating to SEPA shall be done in accordance with RCW 43.21C.075 and TCC 17.09.160 (T).

A. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS

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 **ten (10) days** of the date of the Hearing Examiner's decision on a reconsideration request.
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.

B. STANDING All appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the appeal should be granted.

C. FILING FEES AND DEADLINE If you wish to appeal this determination, please do so in writing on the back of this form accompanied by a non-refundable fee of **\$890.00**. Any 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 above. **Postmarks are not acceptable.** If your application fee as well as completed application form is not filed by this time, you will be unable to appeal this determination. This deadline may not be extended.

**** Shoreline Permit decisions are not final until a 30-day appeal period to the state has elapsed following the date the County decision becomes final.**



Project No. _____
Appeal Sequence No. _____

APPEAL OF HEARING EXAMINER DECISION AFTER RECONSIDERATION

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 _____, 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.

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$890.00 Received: Initial _____ Receipt No. _____ Filed with the Resource Stewardship Department this _____ day of
_____, 20____.

Q:\Planning\Forms\Current Appeal Forms\2015.Appeal.rec.doc