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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	
)	
)	SUPT NO. 2019104112
Pattison Water Company)	
)	
)	
For a Special Use Permit)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	

SUMMARY OF DECISION

The request for approval of a special use permit to construct a 79,000 gallon water reservoir at the existing Pattison Water Company site located at 8201 Chestnut Hill Drive SE, Olympia, Washington is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

James Casebolt on behalf of Pattison Water Company (Applicant) requested approval of a special use permit to construct an additional water reservoir at the existing Pattison Water Company site located at 8201 Chestnut Hill Drive SE, Olympia, Washington. Four reservoirs are currently on site.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on January 28, 2020.

Testimony

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

Leah Davis, Associate Planner, Thurston County Community Planning & Economic Dept.
Dawn Peebles, Thurston County Environmental Health

Robert Balmelli, Applicant Representative, RB Engineering
James Casebolt, Applicant
Gregory Smith

Exhibits

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

Exhibit 1 Community Planning & Economic Department Report including the following attachments:

Attachment A	Notice of Public Hearing, issued January 10, 2020
Attachment B	Master Application, submitted August 12, 2019
Attachment C	Special Use Permit Application, submitted August 12, 2019
Attachment D	SEPA Environmental Checklist, submitted October 2, 2019
Attachment E	Site plan
Attachment F	Notice of Application, dated October 29, 2019
Attachment G	Determination of Non-Significance, issued December 13, 2019
Attachment H	Aerial view of parcel (2018)
Attachment I	Project 020226 Hearing Examiner decision, dated August 12, 2002
Attachment J	Site plan showing open space (if required), dated January 10, 2020
Attachment K	Memo from Dawn Peebles, Environmental Health, dated December 16, 2019
Attachment L	Comments from Washington Department of Ecology, dated September 19 and November 18, 2019
Attachment M	Comment from Nisqually Tribe, dated September 5, 2019
Attachment N	Comment from Squaxin Island Tribe, dated October 25, 2019

Exhibit 2 Photograph of posted notice

Exhibit 3 Large Lot Subdivision AF#1075959 (plat map)

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested a special use permit to construct a 79,000 gallon water reservoir, at the existing Pattison Water Company site located at 8201 Chestnut Hill Drive SE, Olympia, Washington.¹ The proposal is for a concrete reservoir approximately 30 feet in diameter and 15 feet tall on a concrete foundation.² The proposed additional reservoir would bring the Group A water system into compliance with Washington State Department of Health drinking water system regulations regarding minimum capacity and would allow for some level of additional future connections. *Exhibits 1, 1.B, and 1.C; Robert Balmelli Testimony.*
2. Pattison Water Company is a Group A water system regulated by the Washington State Department of Health, which presently serves approximately 1,600 customers in rural Thurston County. The first two of the existing reservoirs were included in the approval of SUP 020226 issued in 2002, which acknowledged that the first two reservoirs on-site had been present since prior to the adoption of the Thurston County zoning ordinance in 1980 and deemed them legally non-conforming; the second two reservoirs were authorized by the 2002 SUP. Three of the existing reservoirs are on the subject property and one reservoir is located within an easement on the property to the south. *Exhibits 1 and 1.I; Testimony of Leah Davis and James Casebolt.*
3. The 4.82-acre subject property is located in the McAllister Geologically Sensitive Area (MGSA) zoning district. The purpose of the MGSA district is to provide for residential, commercial, and agricultural uses of a type and density which will minimize the potential for contamination or significant loss in recharge capacity of a vulnerable groundwater aquifer and potable water source of great importance to the general public. This exercise of the police power (regulatory power) is necessary to preserve the public health, safety, and welfare. *Thurston County Code (TCC) 20.23.010.* The MGSA zone is a residential district that allows special uses other than those identified in TCC 20.23.025. The Group A water system is a special use allowed in the zone. *TCC 20.23.025.*
4. The eastern portion of the subject property is generally flat with moderate slope along the central and western portions. Most of the site is forested, except the eastern portion containing the existing water system infrastructure. The only improvements on-site are those associated with the Group A water system, including four reservoirs, the gravel driveway, a pump, well, and a shed that houses an existing emergency generator. Surrounding parcels are developed with single-family residences on five-acre or larger lots. *Exhibit 1.*
5. The site contains a soil type that may support the Mazama pocket gopher. Thurston County's gopher review team conducted a site visit and determined on December 10,

¹ The legal description of the subject property is a portion of Section 12, Township 17 North, Range 1, West; also known as Tax Parcel Number 11712440900. *Exhibit 1.*

² The staff report's reference at Exhibit 1, page 2 to a 60-foot diameter is an error. *Leah Davis Testimony.*

2019 that based on existing physical, environmental, and biological conditions on-site, the proposal has a low likelihood of impacting protected gophers. No further review was required. Aside from potential gopher soils, there are no regulated critical areas identified on or adjacent to the subject property. *Exhibit 1.*

6. Development standards for the MGSA zone are established in TCC 20.23.030, which limit lot coverage by impervious on lots smaller than five acres to 60% or 10,000 square feet, whichever is less. *TCC 20.23.030.* In this case, the lot is limited to 10,000 square feet of total impervious surface area. While the zone restricts maximum building height to 35 feet, water towers can be considered exempt from that limit pursuant to TCC 20.07.080. The MGSA zone requires setbacks from property lines of 10 feet from right-of-way easement or property line and flanking streets and five feet from side and rear property lines. *TCC 20.07.030.1(a).*
7. The proposed reservoir would be set back more than 40 feet from the front right-of-way, more than 100 feet from both side lot lines, and approximately 700 feet from the rear property line. Three to four feet of the new reservoir would be buried, resulting in a maximum height of approximately 11 to 12 feet above grade. Total existing impervious surface area on the property is 7,361 square feet. The proposed additional reservoir would increase impervious surface areas on-site to 8,160 square feet. As proposed, the new reservoir would satisfy all of the previously listed design standards. *Exhibits 1, 1.C, and 1.E.*
8. Pursuant to TCC 20.23.030.6(b), special uses in the MGSA zone are required to set aside 10% of the overall site in open space consistent with TCC Chapter 20.32. The provisions of TCC Chapter 20.32 primarily address the dedication of open space to be accessible to residents within a plat at the time of subdivision. The privately owned subject property is Lot I of a 15-lot residential subdivision created decades ago. The open space dedication requirement was not addressed at the time of the 2002 SUP permit process and no dedicated open space has been identified or reserved on-site. Given the security requirements of a public water system, dedication of open space to be accessible by all lot owners of the subdivision (and/or the public) would be inconsistent with the existing Group A water system use. Applicant representatives requested to be excused from the requirement. Planning Staff submitted that the open space dedication requirement is not appropriately applied to the instant proposal, contending that the intention of the open space requirement is to avoid creating large areas of impervious surface and that the proposal does this without specific dedication. Staff argued that the provision as drafted did not contemplate a special use like the proposal that would retain the majority of the site in native vegetation. Staff noted that should additional development of the subject property be proposed in the future, even if it were residential in nature, development that would increase on-site impervious surfaces above the 10,000 square foot limit would require special use permit review. *Exhibits 1, 1.H, and 3; Testimony of Leah Davis, Robert Balmelli, and James Casebolt.*
9. The County's zoning ordinance requires off street parking to be provided; however, the parking standards do not specify how many spaces are required for water reservoirs.

TCC 20.44.030. The Applicant indicated that once construction is complete, the only traffic to the site would consist of one maintenance vehicle approximately once per day and that the proposed additional water tower would not generate additional maintenance trips above those already existing. Applicant representatives submitted that the existing looped gravel driveway on-site would provide adequate parking area. *Robert Balmelli Testimony; Exhibits 1 and 1.E*.

10. The zoning ordinance requires landscaping to screen commercial (non-residential) uses from adjoining residential parcels and adjacent rights-of-way. *TCC Chapter 20.45*. The subject property is densely vegetated. Applicant representatives submitted, and Planning Staff concurred, that additional landscaping would not be required for the proposed reservoir to satisfy the screening requirements of TCC Chapter 20.45. *Exhibits 1 and 1.H; Testimony of Leah Davis and James Casebolt*.
11. The project would not add rotary converters, generating machinery, or any equipment that would create substantial noise, electrical interference, or similar disturbances. *Exhibits 1 and 1.D*.
12. The Nisqually Indian Tribe submitted a comment letter stating they had no concerns and asking to be informed of inadvertent discoveries. *Exhibit 1.M*. The Squaxin Island Tribe submitted a comment stating they had been in communication with the Applicant and that their concerns had been satisfied by learning that a local commercial borrow pit would be used for fill. *Exhibit 1.N*.
13. The Thurston County Environmental Health Division (EHD) reviewed the proposal for compliance with environmental and public health standards. EHD Staff recommended project approval with conditions that would require final approvals from the Washington State Health Department prior to construction and to commencement of use. *Exhibit 1.K; Dawn Peebles Testimony*.
14. The Washington Department of Ecology submitted comment with information relating to toxic cleanup (in the event soil contamination is discovered) and water quality management. *Exhibit 1.L*.
15. Pursuant to the State Environmental Policy Act (SEPA), Thurston County was designated lead agency for SEPA review through an environmental checklist and determined through that, with the mitigation proposed, the project would not result in probable significant adverse environmental impact. A determination of non-significance (DNS) was issued on December 13, 2019. The DNS was not appealed and became final on December 27, 2019. *Exhibit 1.G; Leah Davis Testimony*.
16. Notice of application was mailed to owners of parcels within 500 feet of the site on October 29, 2019. *Exhibit 1.F*. Notice of public hearing was mailed to owners of parcels within 500 feet of the site and others who requested notice on January 10, 2020. Notice was posted on-site on January 16, 2020 and published in The Olympian on January 17, 2020. *Exhibits 1.A and 2*.

17. At hearing, a neighboring property owner submitted public comment questioning the need for the expansion and asking whether additional water storage capacity on-site would result in water quantity impacts to surrounding properties served by private wells. *Gregory Smith Testimony.*
18. Applicant representatives explained that the existing reservoir capacity does not satisfy current Washington State Department of Health Group A water system capacity standards for the number of connections presently served. Representatives also explained that the additional reservoir would not be filled with water drawn from the subject property, but rather would have water conveyed to it from off-site wells that are not believed to be hydraulically connected to the ground water in the immediate vicinity of the subject property. *Testimony of Robert Balmelli and James Casebolt.*
19. Having reviewed all materials and heard testimony at hearing, Planning Staff determined that with the conditions recommended, the project would be consistent with the Thurston County Comprehensive Plan, the Zoning Ordinance, and all other applicable policies and ordinances. *Exhibit 1; Leah Davis Testimony.* The Applicant waived objection to the recommended conditions. *James Casebolt Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide this special use permit application under Thurston County Code Sections 2.06.010 and 21.87.010 and Section 36.70.970 of the Revised Code of Washington.

Special Use Permit Criteria for Review

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 21.87.035 are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:

1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

Use-Specific Standards for Public Utilities TCC 20.54.070(30)

1. New or major additions to existing facility. There shall be no rotary converters, generating machinery or other equipment that would cause substantial noise, electrical interference, or similar disturbance.

Conclusions Based on Findings

1. As conditioned, the additional reservoir at its proposed location appears to comply with all applicable laws and plans. In increasing capacity of an established Group A water system serving the greater area while retaining the vast majority of the site in open space, the proposed use complies with the purpose and standards of the MGSA zoning district. *Findings 1, 2, 3, 6, 7, 8, 9, 10, and 15.*
2. The proposed expansion of the existing Group A water system use is appropriate for placement on the site. The proposed reservoir would not generate additional noise or traffic. There is room on-site for maintenance vehicle parking. Due to substantial existing vegetation, topography, proposed setbacks, and the long-standing presence of the existing utility facilities on-site, the additional reservoir would have negligible visual impacts on surrounding properties. A condition of approval would ensure retention or replacement of existing natural vegetation that screens the utility facilities from adjacent uses and rights-of-way. The record supports the conclusions that the project would not create substantial or undue adverse impacts on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or generate adverse impacts on public services. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19.*
3. As proposed, the project would satisfy the utility expansion-specific special use standards at TCC 20.54.070(30). *Findings 1 and 11.*
4. Considering all facts and the omission of the open space dedication from the prior 2002 SUP approval process, the undersigned concludes that it is appropriate to excuse the instant proposal from the open space dedication requirement established in TCC 20.23.030.6(b). Without express dedication, the project would retain more than 4.5 acres in naturally vegetated open space. Dedicated open space accessible to the general public, or even open only to other residents of the subdivision in which the subject property is

located, would be inconsistent with the security needs of the existing Group A water utility on-site. Should additional development be proposed on-site, such future development would be reviewed at that time for the appropriateness of imposing the open space dedication requirement. *Findings 1, 2, 4, 6, and 8.*

DECISION

Based on the preceding findings and conclusions, the requested special use permit to construct an additional reservoir as described herein at the existing Pattison Water Company site located at 8201 Chestnut Hill Drive SE, Olympia, Washington is **GRANTED** subject to the following conditions:

Public Health and Social Services Department Conditions:

1. Spill kits must be kept on-site during construction activities to handle any minor equipment leaks or accidental spills.
2. Prior to release of the building permit, written confirmation of plan approval from Washington State Department of Health must be submitted to Environmental Health.
3. Prior to putting the storage reservoir to use, written confirmation of final construction approval from Washington State Department of Health must be submitted to Environmental Health.

Community Planning and Economic Development Conditions:

1. If contamination is suspected, discovered, or occurs during the proposed action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator at (360)407-6300.
2. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are pollutants.

Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington and is subject to enforcement action.

3. All grading and filling of land must utilize only clean fill. All other material may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filling. Removed debris resulting from this project must be disposed of at an approved site.

4. The existing natural site-obscurer trees and vegetation shall be maintained in such a way as to meet the landscaping/screening requirements of TCC 20.45.040(1)(5):
 - A minimum five-foot buffer strip along all public-rights-of-way or adjacent to a residential district or use.
 - Buffer strips adjacent to residential districts or uses shall contain any combination of trees, live ground covers, shrubs, earthen berms, and other landscape features which will provide a year-round sight-obscurer screen.
5. In the case of inadvertent discovery of archaeological resources or human burial, the Applicant and/or contractor must immediately stop work and contact the Washington Department of Archaeology and Historic Preservation at (360)586-3067.
6. All development shall be in substantial compliance with the approved site plan. Any expansion or alteration this use will require approval of a new or amended special use permit. Community Planning and Economic Development will determine if any proposed amendment is substantial enough to require hearing Examiner approval.

DECIDED February 12, 2020.



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 **\$1,051.00** 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____.