



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 Application of	)	NO. 2020102060
	)	
<b>Thurston County Public Works</b>	)	
	)	FINDINGS, CONCLUSIONS,
For a Special Use Permit	)	AND DECISION
_____	)	

**SUMMARY OF DECISION**

The request for a special use permit to construct a storage building at 9605 Tilley Road is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

Thurston County Public Works (Applicant) requested a special use permit (SUP) to construct a 5,084 square foot metal building for storage of sand and other road maintenance materials. The subject property is located at 9605 Tilley Road South, Olympia, Washington.

**Hearing Date**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on December 8, 2020. In order to ensure public access to the virtual hearing process, the record was held open through December 10, 2020 to allow for comment from members of the public who may have had difficulty joining the virtual hearings, with additional time arranged for responses by the parties. No timely post-hearing public comment was submitted, and the record closed on December 10, 2020.

**Testimony**

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

Scott McCormick, Associate Planner, Thurston County

Dawn Peebles, Environmental Health Specialist, Thurston County

Michael Crowe, Capital Project Manager II, Thurston County

## **Exhibits**

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

- EXHIBIT 1 Community Planning and Economic Development Staff Report including the following attachments:
- A Notice of Public Hearing
  - B Zoning map
  - C Master Application, submitted May 28, 2020
  - D Special Use Permit Application, submitted May 28, 2020
  - E Narrative summary
  - F Site plans, received May 28, 2020
  - G Notice of Application, dated July 22, 2020, with adjacent property owners list, dated July 17, 2020
  - H SEPA determination of non-significance (DNS), date signed March 24, 2020
  - I Notice of SEPA Application, dated February 18, 2020
  - J SEPA Environmental Checklist, signed on “2/13”
  - K Memo from Amy Crass, Environmental Health, dated July 2, 2020
  - L Comment letter from the WA Department of Ecology, dated June 18, 2020
  - M Comment letter from the Nisqually Indian Tribe, dated June 5, 2020
  - N Comment email from the Squaxin Indian Tribe, dated June 4, 2020
  - O Comment email from the Squaxin Indian Tribe, dated February 27, 2020
  - P Full sized site plan, received May 28, 2020
- EXHIBIT 2 Email from Katherine Rottell, Washington Department of Health, dated May 1, 2020

Based on the record developed at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

## FINDINGS

1. Thurston County Public Works (Applicant) requested a special use permit (SUP) to construct a 5,084 square foot metal building for storage of sand and other road maintenance materials.<sup>1</sup> The subject property is addressed as 9605 Tilley Road South, Olympia, Washington.<sup>2</sup> *Exhibits 1, 1.E, 1.E, 1.F, and 1.P.*
2. The application was submitted on May 27, 2020 and determined to be complete for purposes of commencing project review on June 25, 2020. *Exhibits 1 and 1.G.*
3. The subject property is 10.19 acres in area and is zoned Rural One Dwelling Unit per 10 Acres (R 1/10). *Exhibits 1 and 1.B.* The purpose of the R 1/10 zone is to “(1) protect public health and safety by reducing development in environmentally sensitive and hazardous areas ...; (2) provide for residential uses, agriculture, forestry, conservation, and associated uses appropriate for a low density rural area that will not require urban services; and (3) provide for mining through a special use process.” *Thurston County Code (TCC) 20.09C.010.* Primary permitted uses in the R 1/10 zone include single-family dwellings, agriculture, forest practices, and outdoor recreation. *TCC 20.09C.020.* Public facilities are allowed in the R 1/10 zone with approval of a SUP. *TCC 20.54, Table 1.* There are no special use standards applicable to new or major additions to a public facility. *TCC 20.54.070(29); Exhibit 1.*
4. The subject property is part of a larger Public Works campus that serves as the main hub for all road maintenance in the County. The campus includes numerous buildings associated with this use, including an office building, a vehicle maintenance building, storage buildings, and the Emergency Control Center, which is used to coordinate relief during a public emergency or disaster. These buildings are located to the north of the proposed storage building. *Exhibits 1, 1.E, and 1.F.*
5. The project includes the development of a parking lot to the east of the building, but the parking lot does not require SUP approval. *Exhibits 1, 1.D, and 1.P.*
6. Due to the scale of the Public Works campus, surrounding land uses are a significant distance from the proposed building. The nearest residence is to the north of the campus, whereas the proposed building is on the south side of the campus, several hundred feet away. The land use to the south (150 feet from the proposed building) is in agricultural use. *Exhibits 1, 1.E, and 1.F, and 1.J; Michael Crowe Testimony.*
7. Development standards applicable to the R 1/10 zone include a front yard setback of 10 feet, side, and rear yard setbacks of five feet, and a maximum building height of 35 feet. *Exhibit 1; TCC 20.09C.050; TCC 20.07.030.* The proposed single-story building would

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<sup>1</sup> See Finding 17.

<sup>2</sup> The legal description of the subject property is a portion of Section 22, Township 17 North, Range 2 West, W.M.; also known as Tax Parcel Number 12722140104. *Exhibit 1.*

be set back 150 feet from the nearest property line. *Exhibits 1.E and 1.F; Michael Crowe Testimony.*

8. The normal hours of operation would be from 6:00 am to 6:00 pm Monday through Friday, with extended or weekend hours as needed to address weather-related road maintenance requirements. Only County employees – not members of the public – would visit the proposed building. *Exhibit 1.D; Michael Crowe Testimony.*
9. No plumbing and no staffing are proposed within the structure. *Exhibit 1.K.*
10. The Group A public water system serving the campus is located to the north of the proposed building, and a portion of an asphalt driveway and stormwater improvements are proposed within the 100-foot sanitary control radius. The Washington Department of Health reviewed the proposal and submitted that it does not have concerns as long as no parking is allowed on the driveway and stormwater runoff is directed outside of the 100-foot sanitary control radius. The Thurston County Environmental Health Division also reviewed the proposal and recommended these conditions. *Exhibits 1.K and 2.* The Applicant submitted that the proposed driveway would be for vehicle maneuvering and not for parking. Members of the public would not have access to the area. The paving would be sloped to direct stormwater runoff away from the well and into the stormwater system. *Michael Crowe Testimony.*
11. To protect the Group A well from saltwater runoff in the event that salt is added to the sand and spilled during the loading process, the Applicant proposes to construct two 5,000-gallon holding tanks to capture the runoff. *Exhibit 1.E; Michael Crowe Testimony.*
12. There are soils potentially providing habitat to the Mazama pocket gopher within 300 feet of the project area. The site was evaluated for the presence of the Mazama pocket gopher during the summer of 2020 and no mounds or gophers were detected. There are no other environmentally sensitive areas on or near the project site. The nearest water feature that might be classified as a wetland is approximately 1,000 feet from the proposed building. *Exhibit 1; Testimony of Scott McCormick and Michael Crowe.*
13. Thurston County Public Works acted as lead agency for review of the environmental impacts of the proposal. Public Works determined that the project would not have a probable, significant adverse impact on the environment and issued a determination of non-significance (DNS) on March 24, 2020. *Exhibit 1.H.*
14. The Nisqually Indian Tribe and Squaxin Island Tribe commented that they have no issues of concern but requested to be notified if there are any inadvertent discoveries of archaeological resources or human burials. This request was incorporated into the recommended conditions of SUP approval. *Exhibits 1, 1.M, 1.N, and 1.O.*
15. Notice of the open record hearing was mailed to owners of property within 500 feet of the site on November 18, 2020 and published in *The Olympian* on November 27. *Exhibit 1.A.*

16. The Thurston County Planning and Economic Development Department reviewed the proposal for compliance with applicable County codes and the Capital Facilities element of the Thurston County Comprehensive Plan and recommended approval, subject to conditions. The conditions require the Applicant to direct stormwater outside of the 100-foot sanitary control radius, not allow parking within the sanitary control radius, test for contamination if contamination is suspected or discovered, control erosion, use only clean fill, maintain existing landscaping such as to meet the landscaping requirements of TCC 20.45.040, stop work and notify the Washington Department of Archaeology and Historic Preservation if archaeological resources or human burials are inadvertently discovered, obtain a Construction Stormwater Permit from the Department of Ecology, if required, and ensure that development of the site substantially complies with the approved site plan. *Exhibit 1*. The Applicant did not object to the recommended conditions. *Michael Crowe Testimony*. There was no public comment on the application.
17. The application materials and various documents in the record call out a proposed 4,920 square foot pre-engineered building. *Exhibits 1, 1.E, and 1.G*. The site plan indicates an 82- by 82-foot, or 6,724 square foot, building. *Exhibits 1.G and 1.P*. The Applicant representative indicated that the dimensions of 82 by 82 feet shown on the site plan was a typographical error; the correct dimensions are 82 feet by 62 feet, which is 5,084 square feet. The discrepancy between the 5,084 square foot footprint indicated by the Applicant agent and the 4,920 square feet indicated in the project description results from the proposed use of ecology block interior containment walls, which expand the footprint of the building. *Exhibit 1.E; Michael Crowe Testimony*. The site plan should be amended to reflect the accurate size of the building approved.

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner has jurisdiction to decide special use permit applications pursuant to Thurston County Code 2.06.010 and 20.54.015(2).

### **Criteria for Review: Special Use Permit**

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 20.54.040 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.

### **Conclusions Based on Findings**

1. As conditioned, the proposed use at the proposed location would comply with applicable laws and plans, including the Thurston County Comprehensive Plan, the Thurston County Sanitary Code, the Thurston County Critical Areas Code, the State Environmental Policy Act, and the requirements of the Washington Department of Health and the Washington Department of Ecology. *Findings 10, 11, 12, 13, 16, and 17.*
2. The use complies with the general purposes and intent of the R 1/10 zone and with applicable open space, lot, setback, and bulk standards. The development would be outside of environmentally sensitive and hazardous areas and would not conflict with surrounding residential and agricultural land uses. The building setbacks would far exceed the minimum required by the zoning ordinance. *Findings 3, 6, 7, and 12.*
3. With conditions, the proposed use is appropriate in the location for which it is proposed.
  - a. As conditioned, the use would 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. The proposal is for a new building within an existing Public Works campus. The building would not change the character of the existing use and would be a significant distance from surrounding land uses. The proposed 5,000-gallon holding tanks and the conditions of approval recommended by the Washington Department of Health and the Thurston County Environmental Health Division would ensure that the on-site Group A public water system is protected. The conditions of approval include a requirement to stop work and provide notice to the Washington Department of Archaeology and Historic Preservation in the event of inadvertent discovery of archaeological resources or human burials. *Findings 1, 4, 6, 10, 11, 12, 13, 14, 16, and 17.*

- b. As conditioned, the use would be adequately served by and would not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area. *Findings 1, 4, 8, 9, 10, 16, and 17.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a special use permit to construct a 5,084 square foot storage building at 9605 Tilley Road is **GRANTED** subject to the following conditions:

#### Public Health and Social Services Department Conditions:

1. All stormwater runoff must be directed outside of the 100-foot sanitary control radius of the Group A public well.
2. No parking is allowed on the proposed asphalt driveway, as it is within the 100-foot sanitary control radius of the Group A public well.

#### Community Planning and Economic Development Conditions:

3. 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.
4. 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.

5. All grading and filling of land must utilize only clean fill.
6. The existing natural site-obscuring trees and vegetation shall be maintained in such a way as to meet the landscaping/screening requirements of TCC 20.45.040.
7. 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.
8. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant's responsibility to obtain this permit if required.

9. 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.
10. Prior to construction permit issuance, the site plan shall be amended to reflect the correct dimensions of the building envelope and the building footprint.

**DECIDED** December 22, 2020.



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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 **\$750.00** for a Request for Reconsideration or **\$1,041.00** 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 \$1,041.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.