



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. 2021105504
)	
)	
William and Janet McTurnal)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	
<u>For Innocent Purchaser Status</u>)	

SUMMARY OF DECISION

The request for innocent purchaser status relating to a 1.19-acre parcel addressed as 7244 Stibgen Road NW, Olympia is **APPROVED**.

SUMMARY OF RECORD

Request

William and Janet McTurnal (Applicants) requested innocent purchaser status pursuant to Thurston County Code 18.04.045.L relating to a 1.19-acre parcel addressed as 7244 Stibgen Road NW, 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 9, 2022. The record was held open through August 11, 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. The Hearing Examiner also held the record open for the Applicants to submit legal argument on RCW 64.06.015, which was submitted on August 9, 2022 (Exhibit 3). No post-hearing public comment was submitted, and the record closed on August 11, 2022.

Testimony

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

Lacy Garner, Associate Planner, Thurston County Community Planning & Economic Development Department

Cody Branstetter, Attorney, Applicant Representative

William McTurnal, Applicant

Janet McTurnal, 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. Notice of Public Hearing
 - B. Master and Innocent Purchaser Applications and Site Plans, received October 13, 2021
 - C. Site Survey, received June 28, 2022
 - D. Notice of Application, mailed April 29, 2022
 - E. Notarized Innocent Purchaser Statement from William and Janet McTurnal, dated June 17, 2022
 - F. 1979 split of Tract 196 by Karola Watson (SS-1360)
 - G. 1981 sale: Karola Watson to Daniel Gibson
 - H. 1996 Stipulation and Order for Partition of Tenancy in Common
 - I. 2007 sale: Daniel Gibson Estate to Kord & Chase
 - J. 2007 sale: Kord & Chase to McTurnals
 - K. Email from Squaxin Island Tribe, dated May 4, 2022
 - L. Public Comment: Jim Wussler letter, dated May 19, 2022 with attachments
 - M. Public Comment: Kristen Smith email, dated May 19, 2022
 - N. Public Comment: Kristen Smith email, dated May 25, 2022
 - O. Thurston County Assessor's Cost Valuation Report 2016-2021
 - P. Thurston County Assessor's Market Value Information 2013-2022
- Exhibit 2 Email from Cody Branstetter to Lacy Garner, dated August 4, 2022, along with prior correspondence between the parties in same email chain
- Exhibit 3 Letter from Cody Branstetter, dated August 9, 2022 re: RCW 64.06.015

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

FINDINGS

1. William and Janet McTurnal (Applicants) requested innocent purchaser status pursuant to Thurston County Code 18.04.045.L relating to a 1.19-acre parcel addressed as 7244 Stibgen Road NW, Olympia in unincorporated Thurston County, Washington. The legal description of the property is as follows:

That portion of the East one-half of Tract 196, Boston Harbor Water Front Acre Tract, Division 2, as recorded in Volume 8 of Plats, page 46; also known as Parcel No. 2 of Short Subdivision No. SS01360, as recorded in Volume 13 of Short Subdivisions, pages 407-411, under Auditor's File No. 1099541, lying Easterly of a property line extending from a point on the Southerly line of said Tract 232.16 feet Westerly of the Southeast corner thereof thence Northeasterly to a point on the Northerly line of said Tract 92.47 feet Westerly of the Northeast corner thereof.

Together with an easement for ingress, egress, and utilities over, under and across the south 20 feet of said Tract 196.

In Thurston County, Washington.

Known as Tax Parcel Number: 36020019603.

Exhibits 1, 1.B, and 1.E.

2. The Applicants submitted the application for innocent purchaser status on October 12, 2021 and had an affidavit addressing the innocent purchaser criteria notarized on June 17, 2022. *Exhibits 1.B and 1.E.*
3. The subject property is zoned 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. With an area of 1.19 acres, the subject property is substantially smaller than the minimum lot area of the RRR-1/5 zone, but the nonconforming lot area is not unique within the neighborhood. There are other parcels in the vicinity, including off Stibgen Road NW, that are similar in area to the subject property. *Exhibit 1; Thurston County Code (TCC) 20.09A.050(2).*
4. The subject property is undeveloped and mostly forested. *Exhibit 1.*
5. 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 a five-acre parcel that was subdivided into two 2.5-acre lots in 1979 through Short Subdivision 1360. This was a legal subdivision, and the 2.5-acre lot that included the subject property was sold to Daniel Gibson in 1981. On June 3, 1996, an Order for Partition of Tenancy in Common was entered in Thurston County Superior Court, which granted ownership of the eastern half of the 2.5-acre parcel (the subject property) to Mr. Gibson, and the western half to another party. Although the legal lot criteria recognize the legality of court-ordered divisions in some circumstances

(see TCC 18.04.045.G), the division must have occurred between August 23, 1993 and September 18, 1995 to qualify, and the division at issue occurred outside of that time frame and not for the listed circumstances. Consequently, the court order did not create legal lots. Mr. Gibson's estate transferred the subject property to Claudia Kord and Marilyn Chase via quit claim deed on April 30, 2007, and, on May 31, 2007, Kord/Chase transferred the parcel to the Applicants via a Bargain and Sale Deed. The lot had its own street address and tax parcel number. The Applicants were not aware of the illegal status of the lot at the time of purchase. *Exhibits 1, 1.B, 1.E, 1.F, 1.G, 1.H, 1.I, and 1.J; Testimony of Lacy Garner and William McTurnal.*

6. The Applicants purchased the subject parcel for \$124,000 (\$104,202 per acre). Although comparable sales data for 2007 was not presented, based on more recent records, the Applicants' assertion that the sales price represented fair market value (if not higher) for a legal lot is credible. Undeveloped land within the neighborhood sold for amounts ranging from \$29,000 to \$63,000 per acre between May of 2015 and February of 2021, and Thurston County estimated the value of the subject property as \$83,148 in 2021 (\$79,000 after neighborhood adjustment). At the time of the purchase there was a housing bubble with very limited inventory in this neighborhood. The Applicant testified that they paid the sales amount in order to avoid a bidding war because they expressly wanted to live in this neighborhood close to their children and grandchildren. The subject parcel was marketed as a "very nice 1+ acre home site in the Griffin School District just waiting for your ideas" (Exhibit 1.B). *Exhibits 1, 1.B, 1.O, and 1.P; William McTurnal Testimony.*
7. The purchase and sale agreement for the Applicants' purchase specified a 30-day feasibility contingency to allow the Applicants to verify "whether or not the Property can be platted, developed and/or built on (now or in the future) and what it will cost to do this." *Exhibit 1.B.*
8. During the purchase contingency period, Applicant William McTurnal located the property corner markers, measured the property lines with a tape measure, and confirmed that the dimensions matched the dimensions of the legal description. Based on this, he did not think that a professional survey was necessary. He also learned from the County Clerk's office that the current configuration of the property was the result of a court division. The Applicant further contacted a septic designer, a well driller, and the power company, all of which provided information suggesting that sewage disposal, water, and electricity would be feasible on the site. From this research, along with information from the seller that someone had previously lived on the property for a significant period of time, the Applicant believed that the subject property was a buildable lot.¹ *William McTurnal Testimony; Exhibit 2.*
9. Although no evidence was presented that the Applicants sought information from the

¹ The County does not have record of issuing any development permits for the subject property prior to the Applicant's purchase, nor any independent information verifying that the subject property previously contained an inhabited structure. County records identify the subject property as vacant land. *Lacy Garner Testimony.*

County's building or planning departments as to the feasibility of development on the subject property prior to purchase, the Applicants obtained County approval of a Conditional Site Approval for a Septic Design shortly after purchase. The illegal status of the lot was not discovered during the septic review process and a permit was issued for installation of a septic system. During the economic downturn that followed the 2008 market crash, the Applicants allowed the permit to expire without pursuing construction. In 2019 they reapplied; at which time the illegal status of the lot was discovered. *Exhibit I*. Of note, in March 2022 the County issued a permit for replacement of the manufactured home located on the adjacent 1.26-acre parcel (the west half of the illegal subdivision). *Lacy Garner Testimony*.

10. Based on the Applicants' affidavit and the County's research, the Applicants have not previously been granted innocent purchaser status. *Exhibits I and I.E*.
11. Notice of the application was mailed to property owners within 500 feet of the site on April 29, 2022. Notice of the public hearing was mailed on July 22, 2022 and published in *The Olympian* on July 29, 2022. *Exhibits I, I.A, and I.D*.
12. Public comment on the application included concerns that the septic effluent would negatively impact neighboring properties, that an additional dwelling unit would be inconsistent with the RRR 1/5 zoning, and that the Applicant did not exercise due diligence prior to purchase by not taking actions such as having the property professionally surveyed or evaluating the feasibility of development within the contingency period. *Exhibits I.L, I.M, and I.N*. Planning Staff raised similar concerns, arguing that the Applicants may not have adequately demonstrated reasonable diligence, which would mean the application does not satisfy the innocent purchaser criteria established at TCC 18.48.030(B) and should be denied. Planning Staff submitted that the zoning of the property and the lengthy legal description should have been red flags to the Applicants. Planning Staff also questioned whether the Applicants received disclosure from the seller pursuant to RCW 64.06.015.² *Exhibits I and 2; Lacy Garner Testimony*.
13. Through the assistance of legal counsel, the Applicants argued the following: (1) due diligence should not be required because it is not a criterion of state law; (2) even if due diligence is required, the standard is not high and is met in this case; and (3) to require more due diligence than already demonstrated would conflict with a past County innocent purchaser decision (No. 2021102013). With respect to RCW 64.06.015, the effective date of the statute (July 22, 2007) was after the date of sale (May 31, 2007). *Exhibits 2 and 3; Cody Branstetter Argument*.

² RCW 64.06.015 requires certain seller disclosures in a transaction for the sale of unimproved residential property, including disclosures regarding zoning violations, nonconforming uses, and boundary disputes.

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 above market value not reflecting the illegal land division. *Finding 6.*
2. The Applicants exercised reasonable diligence and did not know of the illegal land division. Although there are certainly additional steps the Applicants could have taken to

determine the legality of the lot prior to purchase or within the contingency phase established in the purchase and sale contract, based on the record as a whole, the Hearing Examiner concludes the Applicants' efforts were reasonable under the circumstances. The Applicants did not create the illegal lot through the transaction. The lot had already been transferred in the same configuration previously, and it had an address and parcel number. The lot was marketed as a building site. The Applicants made inquiries during the contingency period regarding the property's development potential and received positive feedback from public and private agencies. The Applicants made application for septic installation and received County approval. Although it is arguable that inquiries should have been made to County agencies with permitting authority, the permitting history of the subject and adjacent parcels suggests that the legal status of the lot might not have been discerned even if inquiries had been made. It was not unreasonable for the Applicants not to question the court-ordered land division. *Findings 5, 6, 7, 8, and 9.*

The Applicants argued that they should not have to demonstrate "due diligence" because such standard is not found in the Washington Supreme Court decision *Crown Cascade, Inc. v. O'Neal*, 100 Wn.2d 256 (1983), which required the County to issue development permits to "an innocent purchaser for value without actual notice" pursuant to RCW 58.17.210, even though the lot had not been legally divided. However, due to the disposition of this case (finding in favor of the Applicants on the question of reasonable diligence) and the Hearing Examiner's lack of jurisdiction to exempt the Applicants from the requirements of TCC 18.48.030.B, the Hearing Examiner declines to determine whether there is any conflict between RCW 58.17.210 and the reasonable diligence standard.

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 August 22, 2022.



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 **\$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____.