MEMORANDUM

TO: Thurston County Planning Commission

FROM: Katie Pruitt, Associate Planner

DATE: March 13, 2015

SUBJECT: Written comments received for March 18, 2015 Public Hearing

The Planning Commission will hear testimony and receive written comments on two development code docket items on March 18, 2015. The following is a table of comments received to date on the appeals process amendment, docket item A-1. No public comments have been received on the changes to the wetlands chapter of the CAO, docket item A-4.

<table>
<thead>
<tr>
<th>Name</th>
<th>Date Received</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Howard Glastetter*</td>
<td>December 3 and 4, 2014, and March 9 and 13, 2015</td>
<td>Opposed – retain the BOCC appeal process</td>
</tr>
<tr>
<td>2. James Myers*</td>
<td>December 4, 2014</td>
<td>Opposed – retain the BOCC appeal process</td>
</tr>
<tr>
<td>3. Barbara Cook*</td>
<td>December 11, 2014</td>
<td>Opposed – retain the BOCC appeal process</td>
</tr>
<tr>
<td>4. Melvin Kauzlarich*</td>
<td>December 12, 2014</td>
<td>Opposed – retain the BOCC appeal process</td>
</tr>
<tr>
<td>5. David Lindeblom</td>
<td>March 10, 2015</td>
<td>Opposed – retain the BOCC appeal process</td>
</tr>
<tr>
<td>6. Gerald Steel</td>
<td>March 11, 2015</td>
<td>Opposed – retain the BOCC appeal process or add a 2nd examiner appeal process</td>
</tr>
<tr>
<td>7. Sue Danver</td>
<td>March 12, 2015</td>
<td>Opposed – retain the BOCC appeal process or add a 2nd examiner appeal process</td>
</tr>
</tbody>
</table>

* December 2014 comments on the establishment of the official development code docket are included for the record per the request of a citizen.
Katie Pruitt, Associate Planner  
Thurston County Planning  
2000 Lakeridge Dr. SW  
Olympia WA 98502  

December 3, 2014  

Howard Glastetter  
11110 Kuhlman Road SE  
Olympia, WA 98513-9605  

Dear Ms. Pruitt,  

The following is my comment on proposed Docket Amendment A-15. I lifted the first two paragraphs below from your email notice and from your web site.  

Resource Stewardship is proposing an amendment to the Thurston County 2014-2015 Preliminary Development Code Docket. This amendment would add one item to the docket, item A-15, to remove the Board of County Commissioners from the quasi-judicial appeals process.  

Due to the complexity of appeals made to the Hearing Examiner, there is a need for a judicial review. Hearing Examiner appeals would be appealed pursuant to state law and would not go to the Board of County Commissioners.  

I don’t think this is a good idea. It gives too much legal advantage to the moneyed developers and practically smothers any attempt at a grass roots response for those most affected by the down side of whatever is going on.  

It adds much more power to the Hearing Examiner by removing checks and balances within the county. It takes the Board of County Commissioners’ (BoCC) “finger” off the pulse of what are likely important county issues. It pushes the BoCC into figurehead status and reduces control of those who should be guiding the county. The BoCC currently has county lawyers to advise them of any legal issues or pitfalls.  

The Hearing Examiner, by nature, easily identifies with the legal teams of developers. They come before him most often. He gets to know them and they may even be viewed as friends and receive more consideration than an unknown individual might get.  

Examples:  

1) Lakeside Industries officially wanted to put an asphalt plant in a Nisqually Valley gravel mine in 1999. The Hearing Examiner approved it, even though the 1992 Nisqually Subarea Plan discouraged new heavy industry from coming in to the valley and prohibited recycled asphalt pavement (RAP) storage or processing.
2) Shortly before this ruling, the Hearing Examiner denied a property owner, across the street from the pit, the ability to use his deluxe barn for weekend wedding receptions and other similar events. Part of the rationale for this ruling was the danger of auto breaks, engine and transmission fluid leaks on the permeable soil of his property.

Two issues, one gets the letter of the law in spades and the other gets to have the law ignored.

I urge you to not allow proposed amendment A15 to be on the current docket.

Sincerely,

Howard Glastetter
howard.glastetter@comcast.net
(360)491-6645
Katie Pruin

From: Howard Glastetter <howard.glastetter@comcast.net>
Sent: Thursday, December 04, 2014 3:35 PM
To: Katie Pruin
Subject: Re: Comment on Proposed Docket Ammendment A15

Ms. Pruin,

I understand that there would still be an appeal process. However, while the Nisqually / asphalt issue was going on from 1999 until 2005 or so, valley residents were in dialog with Commissioner Diane Oberquell. She was supportive, gave us advise and eventually even ruled against the Hearing Examiner along with the other two commissioners at the time. The county then joined the law suit - when their decision was appealed by Lakeside and then Lakeside’s win was appealed by the County and us.

There would not have been that County / Neighborhood involvement if we could not have appealed to the commissioners. It was an expensive process for our neighborhood. It would likely have been prohibitive if we were under the arrangement the Planning Department is proposing. The developer would have had close ties with the Hearing Examiner and other County folks. The neighbors would have been totally outside any perceived support from or any recourse to the County. County involvement would not have occurred early enough, if at all. This, even though half our fight was to defend the Nisqually Subarea Plan that was somewhat imposed by the County on valley residents. It would be very difficult to convince other neighbors to contribute to a legal fund under those circumstances.

I feel I have a legitimate concern. If the appeal process puts too heavy a load on the BoCC, perhaps their number should be increased or a better alternate way be found to level the playing field for residents with less resources. Otherwise, both the County and its citizens will lose - while a few will have an easier time getting their way.

-Howard

From: Katie Pruin
Sent: Thursday, December 04, 2014 11:30 AM
To: Howard Glastetter
Subject: RE: Comment on Proposed Docket Ammendment A15

Mr. Glastetter,

After further consideration of your comment, I wanted to clarify a point raised in your letter. If this amendment were considered for adoption in 2015, Hearing Examiner decisions could be appealed pursuant to state law.

I understand this does not likely change your comment or concern, but I want to be sure you know there would still be an opportunity to appeal (though indeed a very different process).

-- Katie
From: Katie Pruitt  
Sent: Thursday, December 04, 2014 8:55 AM  
To: 'Howard Glastetter'  
Subject: RE: Comment on Proposed Docket Ammendment A15

Mr. Glastetter,

Thank you for your comment. I will share this with the Board.

--Katie

Katie Knight Pruitt  
Associate Planner  
Thurston County Resource Stewardship  
Land Use and Environmental Review  
360-754-3355, x6485

From: Howard Glastetter [mailto:howard.glastetter@comcast.net]  
Sent: Wednesday, December 03, 2014 7:46 AM  
To: Katie Pruitt  
Subject: Comment on Proposed Docket Ammendment A15

Ms. Pruitt,

Attached is my response to this proposal. I will send a signed copy, via snail mail, shortly.

-Howard

Howard Glastetter  
howard.glastetter@comcast.net  
(360)491-6645

Everything should be as simple as it can be, but no simpler.  
Albert Einstein
Katie, 

Please append the attached letter to other formal and informal comments I have made on the A-01 Docket issue. The attached adds a bit more to understanding my concerns on this issue. If the BoCC is to be removed from this process, there should be a way for the county to have some control over property issues after Hearings Examiner decisions and before these decisions officially do or do not enter the court system.

-Howard

Howard Glastetter  
howard.glastetter@comcast.net  
(360)491-6645

Everything should be as simple as it can be, but no simpler. 
Albert Einstein
Katie Pruif, Associate Planner  
Thurston County Planning  
2000 Lakeridge Dr. SW  
Olympia WA 98502

March 9, 2015

Howard Glastetter  
11110 Kuhlman Road SE  
Olympia. WA 98513-9605

Dear Ms. Pruif,

I would like this comment added to the letter I sent you on December 3, 2014.

Resource Stewardship is proposing Amendment Item A-01 to the Thurston County 2014-2015 Preliminary Development Code Docket. This amendment was originally Item A-15. Its purpose is to remove the BoCC from the quasi-judicial appeals process.

What I said in December 3 about this issue, still stands: “It adds much more power to the Hearing Examiner by removing checks and balances within the county. It takes the Board of County Commissioners’ (BoCC) “finger” off the pulse of what are likely important county issues. It pushes the BoCC into figurehead status and reduces control of those who should be guiding the county. The BoCC currently has county lawyers to advise them of any legal issues or pitfalls. The Hearing Examiner, by nature, easily identifies with the legal teams of developers. They come before him most often. (S)he gets to know them and they may even be viewed as friends and receive more consideration than an unknown individual might get.”

Beyond this, the purpose of the Planning Commission is to support the Planning Department. If a Hearing Examiner’s decision goes against principles that the Planning Department supports, there will now be a void in the process.

A major function of the BoCC is to insure county rules and principles are followed. A-01 dumps the responsibility for this on the average citizen, who is ill prepared – in most cases – to follow through. The county steps aside and, only if the citizen wins the next step, will those who are supposed to lead the county be able to participate in the law suit. I urge you to not allow proposed amendment A-01 to be on the current docket.

Sincerely,

Howard Glastetter  
howard.glastetter@comcast.net  
(360)491-6645
Katie,

I would like the following (The Olympian) Letter-to-the-Editor to be added to public comment for the March 18, 2015 public meeting. What this lady is saying is a much better solution to current weaknesses in Thurston County than simply removing the County Commission from being able to legally challenge a Hearings Examiner decision. In the case (Lakeside Industry’s move to Nisqually Valley) I’m most familiar with, the Planning Department recommended denial. The Hearings Examiner over-road that decision. There should be a way for people higher up in the county to act before an issue such as this leaves county jurisdiction. In this case the county later joined the lawsuit; because it was felt the Hearings Examiner’s decision violated county rules, including Sub-Area Plan rules.

Would the County’s involvement even have occurred under the proposed rules had they been in effect back then? These proposed rule changes will be dumping support for defending county regulations on impacted private citizens – private citizens that are often legal neophytes, ill organized and have little discretionary funds to mount a legal defense.

-Howard

Article Follows:

Citizenship: Democracy isn’t a spectator sport

By Clydia J. Cuykendall

January 17, 2015

One of the foundations of democracy in the United States is separation of legislative, executive and judicial powers, a separation that remains strong at the federal and state levels, but gets progressively weaker at the local level.

Article XI, sections 4 and 5 of the Washington state Constitution authorize the legislature to create a uniform system of government for counties, which is the three-member commission form set forth in RCW Title 36. The Constitution was amended in 1948 to provide counties the option of adopting a "home rule" charter, allowing them to reform the uniform system.
There have been three previous attempts to adopt a home rule charter in Thurston County, but the last one was 25 years ago. The six counties in Washington that have home rule charters contain over half the state’s population, and we should give our voters the chance to join them because of Thurston County’s projected growth to almost 400,000 people by 2040.

Currently, the Thurston County commissioners serve as both the legislative and executive branches of government, but do not have executive powers for the offices under the jurisdiction of other elected officials, including the sheriff, assessor, treasurer and auditor. While the courts are managed as a separate branch of government, the Thurston County commissioners exercise quasi-judicial authority over some hearing examiner decisions.

The recent exercise of this power resulted in a $12 million jury verdict against the county. While this decision is under appeal, it is a stark reminder of the risks of not separating governmental powers.

The commissioners have final budget authority, yet do not have direct control over the offices of the other elected officials. Conversely, other elected officials must manage their offices with no say in the bargaining process or control over their final budgets.

Under the Open Public Meetings Act, no two commissioners can meet without calling a public meeting, creating a severe constraint on creativity and planning. With the same body making laws and administering them, the traditional system of checks and balances does not exist at the county level.

I support Better Thurston’s proposed “home rule” charter that would make three simple and basic reforms:

1) Slice the county into five districts to provide better representation for suburban, rural and south county citizens and to enable commissioner subcommittees to work on problems before presenting proposed solutions to the full Board of County Commissioners.

2) Add an elected county executive to oversee daily operations of the county, thus clearly separating legislative and executive powers.

3) Provide Thurston County citizens with the powers of initiative and referendum, giving us a direct means of holding our county government accountable.

While some predict that these reforms would increase the cost of an already fiscally challenged county government, I think the creation of a more representative, accountable and responsive county government would have the opposite result.

Cynthia J. Cuykendall is an attorney in Olympia

Howard Glastetter
howard.glastetter@comcast.net
(360)491-6645

Everything should be as simple as it can be, but no simpler.
Albert Einstein
Ms. Pruitt, it has come to my attention that a proposed change to the hearings examiner process will be evaluated in the near future. It is my understanding the newly proposed amendment, A-15, would remove the elected Thurston County Board of Commissioners from the land use hearings appeals process. As a member of the public at large I find it disturbing that the land use hearings process may become strictly the domain of the hearings examiner with no opportunity for the elected public officials to input into the process. Lack of financial resources are often a deterrent to opposition by the public to development projects. Legal counsel is expensive. Well financed developers as well as large businesses are often able to bring overwhelming resources to the hearings examiners table during land use hearings. The only counterbalance to the hearings examiners findings is the Thurston County Board of Commissioners appeals process. Private citizens are able to bring their concerns to the board and expect a fair consideration as a final opportunity to impact land use decisions. The Board is composed of elected representatives of the people and as such it is expected to reflect the consensus viewpoint of its constituents concerning public matters. On the other hand, the Thurston County Hearings Examiner is a quasi-legal appointed representative of the county and is insulated form public opinion concerning his or hers decisions. While factual findings, environmental law, and planning guidelines are important concerns when a hearing is conducted it is equally important that the public’s interest have an opportunity for serious consideration in the final analyses. The Board provides that balance and therefore should not absolve itself from the final analyses i.e. Appeals process such as A-15 proposes. I therefore am not in favor of a change which excludes the elected representatives of the people from the final analysis of proposed planning decisions.

Respectfully submitted,

James H Myers
947 Old Pacific Highway
Olympia Wa. 98513

Sent from my iPad
Thursday, December 11, 2014

Dear Commissioners:

The addition of item A15 to the Code Docket would remove the Board of County Commissioners from the Quasi-Judicial Review Process. This is, in my view, the reverse of democracy. The public must have direct access to its elected representatives, i.e. local public officials (the County Commissioners) to present and appeal its concerns and opinions on vital issues that impact their lives. A15 prohibits this and I respectfully request that it be removed from consideration on the Code Docket, and that the individual(s) who proposed A15 should reread the Constitution.

Sincerely,
Thomas Cook
To: Thurston County Long Range Planning Division

Ref: Item A-15 Planning Divisions proposal to remove the Board of County Commissioners from the appeals process.

I feel that the Ref proposal is ill conceived and should be re-considered. Access to the Planning Commission and the Docket Review process will distance the average citizen from the ability to have his concerns heard on Planning Division proposals vs his current access to the Board of Commissioners.

The additional complexity, time and cost for timely Citizen comments on Planning Division proposals will certainly be an added burden in making their voices heard.

If the existing system of citizen comments to The County Commissioners is overloading them, the Commissioners should be afforded the opportunity to increase staff or engage outside experts to help their decision making process on Planning and Development Code revisions or enforcement.

I feel that the County Commissioners should remain as the avenue for citizen access to the quasi-judicial appeals process.

Thank you for hearing my concerns.

Melvin Kauzlarich
11034 Kuhlman Rd SE
Olympia Wa 98513-9605

360-491-1233

mellk@comcast.net
Do you know how much it costs to go to Superior Court versus how much it costs to go to the County Commissioners? Of course you do.

This is a move to take government control away from commissioners and voters and put it into the hands of only the rich who can afford lawyers and expert witnesses, etc.

It already costs more in legal fees to collect on a contractor's bond than the bond is worth.

You guys want to rip out any control from the legislative process in the County commission.

Just not fair

Please submit this comment to record.
Katie,  

Please deliver the attached comments to the Planning Commission members and appropriate staff. Because the comments include detailed legal language, it would be useful to get the comments to the appropriate people as early as possible and then also put them in the Commission Packet.

Gerald Steel PE  
Attorney at Law  
7303 Young Rd. NW  
Olympia WA 98502  
360.867.1166  

-----Original Message-----  
From: Katie Pruik <pruitk@co.thurston.wa.us>  
To: sdanver7 <sdanver7@aol.com>; Cindy Wilson <wilsonc@co.thurston.wa.us>  
Sent: Mon, Mar 9, 2015 9:00 am  
Subject: Re: planning commission package  

Hi Sue,  

If you send your written comments to me before the hearing (by 5pm on the 18th) I will include them in the summary of written comments for the Commission.

The staff report which includes the proposal can be found at [http://www.co.thurston.wa.us/planning/docket/docket_home.htm](http://www.co.thurston.wa.us/planning/docket/docket_home.htm). Scroll down the page and check the March 18 PC meeting links under item A-1 and A-4.

--Katie
March 9, 2015

Planning Commission
c/o Thurston County Planning Department
2000 Lakridge Drive SW
Olympia, WA 98502-6045

Re: Gerald Steel Comments for 3-18-15 Hearing on Appeals Process Code Amendments

Dear Planning Commission Chair and Members:

I am an attorney practicing in land use and administrative law and am a professional civil engineer. I submit these comments regarding the proposed Appeals Process Code Amendments that are before you for public hearing on March 18, 2015.

I support the Black Hills Audubon Society ("BHAS") proposal to retain Board of County Commissioners ("BOCC") quasi-judicial appeals or alternatively to provide for a second hearing examiner to hear quasi-judicial appeals now assigned to the BOCC. However, if the Planning Commission recommends elimination of BOCC quasi-judicial appeals without transferring those appeals to a second examiner, I recommend that the Commission modify the staff-proposed language so it conforms with the statutory requirements of the Growth Management Act ("GMA") and the Land Use Petition Act ("LUPA") and to make the code a more consistent document.

The staff-proposed language is in your packet in Attachment B to Development Code Docket Item A-1 titled “Appeals Process Code Amendments”. My modifications to the staff-proposed language are provided in Attachments GS-1 to GS-7 hereto. To facilitate review, I have prepared my modifications by first accepting all staff-proposed language. I then propose additional changes in strikethrough/underline format. I also include analysis to tell you why my proposed changes are desirable or necessary.

Thank you for this opportunity to comment.

Respectfully,

Gerald Steel, PE
Attorney-at-Law
<table>
<thead>
<tr>
<th>SECTION</th>
<th>TITLE</th>
<th>AMENDMENT - Accepts Staff Proposal - Adds Gerald Steel Proposed Changes</th>
<th>WHY MAKE THE CHANGES Proposed BY Gerald Steel</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.06.050 AMEND</td>
<td>Examiner’s decision</td>
<td>B. The land use decision of the examiner shall be final and conclusive on the twenty-first day after the date of issuance of the decision unless an appeal of the examiner’s decision is filed pursuant to Section 2.06.070 TCC and chapter 36.70C RCW.</td>
<td>RCW 36.70C.040(3) and (4) define the state mandated time period for judicial review of a land use decision. The code should make clear that only land use decisions may be judicially reviewed if petition filed within 21 days of issuance.</td>
</tr>
<tr>
<td>2.06.070 AMEND</td>
<td>Appeal of examiner’s decision</td>
<td>Appeals from the final decision of the hearing examiner shall be made to the superior court within twenty (20) twenty-one (21) days of the date of issuance of a land use the decision (as required by chapter 36.70C RCW) or action becomes final except as allowed for threshold determinations (TCC Section 17.09.160), and innocent purchaser determinations (TCC 18.48.030) in the following manner:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>A. All appeals of hearing examiner decisions are considered to be closed record appeals, following an open record hearing on a project permit application or administrative appeal; when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed:</td>
<td>“Twenty” days is changed to “twenty-one” days and “date the decision or action becomes final” is changed to “date of issuance of the land use decision” as required by RCW 36.70C.040. There is no “action” of the examiner that can be appealed to superior court except for a “land use decision” or threshold determination. An innocent purchaser determination is a land use decision and so there is no exception allowed or proposed in TCC 18.48.030. See Nagle v. Snohomish County, 129 Wn.App. 703, 119 P.3d 914, 916 (2005). Subsection A is struck because it explains how a BOCC appeal was conducted as a closed record appeal. RCW 36.70C governs how a judicial appeal is conducted. “Closed record appeal” is not a term of art in RCW 36.70C. A threshold determination is not a land use decision and instead is governed by RCW 43.21C.075, WAC 197-11-680, and TCC 17.09.160.</td>
</tr>
<tr>
<td>18.10.030 AMEND</td>
<td>Application review procedures Table 1</td>
<td><strong>Remove &quot;A&quot; entries in BOCC column. Remove BOCC column from Permit Review Matrix</strong></td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>---------------------------------------</td>
<td>------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>18.10.070 AMEND</td>
<td>Appeal procedures</td>
<td>If the BOCC column is removed, then there is no place for Ordinance Text Amendments and no need for the Type IV column. A better solution is to just remove &quot;A&quot; entries in BOCC column.</td>
<td></td>
</tr>
</tbody>
</table>

B. Appeals of Hearing Examiner Decisions. The final decision by the hearing examiner on Type III actions and on Type I and II appeals, as provided in Table 1, may be appealed to the superior court in the manner prescribed by Chapter 2.06 TCC.

C. Judicial Appeals. The final decision by the hearing examiner on Type I, II, and III appeals, as provided in Table 1, may be appealed to superior court, as follows:

1. Any judicial action to challenge, set aside or void any amendment to this title or any decisions made pursuant to the provisions of this title must be commenced within twenty calendar days from the date of amendment or decision.

2. The plaintiff bringing any such action shall pay the full cost of transcription of the record prepared for judicial review of the matter being appealed.

D. The filing of an appeal shall suspend the issuance of either a construction or land use permit related to the appeal until final action is taken on the appeal.

Section C previously applied to BOCC appeals and should be struck in its entirety. The first paragraph in section C now just repeats what is already in section B except section B correctly identifies “Type III actions” and section C incorrectly identifies Type “III appeals.” The examiner does not hear Type III appeals - appeals are proposed to only go to superior court. Section B refers to Chapter 2.06 TCC which specifies time limits for appeals of land use decisions and so Section C(1) is not necessary. Besides, it gives 20 instead of 21 days and it suggests that the examiner can make amendments to Title 18 which cannot be done. Only the BOCC can amend Title 18. Section C(2) is not necessary because that was only a cost rule for BOCC appeals. Chapter 2.06 TCC, as clarified above in my proposed amendments, cites to chapter 36.70C RCW for judicial appeals of land use decisions and that chapter controls costs of the record. New section D is proposed (to be labeled section C if existing C is eliminated). This is the same language that is now in TCC 21.81.070(D), TCC 22.62.050(D), and TCC 23.72.190(D) for the Lacey, Tumwater, and Olympia UGAs respectively.
| 20.60.060 AMEND | Appeal procedures | 2. Appeals of Hearing Examiner Decisions. The final decision by the hearing examiner on Type III actions and on Type I and II appeals, as provided in Table 2, may be appealed to the superior court in the manner prescribed by Chapter 2.06 TCC.

3. Judicial Appeals. The final decision by the hearing examiner on Type IV actions and on Type I, II and III appeals, as provided in Table 2, may be appealed to superior court, as follows:
   a. Any judicial action to challenge, set aside or void any amendment to this title or any decisions made pursuant to the provisions of this title must be commenced within twenty calendar days from the date of amendment or decision.
   b. The plaintiff bringing any such action shall pay the full cost of transcription of the record prepared for judicial review of the matter being appealed.

4. The filing of an appeal shall suspend the issuance of either a construction or land use permit related to the appeal until final action is taken on the appeal. |

| 21.81.040 | Application review | Remove "A" entries in BOCC column. Remove BOCC from Permit Review Matrix. |

Section 3 previously applied to BOCC appeals and should be struck in its entirety. The first paragraph in section 3 now just repeats what is already in section 2 except section 2 correctly identifies "Type III actions" and section 3 incorrectly identifies Type "III appeals." The examiner does not hear Type III appeals - appeals are proposed to only go to superior court. Section 2 refers to Chapter 2.06 TCC which specifies time limits for appeals of land use decisions and so Section 3(a) is not necessary. Besides, Section 3(a) gives 20 instead of 21 days and it suggests that the examiner can make amendments to Title 20 which cannot be done. Only the BOCC can amend Title 20 and appeals go to the Growth Board not superior court. Section 3(b) is not necessary because that was only a cost rule for BOCC appeals. Chapter 2.06 TCC, as clarified above in my proposed amendments, cites to chapter 36.70C RCW for judicial appeals of land use decisions and that chapter controls costs of the record. New section 4 is proposed (to be labeled section 3 if existing 3 is eliminated). This is the same language that is now in TCC 21.81.070(D), TCC 22.62.050(D), and TCC 23.72.190(D) for the Lacey, Tumwater, and Olympia UGAs respectively.

If the BOCC column is removed, then there is no place for Planned community conceptual approval, Master plan, or Joint plan and zoning text amendments, and legislative rezones, and no need for the Type IV column. A better solution is to just remove "A" entries in BOCC column.
<table>
<thead>
<tr>
<th>Section</th>
<th>Amended Section</th>
<th>Details</th>
</tr>
</thead>
</table>
| 21.81.070 AMEND | Appeal procedures | B. Appeals of Hearing Examiner Decisions. The final decision by the hearing examiner on Type III permits and on Type I and II appeals, as provided in Illustration I, may be appealed to the superior court in the manner prescribed by Chapter 2.06 of this code. 

C. Judicial Appeals. The final decision by the hearing examiner on Type I, II and III appeals, as provided in Illustration I, may be appealed to superior court, as follows:
1. Any judicial action to challenge, set aside or void any amendment to this title or any decisions made pursuant to the provisions of this title must be commenced within twenty calendar days from the date of amendment or decision.
2. The plaintiff bringing any such action shall pay the full cost of transcription of the record prepared for judicial review of the matter being appealed.

CD. The filing of an appeal shall suspend the issuance of either a construction or land use permit related to the appeal until final action is taken on the appeal. Section C previously applied to BOCC appeals and should be struck in its entirety. The first paragraph in section C now just repeats what is already in section B except section B correctly identifies “decision . . . on Type III permits” and section C incorrectly identifies Type “III appeals.” The examiner does not hear Type III appeals - appeals are proposed to only go to superior court. Section B refers to Chapter 2.06 TCC which specifies time limits for appeals of land use decisions and so Section C(1) is not necessary. Besides, Section C(1) gives 20 instead of 21 days and it suggests that the examiner can make amendments to Title 21 which cannot be done. Only the BOCC can amend Title 21 and appeals go to the Growth Board. Section C(2) is not necessary because that was only a cost rule for BOCC appeals. Chapter 2.06 TCC, as clarified above in my proposed amendments, cites to chapter 36.70C RCW for judicial appeals of land use decisions and that chapter controls costs of the record. Existing section D is proposed to be labeled section C if existing C is eliminated. |
<p>| 21.84.040 AMEND | Appeal of decision to board of county commissioners Judicial appeal | Appeals of all site plan review decisions of the hearing examiner may be appealed to superior court pursuant to Section 2.06.070 TCC. Appeals of hearing examiner decisions are taken to superior court, not appealed to superior court. Appeals of appeals go to the Court of Appeals. The title of this section must be changed because the intent to not have BOCC decisions. |
| 21.87.050 AMEND | Appeal to board of county commissioners Judicial appeal | The decision of the hearing examiner may be appealed pursuant to Section 2.06.070 of this code. Title change required because the intent is to not have BOCC decisions. |</p>
<table>
<thead>
<tr>
<th>22.62.020 AMEND</th>
<th>Application review procedures. Table 22.62</th>
<th>Remove &quot;A&quot; entries in BOCC column. Remove BOCC from Permit Review Matrix.</th>
<th>If the BOCC column is removed, then there is no place for Joint plan and zoning text amendments and legislative rezones, and no need for the Type IV column. A better solution is to just remove &quot;A&quot; entries in BOCC column.</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.62.050 AMEND</td>
<td>Appeal procedures</td>
<td>B. Appeals of Hearing Examiner Decisions. The final decision by the hearing examiner on Type III permits and on Type I and II appeals, as provided in Table 22.62, may be appealed to the superior court in the manner prescribed by Chapter 2.06 TCC. Section C previously applied to BOCC appeals and should be struck in its entirety. The first paragraph in section C now just repeats what is already in section B except section B correctly identifies &quot;decision ... on Type III permits&quot; and section C incorrectly identifies Type &quot;III appeals.&quot; The examiner does not hear Type III appeals - appeals are proposed to only go to superior court. Section B refers to Chapter 2.06 TCC which specifies time limits for appeals of land use decisions and so Section C(1) is not necessary. Besides, Section C gives 20 instead of 21 days and it suggests that the examiner can make amendments to Title 22 which cannot be done. Only the BOCC can amend Title 22 and appeals go to the Growth Board. Section C(2) is not necessary because that was only a cost rule for BOCC appeals. Chapter 2.06 TCC, as clarified above in my proposed amendments, cites to chapter 36.70C RCW for judicial appeals of land use decisions and that chapter controls costs of the record. Existing section D is proposed to be labeled section C if existing C is eliminated.</td>
<td></td>
</tr>
</tbody>
</table>

C. Judicial Appeals. The final decision by the hearing examiner on Type I, II and III appeals, as provided in Table 22.62, may be appealed to superior court, as follows:

1. Any judicial action to challenge, set aside or void any amendment to this title or any decisions made pursuant to the provisions of this title must be commenced within twenty calendar days from the date of amendment or decision.

2. The plaintiff bringing any such action shall pay the full cost of transcription of the record prepared for judicial review of the matter being appealed.

C.D. The filing of an appeal shall suspend the issuance of either a construction or land use permit related to the appeal until final action is taken on the appeal.
<table>
<thead>
<tr>
<th>23.72.040 AMEND</th>
<th>Application review procedures. Table 72.01</th>
<th>Remove &quot;A&quot; entries in BOCC column. Remove BOCC from Permit Review Matrix</th>
</tr>
</thead>
</table>

If the BOCC column is removed, then there is no place for Joint plan and rezones, and no need for the Type IV column. A better solution is to just remove "A" entries in BOCC column.

<table>
<thead>
<tr>
<th>23.72.190 AMEND</th>
<th>Appeal procedures</th>
<th>B. Appeals of Hearing Examiner Decisions. The final decision by the hearing examiner on Type III permits and on Type I and II appeals, as provided in Table 72.01, may be appealed to the superior court in the manner prescribed by Chapter 2.06 TCC.</th>
</tr>
</thead>
</table>

C. Judicial Appeals. The final decision by the hearing examiner on Type I, II and III appeals, as provided in Table 72.01, may be appealed to superior court, as follows:

1. Any judicial action to challenge, set aside or void any amendment to this title or any decisions made pursuant to the provisions of this title must be commenced within twenty calendar days from the date of amendment or decision.

2. The plaintiff bringing any such action shall pay the full cost of transcription of the record prepared for judicial review of the matter being appealed.

CD. The filing of an appeal shall suspend the issuance of either a construction or land use permit related to the appeal until final action is taken on the appeal.

The word "AMEND" should be added in the staff "SECTION" column. "TCC" should be added to the end of Section B. Section C previously applied to BOCC appeals and should be struck in its entirety. The first paragraph in section C now just repeats what is already in section B except section B correctly identifies "decision ... on Type III permits" and section C incorrectly identifies Type "III appeals." The examiner does not hear Type III appeals - appeals are proposed to only go to superior court.

Section B refers to Chapter 2.06 TCC which specifies time limits for appeals of land use decisions and so Section C(1) is not necessary. Besides, Section C gives 20 instead of 21 days and it suggests that the examiner can make amendments to Title 23 which cannot be done. Only the BOCC can amend Title 23 and appeals go to the Growth Board. Section C(2) is not necessary because that was only a cost rule for BOCC appeals. Chapter 2.06 TCC, as clarified above in my proposed amendments, cites to chapter 36.70C RCW for judicial appeals of land use decisions and that chapter controls costs of the record. Existing section D is proposed to be labeled section C if existing C is eliminated.
<table>
<thead>
<tr>
<th>24.05.030 AMEND</th>
<th>Coordination with other application reviews. Table 24.05-1</th>
<th>Remove “A” entries in BOCC column. Remove County Commissioners from table</th>
<th>If the BOCC column is removed, then there is no place for Critical area ordinance amendment, and no need for the Type IV column. A better solution is to just remove “A” entries in BOCC column</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.05.050 AMEND</td>
<td>Appeals</td>
<td>B. Appeals of hearing examiner decisions on Type III permits and on appeals of administrative decisions (Type I and II), as provided in Table 24.05-1 TCC, may be brought to the hearing examiner superior court in the manner prescribed by Chapter 2.06 TCC.</td>
<td>Appeals of the hearing examiner decisions are not taken to the examiner but rather are taken to superior court.</td>
</tr>
</tbody>
</table>
Hi Katie:

Here are Black Hills Audubon Society's comments for the Planning Commission Hearing on March 18, 2015. We address the Land Use Appeals process up for vote.

Thank you for distributing to the Commissioners. I do hope they will have adequate time to read and digest prior to the hearing.

Best to you,

Sue Danver
BHAS Conservation Committee Member

705-9247
March 11, 2015

Thurston County Planning Commission  
c/o Thurston County Planning Department  
2000 Lakeridge Drive SW  
Olympia, WA 98502-6045

Re: BHAS Comments for 3-18-15 Hearing on Appeals Process Code Amendments

Dear Planning Commission Chair and Members:

I submit these comments on behalf of Black Hills Audubon Society ("BHAS") regarding the proposed Appeals Process Code Amendments that are before you for public hearing on March 18, 2015.

BHAS opposes the proposal to eliminate quasi-judicial appeals to the Board of County Commissioners ("BOCC"). The staff report notes that 38 percent of the counties in Washington allow BOCC appeals for quasi-judicial decisions. But the staff report also shows that 3/4 of the people in Washington state live in counties that allow such BOCC appeals. The proposed elimination of BOCC appeals in Thurston County is an attack on public participation in the planning process. To stay in touch with the impacts of its land use decisions in Thurston County, the BOCC should continue to hear quasi-judicial appeals and the Planning Commission should make that recommendation.

Appeals to the BOCC give citizens and developers an opportunity to appeal to the BOCC for a final county interpretation of county codes. Most codes are ambiguous. Ambiguous codes are to be interpreted to implement legislative intent. Who is better than the BOCC to interpret its codes so they implement legislative intent. This is not to say that the BOCC can ignore the plain language of a code that it finds repugnant. But if a code is repugnant, the BOCC is given notice by hearing a quasi-judicial appeal. Then the code can be changed as it applies to future development that has not yet vested. This kind of feed-back is very beneficial to aid the BOCC stay in touch with impacts of its development codes.

The cost of a BOCC appeal to each party is measured in thousands of dollars. The cost of a superior court appeal is measured in tens of thousands of dollars. If the matter can be resolved by the BOCC, the cost to the parties is significantly less. This is particularly important to appeals by citizen groups such as BHAS. For such citizen groups, appeal costs are not just a
business expense. Citizens usually appeal just to protect quality of life in the County. The BOCC supports quality of life in the County by allowing quasi-judicial BOCC appeals. This is particularly important because under LUPA, citizens are generally cost-prohibited from going to the Court of Appeals if they do not prevail before the County. LUPA makes it even more important for the BOCC to hear quasi-judicial citizen appeals and provide the most fair interpretation of county codes. A good attorney representing the County, will prevent the County from suffering monetary damages from BOCC decisions and will help resolve quasi-judicial appeals to the BOCC in a manner that best protects quality of life.

We all support quality of life in Thurston County. To protect this quality of life, the Planning Commission should recommend that the BOCC continue to hear quasi-judicial appeals. This is particularly important for Type III permits where there would be no appeal process before the County if there were no quasi-judicial BOCC appeal.

If the BOCC decides that it will not hear quasi-judicial appeals, then BHAS recommends that the code be changed to allow a closed-record appeal to a second hearing examiner. This will allow for the same focused arguments that are generally presented at an appeal, and the second examiner can provide the final county decision on these contested issues. This will at least then allow one county closed-record appeal before an examiner on every permit application.

Thank you for considering our comments and please recommend that a second examiner hear closed-record quasi-judicial appeals if the BOCC chooses to stop hearing closed-record quasi-judicial appeals itself.

Respectfully,

Gerald Steel
Attorney for BHAS