

Cami Petersen - Taylor Shellfish - Hearing Examiner participation

From: "Thomas Bjorgen" <ThomasBjorgen@bjorgenbauer.com>
To: <billy@plauchestock.com>, <mann@gendlermann.com>, "Jeff Fancher" <Fanche...>
Date: 11/03/2011 1:00 PM
Subject: Taylor Shellfish - Hearing Examiner participation
CC: "Robert Smith" <SmithR@co.thurston.wa.us>, "Cami Petersen" <PetersCs@co....>

Dear Mr. Plauche, Mr. Mann and Mr. Fancher:

I'm the principal Hearing Examiner for Thurston County and would hear the pending application by Taylor Shellfish Company for a substantial development permit to operate a floating mussel aquaculture facility.

In reviewing the Final EIS Distribution List, I noted two organizations of which my wife or I am a member. My wife is a member of Black Hills Audubon Society. Her limited involvement has been concerning birding, not advocacy or political activities. I also advised Black Hills Audubon in an unrelated matter before I was Hearing Examiner for the County. We are also members of the Sierra Club. Neither of us have taken part in any activities or meetings of the Cascade Chapter or the South Sound Chapter of the Sierra Club. The purpose of this e-mail is to disclose those connections and to afford the opportunity to request that I recuse myself, if that is desired.

The Hearing Examiner Rules for Thurston County do not discuss this type of circumstance. In its chapter on the Hearing Examiner, the Thurston County Code (TCC) states at TCC 2.06.030:

"A.. In order to assure an appearance of fairness in matters considered by the examiner or by the board on appeal, no person shall have an ex parte (one sided) contact with the examiner or board regarding such matter, and no person, including government officials and employees, shall attempt to interfere with or influence the examiner or board outside a public hearing; provided, that a county official or employee may, in the performance of his official duties, provide information to the examiner when the action is disclosed at the hearing or meeting.

B. No examiner shall conduct or participate in any hearing or decision in which the examiner may have a direct or indirect financial or personal interest or in which such conduct or participation would violate any rule of law applicable thereto."

If you believe that these circumstances fall under any of these criteria or that recusal is appropriate under the appearance of fairness doctrine or any other legal rule or doctrine, please let me know promptly. If you believe recusal is not warranted, please advise me of that also.

At this point before the hearing, it is impossible to know, apart from the Applicant and the Department, which persons or organizations will have party status in this matter. Yesterday, I asked the Hearing Examiner Clerk, Cami Petersen, and the lead Departmental staff representative for this matter, Robert Smith, if they were aware of other entities which were likely to become parties. Mr. Smith stated that the Association for the Protection of Hammersley, Eld and Totten Inlet (APHETI) had been engaged in this matter and likely would be involved in the hearing. Therefore, I'm sending this e-mail to the attorneys for these three entities, which also are positioned on the three corners of this application: the Applicant, those who may be questioning the proposal or aspects of it, and the local regulating department. Neither your responses to this e-mail nor my reply to them will preclude any other person or entity who will participate at the hearing from objecting on these grounds. If I hear this case, I shall make this disclosure again at the hearing.

Tom Bjorgen
Thurston County Hearing Examiner

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