FINDINGS, CONCLUSIONS AND DECISION OF THE HEARING EXAMINER FOR THURSTON COUNTY

CASE NO: PLAT/PRRD 2004101231 (Appeal of administrative determination relating to Carpenter Ridge subdivision)

APPELLANT: Miller Land and Timber, L.L.C.

SUMMARY OF APPEAL:

Miller Land and Timber appeals the December 6, 2010 determination by the Resource Stewardship Department, which declined to confirm that final subdivision approval for the Carpenter Ridge subdivision could be filed within seven years of preliminary subdivision approval.

SUMMARY OF DECISION:

The appeal is upheld. The seven-year period for filing final plats applies to this subdivision.

HEARING AND RECORD:

The parties agreed and the Hearing Examiner held in the Prehearing Order at Ex. 2 that this appeal poses legal issues only and that no evidentiary hearing will be needed. Legal argument on this request was held before the undersigned Hearing Examiner on February 16, 2011. The parties agreed to a one-day extension in the due date for the decision to March 3, 2011.

The following exhibits are admitted as part of the record:

Exhibit 1. Appeal by Miller Land and Timber, L.L.C., with attachments, of the administrative determination of December 6, 2010 by the Resource Stewardship Department relating to whether subdivision approval for the Carpenter Ridge subdivision could be filed within seven years of preliminary subdivision approval. This appeal is date-stamped as received on December 20, 2010 by Thurston County Development Services.

Exhibit 2. Prehearing Order by the Hearing Examiner, dated December 29, 2010.

Exhibit 3. Appellant's Opening Brief dated January 25, 2011, with attachments.

Exhibit 4. Response Brief of Thurston County dated February 8, 2011, with attachments.

Exhibit 5. Letter dated February 8, 2011 from George Kresovich to Thomas R. Bjorgen, with attachments.

Exhibit 6. Appellant's Reply Brief dated February 14, 2011, with attachments.

Exhibit 7. E-mails from Ryan Steen and Jeffrey Fancher, agreeing to one-day extension in the time for decision.

No testimony was taken. Oral argument was presented by Ryan P. Steen on behalf of the Appellant and by Jeffrey G. Fancher on behalf of Thurston County.

After consideration of the exhibits described above and oral argument, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

1. On April 16, 2004 the application for preliminary subdivision and planned rural residential development approval for Carpenter Ridge was deemed complete and vested by Thurston County. The County granted preliminary subdivision and planned rural residential development approval for this proposal on May 11, 2005.

2. The Appellant, Miller Land and Timber, owns the Carpenter Ridge plat.

3. The Department of Ecology issued the Appellant a water right permit to serve the subdivision in September 2005. This permit was appealed to the Pollution Control Hearings Board, which remanded the application to the Department of Ecology for further analysis. After several years of additional investigatory work and expert analysis, the water right permit was re-issued on September 10, 2010. This permit was also appealed to the Pollution Control Hearings Board. After further revisions, Ecology issued an amended water right permit on December 19, 2010.

4. In the meantime, on March 31, 2010 the Appellant applied under the County ordinance for an extension in the then applicable five-year statutory period within which a final plat must be filed. On May 10, 2010 the County Resource Stewardship Department granted a one-year extension in that time period. Under that extension, the preliminary subdivision approval for Carpenter Ridge would expire on May 11, 2011.

5. Also in 2010, the Legislature amended RCW 58.17.140 to state that final plats shall be submitted for approval within seven years of the date of preliminary plat approval. Before this amendment, RWC 58.17.140 required submittal of final plats within five years of the date of preliminary plat approval. The legislation also provided that this requirement would revert to five years on December 31, 2014. This 2010 act was effective June 10, 2010.

6. On November 29, 2010 Century Pacific L.P. wrote to the County requesting an administrative determination that the Carpenter Ridge plat is subject to the seven-year time

period adopted by the 2010 legislation and that consequently it would expire on May 11, 2012 at the earliest.

7. On December 6, 2010 the County Resource Stewardship Department declined to make the requested determination, because it did not make determinations which interpret state law and because no appeal of the one-year extension granted in May 2010 had been filed. See Ex. 1, Attachment.

8. The Applicant appealed this determination to the Hearing Examiner through the appeal document at Ex. 1, received by the County on December 20, 2010.

9. Since the Carpenter Ridge preliminary subdivision and planned rural residential development was deemed vested on April 16, 2004, the County adopted a moratorium on cluster development, rezoned the subject property to a lower density, and adopted a new Drainage Design and Erosion Control Manual. The County also is on track to adopt revisions to its Critical Area Ordinance in the second half of 2011.

CONCLUSIONS OF LAW

A. Bases of the determination on appeal.

1. As stated in the Prehearing Order at Ex. 2, the parties agreed that the appeal poses legal issues only and that no evidentiary hearing would be needed. The Order agreed with this characterization and stated that the appeal will be decided on the basis of legal argument, without the submission of evidence. The attachments to the briefs did present some factual information which could be characterized as evidence. However, this information was of a background nature, related largely to the timing and nature of various state and County legislative enactments, and was uncontested. The submittal of this information was proper and consistent with the Prehearing Order.

2. As found, the Department based its December 6, 2010 determination on two grounds: that it did not make determinations which interpret state law and that no appeal of the one-year extension granted in May 2010 had been filed. The Deputy Prosecutor stipulated at the hearing that the Department did make a determination appealable to the Hearing Examiner, which seems clearly the correct position in this case. The Deputy Prosecutor, however, did defend the gist of the December 6 determination, that the statutory extension to seven years is not applicable to this application, through the arguments presented in his Brief at Ex. 4 and in oral argument. This decision evaluates those grounds as the basis of the December 6 determination. The absence of an appeal of the May 2010 one-year extension is not relevant to those grounds.

B. Nature of the issues and the basic rules of statutory construction.

3. RCW 58.17.140 states in full:

"Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval. Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements."

The 2010 amendment to this statute, discussed in the Findings, changed the reference in the second to the last sentence of this provision from five to seven years.

4. As found, the Carpenter Ridge proposal received preliminary subdivision and planned rural residential development approval on May 11, 2005. Seven years from that date is May 11, 2012. On the effective date of the 2010 amendment, June 10, 2010, the approvals for Carpenter Ridge had not expired. Thus, if this extension from five to seven years applies to this proposal, the appeal must be sustained and preliminary subdivision approval deemed to extend at least to May 11, 2012. The heart of the issue, then, is whether the 2010 amendment applies to this subdivision.

5. The County urges that it does not, arguing that since the 2010 amendment extended the five-year period imposed by the statute, it can only apply to plats that were within the statutory five-year period at the time the amendment was effective on June 10, 2010. As of that date, the Carpenter Ridge preliminary plat had been extended by County ordinance, but was past the five-year period set by statute. Therefore, the County argues, it cannot benefit from the extension of a time period that had already lapsed.

6. A basic rule of statutory interpretation is that if the language of an act is not ambiguous, a court will give effect to its plain meaning. Cerrillo v. Esparza, 158 Wn. 2d. 194, 201 (2006). Stated another way, "[i]f a statute is clear on its face, its meaning is to be derived from the language of the statute alone." Id. at 201; citing Kilian v. Atkinson , 147 Wn.2d 16, 20 (2002). This rule is modified somewhat by the following holding in Cerrillo, 158 Wn. 2d. at 193:

"[a]dditionally, while traditional plain language analysis of statutes focused exclusively on the language of the statute, this court recently has also recognized that "all that the Legislature has said in the statute and related statutes" should be part of plain language analysis. Dep't of Ecology v. Campbell & Gwinn, L.L.C. , 146 Wn.2d 1, 11, 43 P.3d 4 (2002)."

7. Another corollary of the "plain language" rule is that a court will not "add language to an unambiguous statute even if it believes the Legislature intended something else but did not adequately express it." Kilian , 147 Wn.2d at 20. Similarly, courts will not read into a statute matters that are not in it and will not create legislation under the guise of interpreting a statute." Kilian, 147 Wn.2d at 21.

8. On the other hand, if a statute is ambiguous, a court will employ tools of statutory construction to ascertain its meaning. Cerrillo, 158 Wn. 2d. at 193. Resort to such tools, though, is appropriate only after a determination that a statute is ambiguous. Campbell & Gwinn, L.L.C., 146 Wn.2d at 12.

9. A statute is ambiguous if it is "susceptible to two or more reasonable interpretations, but a statute is not ambiguous merely because different interpretations are conceivable." Cerrillo, 158 Wn. 2d. at 193 (internal citations omitted). For a statute to be ambiguous, two reasonable interpretations must arise from the language of the statute itself, not from considerations outside the statute. Id. at 193-194.

C. Application of the rules of statutory construction and interpretation.

10. The application of these rules begins with the operative sentence: "A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval." There is nothing ambiguous about this sentence. It plainly allows final plats to be submitted within seven years of preliminary plat approval.

11. The County, though, does not quarrel with the meaning of this sentence, but argues that it cannot apply to plats such as this, which were beyond the statutory five-year period when the 2010 extension became effective. When one considers that RCW 58.17.140 both imposes a statutory time period and authorizes local governments to extend that period and that the 2010 legislation addressed only the five-year **statutory** period, there is a plausible question whether the statutory extension was intended to apply to plats which are beyond the prior statutory period. This issue is analogous to that posed by unexpired plats in general. No argument is made that the 2010 legislation is intended to revive plats which had already expired; for example, a plat which had already passed the prior five year deadline without obtaining any extension. Yet the text of the 2010 extension simply says that final plats may be filed within seven years of preliminary approval. Its plain language literally would revive already expired preliminary approvals within that period. To allow needed interpretation of whether the extension is intended to revive dead plats, an ambiguity in application would need to be present. The situation here is similar: something more than the wording of the one sentence must be considered to determine its application.

12. Addressing this issue would not involve adding language to an unambiguous sentence in a statute, but would resolve a question of applicability arguably raised by the statute as a whole. Thus, even if the language of the one sentence is unambiguous, a view of the entire statute, I believe, does raise enough of a question about its application to warrant a recourse to evidence of legislative intent and canons of construction. Stated another way, the absence of ambiguity in a sentence in a statute should not foreclose resolution of legitimate

ambiguity in the application of that sentence which is raised by the statute as a whole. Although this analysis is at the stage of determining ambiguity, it seems consistent with the approach of the rule from Cerrillo and Campbell & Gwinn, cited above, that "all that the Legislature has said in the statute and related statutes" should be part of plain language analysis. Sufficient ambiguity in the statute's application is present to warrant statutory interpretation and construction.

13. As a general matter, the principal objective in interpreting statutes is to ascertain and carry out the intent of the Legislature. State v. Riles, 135 Wn.2d 326, 340 (1998). The most persuasive evidence of legislative intent is the language of the statute. See Davis v. Inca, S.A., 440 F.Supp. 448 (1977). Although the operative sentence of the statute was held above not to trigger a simple plain language analysis, its stark phrasing is potent evidence of intent. With unneeded text removed, it states simply that "[a] final plat . . . shall be submitted . . . within seven years of the date of preliminary plat approval." Although it does not contain the terms "any" or "all", its categorical wording and absence of exceptions plainly imply that degree of generality. The presence of "any" does not support an interpretation that the statute applies only to a subset of what it purports to covered. See Cerrillo, 158 Wn. 2d. at 194. Thus, the wording of the statute strongly supports the intent that it apply to all unexpired plats.

14. Next, the Senate Bill Report attached to the letter from Mr. Kresovich at Ex. 5 shows that the two-year extension in the 2010 legislation was proposed because the recession was making it difficult for applicants to bring subdivisions to final approval during the prior five-year period. The extension was intended to provide relief to developers from those pressures.

15. Mr. Steen, the attorney for the Appellant, stated in argument that the main causes of delay in Carpenter Ridge were the general financial crisis and the need to obtain water rights for the development. The extension of the statutory deadline from five to seven years would directly help the Appellant deal with delays caused by the recession, which is the central purpose of the extension. Thus, the legislative intent behind the 2010 statute would best be served by interpreting it to apply to applicants in the Appellant's position.

16. The County argues that the purpose of the extension is to help applicants who obtained preliminary subdivision approval closer to the start of the financial crisis, not those, like the Appellant, who obtained that approval well before the crisis erupted. In 2008, when the recession was in full bloom and credit markets largely dry, the Appellant was three years into the five-year period which began with its 2005 preliminary approval. An applicant in that position is no less deserving of the relief offered by the extension than one who, say, obtained preliminary approval in 2007. In fact, one could argue with some force that those in the Appellant's position are more in need of this relief. The Appellant was closer to the end of its five-year period when the crisis began and could not reasonably have anticipated the collapse of credit markets when it applied in 2004. Interpreting the 2010 statute to apply to applicants in the position of the Appellant best serves the legislative intent behind it.

17. As noted, the County also argues that because the 2010 statute extended the statutory deadline, it was not intended to apply to plats which had already passed that five-year statutory deadline on its effective date, even if they had avoided expiration through an extension

authorized by local ordinance. This is a well-crafted argument, which goes directly to legislative intent and the scope of the extension.

18. In ascertaining legislative intent, though, it is important to consider that RCW 58.17.140 is a comprehensive provision that authorizes local governments to allow extensions beyond the statutory period, as well as imposing statutory deadlines for the processing of preliminary plat approvals and the filing of final plats. The same statute that imposes the deadline for final plats also allows local governments to adopt an ordinance authorizing an extension beyond it. Thus, the 2010 amendment is to a statute governing both the base period for filing final plats and extensions beyond it. The 2010 amendment affects not only the statutory period, but also the total period, counting extensions by ordinance. For these reasons, the interpretation most consistent with the statute as a whole is that the 2010 extension applies to any plat which has not expired, whether by virtue of the base statutory period or that period plus any extension by ordinance.

19. Perhaps more to the point, though, is again the categorical nature of the operative sentence, that "[a] final plat . . . shall be submitted . . . within seven years of the date of preliminary plat approval." The phrasing does not hint of an intent to exclude plats within that seven-year period which are unexpired only by virtue of an extension authorized by ordinance. The Appellant's preliminary plat remains within that period, and it has not expired. Considering both the operative sentence and the entire provision, RCW 58.17.140, the extension to seven years should apply to this subdivision.

D. <u>The vested rights doctrine</u>.

20. The County argues that the policies behind the state's vested rights doctrine support its view that the 2010 extension does not apply to this plat. The County argues, correctly, that the resolution of this issue will determine whether the significant amendments to its land use regulations since 2004 will apply to this proposal. The County is also correct that the determination of whether new regulations apply to a proposal is the work of the vested rights doctrine and that our Supreme Court held in <u>Erickson v. McLerran</u>, 123 Wn.2d 864, 874 (1994) that

> "[d]evelopment interests and due process rights protected by the vested rights doctrine come at a cost to the public interest. The practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. A proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted."

21. The Appellant responds by arguing that this issue has nothing to do with vesting and that, if it did, the Legislature has resolved the issue through adoption of the extension to seven years. Our vesting doctrine governs what law applies to decisions on permits, as sort of a temporal choice of law doctrine, and the controlling permit stage for subdivisions is preliminary plat approval, which passed years ago for Carpenter Ridge. In that regard, the Appellant is correct that this is not a vesting case. However, the Supreme Court's plain statement in <u>Erickson</u>, above, that "[a] proposed development which does not conform to newly adopted laws

is, by definition, inimical to the public interest embodied in those laws", applies just as directly to the issue presented here as to a classic vesting issue, even though its origin was a vesting case. Acceptance of the Appellant's position would avoid the application of the important laws listed in the Findings, adopted since 2004. This is just as "inimical to the public interest embodied in those laws" as was the applicant's position rejected in Erickson. Thus, the policies announced in Erickson strongly support the County's position.

22. The Appellant challenges this argument by pointing out that it would lead to the same result, even if none of the County's standards had changed in the interim. This, though, is the typical result of a generally applicable standard, including the vested rights doctrine. Perhaps the core purpose of that doctrine is to provide certainty to an applicant; to protect the applicant from the vagaries and uncertainties of fluctuating policy. The doctrine serves this purpose generally by fixing applicable law at the time of permit application. This rule applies, though, no matter what the degree, if any, of actual fluctuation in policies. This challenge by the Appellant does not describe a flaw in the County's argument.

23. I believe the Appellant is correct, though, in its argument that no matter what the policies announced in Erickson or underlying vesting generally, the Legislature resolved this issue through its adoption of the flat seven-year rule in 2010. The County is correct that applying this rule in this situation will be likely allow the Appellant to avoid a number of important new regulations by which it otherwise would be bound. The County is also correct that this would be detrimental to the public interest embodied in those recent regulations. This harm to the public interest, though, is the same as that inevitably visited by our minority vesting doctrine generally. The legislature has spoken clearly in adopting that minority vesting rule for subdivisions in RCW 58.17.033 and in extending the seven-year period in RCW 58.17.140. Whatever the disagreements with the wisdom of those rules, a Hearing Examiner must followed them, absent a persuasive argument for a distinction. For the reasons above, I believe the strong argument the County makes from Erickson does not overcome the even stronger argument from the wording of RCW 58.17.140.

E. Deference.

24. The County points out the accepted rule that "[w]here a statute is ambiguous, the agency's interpretation is accorded great deference in determining legislative intent." Faben Point v. Mercer Island, 102 Wn. App. 775, 778 (2000). Since, as decided above, sufficient ambiguity in application is present to allow statutory construction, this rule would apply.

25. The Appellant argues that deference is not warranted here, because the County's position would allow each local government to choose its own deadline for final plat submission. This, in turn, would sacrifice the uniformity required for subdivisions by RCW 58.17.010 and raise conflicts with state law in violation of Wash. Const. Art. 11, Sec. 11. The County, however, is not arguing that each local government may chose how it applies the 2010 statute. The County is arguing that as a matter of state law, the extension to seven years does not apply to plats which were past the prior five-year statutory period when the extension to seven years became effective. If the County's position prevails, then that would be the uniform effect of the state statute. The County's position would not jeopardize required uniformity and would not

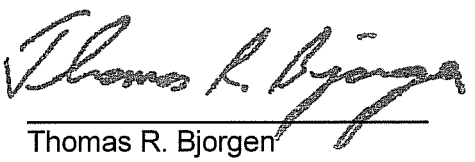
raise a conflict with state law. Therefore, great deference to that position is required by the case law noted above.

26. Even great deference, though, is not conclusive. If it were, then a Hearing Examiner would have no role in appeals of determinations by the administrative staff. Granting the Department's position great deference, I believe that the legal doctrines and analysis set out above must lead to the conclusion that the statutory extension to seven years applies also to this unexpired plat. For those reasons, the appeal should prevail.

DECISION

The Department's determination is reversed, and the seven-year period for filing final plats applies to this subdivision. For Carpenter Ridge that seven year period runs until May 11, 2012. No decision is made about the effect on this period of any extensions authorized County ordinance.

Dated this 3rd day of March, 2011.



Thomas R. Bjorgen
Thurston County Hearing Examiner

THURSTON COUNTY
WASHINGTON
SINCE 1852

Project No. 20041012231 AAPL
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 ☐ **$595.00 for Reconsideration** or **$820.00 for Appeal.** Received (check box): Initial _____ Receipt No. _____
Filed with the Development Services Department this _____ day of _____ 20___.

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 Development Services 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 Development Services 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 **$595.00** for a Request for Reconsideration or **$820.00** an Appeal). Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance 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.