

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

CASE NO: 2011101482 (Carrington Place II preliminary subdivision)

APPLICANT: Pacific Rainier Contractors

SUMMARY OF REQUEST:

The Applicant requests approval of a preliminary subdivision consisting of six lots on 1.17 acres. Lot 6 would contain three townhouse dwelling units.

LOCATION OF PROPOSAL:

Thurston County Assessor's Parcel No. 11808420200, in Section 8, T18N, R1W, W.M.

SUMMARY OF DECISION:

The application is approved, subject to conditions.

HEARING EXAMINER DECISION IN NO. 2011101482

HEARING AND RECORD:

The hearing on this request was held before the undersigned Hearing Examiner on June 18, 2012. The record was held open until June 28 for responses to Hearing Examiner questions concerning school capacity. Exhibits 1 through 5, below, are admitted as part of the record.

Exhibit 1. Staff Report by Thurston County Resource Stewardship Department for Case No. 2011101482, prepared by Tony Kantas and dated June 18, 2012. This Exhibit includes the 15-page Staff Report and Attachments a through o listed on Page 15 of the Staff Report.

Exhibit 2. Photos of the June 18, 2012 hearing posted at the site.

Exhibit 3. Full size Preliminary Plat Map and Engineered Abbreviated Drainage Plan.

Exhibit 4. Letter dated June 25, 2012 from Mike Laverty of the North Thurston School District to Tony Kantas.

Exhibit 5. E-mail sent June 26, 2012 from Chris Merritt to Thomas Bjorgen.

At the hearing, the following individuals testified:

Tony Kantas, Associate Planner
Thurston County Resource Stewardship Department

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2000 Lakeridge Drive SW
Olympia, WA 98502

Arthur Saint
Thurston County Public Works Department
2000 Lakeridge Drive SW
Olympia, WA 98502

Chris Merritt
Olympic Engineering
P.O. Box 12690
Olympia, WA 98506

Scott Melby
1717 Abernethy
Olympia, WA

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

FINDINGS OF FACT

1. The Applicant requests preliminary subdivision approval for a six-lot subdivision on 1.17 acres. Lots 1 through 5 would each contain a single-family residence, while Lot 6 would contain three townhouse units. Lot 6 is not proposed to be further divided through this application. The configuration of the six lots is shown at Exhibit (Ex.) 3.

2. The density of the proposed subdivision is 6.8 dwelling units per acre.

3. The project site is zoned Moderate Density Residential (MD 6-12) and is designated by the Lacey-Thurston County Joint Comprehensive Plan for residential use at a density of six to twelve residential units per acre.

4. The project site is immediately north of 17th Way NE and west of Abernethy Road. The site currently has a single-family residence on it, which will be removed.

5. The proposed subdivision is the second phase of the plat of Carrington Place. The adjacent first phase contains 45 single-family residential lots and received final plat approval on August 28, 2006. This subdivision contains a drainage easement serving Phase I. No improvements are proposed in this easement.

6. Carrington Place I lies immediately to the west of the project site, and the Alonda Villa mobile home park lies to the east. To the north and south of the project site are single-family residences on larger lots.

7. The smallest lot in the proposed subdivision would be 6120 square feet in area and the narrowest lot would be 40 feet wide.

8. Domestic water and sanitary sewer lines run by the City of Lacey are currently stubbed to Lots 1 through 5. This decision is conditioned to allow development of Lot 6 only after Lacey sewer and water services are available to serve it. The Public Health and

Social Services Department reviewed the proposal and concluded that, as conditioned, it complies with applicable provisions of the County Sanitary Code.

9. All lots will be accessed off 17th Way NE, which was constructed as part of the prior Carrington Place I subdivision. This street was constructed to current City of Lacey urban construction standards.

10. Roof runoff from each individual lot will be directed via downspouts to an infiltration facility on each lot. Runoff from the driveways will sheet flow to a ten-foot wide vegetated buffer strip with amended soils adjacent to each driveway. Mr. Merritt testified that this proposal uses low-impact stormwater alternatives and that it is well below the Drainage Design and Erosion Control Manual's thresholds requiring stormwater detention facilities. The Staff reviewed this proposal and concluded that it meets the preliminary requirements of the 2009 Drainage Design and Erosion Control Manual. Mr. Saint testified that in his opinion this proposal will not increase stormwater runoff, since all precipitation falling on the new lots will be infiltrated. Mr. Saint testified also that while this proposal complies with the 2009 Drainage Design and Erosion Control Manual, Carrington Place I was subject to the prior 1994 Manual.

11. Mr. Scott Melby lives at 1717 Abernethy Road, which is directly across 17th Way from the proposed subdivision. Mr. Melby states at Ex. 1, Att. m that after earthwork began on Phase I of Carrington Place, the first significant winter storm flooded his lot and the water subsequently rose to where it partly inundated the floor joists of his residence. This was not an exceptionally wet winter storm, however. Ex. 1, Attachment (Att.) d. Mr. Melby states that this flooding was unprecedented on his property and lasted for

approximately three months. Ex. 1, Att. d. He was also flooded the following year. Test. of Melby.

12. Mr. Melby testified at the hearing that before earthwork began on Phase I of Carrington Place, the static water level in winter for his well was five to seven feet. After this work began, Mr. Melby testified that the winter water level in his well dropped to 15 feet. Last winter the level dropped to 17 feet. This caused his well pump to burn out. Understandably, Mr. Melby is concerned that the grading from Phase I is causing groundwater to be drained away and jeopardizing his water source. As mitigation, Mr. Melby asks that his lot be hooked up to Lacey sewer and water at the Applicant's expense.

13. Mr. Merritt testified that he was not the engineer for Carrington Place I, but that he could understand how runoff could have been increased after grading began. He testified also that with building on the lots, that situation should have disappeared.

14. Mr. Kantas testified that he is not a hydrologist, but that 20 feet is shallow for a well and can be vulnerable to fluctuations. He testified that he has been told by two well contractors that a record number of wells are going dry. Mr. Kantas believes there are no water or sewer connections available from Lacey for Mr. Melby's lot.

15. In Ex. 1, Att. i, the School District states that its schools are over capacity and that it "does not own sufficient land for additional schools nor sufficient facilities to house the projected additional students generated by the proposed development." However, in Ex. 4 the District states that it has the capacity to absorb the students from this subdivision and that it has sufficient funds to provide additional temporary capacity.

Because Ex. 4 was sent just a few weeks ago, approximately six months after the letter at Ex. 1, Att. i, it must be presumed that Ex. 4 reflects current conditions. The phrasing and context of the statement from Ex. 4 suggests that it would house students from this subdivision in temporary or portable units, until funding for permanent capacity is obtained.

16. For schools serving this subdivision, the District will use mitigation fees, including those assessed this development, to help fund construction of permanent capacity and to provide portable classrooms until the permanent capacity is available. New permanent capacity is funded by a number of sources, including state grants, local bond issues, and mitigation fees. However, state grants are apparently not available until enrollment exceeds state thresholds. Portable classrooms are used to house students until the deficit is sufficient to justify a state grant. The District will seek approval of a capital facilities bond in 2014 to provide some of the funding for new capacity. Ex. 4.

17. The District states that the proposed mitigation fees "are commensurate with the estimated five students added by the Carrington Place II project . . ." Ex. 4.

18. The proposed subdivision is located in the North Thurston School District. Mr. Kantas testified that the School District will provide school bus service to this subdivision. The Staff Report recommends that the Applicant be required to install a bus waiting area and shelter in the subdivision at a location acceptable to the School District. Mr. Kantas testified that the proposed subdivision would provide safe walking conditions to this bus stop. This is confirmed by the map at Ex. 3, which shows an existing sidewalk along the entire Abernethy Road and 17th Way frontages of the proposed subdivision. With this proposed condition, which is incorporated below, this proposal provides safe walking conditions to school.

19. As conditioned, this proposal makes appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts. The public use and interest will be served by the proposed plat.

CONCLUSIONS OF LAW

1. This proposal is zoned MD 6-12 and, as conditioned, meets the zoning standards for that district.

2. A proposed subdivision must also meet the requirements of RCW 58.17.110 (2), which states:

"(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and

interest will be served, then the legislative body shall approve the proposed subdivision and dedication . . ."

3. The only issues concerning compliance with this provision relate to school capacity, runoff and groundwater. The November 23, 2010 reconsideration decision for the McAllister Meadows preliminary subdivision, No. 2004106036, granted preliminary subdivision approval for a much larger plat on the condition that final subdivision approval not be granted until a planned bond issue needed for permanent facilities to serve this subdivision is passed or until sufficient financing not including bonds or levies requiring voter approval is reasonably assured to construct permanent facilities needed to remedy capacity deficits for this subdivision by the end of the current Capital Facilities Plan period in 2016. These conditions rested on the Conclusion that RCW 58.17.110 requires denial if adequate school facilities would not be present, even if proportionate mitigation fees are paid. The decision also acknowledged that District policies allowed portable units as an interim, but not indefinite solution. Under that decision, the possibility of a bond issue passing was not enough to comply with RCW 58.17.110.

4. Here, the District continues to rely on a future bond issue which may or may not pass. However, the evidence also shows that in order to obtain state grants for new school construction, the District must first exceed its capacity. The evidence did not show whether this approach is established by law or if it is administrative policy by the state. The evidence also does not indicate the consequences if the future bond issue does not pass. Would students from this subdivision be housed indefinitely in portables or other temporary facilities, or would the District likely be able to obtain state funding to construct permanent facilities even without the bond issue?

5. These issues are best decided after argument from the District as to why it believes its approach complies with RCW 58.17.110. However, the District estimates that only five new students will be added by this proposal, and this plat is the second phase of a much larger proposal that has already been approved. Under these circumstances, it does not serve the reasoned consideration of this issue to require this proposal to be postponed for the months it would take to argue and decide these issues.

6. For these reasons, this proposal should not be denied on the basis of school capacity. However, this decision does not govern the resolution of the issues discussed in Conclusions 3 and 4, above. That must await argument in a future, proper case.

7. Mr. Melby's evidence showed that the first significant winter storm after work began on Phase I of Carrington Place flooded his lot, reaching the floor joists of his residence. Mr. Melby's evidence also showed that this had not occurred before. This is troubling. However, the evidence also showed that the current proposal complies with a more recent set of drainage standards than did Phase I and that, unlike Phase I, it uses low-impact measures for stormwater, which are designed to provide better infiltration. With these differences, and with the much smaller size of this proposal, it cannot be concluded (or found) that this is likely to channel runoff onto the Melby property. This decision is conditioned to require the Applicant to comply strictly and completely with all applicable provisions of the 2009 Drainage Design and Erosion Control Manual and to prevent any runoff from reaching the Melby property during all grading and construction activities, including construction of the residences.

8. Mr. Melby's evidence also showed that the water level in his well declined severely after earthwork began on Phase I of Carrington Place. The issue in this

proceeding, though, is approval of the much smaller Phase II. Although this evidence about Phase I is relevant, I don't think it is adequate to require the Applicant to hook the Melby property to Lacey utilities due to the potential effect of Phase II. Even if we assume that Phase I caused this decline in well level, there must be some evidence showing enough similarities between the phases to allow an inference that a decline is also threatened by this phase. That evidence is not present.

9. As conditioned, this proposal meets the requirements of RCW 58.17.110.

10. As conditioned, this proposal is consistent with the Comprehensive Plan.

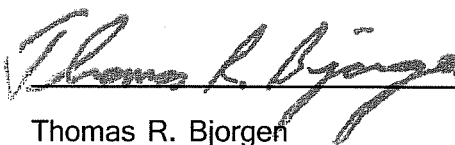
DECISION

The proposed preliminary subdivision is approved, subject to Conditions 1 through 37 on pp. 8 through 14 of the Staff Report at Ex. 1 and the following:

Lot 6 may be developed only after Lacey sewer and water services are available to serve it.

The Applicant shall comply strictly and completely with all applicable provisions of the 2009 Drainage Design and Erosion Control Manual and shall prevent any runoff from reaching the Melby property during all grading and construction activities, including construction of the residences.

Dated this 13th day of July, 2012.

A handwritten signature in black ink, appearing to read "Thomas R. Bjorgen", written over a horizontal line.

Thomas R. Bjorgen

Thurston County Hearing Examiner



Project No. 2011101482 PLAT
 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 Resource Stewardship 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 3.21C.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 Resource Stewardship 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.