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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2016101988
)	
Richard and Ellen Middleton)	Middleton Dock
)	
For Approval of a)	
Shoreline Substantial Development Permit)	
)	DECISION ON RECONSIDERATION
)	

A hearing in the above-captioned application was conducted on January 8, 2019. The shoreline substantial development permit was approved with conditions on January 25, 2019. Condition number 4 stated as follows:

Prior to issuance of the required Thurston County building permit for the pier portion of project, the Applicants shall submit revised impervious surface area calculations for the portion of the site within shoreline jurisdiction that include the area of pavers in the gravel and oyster shell walkways. If the resulting calculation of impervious area exceeds 30% of the total area within shoreline jurisdiction, the excess impervious area shall be remediated prior to building permit issuance.

County Planning Staff was offered a chance to respond but did not choose to do so.

Summary of Request

On February 4, 2019, the Office of the Hearing Examiner received the request for reconsideration timely submitted by the Applicant on February 1, 2019, requesting revisions to the decision as follows:

1. Reconsideration of Decision Condition No.4 requiring the Applicants to submit revised impervious surface area calculations to include the area of pavers located within the gravel and oyster shell walkways;
2. Modification of Conclusions Based on Findings No.5 to reflect that the pavers are pervious and should be excluded from impervious surface calculations as they

allow for the downward passage of water as defined in the 1990 SMPTR, Sec. IV, Definitions at page 128; and

3. Inclusion of a new Finding of Fact or insertion in Finding of Fact No. 15 stating the Applicants provided expert written testimony during the open record hearing with submittal of the December 27, 2018 letter included as Exhibit 3 to the Hearing Examiner's Findings, Conclusions, and Decision from Mark R. Steepy, PE with kpff, concluding that the noncompacted gravel surfaces located at the subject site behave similarly to concrete pavers as both allow surface runoff to reach native or graded soil at the quickest rate possible.

The request for reconsideration was submitted with supplemental information from the same engineer whose expert evidence had previously been provided with the Applicant's response to the staff report, admitted as Exhibit 3. On Reconsideration, the Applicant argued that the record supported a conclusion that the pavers themselves were not impervious as installed on the property; however, because the Decision found otherwise, the Applicant requested to supplement the record with additional expert testimony clarifying the action of the pavers on the site.

Jurisdiction

Pursuant to Thurston County Code (TCC) 2.06.060,

Any aggrieved person ... who disagrees with the decision of the Examiner may make a written request for reconsideration by the Examiner within ten days of the date of the written decision. The request for reconsideration shall be filed with the Development Services Department upon forms prescribed by the Department. If the Examiner chooses to reconsider, the Examiner may take such further action as he or she deems proper and may render a revised decision

Rule 9.4, Procedure for Reconsideration and Reopening Hearing

....

b. Reconsideration.

- 1) Any party of record may file a written request with the Hearings Examiner for reconsideration within ten (10) days of the date of the Hearings Examiner's recommendation or decision. The request shall explicitly set forth alleged errors of procedure or fact. The request may also include direction to a specific issue that was inadvertently omitted from the Hearings Examiner's recommendation or decision.
- 2) Additional evidence may only be submitted upon a Request for Reconsideration if it is new evidence not available at the time of the public hearing, upon a showing of significant relevance and good cause for delay in its submission. At the Examiner's discretion, parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- 3) The Hearing Examiner shall respond to the request for reconsideration by either denying the request or approving the request by modifying or amending the recommendation / decision based on the established record or setting the matter for an

additional public hearing.

Discussion

With respect to the newly offered evidence, the Applicant argued as follows:

The County's evidence at the hearing on the issue of impervious surface consisted of a single planner's opinion, unsupported by any policy, regarding characterization of the gravel surfaces. *See* Decision, Finding 17. The County offered no expert opinion to dispute the written expert testimony from Mark Steepy, PE submitted at the hearing. Specifically, Mr. Steepy's December 27, 2018 letter describes the nature of the pavers and surrounding surfaces and concludes they are not impervious surfaces as defined in the 1990 SMPTR (Sec. IV, Definitions at page 128) since they readily allow for the downward passage of water. *See* Exhibit 3 to the Decision. As such, the Applicant had no reason to believe at the time of hearing that the Hearing Examiner would, *sua sponte*, conclude the pavers were "obviously" impervious contrary to Mr. Steepy's opinion.

The supplemental information offered in the new exhibit does clarify and give more detail about the information in Mr. Steepy's earlier letter at Exhibit 3. The new information from Mr. Steepy, a letter dated February 1, 2019, includes the following information:

For purposes of clarification and to further assist the Examiner, your site contains 674 square-feet of existing pavers, covering three (3) different areas. The areas are described as follows:

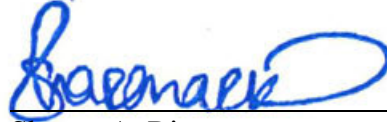
- Area 1 - In the landscape island in the middle of your driveway. The pavers range in size from a maximum 24"x24" square to minimum of 12"x12" square. The pavers are placed with an approximate 1.5" space between them and are laid over a 3"- 4" sand bed.
- Area 2 - located between the driveway and front entry to the home. The pavers range in size from a maximum 24"x24" square to minimum of 12"x12" square. The pavers are placed with an approximate 1.5" space between them and are laid over a 3"- 4" sand bed.
- Area 3 - located around the southern side of the house. The pavers are 24"x24" square. The squares are placed with an approximate 4" space between them and are laid over a 3"- 4" bed of pea gravel.

As my December 27, 2018 letter provides, pea gravel bedding is a well-draining material. Sand bedding is also a well-draining material that will allow for the horizontal movement of runoff. As runoff flows the maximum 24" distance across a paver, it penetrates downward into the sand between pavers and moves horizontally under the pavers. The pavers alone could arguably prevent the downward passage of runoff directly below the paver, but once the runoff reaches the sand/pea gravel in the spaces between the pavers the sand and pea gravel allows the runoff to flow horizontally prior to reaching the native soil. This is standard engineering design and construction applications for permeable pavements.

Decision

1. The February 1, 2019 letter from Mr. Steepy is admitted.
2. Reconsideration is granted. The decision will be modified and reissued.

Decided February 7, 2019.



Sharon A. Rice
Thurston County Hearing Examiner