

NO. 37468-4-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

ROBERT BONNEVILLE, Appellant

v.

PIERCE COUNTY, et al., Respondents

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DIVISION II
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BRIEF OF RESPONDENT PIERCE COUNTY

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I. INTRODUCTION

This is a land use case brought pursuant to the Land Use Petition Act ("LUPA"), *ch. 36.70C RCW*, involving Appellant Robert Bonneville's ("Bonneville" or "Appellant") appeal of the Pierce County Hearing Examiner's decision revoking his Conditional Use Permit for violation of several conditions of approval.

Pursuant to LUPA, this Court reviews the record made before the original tribunal, in this case the Hearing Examiner. *RCW 36.70C.120*. Appellant has the burden of proving that the Examiner's decision is not based upon substantial evidence, is an erroneous interpretation or application of the law, or is otherwise in error. *RCW 36.70C.130(1)*. As this brief will show, the Examiner's decision was correct and should therefore be affirmed by this Court.

II. ISSUES

The issues before this Court are:

1. Whether substantial evidence was presented to support the Examiner's findings and conclusions that Appellant had violated several conditions of approval of his land use permit.

2. Whether Appellant consented to entry of his home/business in conjunction with the Examiner's condition regarding monitoring for compliance with conditions of approval.

3. Whether the Hearing Examiner's rulings regarding recusal, exclusion of evidence, and request for a continuance were an abuse of discretion.

III. RESTATEMENT OF THE FACTS

A. The 2004 Conditional Use Permit.

In 1999 a complaint was filed with the Pierce County Planning and Land Services Department ("Planning Department" or "PALS") regarding a business being operated out of Appellant's house with 10-12 cars parked there daily.¹ Appellant's house is located in a rural area of unincorporated Gig Harbor and is zoned R10.²

For the next several years the Planning Department struggled with Appellant to have him either cease operating his business in a rural zone or apply for and obtain the necessary land use permits.³ To avoid the consequences of orders to cease and desist, Appellant applied for a non-

¹ AR 41. "AR" refers to the Administrative Record made before the Hearing Examiner in this case. The Administrative Record was filed with the Superior Court Clerk on December 21, 2007, and transmitted to the Court of Appeals on or about April 17, 2008, under separate cover. "TR" refers to the transcript of the hearings before the Examiner, filed with the Court of Appeals on or about April 17, 2008 under separate cover. TR is followed by the date of the hearing and applicable page and line numbers.

In 1999, the house apparently belonged to Wilhelm Ellwanger. Mr. Ellwanger subsequently changed his name to Robert Bonneville, Appellant herein.

² AR 40.

³ AR 41.

conforming use permit in August 2001.⁴ This permit was never granted because Appellant could not prove nonconforming use rights.⁵

Finally, in 2003, Appellant filed an application for a Conditional Use Permit which, if granted, would allow him to operate a limited "Cottage Industry" business on-site.⁶

Appellant's application for a Conditional Use Permit (CUP) is attached as Ex. A to this brief.⁷ On page two of the application Appellant describes his request:

Owner wishes to operate an appraisal business from his home. It would involve 2 full time people, owner part time and an additional secretary. There are no sales or traffic involved. The appraisors [sic] drive to homes and look at them. They measure the homes and prepare an appraisal report. They use computers to research. We request the County allow the appraisal business to operate.⁸

⁴ AR 41.

⁵ AR 41. Specifically, Appellant could not prove that the business was legally established prior to the adoption of the Gig Harbor Regulations in 1975.

⁶ At the time PCC 18A.25.150 permitted Cottage Industries within the R10 zone classification subject to obtaining a Conditional Use Permit (CUP). Copies of the Pierce County Code sections referenced in this brief are included as Ex. E to the Brief of Respondent Pierce County.

⁷ Appellant's application is at AR 348 - 361. Although Appellant submitted the application as the owner of the property, the property was apparently owned by "The Waldmeister LP."

⁸ AR 349.

A floor plan was included as part of the application.⁹ The floor plan indicated that the business would be located on the ground floor in specific areas which, according to Appellant's calculations, totaled 1473 square feet.¹⁰

Also included as part of the application was a Right of Entry Agreement, signed by Appellant, which allowed Pierce County personnel access to the subject property "for purposes of inspection during the pendency of the described permit(s)/approval(s)" ¹¹

At the hearing before the Examiner on his application, Appellant addressed the issue of "employees" and stated that the proposal would allow four "employees," three of which were relatives.

MR. BONNEVILLE: . . . Three of the four are part-time workers, young mothers with responsibilities to their own families at their own homes. They work for the family in a Cottage Industry setting because they have kids. And they don't have time for full-time jobs, so they are not there full time either. They are there part time when the family allows them -- when they don't have soccer games, when they don't have to pick up the kids from school, they're there. But they are tallied by the county as full-time employees and they probably will be so by me. That's -- that's something to be sorted out, I guess. But this is the actual -- how it's working out. A lot of the people working there are relatives, and a lot of them are young mothers.

⁹ AR 359, included in Ex. A to this brief.

¹⁰ AR 355.

¹¹ AR 352, included in Ex. A to this brief.

THE HEARING EXAMINER: Again, just so I'm clear, you say there's four employees now?

MR. BONNEVILLE: Actually -- actually, we have -- let me just think out loud here. There's four now, yeah.¹²

Appellant also addressed the issue regarding location of the 1500 square foot business area:

MR. BONNEVILLE: . . . I -- the plan I submitted calculated out to 1500 square feet. I didn't count the kitchen. I can't count the entry, and I counted this area, this area, and the cubicle area in here. And that totaled out to 1500 square feet. So I don't know how we're in violation. However we're in violation. I'll be glad to scale down to the 1500 square feet so that there's no questions about that. You know, these 1500 square feet can be used. And we'll demark them with tape on the floor or whatever it takes to say, you know, we agree that outside of these things, there will be no business and no computer stations or whatever it takes.¹³

As evidence of Appellant's consent to inspections of his property, Appellant recommended that the County have access to his property to ensure compliance with the permit conditions:

MR. BONNEVILLE: . . . And, again, the county's welcome to come or a designated person from the county is welcome to come there -- or is welcome to come there any time, walk through the building, count computers, count areas. We'll put a tape on the floor saying this is computer -- this is the business space; this is -- this is residence.¹⁴

¹² AR 106 - 107. The transcript of the 2004 hearing before the Examiner is contained within the AR at pp. 65 - 186.

¹³ AR 109.

¹⁴ AR 128.

Later, in cross-examination by Deputy Prosecutor Lori Kennedy, he was asked:

The main concern is how the staff is going to be able to be sure, given your history on this, that you are complying with conditions. And I guess I'm asking how the county can be sure that you will comply with any conditions¹⁵

In reply, Appellant stated:

If you come up with a schedule of inspections, be it routine or random, I will -- I will meet that schedule at any time.¹⁶

The transcript then records the following dialogue:

MS. KENNEDY: So you would allow the staff on the property --

MR. BONNEVILLE: Absolutely.

MS. KENNEDY: Any time they wanted to check it out?

MR. BONNEVILLE: And if I'm not there personally that particular day, if they show up unannounced, whatnot, in order to fully, you know, be sure that -- that we're not concealing anything, we can designate other people that would give them permission.

MS. KENNEDY: And you'd be happy to tell the other people that they can come and take a look?

MR. BONNEVILLE: And we can provide the list. You know, say if I'm not there, check with this person, check with that person, that kind of thing.¹⁷

¹⁵ AR 148, lines 22 - AR 149 at line 2.

¹⁶ AR 149, lines 5-8.

¹⁷ AR 149, lines 9-21.

Although the Hearing Examiner was doubtful about Appellant's willingness to comply with the restrictions, he issued a decision approving a Conditional Use Permit for a Cottage Industry on July 1, 2004.¹⁸ The permit was approved subject to a number of conditions.¹⁹ The conditions which are relevant to the issues in this appeal are conditions 3, 10 and 11:

3. The applicant [Bonneville] must apply for permits necessary within 60 days of the final decision of the Hearing Examiner Decision for a Conditional Use Permit (CUP) Cottage Industry II. Failure to obtain appropriate permits to reach conformance with conditions and/or regulations shall cause all approvals granted herein to become automatically null and void.²⁰

10. The proposed Cottage Industry II shall not exceed 1,500 square feet (including accessory buildings) and shall be limited to the maximum of four non-residence employees.²¹

11. The applicant shall allow Pierce County Staff to monitor the site to make sure that all conditions of approval are being adhered

¹⁸ The Examiner stated in his decision: "An appraisal business within a Rural area would be a preferred Cottage Industry II use. This type of business would generally have a very low impact on the surrounding neighborhood and, absent the limited increased traffic that takes place, no one would even know that it was there. The concern is that the applicant will not adhere to the conditions of approval stated in this decision. He has shown that he does not follow directives. The condition of approval relating to allowing unfettered access to the property by agency employees and the right to come straight to the Examiner with permit revocation requests will insure that the conditions are followed." AR 48, attached as Ex. B to this brief.

¹⁹ AR 39 - 53.

²⁰ The permit applicable here was a building permit for conversion of a single family residence to a building which would accommodate his business.

²¹ PCC 18A.35.060(D)(5) limits Cottage Industry II business to not more than four (4) non-residence employees and not more than 1500 square feet for the business. See Ex. E.

too [sic]. A right-of-entry agreement shall be signed by the applicant allowing staff unlimited and unfettered access to the site for inspection and monitoring purposes.²²

It is undisputed that Appellant did not appeal the Hearing Examiner's 2004 decision.

B. The 2007 Revocation Hearing and Decision.

After the Hearing Examiner's decision approving the CUP was issued in 2004, Appellant applied for a building permit to convert the house into a structure suitable for both his residence and his business.²³ Although he filed his building permit application on August 31, 2004, he never followed through and never obtained the building permit. The record shows that he failed to provide information requested by the Health Department, and that his application expired in August of 2005.²⁴

It is uncontested that Appellant never obtained the necessary building permit as required by Condition No. 3.

Appellant also signed another Right of Entry Agreement wherein he agreed to allow Pierce County personnel access to his property.²⁵

Between the time Appellant obtained the conditional use permit (July 1, 2004) and the date the Planning Department filed for revocation of

²² AR 49 - 50.

²³ AR 223 - 227.

²⁴ AR 23.

²⁵ AR 62 - 63, also included as Ex. C.

the permit (February 14, 2007), County Planning Department staff made two site visits to verify compliance with the conditions of approval.²⁶

Despite his prior testimony and agreements, each time Appellant initially refused access and became argumentative.²⁷ Planner Marcia Greeson testified that after a period of delay, Appellant would ask staff to come inside.²⁸

During the times staff did enter the building they observed areas other than the designated 1500 square feet being used for his business and observed more individuals working there than allowed.²⁹ Planner Marcia Greeson testified that when she conducted her May 12, 2005, site visit, she believed that there was more square footage being utilized for the business than what showed on the floor plan.³⁰

Then what really kind of caught my attention was when I left and I saw what appeared to be someone working upstairs, and employees standing outside or people standing outside. Again, it was one of those things that maybe it was just family, friends, and I'll just come back and check it out again.³¹

²⁶ AR 24. Site visits occurred on May 12, 2005, and November 22, 2006. After the revocation request was filed and before the hearing occurred, Planning staff attempted a third site visit on or about March 1, 2007.

²⁷ AR 4-5.

²⁸ TR 4/13/07 p. 17, lines 1-2.

²⁹ TR 4/13/07 p. 17, lines 2-7, and AR 24.

³⁰ TR 6/14/07, p. 28, lines 16-21.

³¹ TR 6/14/07, p. 28, line 22 - p. 29, line 2.

On her next visit (November 22, 2006) Ms. Greeson requested a police escort because she had received a report about people hiding under desks during her first site visit and was afraid for her safety.³² Although Appellant initially asked her to leave, he later allowed her in, along with Code Enforcement Officer Mark Luppino and a Sheriff's Deputy. While inside, Ms. Greeson observed 15 workstations and approximately 7-12 people.³³ She further observed two people working out of what was previously a storage area.³⁴ From her observations she concluded that more area was being used for the business than was allowed by the Examiner.³⁵

Ms. Greeson, Mr. Luppino, and a Sheriff's Deputy attempted a third site visit on March 1, 2007, but Appellant refused to let them inside.³⁶

Meanwhile, neighbors continued to complain about the situation at Appellant's property.³⁷ Planner Marcia Greeson testified that she had received calls from five different people about the business.³⁸

³² TR 6/14/07, p. 40, lines 12 - 21, and p. 43, line 23 - p. 44, line 1.

³³ TR 4/13/07, p. 137, line 3, and AR 24.

³⁴ TR 4/13/07, p. 137, lines 8-11.

³⁵ TR 6/14/07, p. 46, lines 17 - 25.

³⁶ TR 6/14/07, p. 91, lines 1-11.

³⁷ TR 6/14/07, p. 25, lines 8 - 11.

³⁸ TR 6/14/07, p. 25, lines 8 - 11.

In accordance with the Pierce County Code, the Planning Department filed for revocation of the Conditional Use Permit on February 14, 2007.³⁹ A hearing before the Hearing Examiner on the Planning Department's application was scheduled for March 28, 2007.⁴⁰ Shortly before the hearing Appellant sought to derail the hearing by filing a motion for a stay in a superior court civil case he filed against the County in late 2006.⁴¹ The stay was denied by Judge Worswick, and the hearing began on April 13, 2007.⁴²

At the hearing Appellant testified that he met condition 3 because he applied for a building permit. The fact that he didn't follow through and obtain the necessary building permit was not his problem:

MR. BONNEVILLE: Argument No. 3, again, about the Health Department. I did all that I was required to do under Condition 3. It says make application. It does not say I have to get it approved, only that I make application. PCC 18.100 says PALS has 120 days to rule on the application.

The fact that PALS did not act out on the application is not my fault . . .⁴³

³⁹ AR 27 - 30.

⁴⁰ AR 33.

⁴¹ See Pierce County Cause No. 06-2-14268-9, which was dismissed in September, 2007.

⁴² AR 340 - 341.

⁴³ TR 4/13/07, p. 18, line 16 - 23.

On cross-examination Appellant admitted that although he had obtained building permits "many times" in the past, he failed to obtain the necessary building permit in this case.⁴⁴ The transcript of the hearing clearly shows how Appellant attempted to frustrate the Examiner and avoid answering questions. Four times the Examiner asked the Appellant whether he obtained the building permit and four times Appellant attempted to dodge the question with answers such as "Did I get a piece of paper that says 'you have a permit'? No," and "I don't know if I got a certificate. It wouldn't have made any difference to me. The deadline was get all your stuff in that's required for the County."⁴⁵

At the hearing Appellant was equally uncooperative regarding the 1500 square foot limitation on that portion of his house which could be used for the business. First, Appellant argued that the floor plan attached to his application was not what was ultimately approved by the County.⁴⁶ Then he argued that the floor plan he presented at the 2004 hearing was not what was approved.⁴⁷ Appellant also tried to argue that Planning

⁴⁴ TR 4/13/07, pp 55 - 60.

⁴⁵ TR 4/13/07, p. 58, lines 20-21, and p. 59, lines 11-14.

⁴⁶ TR 4/13/07, p. 69. lines 15 - 24.

⁴⁷ TR 4/13/07, p. 70, lines 9-15.

Department staff approved a separate drawing showing the business area; however, he was unable to provide an approved drawing.⁴⁸

When asked to highlight the area approved for his business use, Appellant stated that was "entirely inappropriate"⁴⁹ and that he was entitled to "a floating 1500 square foot area" anywhere in the house.⁵⁰ He further testified that he could have a floating business area even though he never requested it in his application, never mentioned it to County Planning staff, and never brought it up before the Examiner at the 2004 hearing.⁵¹

Appellant's approach to the other alleged violations was similar. With respect to the allegations regarding the number of employees allowed, Appellant argued that these individuals were independent contractors as opposed to employees, therefore they didn't count.⁵²

After a day-long hearing on April 13, 2007, the Hearing Examiner continued the matter until June 14, 2007.⁵³ On June 8, 2007, Appellant unsuccessfully tried again to stop the hearing by filing another motion in

⁴⁸ TR 4/13/07, p. 68, line 25 - p. 69, line 7.

⁴⁹ TR 4/13/07, p. 72, lines 3-4.

⁵⁰ TR 4/13/07, p. 84, lines 8 - 25.

⁵¹ TR 4/13/07, p.85, lines 1 - 25.

⁵² AR 245, lines 16 - 19.

⁵³ TR 4/13/07, p. 140, lines 1 - 17.

the civil case.⁵⁴ The Hearing Examiner again took testimony for one-half day.

On September 5, 2007, the Hearing Examiner issued a decision revoking Appellant's Conditional Use Permit.⁵⁵ In addition to finding Appellant not credible, the Examiner found that the Planning Department had met its burden of proving that Appellant had violated conditions 3 (obtain necessary building permit), 10 (limit business to not more than 1500 square feet and four non-residence employees), and 11 (allow County staff to monitor the site for compliance with conditions of approval).⁵⁶

Thereafter, Appellant filed a land use petition action. The matter was heard by the Honorable Sergio Armijo on February 26 and March 3, 2008, and an order dismissing the land use petition was entered on March 3, 2008.⁵⁷ Thereafter, Appellant appealed to the Court of Appeals.⁵⁸

⁵⁴ AR 630 - 631.

⁵⁵ AR 1 - 16, attached as Ex. D to this brief.

⁵⁶ AR 13 - 14.

⁵⁷ CP 34 - 35.

⁵⁸ CP 36 - 39.

IV. LEGAL ARGUMENT

A. Standard of Review in LUPA Cases.

With few exceptions, LUPA is the exclusive means for judicial review of land use decisions. *RCW 36.70C.030*; *Twin Bridge Marine Park, LLC v. Dep't of Ecology*, 162 Wn.2d 825, 854, 175 P.3d 1050 (2008); *Milestone Homes Inc. v. City of Bonney Lake*, ___ Wn. App. ___, ___ P.3d ___ (June 17, 2008, COA # 36441-7). Under LUPA, appellate courts review the land use decision on the basis of the administrative record, not the superior court's record or decision. *Pavlina v. City of Vancouver*, 122 Wn. App. 520, 525, 94 P.3d 366 (2004). A reviewing court may reverse a land use decision if the Appellant meets his burden of proving that one of the statutory criteria is met:

(1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under *RCW 36.70C.120*. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1).

On appeal of an administrative decision, courts review the record made before the original tribunal, including the tribunal's findings of fact and conclusions of law. *N. Pac. Union Conference Ass'n of Seventh Day Adventists v. Clark County*, 118 Wn. App. 22, 28, 74 P.3d 140 (2003).

RCW 36.70C.130(1) "reflects a clear legislative intention that this court give substantial deference to both legal and factual determinations of local jurisdictions with expertise in land use regulation." *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 180, 61 P.3d 332 (2002), review denied, sub nom.; *Citizens for a Responsible Rural Area Dev. v. King County*, 149 Wn.2d 1013, 69 P.3d 874 (2003).

Whether a land use decision is an erroneous application of the law is a legal question courts review de novo. *Medina v. T-Mobile USA, Inc.*, 123 Wn. App. 19, 95 P.3d 377 (2004). A decision is clearly erroneous

only when the court is left with the definite and firm conviction that a mistake has been made. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 716, 47 P.3d 137 (2002).

Reviewing courts view the evidence and any reasonable inferences in the light most favorable to the party that prevailed in the highest forum exercising fact-finding authority. *Davidson v. Kitsap County*, 86 Wn. App. 673, 680, 937 P.2d 1309 (1997). Substantial evidence is evidence of a sufficient quantity to persuade a fair-minded person of the truth or correctness of the order. *Medina v. T-Mobile USA, Inc.*, 123 Wn. App. 19, 95 P.3d 377 (2004), *citing Benchmark Land Co. v. City of Battleground*, 146 Wn.2d 685, 694, 49 P.3d 860 (2002).

B. Substantial Evidence Supports the Examiner's Findings and Conclusions Regarding the Violations of Conditions 3, 10, and 11.⁵⁹

Appellant argues that the Examiner lacked sufficient evidence to support his findings regarding the violations of the conditions limiting the square footage of the business, number of employees, and the lack of a building permit.⁶⁰

⁵⁹ At the hearing before the Examiner the Planning Department admitted that there was insufficient evidence to support a finding that Appellant violated Condition No. 7 which required that Bonneville reside on the site. The Examiner agreed and found that Appellant complied with Condition No. 7. AR 13.

⁶⁰ See Appellant's Opening Brief at pp. 9-12 and 29.

Appellant also argues that the Hearing Examiner found that Bonneville did not reside on-site.⁶¹ Appellant misreads the Examiner's decision in which the Examiner found that "[t]he preponderance of the evidence did not show that Mr. Bonneville has not lived on the property, and thus he complied with Condition 7."⁶²

1. Substantial Evidence Supports the Examiner's Finding That Appellant Violated Condition 3 By Failing to Obtain a Building Permit.

Appellant's sole argument on this issue is that he only needed to apply for a building permit; he didn't actually need to obtain the building permit.⁶³ Appellant's argument ignores that portion of Condition 3 which states that "[f]ailure to obtain appropriate permits to reach conformance with conditions and/or regulations shall cause all approvals granted herein to become automatically null and void." The undisputed evidence was that Bonneville failed to obtain the necessary building permit.⁶⁴ The Examiner therefore correctly found that Bonneville failed to comply with Condition 3.

⁶¹ See Appellant's Opening Brief at pp. 11 - 12.

⁶² AR 13, Item B.

⁶³ Brief of Appellant Bonneville, pp. 26 - 27.

⁶⁴ Appellant's reference to AR 55 is misleading as the 2004 Memorandum of Agreement states on its face that it involves the Hearing Examiner's approval of Conditional Use Permit 20-03("CP 20-03") involving the cottage industry, not the building permit.

Moreover, evidence was presented as to why the building permit had not been issued. Planner Marcia Greeson testified that Appellant's building permit application expired because he failed to address the Health Department's concerns.⁶⁵

2. Substantial Evidence Supports the Examiner's Finding That Appellant Violated Condition 10 By Exceeding the Limitations on Business Square Footage and Number of Employees.

As set forth above, Planner Marcia Greeson testified that based upon her site visits, she calculated that Appellant exceeded the 1500 square foot limitation for operation of his business.⁶⁶ Appellant's argument in response to the evidence was that he was entitled to conduct his business anywhere he desired in the house, as long as the total business square footage did not exceed 1500 square feet at any one time.⁶⁷

The Examiner disagreed with Appellant's argument that he was entitled to a "floating 1500 square foot" business area. The Examiner's decision is correct, particularly in light of the fact that Appellant specified the location of the business in floor plans that were part of his application and part of the presentation to the Examiner in 2004.

⁶⁵ TR 4/13/07, 14:15 - 24, located at AR 406.

⁶⁶ TR 6/14/07, 28:16 - 28.

⁶⁷ TR 4/13/07, 84:8 - 25.

Similarly, Appellant's attempt to sidestep the limitation on the number of employees by characterizing those working for him as independent contractors lacks merit. As the Examiner stated in his decision, his intent was to only allow four non-residential workers on the property.⁶⁸ The Examiner correctly found that Appellant violated this condition based upon Ms. Greeson's observations and Appellant's response. As the Examiner stated:

Therefore, a preponderance of the evidence shows that the applicant violated Condition 10 both by having more than four employees and exceeding the square footage limitation.⁶⁹

3. Substantial Evidence Supports the Examiner's Finding That Appellant Violated Condition 11 By Not Allowing Pierce County Staff To Monitor the Site For Compliance With the Conditions of Approval.

Although the Examiner's 2004 decision became final and binding when Appellant failed to appeal, he now argues that the condition regarding monitoring the site for compliance with conditions of approval somehow violates his constitutional rights.⁷⁰ Pursuant to *RCW 36.70C.040* Bonneville had twenty-one days to appeal the Examiner's

⁶⁸ AR 13, FOF 7C.

⁶⁹ AR 14.

⁷⁰ Appellant's Opening Brief, pp. 2 - 9.

2004 decision.⁷¹ His failure to do so bars him from now challenging these conditions.

Furthermore, Appellant's arguments ignore the fact that he signed two (2) Right of Entry Agreements wherein he agreed to allow Pierce County personnel to access his property for inspection during the pendency of his permit application and approval.⁷²

The first time Appellant submitted a Right of Entry Agreement authorizing access to his property was in February 2004, around the time he applied for a Conditional Use Permit.⁷³ His signature was notarized by his attorney, Frederick Hetter, and purported to be his "free and voluntary act for the uses and purposes mentioned in the instrument." The second Right of Entry Agreement was notarized on August 31, 2004, soon after the Examiner's decision approving his request for a Conditional Use Permit.

In addition to the signed agreements authorizing access to his property in conjunction with his land use permit, Appellant personally

⁷¹ *RCW 36.70C.040* provides in pertinent part: (2) A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition: . . . (3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision.

⁷² AR 352-353 and 62- 63.

⁷³ AR 352-353.

agreed to allow Pierce County personnel to enter his house when the inspections were conducted. Planner Marcia Greeson testified that at the time of the first inspection Appellant came out with two people and asked her to leave.⁷⁴ Then he invited them in.⁷⁵

At the time of the second inspection, Ms. Greeson testified that she went up to the door and asked to be let in.⁷⁶ "You [Bonneville] came out, told me that I had no right to come in, it was unconstitutional."⁷⁷ When Ms. Greeson and those with her attempted to leave, Appellant changed his mind, asked them to come in, and then gave them a "tour" of the house.⁷⁸

On the attempted third inspection Appellant came to the door, shut the door behind him, came out on the porch and talked with Code Enforcement Officer Mark Luppino.⁷⁹ Appellant refused to allow them to inspect the business and they left.

Appellant did not dispute the testimony of the Pierce County personnel who were present. His argument then, and now, was that he should not have been required to allow them to inspect the business for

⁷⁴ TR 4/13/07, p. 132, line 19.

⁷⁵ TR 4/13/07, p. 132, lines 20 - 21.

⁷⁶ TR 6/14/07, p. 43, lines 17-19.

⁷⁷ TR 6/14/07, p. 40, lines 19-20.

⁷⁸ TR 6/14/07, p. 89, lines 12 - 18.

⁷⁹ TR 6/14/07, testimony of PCSD Deputy Dan Wulick, p. 90, lines 15-25, and p. 91, lines 1-4.

compliance with the limitations set forth in the Examiner's decision.

Appellant's argument lacks merit in that he (1) agreed in writing to allow Pierce County personnel to inspect his property for compliance, (2) orally agreed at the time of two inspections to let them inside to inspect the premises, and (3) failed to appeal the Examiner's 2004 decision which contained the condition regarding access.

**4. Appellant Consented to Entry of the Premises;
Therefore Entry Was Lawful.**

Appellant primarily complains about unconstitutional searches and unconstitutional conditions of the permit. His claims are wholly without merit. Indeed, Appellant consented to and even invited these searches.

Both the United States and Washington Constitutions protect a citizen's privacy interests. *U.S. Const. amend. 4; Wash. Const. art.1, § 7*. It is well-settled in Washington, however, that a warrantless search is constitutional when valid consent is granted. *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004). The requirements for consent are less stringent in the administrative context and whether consent to search is voluntary is determined from the totality of the circumstances. *Cranwell v. Mesec*, 77 Wn. App. 90, 102, 890 P.2d 491 (1995).

Here, there is no dispute that Appellant consented to these searches – he did so (1) orally in the 2004 hearing; (2) by failing to appeal the

condition regarding "unfettered access" in the Hearing Examiner's 2004 decision; (3) by submitting a Right of Entry Agreement with his permit application; (4) by signing and submitting a consent form prepared by the County allowing the searches; and (5) by inviting County employees inside at the time of the site inspections. Appellant now tries to avoid these facts by alleging that his consent was involuntary and coerced. The facts in the record do not support this claim.

First, Appellant's oral consent made while under oath during the May 13, 2004, hearing was voluntarily and intelligently made. Indeed, it was Appellant who initially suggested that enforcement of the terms of the Conditional Use Permit be enforced through inspection of his property by a designated person from the County. Furthermore, Appellant stated on his own accord that he was willing to allow a County employee to inspect his property at any time. Appellant came to the hearing voluntarily, and at no time during the hearing was he subjected to physical or verbal threats. There is no merit to his claim of coercion.

Next, Appellant's actions after the Hearing Examiner's 2004 decision show that he voluntarily agreed to abide by the conditions of the permit. The Hearing Examiner's approval of the permit is explicitly conditioned on on-going access to Appellant's property. Appellant knew

about the Hearing Examiner's decision, failed to appeal it, and continued operating his business after the decision was rendered.

Moreover, Appellant voluntarily signed a Right of Entry Agreement explicitly granting Pierce County personnel access to the property for purposes of inspection.⁸⁰ The agreement was also notarized by his attorney, Fred Hetter. By notarizing the agreement, Appellant's own attorney attested that Appellant acknowledged that the agreement was signed freely and voluntarily.

Finally, the circumstances surrounding Appellant's oral consent at the scene show that his consent was voluntary. Planner Marcia Greeson and others entered the property and asked Appellant for his consent to allow the inspection.⁸¹ Appellant initially refused to allow them on the property, and they started to leave. Appellant then invited them into his home and gave them a tour of his residence.

In sum, on several occasions Appellant gave his consent for Pierce County personnel to search his property for the purposes of ensuring that he was not in violation of the terms of the Conditional Use Permit. On each occasion his consent was freely and intelligently given. Given these

⁸⁰ AR 352 - 353.

⁸¹ TR 4/13/07, 16:23 - 17:2.

undisputed facts, Appellant's claim of unconstitutional and illegal searches is without merit.

C. The Examiner's Rulings Regarding Recusal, Continuance, and Exclusion of Evidence Were Proper.

Before the revocation hearing Appellant filed a 58-page brief requesting a stay, a continuance, recusal of the Examiner, suppression of evidence and testimony, and dismissal of the request for revocation.⁸² At about the same time Appellant filed a motion to stay the proceedings in a superior court action he had against the County. After a hearing Judge Lisa Worswick denied Appellant's motion on the morning of April 13, 2007, and the hearing before the Examiner commenced that same afternoon.⁸³

Appellant argues that the Examiner abused his discretion by not granting his motion for stay.⁸⁴ His argument is simply that the County failed to file a written response to his motion. Appellant fails to point out that the County argued orally against his motion to continue at the hearing before the Examiner.⁸⁵

⁸² AR 228 - 285.

⁸³ AR 340 - 341.

⁸⁴ Appellant's Opening Brief, p. 7.

⁸⁵ TR 4/13/07, 11:19 - 12:2.

In addition, there is no requirement that the County file a written response to a motion to be heard by the Examiner. Second, the Examiner's decision can hardly be said to be an abuse of discretion when the same or similar motion was denied by Judge Worswick. Appellant's argument lacks merit and should be summarily denied.

Furthermore, Appellant's argument that the Examiner should have recused himself is without merit. Appellant ignores the fact that the Examiner approved his conditional use permit in 2004. If, as Appellant now argues, the Examiner exhibited an "appearance of unfair predisposition" toward Appellant at the time his permit was approved,⁸⁶ why did Appellant accept the Examiner's 2004 decision without challenge? This argument was nothing more than another attempt by Appellant to forestall a hearing on the revocation issues.

Lastly, Appellant states that it was an abuse of discretion for the Examiner not to have granted his motion to exclude evidence.⁸⁷ Yet Appellant fails to state what evidence should have been excluded and why, other than to state that the Examiner should have considered and decided

⁸⁶ Appellant's Opening Brief, p. 7.

⁸⁷ Appellant's Opening Brief, p. 7.

Appellant's constitutional arguments, and that "all evidence and testimony are properly struck as fruit of the poisonous tree."⁸⁸

It is well-settled that the Hearing Examiner acts in a quasi-judicial capacity on behalf of the County's legislative body (County Council) and does not have authority to decide constitutional arguments. *See Exendine v. City of Sammamish*, 127 Wn. App. 574, 586-587 (2005).⁸⁹ The Examiner properly denied Appellant's motions.

D. Respondent Is Entitled to Reasonable Attorney's Fees Under RCW 4.84.370.

RCW 4.84.370(1) provides that in land use matters the prevailing party is entitled to reasonable attorneys' fees and costs at the appellate court level. In addition, subsection (2) provides that the county is the prevailing party where the county's decision is upheld at superior court and on appeal. *RCW 4.84.370(2)*.

In the present case, the County's (Hearing Examiner's) decision revoking Appellant's conditional use permit was upheld by the Superior Court. Furthermore, the Superior Court's order included a determination

⁸⁸ Appellant's Opening Brief, p. 9 - 10.

⁸⁹ *See also Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998); *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 636, 689 P.2d 1084 (1984); and *Woodinville Water Dist. v. King County*, 105 Wn. App. 897, 906 (Wash. Ct. App. 2001).

that the County was the prevailing party.⁹⁰ Pierce County is therefore entitled to reasonable attorneys' fees and costs if the Hearing Examiner's decision is upheld by this Court.

V. CONCLUSION

Appellant has not met his burden of proving that the Hearing Examiner's decision should be reversed pursuant to any of the grounds set forth in *RCW 36.70C.130(1)*. The challenged findings were supported by substantial evidence. The Hearing Examiner correctly interpreted and applied the law.

Appellant consented to entry of his home before the permit was approved, after the permit was approved, and orally at each visit. He cannot now challenge the Examiner's condition regarding access in the 2004 decision as the time has long since passed to appeal it.

Respondent Pierce County respectfully requests that this appeal be denied, that the Examiner's decision be affirmed, and that the County be awarded costs and reasonable attorney's fees pursuant to *RCW 4.84.370*.

/////

/////

/////

⁹⁰ CP 35.

Pierce County respectfully requests that this Court uphold the decision of the Examiner revoking Appellant's Conditional Use Permit for violation of conditions.

DATED this 26th day of June, 2008.

GERALD A. HORNE
Prosecuting Attorney

By: Jill Guernsey
JILL GUERNSEY, WSBA #9443
Deputy Prosecuting Attorney
PH: (253)798-7742
Attorneys for Pierce County

CERTIFICATE OF SERVICE

I, Christina M. Smith, declare that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. As a legal assistant in the Office of the Pierce County Prosecuting Attorney, I sent a true and correct copy of the Brief of Respondent Pierce County today by delivering the same to ABC Legal Messengers, Inc., with appropriate instruction to forward the same to the attorney for Plaintiff as follows:

Joseph P. Tall
Sorrel & Tall, Inc., PS, P.C.
2611 NE 113th Street, Suite 300
Seattle, WA 98125-6700

I certify under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED at Tacoma, Pierce County, Washington, this 26th day of June, 2008.


CHRISTINA M. SMITH

FILED
COURT OF APPEALS
DIVISION II
08 JUN 27 PM 1:40
STATE OF WASHINGTON
BY  DEPUTY

EXHIBIT A



PIERCE COUNTY PLANNING AND LAND SERVICES DEPARTMENT

MASTER APPLICATION

Check all Applications for which you are applying.

Hearing Examiner _____

Case No.: _____

Exhibit No.: 5

- | | |
|--|--|
| <input type="checkbox"/> Administrative Use Permit | <input type="checkbox"/> Preliminary Plat |
| <input type="checkbox"/> Administrative Design Review | <input type="checkbox"/> Preliminary Plat Major Amendment |
| <input type="checkbox"/> Amendment to Short Plat/Large Lot | <input type="checkbox"/> Reasonable Use Exception |
| <input type="checkbox"/> Boundary Line Adjustment* | <input type="checkbox"/> SEPA |
| <input type="checkbox"/> Binding Site Plan | <input type="checkbox"/> Short Plat/Large Lot |
| <input type="checkbox"/> Commercial Building Permit | <input type="checkbox"/> Site Development Permit |
| <input checked="" type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Site Development Variance (storm water) |
| <input type="checkbox"/> Final Plat | <input type="checkbox"/> Site Plan Review |
| <input type="checkbox"/> Fish and Wildlife Variance | <input checked="" type="checkbox"/> Variance |
| <input type="checkbox"/> Forest Practice | <input type="checkbox"/> Wetland Study Review |
| <input type="checkbox"/> Formal Plat Alteration | <input type="checkbox"/> Wetland Variance |
| <input type="checkbox"/> Minor Amendment of _____ | <input type="checkbox"/> Zone Change (Within a Community Plan Area Only) |
| <input type="checkbox"/> Nonconforming Use Permit | |
| <input type="checkbox"/> Planned Development District | |

PLANNING & LAND SERVICES

MAR 03 2004

PIERCE COUNTY

*Submit one copy of completed master application for each parcel.

APPLICATION DATA

If an amendment, relate to application # _____ P.C.D.E. # _____

PROJECT NAME: APPRAISAL SERVICES NW / BONNEVILLE RESIDENCE

Owner: <u>ROBERT BONNEVILLE</u>	Phone: <u>(253) 857-3616</u>
Address: <u>8820 149th ST NW</u>	
City/State: <u>Gig Harbor, WA</u>	Zip: <u>98329</u>
Owner: <u>ROBERT BONNEVILLE</u>	Phone: <u>(253) 857-3616</u>
Address: <u>8820 149th ST. NW</u>	
City/State: <u>GIG HARBOR, WA</u>	Zip: <u>98329</u>

Applicant if not Owner: N/A Phone: _____

Name of Agent _____ Phone: _____

Address: _____

City/state: _____ Zip: _____

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DETAILED DESCRIPTION OF REQUEST: (please attach additional sheets if needed)

OWNER WISHES TO OPERATE AN APPRAISAL BUSINESS FROM HIS HOME. IT WOULD INVOLVE 2 FULL TIME PEOPLE, OWNER PART TIME AND AN ADDITIONAL SECRETARY. THERE ARE NO SALES OR TRAFFIC INVOLVED. THE APPRAISORS DRIVE TO HOMES AND LOOK AT THEM. THEY MEASURE THE HOMES AND PREPARE AN APPRAISAL REPORT. THEY USE COMPUTERS TO RESEARCH. WE REQUEST THE COUNTY ALLOW THE APPRAISAL BUSINESS TO OPERATE.

PARCEL DATA

Site address: 2820 149th St NW Cantonment Parcel #: 01222154048
Related parcels: N/A

Source of water (well or name of public/private company): Harbor Water
Electric company/PUD: Peninsula Power
Sanitary sewer provider: ~~Harbor~~
If septic system, Health Dept approval date 1979 by (person) Hemleys

Zoning designation: R-10 Shoreline Environment: N/A

Environmentally sensitive area: N/A

Current use of property: Home & business

ARE THERE ANY OTHER COUNTY APPLICATIONS IN PROCESS? If so, specify names/numbers: N/A

LEGAL DESCRIPTION:

West 430 - 60 FT OF S 1/2 OF W 1/2 OF S 1/2 OF NE 1/4 OF SE 1/4 EXC W 130 FT TRAIL OFF ALSO EXC @ 134 THEREOF E/A

Range 01 Township 22 Section 5 Quarter Section SE

NOTE: Unless lot and block - attach a complete legal description furnished by a title company. If the area is large or contains a number of parcels of land and different owners, do not attempt to write a legal description. Data presented on Assessor's Map will be sufficient.

DETAILED DIRECTIONS TO THE SITE:

Highway 16 take Pundia Ken Center Exit follow and make a left over Alvin St then right onto bottom right at stop light left on 145th right on 20th left onto 149th NW, 1st driveway on the left

Nearest Town or City: WANNA

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STATISTICAL BREAKDOWN OF THE SITE

Complete all Applicable Information

	Existing	PROPOSED
AREA		
Total Acreage (or square feet)	43,560	
Net Developable Acreage ¹	None	
Area in dedicated Right of Way or Easements	None	
Area to be Cleared/Logged	None	
Number of Lots	2	
TOTAL DWELLING UNITS BY BEDROOM		
1 Bedroom		
2 Bedroom		
3 + Bedroom	X	
Total Units	1	
SITE COVERAGE (in square feet)	43,560	
Residential Structure Site Coverage	4,658	
Non-Residential Structure Site Coverage	528	
Impervious Surface Coverage	2700 2700	
Permeable Parking Area and Driveways	600	
Total Site Coverage	8,486	
Area to be left in Natural Vegetation	35,074	
STRUCTURE SIZE AND LOCATION (area in sq.ft.)	5,186	
Per Floor Building Area (first/second/third)	2173/2485 DM/528 Garage	
Number of Buildings	1	
Individual Building Area	5186	
Total Building Area	5186	
Height of tallest Building	23'	
Front Yard Setback from Property Line	42'	
Side Yard Setback from Property Line	66'	
Rear Yard Setback from Property Line	222'	
Setback from Shoreline or Bulkhead	NR	
Minimum Distance between Structures	1 Structure	
PARKING		
Total Number of Parking Stalls	6	
Number of Compact Parking Stalls	2	
LINEAR DIMENSIONS		
Public Roads	None	
Private Roads	1 Mile	
Shoreline Frontage	None	
FILL (in cubic yards)	None	
Fill Needed to be Added	None	
Material to be Removed	None	
ESTIMATED TRAFFIC FLOW		
Estimated Average Daily Trips	8-12	

¹The gross site acreage minus any public or private street rights-of-way and environmentally constrained lands.

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GENERAL QUESTIONS

Describe the current use on the surrounding properties to the:

North: homes - residential
East: homes - residential
South: homes - residential
West: homes - residential

Has site preparation been started on the site? If so, explain to what extent.

preexisting - home already?

If the proposal is commercial or industrial, what are the proposed hours of operation?

am 9-5 p.m

Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal?

None

Proposed timing for completion of the proposal (include phasing if applicable):

Already Complete

Are there any other applications pending for governmental approvals for this or other proposals directly affecting the property covered by the proposal? if yes, please list.

NO

I, ROBERT BONNEVILLE, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

I am a property owner or officer of the corporation owning property or authorized agent involved in this application and I have familiarized myself with the rules and regulations of the Pierce County Department of Planning and Land Services with respect to preparing and filing this application and the foregoing statements, answers and information submitted present the argument in behalf of this application and are in all respects true and correct to the best of my knowledge and belief.

I declare under penalty of perjury of the laws of the State of Washington the foregoing to be true and correct.

SIGNED this 22 day of FEB, 2004

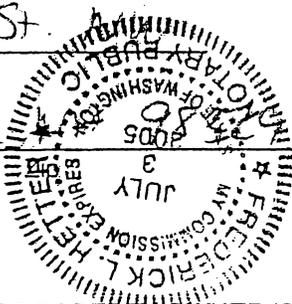
8820 149th St.
Street Address

Gig Harbor
City

State
(253) 857-3616
Telephone Number

Robert Bonneville
Signature

Corporation or Company



IF A PERSON OTHER THAN THE PROPERTY OWNER IS SUBMITTING THIS APPLICATION, A LETTER FROM THE PROPERTY OWNER, GRANTING AUTHORIZATION TO ACT AS THE OWNER'S AGENT, MUST ALSO BE SUBMITTED.

NOTE: Requests that are subject to posting requirements must be posted by the applicant/agent in accordance with the regulations within 14 days of the application filing date. The sign shall remain posted until Notice of Application comment period has expired. If signs are not posted, meetings and hearing must be postponed.

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**RIGHT OF ENTRY AGREEMENT TO ALLOW
COUNTY REPRESENTATIVES TO ENTER SITE TO PERFORM
INSPECTIONS, MONITORING AND CORRECTIVE ACTIONS IN
ASSOCIATION WITH**

APPLICATION # 377607
PERMIT NUMBER(S) 01222154048

Grantor and Grantee: For purposes of this agreement and for indexing by the Pierce County Auditor as required by R.C.W. Ch. 65.04, the parties to this agreement are ROBERT BONNEVILLE, Grantor(s), and Pierce County, Grantee.

Legal Description of Property: (Note: include abbreviated legal description if complete legal will not fit here and reference to where complete legal can be found.)

E 134 FT OF W 430.66 FT. OF S 1/2 of W. 1/2 OF
S 1/2 of NE of SE EASE OF RECORD, OUT OF 4-012
SEG L-663 (OW Deed has Complete Legal)

Assessor Parcel No(s): 01222154048

A. Recitals.

1. Grantor is the owner of certain real property in Pierce County, Washington, described above and referred to in this agreement as "the subject property."
2. Grantor is applying for (a) Cottage Industry II permit(s)/approval(s) associated with the development of the subject property.
3. In conjunction with the Grantor's proposed development of the subject property, the Grantor agrees to allow Pierce County personnel and its representatives access to the subject property for purposes of inspection during the pendency of the described permit(s)/approval(s) associated with the development of the subject property.

B. Access.

1. Grantor hereby grants to Pierce County personnel and its representatives access to the subject property for purposes of inspection during the pendency of the described permit(s)/approval(s) associated with the development of the subject property.
2. Grantor further grants to Pierce County personnel and its representatives access to the subject property for purposes of completion of work guaranteed for site stabilization, completion of conditions of approval and/or mitigation measures, performing reclamation of the site, or correcting defective work or facilities.
3. This right of entry shall commence on the date of signing of this agreement and shall expire when the County deems that all necessary conditions of approval, permit requirements, ordinance requirements, or mitigation measures have been met and the development proposal has been completed (including work occurring pursuant to a financial guarantee).

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C. Successors and Assigns.

1. This agreement is intended to protect the value and desirability of the subject property and to benefit all citizens of Pierce County. It shall run with the land and be binding on all parties having or acquiring any right, title, interest, or any part thereof, of the subject property, including the grantor, heirs, successors and assigns. This agreement shall inure to the benefit of each present or future successor in interest of the subject property or any part thereof, or interest therein, and to the benefit of the citizens of Pierce County.

Dated this 22 day of FEB, 2004

<u>Robert Bonnette</u> Signature	_____ Signature	_____ Signature
<u>8820 149th Street NW</u> Address	_____ Address	_____ Address
<u>Oig Harbor, Wa</u> City, State, Zip	<u>98329</u> City, State, Zip	_____ City, State, Zip

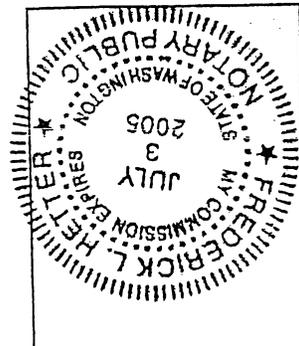
STATE OF WASHINGTON)
)
 County of Pierce)

I certify that I know or have satisfactory evidence that Robert Bonnette is/are the person(s) who appeared before me, and that said person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 27th day of FEB, 2004

Signature
TREP HATTEN
Print Name

Title
 My Appointment Expires 7/3/05



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Pierce County

Department of Planning and Land Services

CHUCK KLEEBERG
Director

2401 South 35th Street
Tacoma, Washington 98409-7460
(253) 798-7210 • FAX (253) 798-7425

Re: Cottage Industry II application number 397507

Declaration of Robert Bourneville

My legal name is Robert Bourneville, but prior to my name change in 2002, my legal name was on file

I reside at 8820 149th St ^{also known as 14820 98th Ave NW}, Pierce County, Washington, parcel number 0122154048. I have resided at this address for 24 years.

On November 17, 2003, I applied for a Cottage Industry II permit from the Pierce County Planning and Land Use Services Department. I am seeking this permit in order to operate [name of business(es) Appraisal Services Inc at

8820 149th Street / 14820 98th Ave NW parcel number 0122 15 4048

[Describe specifically the nature of the business(es) and the Department of Revenue Tax Reporting Number* for each business]:

Appraisal of Residential Homes; Obtain order, research property; look at property; return to office to prepare a report.
UBI 601 087 612

This/these business(es) employ(s) 4 people. There are 3 independent contractors associated with this/these business(es).

deliver & pick up work.

~~They are independent contractors~~

This/these business(es) also operate(s) from other parcels:

[Name of business and location of other parcel]: No other parcels are associated with this business.

[Name of business and location of other parcel]: _____

[Name of business and location of other parcel]: _____

[Name of business and location of other parcel]: _____

[Name of business and location of other parcel]: _____

[Name of business and location of other parcel]: _____



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*As an example, the Tax Report Number for Northwest Appraisers is 601087612.

The type and number of vehicles associated with each of the above businesses is:

~~Personal Vehicles Only~~ - Honda Accord
No Company Vehicles Nissan Truck
Chevy Malibu
Chrysler Caravan

The total square footage at the address for the parcel listed in the Cottage Industry II application is ~~4273~~ 4658. Each of the businesses listed above will take place within this parcel and will take up the following amount of square feet within the residential structure: (Describe)

Area 1 - 480
Area 2 - 818
Area 3 - 135

Total 1473

Items will will not be displayed outside the residential structure. If items will be displayed outside the structure, please describe those items:

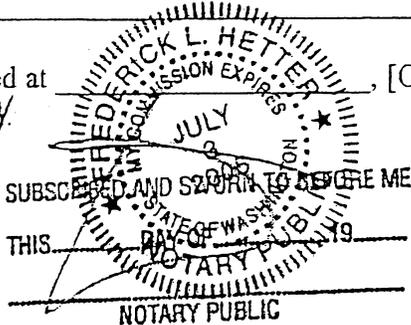
No signs or advertisement.

There will will not be outside storage of materials and/or equipment associated with the following businesses described above:

No outside storage.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at _____, [County], Washington this 3 day of March, 2003.



Robert Brunelle
Signature

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2

REQUIRED FINDINGS

FOR YOUR APPLICATION TO BE APPROVED, THE FOLLOWING CRITERIA MUST BE MET BY YOUR PROPOSAL

CONDITIONAL USE (Includes Cottage Industry II)

PLEASE ADDRESS EACH CRITERIA AND SUBMIT WITH THE MASTER APPLICATION

The following questions address the points that the examiner must consider when granting a Conditional Use Permit. (Section 18A.75.030.B, Pierce County Development Regulations-Zoning)

A Conditional Use Permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record:

A. The granting of the proposed Conditional Use Permit will not:

- (1) be detrimental to the public health, safety, and general welfare;

See attached sheet

- (2) adversely affect the established character and planned character of the surrounding vicinity; nor

See attached sheet

- (3) be injurious to the uses, planned uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.

See attached sheet

B. That the granting of the proposed Conditional Use Permit is consistent and compatible with the intent of the goals, objectives and policies of the County's Comprehensive Plan, appropriate Community Plan (provided that, in the event of conflict with the Comprehensive Plan, the Comprehensive Plan prevails), and any implementing regulation.

See attached sheet

C. That all conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.

See attached sheet

D. That the proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety, and welfare of the community from such hazard.

See attached sheet

A1. THE CONDITIONAL USE PERMIT WILL NOT BE DETRIMENTAL TO PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE. THE COTTAGE INDUSTRY IN QUESTION IS AN APPRAISAL BUSINESS. WITHIN THIS BUSINESS, THE ONLY BUSINESS EXERCISE IS CONDUCTED PER COMPUTER. THERE IS NO SIGNAGE TO THE BUILDING AND THERE IS NO NOISE ASSOCIATED WITH THE BUSINESS. THERE IS NO MANUFACTURING OF A PRODUCT. THE EQUIPMENT CONSISTS OF A VARIETY OF COMPUTERS, SCANNERS, AND FAX MACHINES, AS WELL AS PRINTERS. THE ENTIRE BUSINESS IS CONDUCTED INDOORS WITH NO ADVERSE AFFECT TO THE EXTERNAL SURROUNDINGS OF THE IMPROVEMENT.

A2. THE PROPOSED CONDITIONAL USE PERMIT DOES NOT ADVERSELY AFFECT THE ESTABLISHED CHARACTER AND PLANNED CHARACTER OF THE SURROUNDING VACINITY. THE ESTABLISHED CHARACTER OF THE SURROUNDING IS CONTAINED OF HOMES ON LARGE LOTS CONSISTING, AT MINIMUM, OF ONE ACRE PARCELS. THE SUBJECT PROPERTY CONSISTS OF A ONE ACRE PARCEL. TO ADDITIONAL BUILDINGS ARE PROPOSED, NO ADDITIONAL OUTBUILDINGS ARE PROPOSED TO BE INCLUDED IN THE CONDITIONAL USE PERMIT. THE USAGE OF THE CONDITIONAL USE PERMIT WILL NOT CHANGE THE PLANNED CHARACTER OR THE SURROUNDING VACINITY AS ALL ACTIVITY WILL BE OUTSIDE THE BUILDING. THE ACTIVITY IN THE BUILDING CONSISTS OF THE USE OF COMPUTERS, NO MANUFACTURING, AND NO CHANGES TO THE VACINITY WILL OCCUR.

A3. THE CONDITIONAL USE PERMIT WILL NOT BE INJURIOUS TO THE PLANNED USES, PROPERTY, OR IMPROVEMENTS ADJACENT TO, AND IN THE VACINITY OF, THE SITE UPON WHICH THE PROPOSED VIEWS ARE LOCATED. AGAIN, THE USE OF THE CONDITIONAL USE PERMIT WILL BE FOR THE USAGE OF COMPUTERS AND PRINTERS/SCANNERS WITH ALL ACTIVITY CONDUCTED INSIDE.

THE ONLY NOTICABLE AFFECT WILL BE A SLIGHT INCREASE IN TRAFFIC PATTERNS. IT APPEARS THAT THE OUTSIDE PERSONNEL COMING IN THE BUSINESS/RESIDENCE WILL BE CONDUCTING ONE TRIP PER DAY FOR THREE PEOPLE ADDING A TOTAL OF SIX TRIPS PER DAY TO THE TRAFFIC PATTERN. THIS INCREASE IN TRAFFIC APPEARS MINIMAL AS ALL THE PARCELS IN THE AREA ARE

LARGE PARCELS OF ONE ACRE MINIMUM WITH THE HOMES HAVING SUBSTANTIAL SETBACK FROM THE ROAD AND TRAFFIC PATTERNS.

B. THE COUNTY'S COMPREHENSIVE PLAN DOES NOT APPLY TO THIS PROPOSAL. MY UNDERSTANDING IS THAT SINCE THE BUSINESS IS OVER SIX MILES FROM THE NEAREST TOWN AND IN A RURAL AREA OF ONE ACRE PARCELS MINIMUM, THIS BUSINESS IS NOT ENCOMPASSED THEREIN. IF WERE TO CONSIDER THE GOALS OF ANY PLAN THIS WOULD CERTAINLY CONFORM. GIVING A NUMBER OF YOUNG PARENTS EMPLOYMENT WHILE NOT DISRUPTING ANYONE OR ANYTHING WOULD BE BENEFICIAL TO ALL.

C. ANY IMPACT AS RELATING TO THE SITE FROM TRAFFIC PATTERNS CAN EASILY BE MONITORED BY THE NUMBER OF VEHICLES PRESENT AT THE SITE THAT ARE NOT REGISTERED TO THE OWNERS OR OCCUPANTS OF THE HOME. THE NUMBER OF EMPLOYEES CAN BE MONITORED BY HAVING ME DELIVER EMPLOYMENT RECORDS, 940, OR 941 RECORDS OF EMPLOYMENT. AN INSPECTION OF THE PROPERTY CAN BE DONE TO ASSURE THAT THE FIRE CODES AND BUILDING CODES ARE IN PLACE. SINCE THE BUSINESS IS SO SMALL AND ALL DONE INDOORS THERE WOULD BE NO NOTICABLE IMPACT ARISING FROM THE PROPOSED USE THAT WOULD NOT BE SIMILAR TO PARENTS STAYING HOME WITH THEIR CHILDREN OR A RETIRED COUPLE STAYING HOME DURING THE DAY.

D. THE CONDITIONAL USE PERMIT WILL NOT INTRODUCE HAZARDOUS CONDITIONS TO THE SITE OR TO THE IMPROVEMENT OR TO THE VICINITY AS NO HAZARDOUS MATERIALS ARE ASSOCIATED WITH THE USE OF COMPUTERS AND WITH THE USE OF THE BUSINESS. THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE COMMUNITY DOES NOT APPEAR TO BE IMPACTED BY ANY HAZARDS AS NO HAZARDS ARE PART OF THE CONDITIONAL USE PERMIT OR ANY INTENDED USE OF THE PROPERTY.

E. THE CONDITIONAL USE PERMIT WILL NOT ADVERSELY AFFECT ANY PUBLIC FACILITIES AND SERVICES AS IT REQUIRES NO OTHER SERVICES THAN THOSE ALREADY SUPPLIED TO THE IMPROVEMENT BY THE COUNTY. SINCE THE APPRAISAL BUSINESS BEGAN AT THE RESIDENCE THE UTILITIES HAVE NOT INCREASED NOR HAS POWER USAGE. IT IS NOT ANTICIPATED THAT THE BUSINESS WILL USE ANY MORE POWER THAN ANY ADJACENT PROPERTY WITH THE SAME OR SIMILAR SQUARE FOOTAGE. THE MOST COSTLY IS HEATING WHICH HAS ALWAYS BEEN THE SAME BECAUSE THE HOME HAS ALWAYS BEEN HEATED.

F. THE LEVEL OF SERVICE STANDARDS FOR PUBLIC FACILITIES AND SERVICES WILL NOT CHANGE IN ANY MANNER DUE TO THE CONDITIONAL USE PERMIT AS NO ADDITIONAL LEVEL OF SERVICE FOR PUBLIC FACILITIES IS REQUIRED. THERE WILL BE NO ADDITIONAL OR SEPARATE METERS OR ACCESS FOR PUBLIC FACILITIES. THERE IS NO ALTERATION IN ANY PUBLIC SERVICE REQUIREMENT SINCE THE DATE OF CONSTRUCTION.

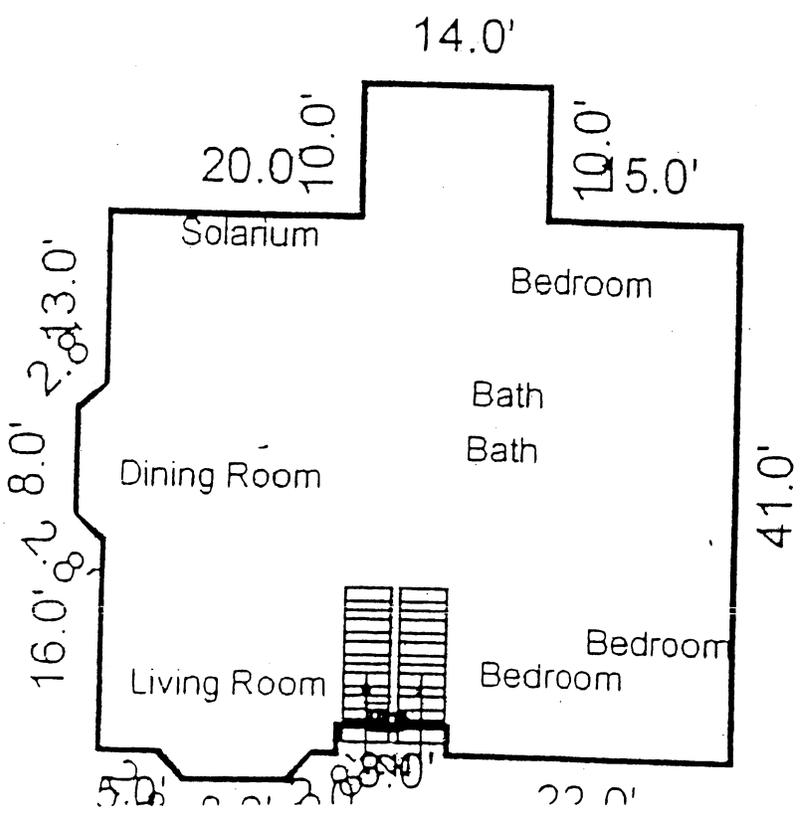
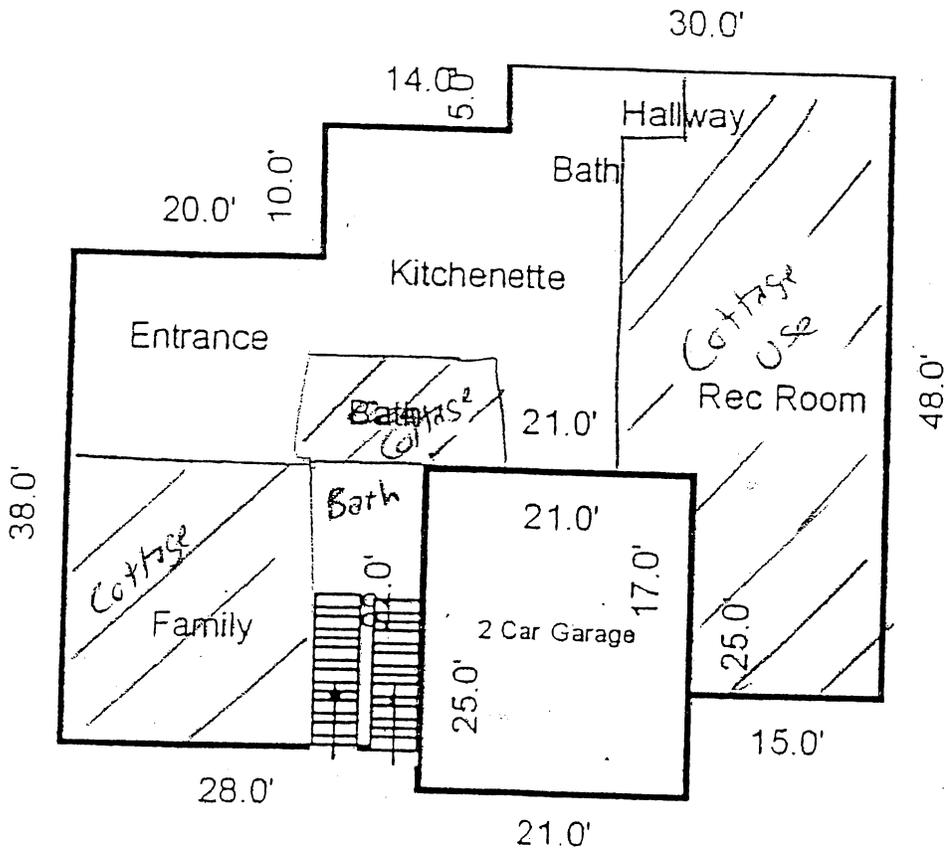
I DECLARE UNDER PENALTY OF PERJURY THE INFORMATION CONTAINED IN THIS REQUEST IS TRUE AND CORRECT SUBJECT TO THE LAWS OF WASHINGTON STATE

Robert Bonnevillle

ROBERT BONNEVILLE

~~WILLIAM WANGER~~

358



359

FLOORPLAN

Borrower: WILL ELLWANGER

File No.: WEJ3866-03

Property Address: 8820 149TH STREET NW

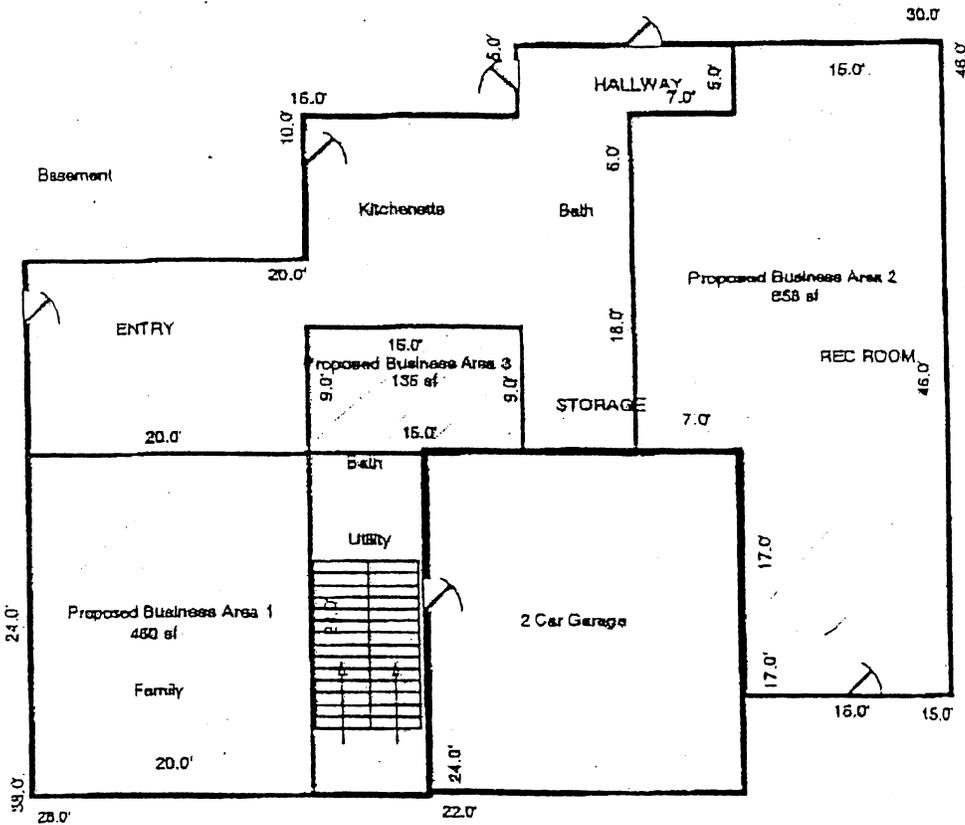
Case No.:

City: GIG HARBOR

State: WA

Zip: 98329

Lender: US BANK



Sketch by Apex IV Windows™

360

AREA CALCULATION		SUMMARY	
Code	Description	Size	Totals
GLA1	First Floor	2173.00	2173.00
BSMT	Basement	2485.00	2485.00
R	Garage	525.00	525.00
	Basement	2989.00	2989.00
<i>First Floor</i>		<i>2173</i>	
<i>BSMT</i>		<i>2485</i>	
<i>Total</i>		<i>4658</i>	
1.)	TOTAL LIVABLE (rounded)		+ 2173

VG AREA BREAKDOWN			Subtotals
Breakdown			
First Floor			
	10.0 x	14.0	140.00
	2.0 x	8.0	16.00
	0.5 x	2.0 x 2.0	2.00
	0.5 x	2.0 x 2.0	2.00
		19.0 x 28.0	532.00
		2.0 x 8.0	16.00
	0.5 x	2.0 x 2.0	2.00
	0.5 x	2.0 x 2.0	2.00
		26.0 x 30.0	780.00
		13.0 x 49.0	637.00
		2.0 x 22.0	44.00
11 Areas Total (rounded)			2173

BMT + 2485
Total 4,658 ~~11~~
 3) *Garage* 528
 4) *Total* 5,186 ~~11~~

3261

EXHIBIT B



902 South 10th Street
Tacoma, Washington 98405
(253) 272-2206

July 1, 2004

Robert Bonneville
8820 – 149th St. NW
Gig Harbor, Washington 98329

RE: CONDITIONAL USE PERMIT: CASE NO. CP20-03, THE WALDMEISTER LP

Dear Applicant:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

MARK E. HURDELBRINK
Deputy Hearing Examiner

SKC/cka

- cc: Parties of Record
- PIERCE COUNTY PLANNING AND LAND SERVICES
- PIERCE COUNTY BUILDING DIVISION
- PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
- PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
- TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
- FIRE PREVENTION BUREAU
- PIERCE COUNTY PARKS AND RECREATION
- PIERCE COUNTY COUNCIL
- PIERCE COUNTY RESOURCE MANAGEMENT



OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: CONDITIONAL USE PERMIT: Case No. CP20-03
The Waldmeister LP

APPLICANT: Robert Bonneville
8820 – 149th Street NW
Gig Harbor, Washington 98329

SUMMARY OF REQUEST:

Applicant requests a Conditional Use Permit (CP) for a Cottage Industry II to allow for the operation of an appraisal business in association with a single-family residence. The business will allow for 4 employees along with conversion of 1,500 square feet of the residential structure into office space. The project is on a one acre parcel, in the Rural (R10) zone classification, located at 8820 - 149th Street NW, in the SE ¼ of Section 15, Township 22 North, Range 1 East, Willamette Meridian, in Council District #7.

SUMMARY OF DECISION:

Request granted, subject to conditions.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on May 13, 2004 at 10:07 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Planning and Land Services Staff Report and Attachments
- EXHIBIT "2" - Letter in Opposition (no date)
- EXHIBIT "3" - Letters in Support (May 12, 2004) (Collectively)
- EXHIBIT "4" - Order Changing Name

- EXHIBIT "5" - Summary by Applicant
- EXHIBIT "6" - Jeannie Woodward Letter (May 7, 2004)
- EXHIBIT "7" - Patricia Prokep Letter (May 8, 2004)
- EXHIBIT "8" - Inge Roegner Letter (May 8, 2004)
- EXHIBIT "9" - Harry Roegner Letter (May 8, 2004)
- EXHIBIT "10" - Assessor's Sale's Activity
- EXHIBIT "11" - Letter from Applicant (February 7, 2004)

Appearing was MARCIA GREESON who presented the planning division staff report. The applicant is requesting a conditional use permit to allow for the operation of an appraisal business in association with a single family residence. The use would be classified as a Cottage Industry. The history of the applicant and the uses on this site were discussed. Code enforcement has been involved since September 1999 when a complaint was filed. The complaint indicated that a business was being operated at this particular address and 10-12 cars were parked there daily. Wilhelm Ellwanger was the owner and/or lived at the residence at that time. Mr. Ellwanger has since changed his name to Mr. Bonneville. Mr. Bonneville is the applicant for this proposal. Site inspections were done in 1999. A letter to correct and later a cease and desist order was issued against Mr. Ellwanger in mid 2000. Another site visit was conducted which indicated that there was still work being done at the home. A citation was issued and it was referred to the Pierce County Prosecutor's office for charges. Mr. Ellwanger then stated that he no longer lived at the residence and that he was not the property owner of that parcel. An individual named Al Bishop indicated that he was the one who was the occupant of the residence and not Mr. Ellwanger. This continued until June, 2001, at which time code enforcement was denied access to the residence. There were still suspicions that the business was being run out of the home. A search warrant was issued by a judge and a site visit was conducted in July 2001. There obviously was business taking place at that time. There were 20 different workstations. The entire first floor was converted to office space. There was a list of 15 employees. In August 2001, a non-conforming use application was applied for by Mr. Ellwanger. In the application, he stated that he had lived continuously on the site and ran a business there. In December 2002, code enforcement visited the site and observed six vehicles. The business was still in operation. The case was charged by the Pierce County Prosecutor's Office and a criminal complaint was filed June 6, 2003. Eventually it was determined that the nonconforming rights could not be shown. In November 2003, this application was filed. Various information was requested by the County. The information has finally been received. The criminal case has been continued several times and is still pending. There have been several letters and comments received from the public indicating that there is a lot of traffic in the area as a result of this business. Mr. Bonneville has also submitted several letters of support, but many of these letters are from relatives and/or employees of him. There are two letters given that state addresses that are not even valid. At the actual site, most of the downstairs has been converted to office space. Staff has great concerns that the requirement of there only being four employees, and only 1500 square feet of space being used as part of the business, will not be adhered to by the

applicant. A Cottage Industry such as this would be allowed if the applicant would adhere to the requirements. The business would operate entirely inside the facility. If the application is granted, five parking spaces must be provided. The maximum employees is four. This site is located within the rural 10 zone classification of the Pierce County Code. Cottage industries such as this are allowed if the requirements can be satisfied and if the criteria for a conditional use permit can be satisfied. It does not appear that this use would be detrimental to the neighborhood. If this application is approved, then it is very important that staff be allowed to go on the site to verify that the use has not exceeded that which is allowed.

Appearing was LORI KENNEDY who is a deputy prosecuting attorney. She has been handling the criminal complaint against Mr. Bonneville. A trial date was scheduled for April 24, 2004. Mr. Bonneville did not appear and a warrant was issued.

Appearing was MARK LAPINO who is a representative from code enforcement. He submitted as an exhibit the order changing the name of Mr. Ellwanger to Mr. Bonneville. He echoed Ms. Greeson's testimony. He can verify the times and dates that are located within the staff report.

Appearing was ROBERT BONNEVILLE who is the applicant. The only reason that he changed his name to Bonneville was that he was a victim of identity theft. He hopes that now, because people know his current name, the theft will not occur again. He would have preferred that his new name be kept private. They have operated a cottage industry out of the home for roughly 30 years. They have kept their 32 acres relatively "as is" and have not sold out. All of the surrounding areas have sold their sites for development. They have been "good stewards" of the land. They have not subdivided. The issue regarding title to the property comes about because this property has been transferred into a family trust and then transferred out to different family members. The subject parcel applicable to this application has been put into his name solely. The operation of cottage industries for the past thirty years on the site has allowed the family to pay the property taxes and upkeep on the land. They all have normal jobs. A construction business was previously run out of this property. Now it is an appraisal business. Most of the business activity is done in front of a computer. The information is downloaded. The family owns 32 acres in this area. There are four homes located on the property. Most of the employees are relatives with kids. They are not full time. They are young mothers trying to earn some extra money. He said that there are currently only four employees. On occasion, there are five. He is willing to scale the business back to 1500 square feet. He asks that the application be approved. This is a family business. They combine their efforts which minimizes the road traffic. They try and do only one mail run for everyone. Most of this business is run by mail or e-mail. An appraisal business is a very low impact business. This home is located in a very private setting. This is a very heavily wooded area. Other than the neighbors to the back, he is not aware of anyone else that can even see their business. He does not like the way code enforcement approached this situation. They appeared out of nowhere.

They looked like a SWAT team. They terrorized his employees. There was an application always in place relating to the non-conforming use. He thought he had done everything that he was supposed to do regarding the application. The next thing that he knows he is being invaded by the SWAT team. He is not in agreement with the timeline that is presented by planning staff. He believes that the reference that he changed his name is used to disparage him. The only reason is that he has been an unfortunate victim of identity theft. His information was downloaded from his computer. It has been a very arguous process to try and fix this issue. Upon questioning by Lori Kennedy, he admits that he was not present on site when Mr. Lapino arrived at the site with the warrant. He did not give specifics regarding what was wrong with the timeline presented by Ms. Greeson.

Reappearing was MARCIA GREESON who stated that she does not care how many employees Mr. Bonneville has, but it must be under 5. Planning staff did not know about Mr. Bishop living on the property in July 2001. She was never notified that Mr. Bonneville did not live on the site. Mr. Bonneville has given contradictory statements to various people.

Reappearing was MARK LAPINO who stated that he did not enter the site with a SWAT team. He brought two uniformed officers with him. He did not know that Mr. Bonneville has used various names. He wants to make it clear that if Mr. Bonneville moved out at any time, then he had lost his non-conforming rights.

Appearing was JOHN HILL who stated that he visited the site in the past and was not allowed access to the site. He was a Pierce County Representative at that time.

Appearing was JEANNIE WOODWARD who is a neighboring property owner. She does not believe that this use adversely effects the neighborhood at all. There is simply no problem with what the applicant is proposing. There are other people in the area that are causing problems.

Appearing was THERESA PROKOP who feels safe because of Mr. Bonneville. She has two small children. She goes to the subject property to do research for her appraisals. She herself is an appraiser. She was there when the "raid" happened. She thought that it was very unprofessional. She submitted a statement indicating that she is in favor of this proposal. She is an immediate neighbor to the east. The applicant's property is always kept neat, uncluttered, and clean.

Appearing was INGE ROENGER who stated that she has no problem with the cottage industry existing at this site. She hardly ever sees anyone at the house. All the work is done on computers and is done inside the residence. She doesn't see any negative impact on the neighborhood.

Appearing was JERRY SHUGARS who is a current tenant at the address. He does not believe that there is any negative impact. He does work at the residence.

Appearing was THERESA TANGER who stated that this business will have no negative effect at all on the neighborhood. She is in favor of the proposal. She works 20 hours a week. She goes there about 3 times a week. She is Mr. Bonneville's niece. It is very quiet there. The business has no adverse effect. There are only four employees at the business.

Appearing was HARRY ROEGNER who submitted a statement and stated that there are no problems with the business.

Reappearing was ROBERT BONNEVILLE who wanted to clarify that Jerry Shugars is the computer guy for the business. He gave a couple other names of employees. He has been there for thirty years. He does not believe that there is a traffic problem. He does dispute the problem with cars in the area. He does not want to be a problem in this neighborhood. He has tried to work with the officials, but it just has not worked out. He believes that this cottage industry has a minimum impact on the area and should be approved.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded at 12:30 p.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.
2. Pursuant to the State Environmental Policy Act and the Pierce County Environmental Regulations, Title 18E, the Pierce County Environmental Official designate has reviewed this project and determined that the project is exempt from SEPA provisions.
3. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks prior to the hearing in the official County newspaper. Property owners within 300 feet of the site were sent written notice. Notice has been posted on the site.
4. The applicant is requesting a Conditional Use Permit for a Cottage Industry II to

allow the operation of an appraisal business in association with a single family residence. The business will be limited to four employees and the square footage used for the business will be limited to 1500 square feet. The proposed site is located on a one acre parcel at 8820 —149th Street Northwest. There were issues regarding who has title to the property because the form of ownership has been transferred several times over the years. Based on the testimony at the hearing, it appears that any title problems will be cleared up by the applicant and he will have a possessory ownership interest in this parcel of property.

5. The applicant has apparently been operating various businesses out of this home since the family came into possession of the property over 30 years ago. There is a long history of the applicant not being forthcoming with Pierce County Officials as it relates to conducting business on the property. The evidence is clear that an appraisal business has been operating on this property since at least the fall of 1999. It is also clear that the appropriate permits and/or applications to operate the appraisal business were not applied for in a timely manner. It was not until the Fall of 2003 that this application was filed.
6. The site accesses off of 149th Street NW. There is an existing residence located on the site. The residence has a square footage of 4,658 square feet. The residence is located in a fairly rural setting and is shielded well from surrounding properties. The surrounding uses are single family residences or proposed single family residences.
7. This property, along with the surrounding area, is located within the Rural 10 classification of the Pierce County zoning code. The 1994 Pierce County Comprehensive Plan states that within the rural element of the plan, Cottage Industries are allowed if they do not impact surrounding lands and are clearly incidental and secondary to the residential main use of the property. Cottage Industries have to be sufficiently screened from adjacent property owners. All zoning requirements have to be satisfied.
8. Pierce County Code (PCC) Section 18A.25.150 states that Cottage Industries are permitted uses within the Rural 10 zone classification subject to obtaining a Conditional Use Permit. PCC Section 18A.35.060 discusses the general provisions that apply to all Cottage Industry activities. These provisions must be adhered to before a Cottage Industry is allowed. Findings on the specific Cottage Industry provisions are hereby made as follows:
 - a) *The activity is clearly incidental and secondary to the use of the property for residential purposes and shall not change the residential character of the dwelling or neighborhood.*

This provision could be satisfied by the applicant if the scope of the activity is reduced to 1500 square feet of space within the residence. This is a fairly large residence and limiting the space for operating the business to 1500 square feet would not change the residential character of this dwelling or the neighborhood. The problem is that the applicant has not adhered to reduced activities on the site and has shown in the past that he will not be truthful and will do whatever he can to continue his business without regard to applicable laws or codes. Conditions of approval will specify that the permit is subject to revocation and will be revoked if the conditions of approval are not satisfied. This can be done through the Hearing Examiner which will insure that the conditions of approval are followed.

- b) *External alteration inconsistent with the residential character of the structure is prohibited.*

No alterations are proposed.

- c) *Use of headers, materials or equipment must comply with the requirements of the uniform building code and the uniform fire code.*

No hazardous materials or equipment are proposed.

- d) *Activities do not create noticeable glare, noise, odor, vibration, smoke, dust, or heat at or beyond the property lines.*

All activities will be conducted inside the buildings. Because this is an appraisal business, there will be no effect beyond the property lines. This will be especially true if the adherence to the limited number of employees (4) is followed by the applicant.

- e) *Use of electrical or mechanical equipment which creates visible or audible interference in radio or television receivers or fluctuations in line voltage at or beyond the property line is prohibited.*

This type of equipment will not be used.

- f) *Manufacturers shall be limited to the small scale assembly of already manufactured parts but does not preclude production of small individual-crafted items, furniture or other wood items as long as the activity meets the other standards of this chapter.*

This is an appraisal business, thus there is no proposed manufacturing.

- g) *Customer/clients are prohibited on the premises prior to 6:00 a.m. and after 9:00 p.m.*

A condition of approval does not allow business to be conducted after these times.

- h) *Sales in connection with the activity are limited to merchandise handcrafted on site or items accessory to a service (i.e. hair care products for beauty salon)*

This is an appraisal business, therefore, no sales activity is proposed.

- i) *One advertising sign not exceeding two square feet in size is permitted in accordance with Chapter 18B.20, Signs (except for Gig Harbor) and Chapter 18B.40, Signs (Gig Harbor/Peninsula).*

There is no proposed sign.

- j) *In addition to the single family parking requirements, offstreet parking associated with the activity shall include one space per non resident employee, and one additional space in accordance with standards set forth in Section 18A.35.040, loading area requirements and offstreet parking.*

There is a condition of approval requiring five parking spaces to be provided.

- k) *Cottage Industry Activities shall comply with building and fire code requirements for permits, occupancy, and inspection.*

A condition of approval requires that the applicant bring the facility into conformance with the code requirements.

9. Because of the size of the proposed use, this proposal would be classified as a Cottage Industry II. According to PCC Section 18A.35.060(D)(5), as long as the applicant reduces the business activity square feet to 1500 and only has four non resident employees, then the standards for a Cottage Industry II are satisfied. The Cottage Industry II use has to be clearly incidental and secondary to the use of the property for residential purpose or it shall be denied.

10. As stated above, a Conditional Use Permit is required before a Cottage Industry II use within the Rural 10 zone classification of the Pierce County Code is allowed. PCC Section 18A.75.030 states criteria that must be satisfied before a conditional use permit will be granted. Findings on each criteria are hereby made as follows:

a) *That the granting of the proposed conditional use permit will not:*

- 1) *be detrimental to the public health safety and welfare;*
- 2) *adversely affect the established character and planned character of the surrounding vicinity; nor*
- 3) *be injurious to the uses, planned uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.*

An appraisal business within a Rural area would be a preferred Cottage Industry II use. This type of business would generally have a very low impact on the surrounding neighborhood and, absent the limited increased traffic that takes place, no one would even know that it was there. The concern is that the applicant will not adhere to the conditions of approval stated in this decision. He has shown that he does not follow directives. The condition of approval relating to allowing unfettered access to the property by agency employees and the right to come straight to the Examiner with permit revocation requests will insure that the conditions are followed.

b) *The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives and policies of the counties comprehensive plan, appropriate community plan (provided that in the event of conflict with the comprehensive plan, the comprehensive plan prevails) and any implementing regulation.*

Cottage Industry II activities are allowed within the Rural 10 zone classification subject to a conditional use permit. This is the type of use that was envisioned when the code was passed.

c) *That all conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.*

Again, this is a major concern. With the unlimited access and the right to come directly back to the Examiner, this condition can be satisfied.

d) *That the proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety, and welfare of the community from such hazard.*

There does not appear to be any potential introduction of hazardous conditions at the site.

e) *That the use will be supported by, and not adversely effect adequate public*

facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.

There will be no effect on public facilities and services.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The request for a Conditional Use Permit to allow a Cottage Industry II activity, an appraisal business, to be operated on a one acre parcel of property within the Rural 10 zone classification of the Pierce County Code satisfies the goals and policies of the Pierce County Comprehensive Plan, the standards for Cottage Industry II activities and the criteria for a Conditional Use Permit under PCC Section 18A.75.030, therefore, the proposal is granted subject to the following conditions:
 1. Both on-building and off-building signs shall be regulated, installed, and designed in accordance with the Pierce County Sign Code.
 2. All requirements of the Pierce County Building Department must be met prior to the issuance of building permits for this proposal including an application for a Change of Use Permit.
 3. The applicant must apply for permits necessary within 60 days of the final decision of the Hearing Examiner Decision for a Conditional Use Permit (CUP) Cottage Industry II. Failure to obtain appropriate permits to reach conformance with conditions and/or regulations shall cause all approvals granted herein to become automatically null and void.
 4. A final development plan shall be submitted prior to approval of the Change of Use Permit that shows the exact square footage and layout of the proposed business area to be used including storage. The site plan submitted should show all designated parking areas for employees or others associated with the business.
 5. On-site parking and building illumination shall be shielded in such a way as to prevent light and glare from passing beyond the applicant's boundary property lines.
 6. A Memorandum of Agreement shall be completed and recorded by

the applicant with the Pierce County Auditor in conjunction with the final development plan approval by the Director of Pierce County Planning and Land Services.

7. The business owner must live on the site for the continued activity of the business. If the business owner moves off the site, the business must be moved from the current residential site to another approved site or be closed. Hours of operation shall be limited to 8:00 a.m. to 5:00 p.m. on weekdays with no weekend activities at this site.
8. There shall be no outside storage of equipment, materials, supplies, or products; no manufacturing or retail shall occur on site.
9. Applicant must provide at least six (6) parking stalls at this site.
10. The proposed Cottage Industry II shall not exceed 1,500 square feet (including accessory buildings) and shall be limited to the maximum of four non-residence employees.
11. The applicant shall allow Pierce County Staff to monitor the site to make sure that all conditions of approval are being adhered too. A right-of-entry agreement shall be signed by the applicant allowing staff unlimited and unfettered access to the site for inspection and monitoring purposes.
12. The applicant shall note the required Site Development Permit and/or geotechnical review shall be in accordance with the applicable sections of the following Pierce County Ordinances in effect at the time of application:
 - Title 11, Illicit Stormwater Discharges, Ordinance 96-47.
 - Title 17A, Construction and Infrastructure Regulations, Site Development and Storm Drainage Manual, Ordinance No. 99-24S.
 - Title 17B, Construction and Infrastructure Regulations, Road and Bridge Design and Construction Standards, Ordinance No. 99-24S.
 - Title 17C, Construction and Infrastructure Regulations, Building and Fire Codes, Ordinance No. 99-24S.
 - Title 18E, Critical Areas, Ordinance 97-84.
13. The Hearing Examiner maintains jurisdiction over this case for a period of three years to insure that all conditions of approval are satisfied. If enforcement is necessary because there has not been adherence to the conditions of approval, then the conditional use

permit will be subject to revocation directly by the Hearing Examiner.

14. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
15. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for a Conditional Use Permit to allow a Cottage Industry-II appraisal business on site is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 1st day of July, 2004.



MARK E. HURDELBRINK
Deputy Hearing Examiner

TRANSMITTED this 1st day of July, 2004, to the following:

APPLICANT: Robert Bonneville
8820 – 149th Street NW
Gig Harbor, Washington 98329

OTHERS:

Harry Roegner
PO Box 400
Wauna, WA 98395

Patricia Prokep
14820 – 88th Ave. NW
Gig Harbor, WA 98329

Jeannie Woodward
8707 – 150th St. N.W.
Gig Harbor, WA 98329

Jerry Shugers
14820 – 88th Ave. NW
Gig Harbor, WA 9829

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

CASE NO: CONDITIONAL USE PERMIT: CASE NO. CP20-03
THE WALDMEISTER LP

NOTICE

1. RECONSIDERATION: Any aggrieved party or person affected by the decision of the Examiner may file with the department a written request for reconsideration within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. APPEAL OF EXAMINER'S DECISION: The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.

EXHIBIT C



RIGHT OF ENTRY AGREEMENT TO ALLOW COUNTY REPRESENTATIVES TO ENTER SITE TO PERFORM INSPECTIONS, MONITORING AND CORRECTIVE ACTIONS IN ASSOCIATION WITH

PERMIT NUMBER(S) GP20-03

Grantor and Grantee: For purposes of this agreement and for indexing by the Pierce County Auditor as required by R.C.W. Ch. 65.04, the parties to this agreement are Robert Bonucville, Grantor(s), and Pierce County, Grantee.

Legal Description of Property: (Note: include abbreviated legal description if complete legal will not fit here and reference to where complete legal can be found.)

Assessor Parcel No(s): 012215-4-048

A. Recitals.

- 1. Grantor is the owner of certain real property in Pierce County, Washington, described above and referred to in this agreement as "the subject property."
2. Grantor is applying for (a) Cottage Industry Permit II permit(s)/approval(s) associated with the development of the subject property.
3. In conjunction with the Grantor's proposed development of the subject property, the Grantor agrees to allow Pierce County personnel and its representatives access to the subject property for purposes of inspection during the pendency of the described permit(s)/approval(s) associated with the development of the subject property.

B. Access.

- 1. Grantor hereby grants to Pierce County personnel and its representatives access to the subject property for purposes of inspection during the pendency of the described permit(s)/approval(s) associated with the development of the subject property.
2. Grantor further grants to Pierce County personnel and its representatives access to the subject property for purposes of completion of work guaranteed for site stabilization, completion of conditions of approval and/or mitigation measures, performing reclamation of the site, or correcting defective work or facilities.
3. This right of entry shall commence on the date of signing of this agreement and shall expire when the County deems that all necessary conditions of approval, permit requirements, ordinance requirements, or mitigation measures have been met and the development proposal has been completed (including work occurring pursuant to a financial guarantee).

C. Successors and Assigns.

- 1. This agreement is intended to protect the value and desirability of the subject property and to

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benefit all citizens of Pierce County. It shall run with the land and be binding on all parties having or acquiring any right, title, interest, or any part thereof, of the subject property, including the grantor, heirs, successors and assigns. This agreement shall inure to the benefit of each present or future successor in interest of the subject property or any part thereof, or interest therein, and to the benefit of the citizens of Pierce County.

Dated this 31 day of August, 2004

PLANNING & LAND SERVICE
SEP 01 2004
PIERCE COUNTY

Robert Brummitt
Signature

Signature Signature

8820 149th Street NW
Address

Address Address

Pig Harbor, Wa.
City, State, Zip

City, State, Zip City, State, Zip

STATE OF WASHINGTON)
)
County of Pierce)

I certify that I know or have satisfactory evidence that Robert Brummitt is/are the person(s) who appeared before me, and that said person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.

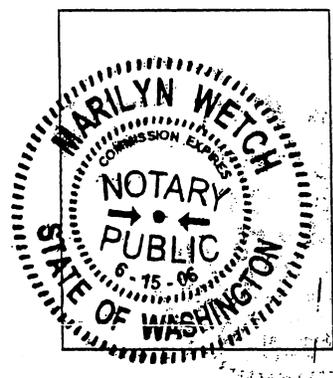
DATED this 31 day of August, 2004

Marilyn Wetch
Signature

MARILYN WETCH
Print Name

Notary
Title

My Appointment Expires 06-15-06



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EXHIBIT D



September 5, 2007

Pierce County
Planning and Land Services
2401 South 35th Street
Tacoma, WA 98409

**RE: Revocation of Conditional Use Permit:
Case No.: CP20-03 (The Waldmeister LP)**

Dear Applicant:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

MARK E. HURDELBRINK
Deputy Hearing Examiner

MEH/dd

cc: Parties of Record
PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY CODE ENFORCEMENT
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT



OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: REVOCATION OF CONDITIONAL USE PERMIT:
Case No. CP20-03 (The Waldmeister LP)

APPLICANT: Pierce County
Planning & Land Services
2401 South 35th Street
Tacoma, WA 98409

OWNER: The Waldmeister LP
Attn: Robert Bonneville
PO Box 346
Wauna, WA 98395

SUMMARY OF REQUEST:

On July 1, 2004, the Pierce County Hearing Examiner issued a decision approving Conditional Use Permit, Case No. CP20-03, subject to a number of conditions. The approval allowed The Waldmeister LP, (Robert Bonneville) to operate a Cottage Industry II at 8820 – 149th Street NW. Pierce County is seeking revocation of the permit as three conditions have been violated and there is a continued pattern of noncompliance.

SUMMARY OF DECISION:

Conditional Use Permit No. CP20-03 is revoked.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing commenced on April 15, 2007.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Planning and Land Services Staff Report and Attachments
- EXHIBIT "2" - March 26, 2007 Mr. Bonneville's Brief
- EXHIBIT "3" - Order
- EXHIBIT "4" - Fax to Mr. Bonneville
- EXHIBIT "5" - Master Application March 3, 2004
- EXHIBIT "6" - Enlarged copy of Ex. 2 of Mr. Bonneville's Memorandum
- EXHIBIT "7" - Order Denying Court
- EXHIBIT "8" - Hearing Brief
- EXHIBIT "9" - Mansuer Case
- EXHIBIT "10" - Chart
- EXHIBIT "11" - March 23, 2007 Letter
- EXHIBIT "12" - Floor Plan February 12, 2004
- EXHIBIT "13" - PC Code and App. A
- EXHIBIT "14" - Transcripts from April 13, 2007 proceeding
- EXHIBIT "15" - Ordinance 2004-58s
- EXHIBIT "16" - Photos of Site (Pictures of Ex. 6)
- EXHIBIT "17" - Motion and Statement of Domestic Violence
- EXHIBIT "18" - Cause for Petition February 16, 1988
- EXHIBIT "19" - Business Locations Address
- EXHIBIT "20" - Original Search Warrant (Criminal Case)
- EXHIBIT "21" - Dept. of Revenue (Waldmeister Trust)
- EXHIBIT "22" - Prop Information (Bruckwiesen)

Appearing was ROBERT BONNEVILLE who wanted to put on the record several objections to the hearing. First, he requested that the Hearing Examiner recuse himself from hearing this matter which was denied. He also wanted to put on the record that there was no opposition to his Motion Requesting Suppression of all evidence obtained from unconstitutional searches. He also objected to any testimony from Pierce County employees or agents that relate to anything observed in the three (3) searches of his home. He also objected to there being a hearing on anything other than Condition No. 10 because Pierce County failed to give him constitutional notice and failed to provide public notice. He wanted to be allowed to prepare an adequate defense on adequate notice. He requested a continuance of the hearing.

Appearing was JILL GUERNSEY who is a Deputy Prosecuting Attorney for Pierce County. She agrees that there was no written response but wanted to make full arguments on the issue. Respondent was in Superior Court. Mr. Bonneville wanted this hearing stayed pending any outcome of that case. The issue was denied by the Court. Various Exhibits were entered into the record. The Hearing Examiner does not have authority to rule on constitutional issues. The objection to testimony is also a constitutional argument. A letter

dated March 23, 2007 was faxed to Mr. Bonneville, which was titled Amended Revocation of Conditional Use Permit, which provided notice.

Reappearing was ROBERT BONNEVILLE who stated that he did not receive the Amended Revocation letter. He still does not think this provided him adequate notice and it was not advertised the way it was suppose to be advertised.

Reappearing was JILL GUERNSEY who stated that there is no requirement that the letter be published in the newspaper. Mr. Bonneville already had a continuance in this hearing and there is no reason to continue it further.

Reappearing was ROBERT BONNEVILLE who stated that he did get a Staff Report, but he doesn't think it provided him with constitutional notice.

The Hearing Examiner denied the requests of Robert Bonneville.

Appearing was MARCIA GREESON who is a Project Manager with Pierce County. This matter was heard before the Examiner three (3) years ago. Since that time several things have happened. There is a correction in the revocation letter that was discussed. On July 1, 2004 a Decision was issued approving a home occupation / cottage industry for Mr. Ellwanger-Bonneville. There were certain conditions that needed to be adhered to by Mr. Bonneville. These related, among other things, to a limitation of four (4) employees, 1,500 square feet and allowing County staff unlimited access to be able to see if Conditions are satisfied. The County has gone out three (3) different times within the three (3) years. The Examiner has authority to revoke a Conditional Use Permit if the Conditions of Approval are not satisfied. Mr. Bonneville has violated numerous Conditions. First was Condition No. 3, which said that he must apply for permits necessary within sixty (60) days of the final Decision. Failure to obtain those permits would automatically cause the approval to be null and void. A building application was filed within the time frame. The applicant did nothing with this permit and the application expired on August 31, 2005. The applicant failed to address the Health Department concerns, which include the request a floor plan of the entire building, be provided. Mr. Bonneville also violated Condition No. 7 in the original Decision. That Condition required that the business owner must live on the site for the continued activity of the business. A former employee contacted County staff and stated that Mr. Bonneville was not living on the site. Mr. Bonneville also violated Condition No. 10 of the original Decision in that in the Decision it stated that the proposed use shall not exceed 1,500 square feet. It actually limited the maximum to four (4) non-residential employees. During each of the visits it was clear that other areas of the home were being used for business but were not on the submitted floor plan. There were also more than four (4) individuals who identified themselves as employees. Staff estimated between 7 and 12 people were on the premises. Condition No. 11 was also violated which states that the applicant shall allow Pierce County staff to monitor the site. On each of the three (3) visits Mr. Bonneville did not allow immediate access. Mr. Bonneville was very

argumentative at each of the site visits. It is noted that there were more than four (4) employees, and as many as 15 workstations were observed. County staff has received phone calls from neighbors with concerns about this business. This happened as recently as yesterday.

Reappearing was ROBERT BONNEVILLE who stated that he did all that he was required to do under Condition No. 3. He submitted an application. Planning and Land Services has to rule on that application within 120 days. There wasn't anything else that he had to do. The fact that the County did not act on the application was not his fault. He never received a request from anyone for more information. The floor plan is correct. In reference to area 5, it is upstairs and is on the floor plan. Everything was done appropriately by him. He believes that if the County wanted more information they should have contacted him. The County had a site visit on May 3, 2005. This was a normal site visit. He was polite. There was no problem with that inspection. They toured each area and found that everything was appropriate. Area 5 is part of the upstairs. He took the County representatives upstairs which were private areas. Area 5 is included in the original calculations. He was referring to a map. Questions were asked from both County representatives and the Hearing Examiner about this site plan. He indicated that there was an agreed floor plan. It was revised several times after discussions with County staff.

Reappearing was JILL GUERNSEY who stated that the only floor plan that staff agreed to is located within the original packet and is marked as Exhibit 1G.

Reappearing was ROBERT BONNEVILLE who stated that it is clear that 1G is not the correct floor plan because it does not even include the upper floor. Area 5 is on the upper floor. There would be no mention of Area 5 unless an upper floor was part of the floor plans. He submitted calculations several times between several plans in 2005 when everything was agreed upon. Area 5 has never been used as a business area as part of the 1,438 square feet. This area is used for his significant other's father. He does not believe he violated Condition No. 7 regarding unlimited access. He has never lived anywhere else for any duration of time for 25 years. Unlimited access is a violation of his constitutional rights. He has never violated any space requirements. The floor plans have never changed for all three (3) visits. He has had less and less space for his business and less and less employees since 2005. He discussed the employee situation. There have not been more than four (4) non-residential employees ever. He has two (2) full time employees. There are appraisers that come to his house, but they are not employees. They share things, come to pick up files, assignments, etc. Patricia Prokop and her daughter are sometimes at his place. They are not employees. Calculation of employees does not count when a customer or client comes in. The second search by the County was more like a police raid. A police car came in and screeched across the driveway. He blocked off the driveway. Everyone was afraid of what was going on. There were eight (8) people there including himself. Patricia was there. She is his significant other. She lives next door and is an appraiser. She does maintain a workstation in his house. She is not

an employee. Lisa was also there and she is an independent contractor. She had a person driving her named Ditch who has tattoos all over him. He is not an appraiser. He doesn't understand how the County keeps saying that there was between 7 and 14 people there. Why can't they count the number of people? He can count. There is Sarah who is an employee and Shannon who is an employee. Lisa is not an employee. She has an office somewhere else. Patricia is not an employee. She is her own appraiser. Colleen was there who is her daughter. She is a 16 year-old high school student. She is not an employee. Her friend was there also. She is not an employee. The real issue is what constitutes an employee.

Reappearing was JILL GUERNSEY who asked questions of Robert Bonneville. Mr. Bonneville acknowledged a copy of the master application. He looked through it. He acknowledged that he signed the application under penalty of perjury. He acknowledged four (4) employees. He requested four (4) employees. The specifics of this application were discussed. He acknowledged that he wanted to operate an appraisal business from his home. There was some discussion about traffic and Mr. Bonneville's answer to that. Mr. Bonneville acknowledged several other statements made within the application that were correct. He acknowledged that this was done under penalty of perjury. The right of entry agreement was discussed. He acknowledged signing this agreement. He stated that there would be four (4) employees. He described within the document which areas would be used for the business. The specific floor plan within the master application was discussed further. He acknowledged that three (3) particular areas were all that he requested be designated as business areas within the application. The original Decision was discussed. Questions were asked regarding the original conditions relating to the Decision granting the Conditional Use Permit. He applied for the appropriate permits. He did not receive any requests for additional information. He acknowledged that he did not obtain a permit. He believes that he did everything that he was required to do. He insisted that he has lived on the property and abided by the hours of limitations stated in the Decision. He also believes that he satisfied the maximum square footage for the business and the limitation on employees. He did have a problem with the unlimited access condition. He described some of the inspections, including the second inspection which he described as a raid. He described the officer. He said he worked with Ms. Greeson about a floor plan for the business and the structure. They came to an agreement. Mr. Bonneville discussed where he has lived. There were discussions about what he testified about at the prior hearing. This is about his living arrangements and why they lived in Bellevue for a time. He stated that the 1,500 feet is the maximum this particular area can vary. He is not locked in on particular areas.

Appearing was LISA BONNER who was asked questions by Robert Bonneville. She testified that she is an independent contractor for Robert Bonneville. She types reports for him. She described the second inspection because she was present. She was at the business with a friend named Ditch who is not an employee. Someone told her that someone was peeking through the window. It happened to be Mr. Luppino. He was in a

bulletproof vest. It was an extremely scary event. Everyone was in a panic. She is an independent contractor and has a separate building on her property for her business. She has her own business license. She did feel intimidated at the inspection that took place. She had to go see a counselor. Since then the cleaning lady hasn't come back. Jill Guernsey asked several questions. She thought that Mr. Luppino was wearing a bulletproof vest. A police officer was armed, but he did not draw his weapon.

Appearing was MARK LUPPINO who is code enforcement officer with Pierce County. He was asked questions by Robert Bonneville. He acknowledged that he did not measure the house. He was then asked questions by Jill Guernsey. He was not wearing a bulletproof vest. He stated that there were 10 to 12 people there. There were 15 workstations. This was all on the downstairs level. He did go upstairs and saw areas that could potentially be work areas, but Mr. Bonneville said that this was for his own personal use. Mr. Bonneville would not initially let them onto the property. He described what he saw. Robert Bonneville specifically stated that he would not agree to let them on the property.

Appearing was KOLENE SNIDER who was asked questions by Robert Bonneville. She saw someone outside the window talking on the phone. She is a student. She did feel cornered. She does not like being asked these questions. She felt intimidated. She was not an employee nor was her friend.

Appearing was PATRICIA PROCOP who was asked questions by Robert Bonneville. She lives east of his house. She has her own business. She does maintain a desk in his office. She is Mr. Bonneville's significant other. She was present at the inspection. She also was very intimidated. It was like something out of the TV show "Cops". It certainly could affect the business. She talked about the previous person called Hillary. She was a previous employee who got in a car accident and wanted to work under the table. She became very defiant towards you when you do not agree. She said that she would get back at you.

Appearing was HARRY ROENGER. He lives close to Robert Bonneville. There hasn't been a lot of traffic in this area. He walks by Robert Bonneville's place. There are very few cars there. On average there is maybe four (4) cars. He is around almost every day. On the weekends he doesn't see any cars there. He is Robert Bonneville's brother-in-law.

Appearing was JEANNIE WOODWARD who was asked questions by Robert Bonneville. She is his sister. She owns property in this area also. She sees three (3) to four (4) cars parked at his property on the weekdays and on the weekends. The upstairs is not used for business.

Appearing was CAROL OWEN who owns property on the backside of Mr. Bonneville's property. She had some questions about the business impact on surrounding areas. She is concerned that this area would be rezoned.

Appearing was MARCIA GREESON who is the County Planner for this project. She was asked questions by Robert Bonneville. She was present at all three (3) of the inspections. She did not measure the house when she came out for the inspection. She relies on floor plans and site plans that are submitted. She saw particular people at the inspections. She saw a Billy, Kevin, a blonde woman, a person who identified themselves as his daughter, Shanna, Patricia, Sarah, Lisa and another girl on the side of the road. She described specifically what she observed at the inspection. A woman who answered the door stated she would give to get her boss who she identified as Patricia. Another girl came out and said she was an employee.

The hearing was continued and then reconvened on June 14, 2007.

Reappearing was JILL GUERNSEY who submitted an Exhibit. It was an Order Denying Mr. Bonneville's request to Enjoin and Stay this hearing.

Reappearing was ROBERT BONNEVILLE who submitted a Hearing Brief as an Exhibit. He cited the Mansour case in support of his position regarding the standard of proof.

Reappearing was JILL GUERNSEY who argued that the Mansour case is not applicable to the facts in this case. The Hearing Examiner in this case is a fact finder. In the Mansour case the King County Board of Appeals was acting in appellate capacity so, therefore, there was standard of proof issues. The Department has just requested revocation of permit. An Exhibit contrasting the Mansour case versus this particular situation was submitted. The Hearing Examiner has to find by a preponderance of evidence that it is appropriate to revoke the permit. She went through the standards of review and where certain Decisions are appealed. Mr. Bonneville is incorrect in his analysis. The preponderance of the evidence standard is the appropriate standard. The March 23, 2007 letter from Ms. Greeson to Mr. Bonneville and was also marked as an Exhibit.

Reappearing was ROBERT BONNEVILLE who stated that the substantial evidence standard of proof cited in the Pierce County Code is entirely inadequate for a trier of fact. The Mansour case is applicable.

Appearing was CAROL OWEN who did testify at the last hearing. She was in Mr. Bonneville's house yesterday. There were three (3) cars in the yard and three (3) people in the house. Upon questioning by Mr. Bonneville she agreed that this was not a staged situation. She just happened to go by there.

Appearing was SANDI ARNDT who only knows Robert Bonneville by the name Mr. Ellwinger. Her property abuts against his property. They go back a long ways. She has lived in this area since 1993. She first found out about the business in 1999 when someone was climbing up her tree. This person said there was going to be a business on the property. After that she noticed cars coming and going. There is 50 feet of property

from her patio to his property. She reported the business to appropriate agencies. Mr. Ellwinger has threatened her in the past. Neighbors are scared to testify against Mr. Ellwinger. He takes what he wants. She doesn't want to hear the noise from his business. She feels threatened. The rest of the neighbors also feel threatened. She has tried to document the threats. Upon questioning by Mr. Bonneville she stated that she has lived on the property for almost 15 years. She has met him twice. She only made one (1) phone call to the County. She discussed more threats to her life. Mr. Bonneville has had continuing problems with not having permits.

Reappearing was MARCIA GREESON who was asked questions by Mr. Bonneville. She stated that she had received approximately five (5) calls per day regarding complaints on his property. There were probably five (5) different people who called at different times and complained about the cars coming and going. She described what she saw on the first visit after the Decision was issued. She went out the first time on May 12, 2005. There appeared to be too many vehicles and too much space was being taken in the building for business use. There also appeared to be someone working upstairs and an employee standing outside. She was not going to pursue it at that point but wanted to check back. She described areas that were being used. She did this on Exhibit "6". The areas between areas 3 and 4 have always been used for business areas. There were desks and computers used in that area. Another floor plan was examined. The area she was describing was one large area. She did not go upstairs on the first visit. The person working upstairs was a younger man. She did ask to look in different areas. She did not go upstairs. She didn't see anyone under desks, but there could have been people under there. Her second visit wasn't until the next year in November. It was a routine follow up. The police did come with her. She received a report that they were hiding under desks. She toured the entire house. She believes that Mr. Bonneville has been very belligerent and argumentative in the past and thought that it was appropriate to have a police escort. She went to the door initially. Mr. Bonneville initially told her that she could not come in and that it was unconstitutional. Upon questioning by Jill Guernsey, she stated that she was never allowed to go in immediately when she went for a site visit. She went through Exhibit "12" which was the floor plan. She went through the calculations. There were three (3) specific business areas. Ms. Greeson did see copiers, paper and office supplies along the entryway which was not part of the calculations. Business area 2 was being used on all three (3) visits as a business area. The only area that may not have been used was proposed business area 3. On the first visit it appeared that an area upstairs was being used for business purposes. The second visit it appeared not to be being used as a business area.

Reappearing was PATRICIA PROKOP. Exhibit "6" was entered. In May 2005 her father was living upstairs. There wasn't business being conducted there. Area 3 is not used for business. It is just a hallway. She discussed the dog groomer's business. Their business has more effect on the community than his. She has her own computers at her office. She is only an independent contractor and uses some of the research facilities that Mr.

Bonneville has. She is not an employee.

Reappearing was MARK LUPPINO who stated that the disk of the pictures he took failed. He only had two (2) pictures. One of the pictures is of an employee box with a bunch of names on it. He did not recall if he toured the whole house on the first visit. On the second visit they were concerned because they heard that people could possibly run out the back door if they came to visit. He and the Deputy separated. He described where he was in relation to the Deputy. They did tour the entire upstairs and downstairs together. The license plate numbers were marked down. He stated that the majority of the downstairs was being used for business purposes. He described the right of entry agreement. If they are told to leave by a property owner, then they leave. He is not aware of any Section that states he must advise them that they can deny entry. He did not advise Mr. Bonneville of that right. He did not see anybody hiding under desks, but they could have been. Upon questioning by Jill Guernsey, he stated that he wears jeans to inspections. He does have a Pierce County shirt that says Code Enforcement. Sometimes he wears a vest. He was wearing the same vest today that he wore at the inspections. He went over some of his previous testimony. He reiterated that he stated there were 10 to 12 people at the site. On the second visit there were approximately 15 workstations. He discussed some of the problems they have had with entering the residence. The first one he told them they had to wait. On the third visit he did not let Ms. Greeson in. He became very argumentative. He believed that they were violating his rights. Upon questioning by Robert Bonneville, he stated again that 10 to 12 people were at the residence.

Appearing was DEPUTY DAN WELICK who was asked questions by Robert Bonneville. He was present at the site visit and was armed. He did enter the building the first time he went out there. He was given a tour by Mr. Bonneville. He did question one (1) female at the site visit. He did not screech his tires. He wore the same clothes that he was wearing today. He parked his vehicle in back of Mr. Luppino's. He did not flash his lights or put on his sirens. He did not arrest or threaten to arrest anyone. On the first visit he thought Mr. Bonneville was trying to intimidate Ms. Greeson. He became less confrontational after he saw him. Mr. Luppino and himself were going to leave because he would not let them in the house, but he did come out and agreed to let them come in and inspect. There was about a five (5) minute lag from the time Ms. Greeson asked to go in the house to when they were finally allowed in the house. On the second visit he pulled in to the driveway the same way he did before. Mr. Bonneville argued with Mr. Luppino. They started leaving again. Mr. Bonneville came running out of the house again and asked them to please come in. On his first visit there were several cars. There were approximately six (6) cars located in the vicinity. He thought there were approximately 7 or 8 people working at the residence. There were more workstations than people. There were 15 workstations in the downstairs area. There were also two upstairs but it appeared they were not being used. Upon questioning by Robert Bonneville he explained again that Mr. Bonneville was not cooperative. He stated that they had no right to go on his property. There were 7 or 8 people working. Four (4) had left the residence.

Reappearing was ROBERT BONNEVILLE who admitted pictures into the record. Jerry Sugar testified about those pictures.

Reappearing was JILL GUERNSEY who admitted a couple more Exhibits into the record. A Protection Order filing indicated that Mr. Bonneville had a different address in 1987. This contradicts his living in the same residence for 25 years. There also was admitted a compilation of businesses that list Robert Bonneville's address as their business address. Several other Exhibits were entered. She gave closing statements. She believes that the Conditions were violated pursuant to the March 23, 2007 amended letter from Marcia Greeson. Condition No. 3 stated that the applicant must apply for necessary permits. Failure to obtain the permits will cause the approval to automatically be null and void. Mr. Bonneville himself testified that he applied for the permits, but he did not obtain them. He is experienced. He knows what to do. The County did not prove Condition No. 7. Condition No. 10 was also proved. It stated that the workarea shall not exceed 1500 square feet. It should be limited to four (4) nonresidents and employees. Ms. Greeson testified that she did not agree to Exhibit No. 6. She only testified about Exhibit No. 12. She also testified that Mr. Bonneville exceeded the square footage because he used more than what she approved on Exhibit No. 12. He also exceeded the employee limitation. The intent of the Decision was for there to be a limit of four (4) workers at the site. There has been discussion about independent contractors and employees. There was 15 workstations. Condition No. 11 was also violated. He did not allow unlimited access. He was intimidating. He should have appealed the Decision if he had any problems with it. Mr. Bonneville insists that this 1500 square feet limitation is floating.

Reappearing was ROBERT BONEVILLE who gave his closing statements. He believes they agreed to a configuration outlined in Exhibit 6. He could easily consolidate down to 1000 square feet. These continued workstations don't make employees. They don't have excessive floor space. He does not believe that his credibility is at issue. He believes the County representatives have misstated what is going on. He believes it is manufactured evidence. The evidence just isn't before the Examiner. He believes that he did apply for all the permits. He never got any communication from County staff about permits. The right-of-entry agreement also wasn't violated. It violates his constitutional rights. He does not believe he violated any Conditions.

No one spoke further in this matter and the Examiner took the matter under advisement.

The hearing was concluded at 4:30 p.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, viewed the property, and taken this matter under advisement.
2. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks prior to the hearing in the official County newspaper. Property owners within 300 feet of the site and parties of record from the past hearing were sent written notice.
3. On July 1, 2004 a Decision approving a Conditional Use Permit, subject to conditions was issued by the Hearing Examiner. No appeals of the Decision were filed. The approval allowed The Waldmeister LP (Robert Bonneville) to operate a Cottage Industry II appraisal business at 8820 149th Street NW. The County is now seeking revocation of the permit alleging that Robert Bonneville violated several Conditions of Approval.
4. The County may bring a request to revoke a Conditional Use Permit based upon violations of Conditions of Approval. In this case, the Hearing Examiner maintained jurisdiction over this case for a period of three (3) years to ensure that all Conditions of Approval were satisfied. Condition No. 13 specifically provided that if the applicant did not adhere to the Conditions of Approval, then the Conditional Use Permit would be subject to revocation directly by the Hearing Examiner.
5. Robert Bonneville argued that the standard of proof for this revocation proceeding was inappropriate and the proceeding should be dismissed. This Examiner does not find that there is an improper standard of proof with regard to revocation of Conditional Use Permits. The Examiner must find by a preponderance of evidence that the Conditions contained within the original Decision were violated prior to revoking the Conditional Use Permit. The Mansour case does not apply to this proceeding. The Hearing Examiner is the fact finder in this case.
6. Robert Bonneville also brought up Constitutional arguments that are beyond the jurisdiction of the Hearing Examiner. Robert Bonneville's argument regarding inadequate notice is without merit. All notice requirements were satisfied and Mr. Bonneville himself was provided ample notice.
7. The County outlined its arguments in a March 23, 2007, Amended Revocation Letter. An analysis of each of the alleged violations are hereby made as follows:
 - A. *Condition No. 3 of the original decision states that: The applicant must apply for necessary permits within 60 days of the final Hearing Examiner's Decision*

approving a Conditional Use Permit (CUP) for a Cottage Industry II. Failure to obtain appropriate permits to reach conformance with conditions and/or regulations shall cause all approvals granted herein to become automatically null and void.

Although Mr. Bonneville did apply for necessary permits within 60 days of the final Decision, no approvals were ever granted. Mr. Bonneville blames County officials for not doing their jobs in a timely fashion, but he presented no evidence showing that he diligently attempted to obtain appropriate permits. Therefore, he violated Condition No. 3.

- B. *Condition No. 7 of the original decision states that the business owner must live on the site for the continued activity of the business. If the business owner moves off the site, the business must be moved from the current residential site to another approved site or be closed.*

The preponderance of the evidence did not show that Mr. Bonneville has not lived on the property, and thus he complied with Condition 7.

- C. *Condition No. 10 of the original decision states that the proposed Cottage Industry II shall not exceed 1,500 square feet (including accessory buildings) and shall be limited to four non-residence employees.*

There was a lot of testimony about this particular issue. Mr. Bonneville testified that he believed that a particular site plan was approved by the County for this business use. This was admitted into evidence as Exhibit No. 6. None of the County employees agreed that this was an approved site plan and Exhibit 6 had never been part of the record in the past. Exhibit No. 12 is the previously submitted site plan which shows what areas would be used for business use. The testimony from Marcia Greeson was particularly compelling. She stated that on at least one of her visits the entry way, proposed business area no. 1, proposed business area no. 2, and business area no. 3 (as noted on Exhibit No. 12) were being used for business. She counted 15 workstations. The square footage used for business purposes exceeded 1,500 square feet. It was not the intent of the Hearing Examiner to allow this to be a floating business area. It is also clear from the testimony that there are more than four (4) nonresidential workers on site. There was a lot of testimony about the distinction between employees versus independent contractors, but the intent of the Decision was to only allow four (4) nonresidential workers. There were in excess of that number during at least one of the site visits. There were at least 15 workstations present at the business. Mr. Luppino saw an employee box with a bunch of names on it.

Therefore, a preponderance of the evidence shows that the applicant violated Condition 10 both by having more than four employees and exceeding the square footage limitation.

- D. *Condition No. 11 of the original decision states that the applicant shall allow Pierce County Staff to monitor the site to make sure that all conditions of approval are being adhered to. A right-of-entry agreement shall be signed by the applicant allowing staff unlimited and unfettered access to the site for inspection and monitoring purposes.*

Mr. Bonneville made constitutional arguments regarding the legality of this Condition. However, the original Decision was not appealed. Mr. Bonneville is therefore required to abide by the conditions contained within the original Decision. This condition was imposed because there was a question about whether or not the Conditions would be satisfied by him. His abusive and hostile behavior is a violation of the agreement. He would not let the individuals on to the site without causing problems, and therefore, violated Condition 11.

8. The Examiner finds that the credibility of the witnesses was paramount in making this Decision. The Examiner did not find Robert Bonneville credible.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. A preponderance of the Evidence showed that Conditions of Approval No. 3, 10 and 11 were violated. Therefore, the Conditional Use Permit is revoked.

DECISION:

Conditional Use Permit No. CP20-03 is hereby revoked for violations of conditions of approval.

ORDERED this 5th day of September, 2007.



MARK E. HURDELBRINK
Deputy Hearing Examiner

TRANSMITTED this day 5th of September, 2007 to the following:

APPLICANT: Pierce County
Planning & Land Services
2401 South 35th Street
Tacoma, WA 98409

OWNER: The Waldmeister LP
Attn: Robert Bonneville
PO Box 346
Wauna, WA 98395

OTHERS:

Carol Owen
PO Box 723
Wauna, WA 98395

Leroy & Sandy Arndt
14687 Bridle Ridge Trail NE
Prior Lake, MN 55372

Jeannie Woodward
PO Box 641
Wauna, WA 98395

Charlotte Yordy
8914 149th Street NW
Gig Harbor, WA 98329

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Gig Harbor, WA 98335

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Lisa Bonner
PO Box 257
PMB 2799
Olympia, WA 98507

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

**CASE NO: Revocation of Conditional Use Permit: Case
No. CP20-03 (The Waldmeister LP)**

NOTICE

1. **RECONSIDERATION:** Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION:** The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.

EXHIBIT E

18.140.060 Revocation, Modification and Expiration.

The purpose of this Section is to provide the authority and procedures for the revocation, modification, and expiration of permits and approvals granted pursuant to the Pierce County regulations.

- A. **Hearing Examiner's Authority.** The Hearing Examiner has the authority to revoke or modify any permit or approval which was issued pursuant to his or her review. Prior to such revocation or modification, a public hearing shall be held by the Examiner and procedures concerning notice, reporting, and appeals shall be the same as required for the initial consideration thereof, provided that when any permit or approval is not exercised within the time specified in such permit or approval or, if no date is specified, within one year from the approval date of said permit or approval, the permit or approval shall automatically become null and void and no public hearing shall be required on the matter.
- B. **Director's Authority.** The Director or designee has the authority to revoke or modify any permit or approval which was issued pursuant to his or her review. Prior to such revocation or modification, the Director or designee shall follow procedures concerning notice and appeals as required for the initial consideration thereof, provided that when any permit or approval is not exercised within the time specified in such permit or approval or, if no date is specified, within one year from the approval date of said permit or approval, the permit or approval shall automatically become null and void and no public hearing shall be required on the matter.
- C. **Initiation of an Action.** An action to revoke or modify any matter set forth in subsections A. and B. may be initiated by:
1. The Examiner;
 2. The Director; or
 3. The petition of any aggrieved party directly affected by the project or use together with a filing fee listed in Chapter 2.05, PCC, and filed with the Department.
- D. **Grounds for Revocation or Modification.** Such revocation or modification shall be made on any one or more of the following grounds:
1. That the approval or permit was obtained by fraud;
 2. That the use for which such approval or permit was granted is not being exercised;
 3. That the use for which such approval or permit was granted has ceased to exist or has been suspended for one year or more;
 4. That the approval or permit granted is being, or recently has been, exercised contrary to the terms or conditions of such approval or permit, or in violation of any statute, resolution, code, law, or regulation.

5. That the use for which the approval or permit was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

E. **Expiration.** When any permit or approval is not exercised by the expiration date indicated on the approval or permit or, if no expiration date, is specified, one year from the approval date, the permit or approval shall expire. No extension of the expiration date for a permit or approval shall be granted unless such extension is approved pursuant to specific provisions for the relevant permit or approval.

18A.25.150 Rural Zone Classifications and Use Table.

B. Rural Residential.

1. Purpose. To provide for rural uses incorporating existing as well as historic patterns of settlement and character. Rural Residential areas function as a buffer between urbanized areas and resource land. They can supply lands that may be added to an urban growth area over time. The Rural Residential zones also allow for commercial and industrial uses related to and dependent upon natural resources and public and commercial recreational and associated uses related to the outdoors, along with rural residential, agricultural, and other resource uses.
2. Description. Seven Rural Residential zone classifications are recognized: Rural Separator, Rural 5, Rural 10, Rural Reserve 5, Rural Reserve 10, Rural 20, and Rural 40.
 - c. Rural 10. The Rural 10 zone classification is intended to provide for rural uses at a rural density and includes rural lands between the Rural 5 classification and the designated Forest Lands classification.

18A.35.060 Home Occupations and Cottage Industries.

- A. **Purpose.** The purpose of this Section is to provide standards which allow a resident of a single-family dwelling to operate a limited activity from their principal residence or permitted accessory structure while achieving the goals of retaining residential character, maintaining property values, and preserving environmental quality.
- B. **Applicability.** Home Occupations and Cottage Industries are only permitted as an accessory use in conjunction with a residence.
- C. **Exemptions.**
1. Home-Based Day Care activities are exempt from the regulations of this Chapter. The regulations governing day-care facilities are stated in Section 18A.35.070, Day-Care Facilities.
 2. Temporary Lodging Facilities (Lodging House), including bed and breakfast inns and boarding/rooming homes, are exempt from the regulations of this Chapter.
- D. **Performance Standards.**
1. **Intent.** It is the intent of this Section to provide performance standards for home occupation and cottage industry activities, not to create a specific list of every type of possible home-based business activity. The following performance standards prescribe the conditions under which home occupation and cottage industry activities may be conducted when incidental to a residential use. For activities which exceed these performance standards, refer to Chapter 18A.25, Zone Classifications and Use Tables, to determine the appropriate commercial, industrial, civic, or office use category which applies to the activity.
 2. **General Provisions.** The following general provisions shall apply to all home occupation or cottage industry activities. Additional provisions for each type of home occupation and cottage industry are found in Sections 18A.35.060 D.3., 4., and 5.:
 - a. The activity is clearly incidental and secondary to the use of the property for residential purposes and shall not change the residential character of the dwelling or neighborhood;
 - b. External alteration inconsistent with the residential character of the structure is prohibited;
 - c. Use of hazardous materials or equipment must comply with the requirements of the Uniform Building Code and the Uniform Fire Code;
 - d. The activity does not create noticeable glare, noise, odor, vibration, smoke, dust, or heat at or beyond the property lines;
 - e. Use of electrical or mechanical equipment which creates visible or audible interference in radio or television receivers or fluctuations in line voltage at or beyond the property line is prohibited;
 - f. Manufacturing shall be limited to the small-scale assembly of already manufactured parts but does not preclude production of small, individually hand-crafted items, furniture, or other wood

items as long as the activity meets the other standards of this Chapter;

- g. Customers/clients are prohibited on the premises prior to 6 a.m. and after 9 p.m.;
 - h. Sales in connection with the activity are limited to merchandise handcrafted on site or items accessory to a service (i.e., hair care products for beauty salon);
 - i. One advertising sign not exceeding two square feet in size is permitted in accordance with Chapter 18B.20, Signs (Except for Gig Harbor) and Chapter 18B.40, Signs (Gig Harbor/Peninsula);
 - j. In addition to the single-family parking requirements, off-street parking associated with the activity shall include one space per non-resident employee, and one additional space in accordance with standards set forth in Section 18A.35.040, Loading Area Requirements and Off-Street Parking; and
 - k. Cottage industry activities shall comply with building and fire code requirements for permits, occupancy, and inspection.
3. **Home Occupation.** Activities which comply with the following standards are permitted outright in either urban or rural areas:
- a. Only the resident can perform the activity; non-resident employees are prohibited;
 - b. The activity shall be limited to an area not more than 500 square feet or a size equivalent to 50 percent of total floor area of the living space within the residence, whichever is less;
 - c. One vehicle, up to 10,000 gross vehicle weight, is permitted in connection with the activity;
 - d. The activity shall be performed completely inside the residence, an accessory structure, or a combination of the two.
 - e. There shall be no outside display or storage of materials, merchandise, or equipment.
4. **Cottage Industry I.** Activities which comply with the following standards are permitted upon issuance of an Administrative Use Permit in the urban and rural areas:
- a. Two non-resident employees are permitted;
 - b. The activity shall be limited to 1,000 square feet or a size equivalent to 50 percent of total floor area of the living space within the residence, whichever is less;
 - c. Two vehicles, up to 10,000 gross vehicle weight each, are permitted in connection with the activity;
 - d. The activity shall be performed completely inside the residence, an accessory structure, or a combination of the two; and
 - e. There shall be no outside display or storage of materials, merchandise, or equipment.
5. **Cottage Industry II.** Activities which comply with the following standards are permitted in the rural area upon issuance of a Conditional Use Permit:

- a. Four non-resident employees are permitted;
- b. The activity shall be limited to 1,500 square feet or a size equivalent to 50 percent of total floor area of the living space within the residence, whichever is less. Properties which are five acres or greater may exceed this requirement at the Examiner's discretion;
- c. Three vehicles up to 10,000 gross vehicle weight each and one vehicle in excess of 10,000 gross vehicle weight are permitted in connection with the activity;
- d. Outside display of up to 10 items of merchandise which are consistent with Section 18A.35.060 D.5.e., is permitted provided that such items are located completely on the property and do not create a nuisance or hazard to traffic or adjacent properties; and
- e. Activities and outside storage of materials and/or equipment are permitted provided the site is sufficiently screened as determined by the Examiner.

E. **Conditions and Decision Criteria.** In addition to the standards set forth in Section 18A.35.060 D., the Director and/or the Examiner have the authority to impose additional conditions or to deny a Cottage Industry I or II based upon the following decision criteria:

1. Activities which are potentially harmful or hazardous and may adversely affect the surrounding residential character or the environment may be modified or denied;
2. Activities which are not clearly incidental and secondary to the use of the property for residential purposes shall be denied; and
3. Home Occupation or Cottage Industry I or II, where the single-family dwelling is not occupied for residential use, shall be denied.