

NO. 80214-9

THE SUPREME COURT
OF THE STATE OF WASHINGTON

JEFF GRIFFIN,
Petitioner,

v.

THURSTON COUNTY, and its BOARD OF HEALTH,
BRUCE CARTER, SHARI RICHARDSON, GEORGIA BICKFORD,
BARBARA BUSHNELL and JANE ELDER BOGLE,

Respondents.

SUPPLEMENTAL BRIEF OF
RESPONDENT INTERESTED PARTIES

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I. INTRODUCTION

THE SUPREME COURT SHOULD AFFIRM THE JUDGMENTS OF THE HEARING OFFICER, BOARD OF HEALTH AND COURT OF APPEALS DENYING GRIFFIN'S SEPTIC TANK PERMIT APPLICATION FOR AN UNDERSIZE LOT

The Decision of the Thurston County Board of Health(AR 1-6) and the Court of Appeals decision set forth at 137 Wn. App. 609 (2007) should be affirmed for the following reasons:

A. Griffin incorrectly asserts that Thurston County and the Appeals Court interpret the Code to confer no discretion on the health officer.

B. Staff errors in processing a permit application and prior like errors are irrelevant to an appeal by aggrieved neighbors.

C. The Board properly exercised its authority and expertise in denying the permit for the following reasons:

1. Respondent Interested Parties (Carter parties) agree with Griffin that Article IV, § 21.4.5.3 TCSC¹ precludes small-lot applicants from obtaining waivers.

¹ The Record on Review is also comprised of the Report of Proceedings ("RP"), the Clerk's Papers ("CP") and the Administrative Record of Adjudicative Proceedings ("AR"). An Amended Appendix was also filed in the Court of Appeals. Other references will be On-Site sewer system ("OSS") Board of Health ("Board"), Thurston County's Sanitary Code (TCSC), Griffin's Petition for Review ("GPR"). The attachments to this Supplemental Brief will be described as Exhibits (Ex. __).

2. The plain meaning of the phrase “meets all requirements” in Article IV, § 21.4.5.3 TCSC precludes the health officer from waiving requirements of the code.

3. The Board employed its expertise in exercising its informed discretion in construing § 21.4.5.3 to deny Griffin’s permit.

4. The Board decision overruled the staff decision to waive the 240 gallon per day septic tank capacity requirements and grant Griffin’s disputed request for a 50% reduction in septic system capacity.

II. STATEMENT OF THE CASE

PARTIES. The Carter parties fear a two-fold risk to their property rights: First, that insufficiently diluted effluent will flow onto their beachfront or under their properties; and second, that the reduced-capacity septic system will overload with summertime usage, causing overflow alarms, odors and possible sewage overflows onto the downhill Carter property. Four average adults at the Griffin home might cause an overflow alarm in one day. AR 301-29.

The Thurston County Board of Health (“Board”) is responsible for the protection of the County’s public health and for promulgating, revising, implementing and reviewing its rules under the purview of the

State Health Department. As to septic tank issues, the Board should be knowledgeable about the policy reasons underlying minimum lot size requirements and the need to dilute treated sewage before it flows through the ground water onto an adjacent beach, into marine waters or under a neighboring vacation property. AR 196-198, 205-207, Appellants' Opening Court of Appeals brief at 20-27. They should be aware that a concentration of septic tanks on too-small waterfront lots poses public health risks, and that water pollution has resulted in extensive closures of local shellfish beds. AR 206-207. Beachfront septic systems with reductions in lot size increase public health risks. See Appellants' Opening Brief in Court of Appeals at pages 20-27, AR 196-198, 205-207, 208.

Any decision to waive requirements and allow reduced-capacity pump chamber septic systems for a 1600 square foot beach residence risks summer back ups, causing overflow alarms and surfacing sewage, posing health hazards to occupants and neighbors. AR 209-212, 313-322, Hearing Officer Starry AR 350.

FACTS: Griffin's newly-purchased vacant lot of 2850 square feet is less than one quarter the health department's minimum OSS lot size of 12,500 square feet, a 77% reduction from the minimum lot size. AR 37, 43 ¶ 4. Griffin proposes a 1600 square foot two-bathroom residence on the too-small lot on the basis of six requests to waive various septic system

requirements. AR 8-9, 139. If Griffin's permit was approved, many other tiny lots on the island would become eligible for new residential construction, dramatically increasing density of septic systems. AR 81¶ 3.

In processing Griffin's application, the permit reviewing staff overlooked the restrictive provisions of § 21.4 TSCS. They accepted, reviewed and decided to waive various Griffin requests for waivers, setback reduction and modifications without addressing the discretionary judgment and limitations of §§ 21.4 and 21.4.5.3. AR 18, 21, 79, 139. In the summarizing approval document entitled the "Case Handler Report Form for Waiver Request" there was no consideration of the §21.4.5.3 limitation. AR 139. The Board finding that the applicant did what staff requested of them (AR 3, Conclusion 4) is of no significance because compliance involved following staff misguidance.

The Board barred the Carter parties from presenting evidence or examining witnesses in the Board hearing even though the Prosecutor supported their participation. AR 54, 301-329, 401, 403, 404.

The significance of minimum lot size for on-site sewer systems is specifically addressed in the following quotation from the Conclusions of the hearing officer explicitly adopted by The Board of Health (AR 1):

3. ... Article IV gives the health officer considerable discretion when deciding whether to approve on-site

systems on lots that fail to meet the minimum land area provisions of Article IV.

4. When looking at Section 21.4.5 and the permitting of on-site systems on undersized lots, it must be recognized that minimum land area and density are **significant public health issues**. It is well recognized that even properly operating on-site systems discharge pollutants that can be detrimental to public health at some concentrations. . . . It seems logical then, that when considering undersized lots, the health officer should take a conservative position when considering how to apply Section 21.4.5.3.

5. For the permit in question the applicant proposes to build a residence on a 2850 square foot lot. This represents a density of approximately 15.2 units per acre, which is well in excess of the maximum of 3.5 units per acre allowed for new subdivisions. This suggests that the other code provisions should be rigorously applied when minimum land area requirements are set aside. [Emphasis added] AR 43.

The fundamental finding on which the Board of Health's decision was predicated was finding 13 of its opinion that provides as follows:

- 13) The Hearing Officer cited the following relevant criteria that were considered in denying the permit. . . :
 - a) The Hearing Officer first determined that the minimum land area requirements and density are **significant public health issues** when considering **the permitting of OSS on undersized lots, and the Health Officer or their designee should "take a conservative position when considering how to apply 21.4.5.3"**. (Emphasis added) AR 2, finding 13.

The Board reiterated this in its Conclusion of Law:

- 7) That a majority of the Board agrees with the Hearings Officer in that the language in 21.4.5.3 should be construed conservatively. "All (other) requirements" means that an application for an OSS on a too-small lot should satisfy all requirements related to permitting at the time of the application without having to result to waivers, setback adjustments or other modification of the rules found within the Code. AR 3.

Environmental Health Division Director Art Starry testified regarding the risks in allowing the permit. "[I]t could then have an impact on public health, whether its ground water or surface water or surfacing sewage in people coming in contact with that." AR 350.

Regulatory Framework:

The pertinent WAC provided that local Boards of Health may adopt regulations consistent with and as stringent as these. WAC 246-272-0200(1) (6). Ex.1. Uniformity beyond state minimums was not required under WAC 246-272-200(1), (7) which provided that "nothing shall prohibit more stringent regulation." Ex 1.

Article IV, TCSC restricts OSS on too-small lots.

"May" means discretionary, permissive or allowed." ...

"Shall" means mandatory.

DEFINITIONS .p.4-8, 4-11.

21.4 The health officer **may**: . . .

21.4.4 Require larger land areas or lot sizes to achieve public health protection. . . .

21.4.5 Permit the installation of an OSS, where the minimum land area requirements or lot sizes cannot be met, **only when all of the following criteria are met:**

21.4.5.1 The lot is registered as a legal lot of record created prior to January 1, 1995; and

21.4.5.2 The lot is outside an area of special concern where minimum land area had been listed as a design parameter necessary for public health protection; and

21.4.5.3 The proposed system **meets all requirements of these regulations** other than minimum land area. (Emphasis added)

TCSC Article IV, §21.4

III. ARGUMENT

A. GRIFFIN INCORRECTLY ASSERTS THAT THURSTON COUNTY INTERPRETS ITS CODE AS CONFERRING NO DISCRETION ON ITS HEALTH OFFICER

Although the new assertion that the term “may” is synonymous with “shall” may be essential to Griffin’s case, there is no basis for the contention in the law, code or record.

First, this factual contention, as with many of Griffin’s present claims, should be considered waived because it was not presented to the Hearing Officer, the Board or the Court of Appeals which should preclude

introducing it in a Reply brief. *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 201 n.4, 84 P. 2d 1 (1993), *cert. denied*, 510 U.S. 1176 (1994).

Second, the language of the regulations defines “may” and “shall” in distinct terms, “shall” as mandatory and “may” as discretionary, permissive or allowed. Section 3 Definitions above., *See also, In Re Det. of Rogers*, 117 Wn. App. 270, 274-75, 71 P. 2d 220 (2003).

Application of statutory definitions to the terms of art is essential to determining the plain meaning of the statute. [State] v. J.P., 149 Wn.2d [444], at 450. [69 P. 3d 318 (2003).]

Cobra Roofing Servs., Inc., v. Dep't of Labor & Indus., 157 Wn.2d 90, 99, 135 P. 3d 913 (2006).

Third, the claim that the health officer has no discretion is unsupported in the record. When questioned about the meaning of the term “may” in 21.4, the staff witness acknowledged that “may” provides discretion. AR 245. The Hearing Officer found as conclusion 3 that “Article IV gives the health officer considerable discretion when deciding whether to approve on-site systems on lots that fail to meet the minimum land area provisions of Article IV.” AR 43. This and other findings were adopted by the Board in its Decision. AR 1. In its conclusion, the Board placed special emphasis on the discretionary “may,” highlighting it with underlining and the parenthetical (emphasis added). The Court of Appeals

found that “the health officer has discretion to waive minimum lot size requirements to permit an OSS installation only if three criteria are met.” *Griffin v. Bd of Health, supra*, 618 (2007). However, it affirmed the Board’s Decision disallowing revisions on the basis of the plain meaning of the “meets all requirements of these regulations” language of §21.4.5.3.

B. STAFF ERRORS IN PROCESSING PRIOR CASES ARE IRRELEVANT.

The issue of the application of §§ 21.4 and 21.4.5.3 was first considered by the Board in this proceeding. AR 382. The staff’s prior failure to apply these regulations properly is not binding on the Board of Health or the appealing Carter parties who are entitled to the protection of their property rights under the regulations in effect.

The . . . [Shorelines Hearings] Board concluded that past inconsistent administration never brought to the Board for review cannot alter the plain meaning of the Master Program as applied to the case before it.

[14] We agree. The proper action on a land use decision cannot be foreclosed because of a possible past error in another case involving different property. No authority is cited for the proposition that the Board can be estopped from enforcing existing regulations by prior decisions not ever even considered by the Board. In *Mercer Island v. Steinmann*, 9 Wn. App. 479, 783, 513 P.2d 80 (1973), the court stated that a municipality is not precluded from enforcing zoning regulations if its officers have failed to properly enforce zoning regulations. That court explained that the elements of estoppel are wanting. The governmental zoning power may not be forfeited by the action of local officers in disregard of the statute and

the ordinance; the public has an interest in zoning that cannot be destroyed. (fn43).

Buechel v. Ecology, 125 Wn.2d 196, 211 (1994); see also, *Ford v. Bellingham-Whatcom Cy. Dist. Bd. Of Health*, 16 Wn. App. 709, 716, n.1, 558 P.2d 821(1977); 3 Robert M. Anderson, *Zoning 20.56*, at 554-55(3d ed. 1986).

It would be unfair to allow staff errors to control, negating the purpose of appeal, particularly on a new issue never previously presented to the policy implementing Board for review. AR 382 ¶2. This is especially true where third parties seek appellate correction and protection of the Code on a matter involving prospective risks to public health and the health of the third party families. An enforcement action to collect penalties would involve different factors, including fair notice to a defendant and deterrent which have a lesser effect on third parties.

C. THE BOARD PROPERLY EXERCISED ITS AUTHORITY AND EXPERTISE IN DENYING THE PERMIT

The intention of the Article IV § 21.4 is to restrict new construction of septic systems on undersize lots by precluding exercise of any right to waive the minimum lot size requirements unless the lot was registered before January 1, 1995 and the proposal “meets all requirements of these regulations”

C.1 Respondents agree with Griffin that § 21.4.5.3 TCSC precludes small-lot applicants from obtaining waivers.

Griffin concedes that §21.4.5.3 TCSC “precludes small-lot applicants from obtaining discretionary waivers” while incorrectly contending that waivers can only flow from an applicant’s filing of a hardship petition under Article I § 13 (page 11, ¶ 1 GPfRP, See also Art. IV § 27 TCSC). This claim that waivers are restricted to hardship petitions was never raised to the Hearing Officer or the Board, and the processing of the waivers was not factually developed, though it was undisputed that several of the non-hardship discretionary revisions Griffin applied for were waivers, requesting revisions that were not referred to in the code. AR 18, 21 *See also*, AR 9-10, 38 ¶ 5, 338, 340, 344, 349-51.

Though conceding that discretionary waivers are barred under § 21.4.5.3, he argues that a waiver can only follow from a petitioner’s filing of a hardship application under TSCS Article I, § 13. (GPfR 11 ¶ 1-3) (See Art. IV, ¶ 27). The filing of a hardship petition is irrelevant here because the hardship method for obtaining a waiver is not exclusive. In Griffin’s waiver requests in the record, he sought and received waivers without alleging hardship. AR 18, 21.

RCW 70.05.072 vests discretion to grant waivers in the health officer:

Local health officer -- Authority to grant waiver from on-site sewage system requirements.

The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if:

(1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;

(2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and

(4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

(Emphasis added).

The statute provides indicates that a discretionary waiver is not restricted to an Article I, § 13 TCSC hardship situation. Griffin concedes the argument the §21.4.5.3 bars waivers with his statement that “The County can properly be described as granting a ‘waiver’ if, and only if, the county exercises its discretion to relieve an applicant from complying with any of the standards articulated in the Code pursuant to Article I, Section 13. GPfR p.11 ¶ 1. The concession is complete because hardship condition is non-exclusive and non-essential under the statute. The concession is reiterated in the statement that “[t]he phrase precludes small-

lot applicants from obtaining discretionary waivers under Article I. Section 13... ." GPfR p.11 ¶ 3. Carter parties agree that § TCSC 21.4.5.3 precludes small-lot applicants from obtaining discretionary waivers, and this concession controls the application of the "meets all requirements" language of 21.4.5.3. Since waivers like those sought by Griffin are not restricted to hardship cases, respondents concur in his statement that the "phrase precludes small-lot owners from obtaining discretionary waivers" GPfR p. 11 ¶ 3.

C.2. The plain meaning of the phrase "meets all requirements" in Article IV, § 21.4.5.3 TCSC precludes the health officer from waiving requirements of the code.

The controlling criterion is the expansive case law definition of the term "all," particularly where both parties cite the same case.

The dictionary defines the adjective "all" as meaning, variously, "being or representing the entire or total number, amount, or quantity," "constituting, being, or **representing the total extent or the whole,**" "**being the utmost possible of,**" "every," "any whatsoever," and other, similarly comprehensive terms. (fn to Dictionary) **We do not read the word "all" or the phrase "of any kind" to imply an exception** for equitable indemnity claims. (Emphasis added)

Parkridge Associates, Ltd. V. Ledcor Indus. Inc., 113 Wn. App. 592, 602, 54 P.3d 225 (2002).

The principal difference is that Griffin's brief, at page 11 misconstrues the definition by omitting the expansive nature of the definition, including only the "any, whatsoever" language. The *Parkridge*

language “constituting, being, or representing the total extent or the whole,” “being the utmost possible of” requires that plain meaning of the terms “all regulations” include all the more stringent requirements in the code. The Court should confirm the Court of Appeal’s finding regarding the “plain meaning” of the terms and give effect to the regulatory policy of limiting OSS on undersize lots. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P. 3d 4 (2002).

The regulations never contemplated any waiver of the winter water study required under Article IV §11.4.1. AR 79, 18. A waiver was obtained to reduce the required distance between the septic tank and the pressurized drinking water line from the 10 feet required under Article IV, § 10.1, Table 1 to 5 feet. AR 21.

Staff’s processing of the application to allow all available waivers, setbacks and modifications impermissibly renders subsection § 21.4.5.3 meaningless and superfluous. *Cobra Roofing Servs. Inc., v. Dep’t of Labor & Industries*, 157 Wn.2d 90, 99, 135 P. 3d. 913 (2006). Griffin’s briefs reflect his continuing failure to assign any tenable meaning to § 21.4.5.3.

Griffin’s claim that his proposed modifications are alternative proposals available as a matter of right was resoundingly rejected in the Court of Appeals. Disjunctive language is not cited. The granting of

Griffin's proposed reductions in other standards is permissive, usually providing that the health officer "may" waive or modify a requirement under certain circumstances, but it does not assure an alternative method of compliance. *See*, TCSC § 10, table 1 and § 11.4.1. The more rigorous provision is a matter of right, though the health officer may waive it and allow a lesser standard as a matter of discretion under limited factual circumstances, some of which were not met below.

If there were to be any concern about the ambiguity of the regulations as a whole, the Court should defer to legislative intent and the agency charged with administration and enforcement.

If the statute is ambiguous, we construe it to give effect to legislative intent. *Whatcom County v. City of Bellingham*, 128 Wn. 2d 537, 546, 909 P.2d 1303 (1996). We also defer to a statutory interpretation of the administrative agency charged with administering and enforcing the statute. *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975).

Lakeside Indus. v. Thurston County, 119 Wn. App 886, 898, 83 P.3d 433 (2004), *review denied* (Wash. Oct. 6, 2004).

An additional reason for rejecting this "matter of right" argument is because the question was not first raised and a full record developed before the Board of Health, the agency charged with receiving evidence and promulgating, applying and reviewing these rules.

C.3. The Board employed its expertise in exercising its informed discretion in construing §21.4.5.3 to deny Griffin's permit.

Article IV Section 21.4 provides the Board with discretion in determining whether to permit a septic system on a too-small lot. The Hearing Officer and the Board of Health denied Mr. Griffin's request for an OSS on his 77% undersize lot pursuant to their discretionary authority under the term "may" in § 21.4 and their expertise in making a rigorous, conservative construction and application of §21.4.5.3.

The Courts have consistently held that the term "may" confers discretion on the decision maker:

Canons of Construction. We give statutory terms their plain and ordinary meaning, *State v. Hentz*, ([fn1 [99 Wn. 2d 538, 541, 663 P. 2d 476(1983)]) assuming that is possible. Where a provision contains both the words "shall" and "may," it is presumed that the lawmaker intended to distinguish between them: "shall" being construed as mandatory and "May" as permissive or discretionary. *Carrick v. Locke*, 125 Wn. 2d 129,142, 882 P.2d 173 (1994); see also *State v. Pineda-Guzman*, 103 Wn. App. 759, 763, 14 P.3d 190 (2000).

In Re Det. of Rogers, 117 Wn. App. 270, 274-75, 71 P. 3d 220 (2003).

When reviewing matters within the agency's discretion, the appellate court must "limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency." RCW 34.05.574(1), Administrative Procedure Act. The

reviewing court must also give due deference to the agency's knowledge and expertise. See *Medical Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 483, 663 P.2d 457 (1983) (citing *English Bay Enters., Ltd. v. Island County*, 89 Wn.2d 16, 568 P.2d 783 (1977)).

Clausing v. State, 90 Wn. App. 863, 870-71, 955 P. 2d 394 (1998).

Deference is particularly important in this case where the Board based the "conservative" interpretation of the regulation on policy, knowledge, expertise and discretion. The Health Officer cited the following relevant criteria that were considered in denying the permit:

a) The Hearing Officer first determined that the minimum land area requirements and density are significant public health issues when considering the permitting of OSS on undersized lots, and that the Health Officer or their designee should "take a conservative position when considering how to apply Section 21.4.5.3.

b) That the only way for the lot to be developed was to allow a "substantial number" of waivers and horizontal setback reductions. AR 2.

This was reiterated and ratified in the Conclusions of the Board of Health:

7) That a majority of the Board agrees with the Hearings Officer in that the language in 21.4.5.3 should be construed conservatively. "All (other) requirements" means that an application for an OSS on a too-small lot should satisfy all requirements related to permitting at the time of application without having to result to waivers, setback adjustments or other modification of the rules found within the Code. AR 3.

Thus, the Board of Health's exercise of its discretion and expertise in construing § 21.4.5.3 to deny Griffin's permit provides a separate basis for affirming its decision denying Griffin's permit.

C.4 The Board's decision precluded the staff modification waiving the 240 gallon per day septic tank capacity requirements and grant Griffin's disputed request for a 50% reduction in septic system capacity

TCSC Article IV§21.2.3.1 provides for minimum capacity of such on-site systems:

For single family residences, the design flow for both the primary and reserve area shall be 120 gallons per bedroom per day with a minimum of 240 gallons per day unless technical justification is provided to support calculations using a lower design flow.

The 50% reduction in the capacity of Griffin's OSS should never have been allowed because there was no "technical justification" assessing likely peak flows.

Carter respondents recommend the definition of technical from the American Heritage Dictionary of the English Language: Fourth Edition. 2000.

Of, relating to, or employing the methodology of science; scientific.

Griffin had submitted a drawing for a 1600 square foot two-bathroom residence with two large rooms upstairs, one of which was

labeled a bedroom and the second 140 square foot apparent bedroom was labeled a "utility" room. AR 61, 39.

Staff relied on the one-bedroom designation as the "technical justification," granting a system capacity reduction from 240 gallons per day to 120. AR 302-308. If the "utility" room had been designated as a second bedroom, the required 240 gallon per day system would preclude building on Griffin's lot. AR 302.

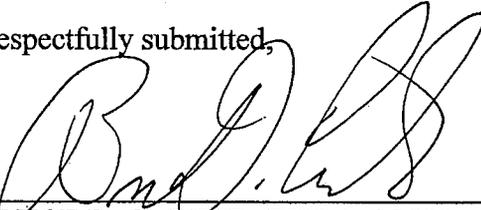
The EPA manual states that a "system should be capable of accepting and treating normal peak events." AR 169. Staff made no assessment of the likely "peak" summertime usage of the 1600 square foot Puget Sound beach house. AR 303-308. The witness conceded that with four average adults at 60 gallons per day, the high water alarm would go on in one day, in which event the residents should stop using water in the house. AR 313-320. Continued average usage might result in overflow in three days, a matter of "public health significance." AR 322. *See also*, Calculations of Engineer Dennis Bickford. AR 209-12. A Thurston County records request found only one vacant lot reduced capacity OSS and the county had limited house size to 800 square feet. AR 370. Pierce, Mason, and Kitsap counties do not allow any capacity reductions below 240 gallons per day for new construction on vacant land. AR 199-205.

IV. CONCLUSION

The decisions of the Board and Court of Appeals should be affirmed.

DATED this 28th day of April, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce D. Carter", written over a horizontal line.

BRUCE D. CARTER, WSBA # 2588
Attorney for Respondent Interested Parties

Environmental Health

Chapter 246-272 WAC On-Site Sewage Systems

Rules and Regulations of
the State Board of Health

Adopted March 9, 1994, Effective January 1, 1995
Amendment Effective May 12, 1995

Ev. 1-1

246-272-02001 Local Regulation.

(1) Local boards of health may adopt and enforce local rules and regulations governing on-site sewage systems

when the local regulations are:

(a) Consistent with, and as stringent as, this chapter; and

(b) Approved by the department prior to the effective date of local regulations.

...

(7) Nothing in this chapter shall prohibit the adoption and enforcement of more stringent regulations by local health departments where such regulations are needed to protect the public health.

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3
4
5 SUPREME COURT
6 OF THE STATE OF WASHINGTON

7 JEFF GRIFFIN

8 Petitioner.

No. 80214-9

9 vs.

DECLARATION OF SERVICE

10 THURSTON COUNTY AND ITS BOARD
11 OF HEALTH, BRUCE CARTER, SHARI
12 RICHARDSON, GEORGIA BICKFORD,
13 BARBARA BUSHNELL and JANE ELDER
14 BOGLE,

Respondents.

15 I, SANDRA L. SAGE, declare that I am over the age of eighteen years, have personal
16 knowledge of the following and am competent to testify herein:

17 A copy of Supplemental Brief of Respondent Interested Parties was properly addressed
18 and mailed, postage prepaid, to Matthew B. Edwards, Owens Davis PS, 1115 Westbay Dr, Ste
19 302, P.O. Box 187, Olympia, WA 98507, on ^{may} April 1, 2008. Also on ^{may} April 1, 2008, a
20 copy of Supplemental Brief of Respondent Interested Parties was hand delivered to Elizabeth
21 Petrich, Deputy Prosecuting Attorney, 2424 Evergreen Park Dr SW, Ste. 102, Olympia, WA
22 98507.

23
24 I certify (or declare) under penalty of perjury under the laws of the State of Washington
25 that the foregoing is true and correct. Olympia, Washington.

Date: May 1, 2008

Signature: Sandra Sage