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No. 38321-7-II

COURT OF APPEALS, DIVISION
OF THE STATE OF WASHINGTON

LOUISE LAUER and DARRELL deTIENNE,

Respondents,

v.

PIERCE COUNTY; MIKE AND SHIMA GARRISON; and BETTY GARRISON,

Appellants.

RESPONDENTS LOUISE LAUER AND DARRELL DETIENNE'S PETITION
FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER

Petitioners are Louise Lauer and Darrell deTienne.

II. CITATION TO COURT OF APPEALS DECISION

Petitioners seek review of the Published Opinion of the Court of Appeals, Division II filed in this case on September 8, 2010. A copy of the Opinion is in the Appendix at pages A-1 through A-16.

III. ISSUES PRESENTED FOR REVIEW

May an applicant invoke RCW 36.70B.070(4)(a) to automatically vest a building permit when the application: (a) was based upon inaccurate information supplied by the applicant and, (b) was previously adjudicated to be insufficient to authorize construction without an approved variance? Put another way, may an applicant use RCW 36.70B.070(4)(a) as a shield for his own misconduct?

IV. STATEMENT OF THE CASE

Garrison owns 1.38 acres of real property abutting Henderson Bay located at 8122 SR 302 in Gig Harbor, Washington. (Administrative Record "AR" 68-69). They purchased the property in December 2002. (AR 84). At that time, the property was improved with a single-family residence located adjacent to the west property line, substantially upland from the bay. (AR 89.) The south shoreline portion of the property was largely undeveloped and thickly vegetated and wooded.

(See AR 265.) A continuous stream flowed south across western portion of the property, ultimately draining into the bay through a culvert in the bulkhead. (AR 90-91, 265, 273.) A narrow dirt trail paralleled the stream and provided pedestrian access from the residence, through the trees to the bulkhead and tidelands below. (AR 97-98, 122, 126-128, 265, 267, 269.). The stream has been determined to be a Type 5 stream, protected by Pierce County's critical area regulations. (AR 90-92, 97, 199-200.)

A. The County Cited Garrison For Unlawfully Removing Vegetation Within the 35-Foot Buffer Protecting the Stream in 2003.

In 2003, Garrison illegally logged and cleared the vegetated area surrounding the stream. (AR 33, Finding 5.) The vegetation included approximately 50 year-old fir trees that provided shade and habitat around the stream for a host of creatures in the area. (Report of Proceedings ("RP") at 26: 21-27; 27:1-3, 25-26; 28:1-6). Garrison logged and cleared the area adjacent to the stream without a permit. (AR 178.) Neighbors witnessed the devastation and promptly contacted Pierce County who sent an inspector to the site. (AR 45.)

On March 7, 2003, Pierce County issued a "Correction Notice/Cease and Desist Order." (AR 162.) The County cited Garrison for illegally clearing vegetation within 35 feet of the stream, contrary to Pierce County's Critical Area Regulations (Title 18E PCC),to include

Chapter 18E.60—Fish and Wildlife Habitat Areas and Chapter, 18E.20—Use and Activity Regulations. (AR 162.) Through this Correction Notice, Garrison was advised that the stream traversing their property was a regulated stream protected by a 35-foot buffer.

Garrison did not dispute that a regulated stream crossed the property or that they violated the code. Instead, on March 17, 2003, they met with County officials and agreed that “[t]he drainage course needs to be revegetated with native vegetation, between the western fence and west of the existing access pathway.” (AR 178.) As required by the County, Garrison filed an application to re-vegetate the buffer around the stream on March 27, 2003. (AR 45, Finding 2; 176.) In November 2003, Garrison submitted to the County a status report (AR 258-60) which included a site map depicting the “existing drainage course,” “existing trail,” and the planting that Garrison had completed at that point in time. (AR 260.)

B. Garrison Inquired About “Tight Lining” The Drainage Course And Was Advised That A Variance Would Be Required.

In December 2003, Garrison asked the County if they could tight line the stream – that is, direct the stream through an enclosed pipe. (AR 193.) The County’s Biologist responded by letter dated December 18, 2003: “I could possible support the tight lining of the Type 5 drainage course located at the site ... if it is deemed to be the

best alternative by the Washington State Department of Fish and Wildlife (WDFW), Pierce County Development Engineering, the Pierce County Environmental Biologist and your private professional engineer.” (AR 184.) The County instructed Garrison to contact WDFW to determine if an Hydraulic Project Approval (HPA) would be required. The County further advised that, if an HPA was required, a Fish and Wildlife Variance would also be required from the County. (*Id.*) Thus, Garrison was again reminded that the stream was a regulated stream and that the stream cannot be altered without an approved variance.

C. Garrison Submitted A Building Permit Application in March of 2004. The Application Failed to Identify the Stream and Placed the Residence Squarely Within the Buffer.

Though there was an existing residence, Garrison desired to construct another residence closer to the water. Garrison proposed to convert the existing residence into an accessory dwelling unit and storage area and construct a new residence closer to the water. Accordingly, Garrison submitted a building permit application to construct the new residence in March of 2004. (AR 45, Finding 2.)

The County requires that a building permit application include a site plan and Garrison submitted a site plan with their application. (PCC 18.40.020; PCC 15.04.160, Table 1-A-9 (former); AR 132-33, 263.) The site plan depicted a culvert, thus indicating that a drainage

course existed on the west side of the property. However, Garrison failed to state that drainage course was a Type 5 regulated stream. He likewise failed to identify the code-required 35-foot buffer. Moreover, the site plan falsely labeled the trail as an “existing drive.” (AR 263, 97-98 at Finding 22.) The proposed foundation was depicted just east of the so-called “existing drive,” creating the false impression that existing improvements intervene and lie between the proposed home and the drainage course. (*Id.*)

Based on the information disclosed and described on the site plan and application, County officials issued a building permit. (AR 45, 89) Garrison commenced construction and poured the foundation squarely within the 35-foot buffer they had previously been ordered to re-vegetate. Petitioners contacted the County and informed them that Garrison had again impinged upon the buffer surrounding the stream. (AR 248-53.) The County conducted a site visit and immediately issued another Stop Work Order for “Building with the 35 foot stream/drainage buffer.” (AR 167-170.)

Garrison appealed the Stop Work Order to the Pierce County Hearing Examiner. (AR 78.) Remarkably, Garrison’s primary argument was that a regulated stream did not cross their property even though the County previously cited Garrison for logging and clearing that same

area less than one year earlier. In the prior proceeding, Garrison acknowledged the regulated stream, agreed to re-vegetate the buffer and prepared a site plan depicting the stream. (AR 90, Finding 7.A; 97-98.) Nevertheless, in this second proceeding, Garrison insisted, for the first time, that no stream crossed their property. (AR 90.)

D. The Hearing Examiner Affirmed the Stop Work Order in 2005, Citing the “Overwhelming Evidence” that a Stream Crossed the Property.

The Pierce County Hearing Examiner held a hearing on the appeal. The Examiner rejected Garrison's arguments. In a written decision issued on February 4, 2005, the Hearing Examiner concluded:

The appellants' appeal is denied as overwhelming evidence establishes that an historic drainage course not associated with short plat parcel has conducted water across the appellants' parcel for many years. The drainage course meets the definition of a DNR Type 4 or 5 watercourse and therefore requires a 35 foot wide, undisturbed buffer. (Emphasis added.)

(AR 90.) The Examiner specifically listed all of the evidence that supported his determination. (AR 90-91.) Perhaps most persuasive was that the site plan Garrison prepared in response to the 2003 enforcement action specifically identified the stream. (AR 91, Finding 9.G. See *also* AR 97-98, Finding 22.)

In 2005, the Garrison attempted to excuse their unlawful activity by asserting that they relied upon the approved permit and the

authorizations following staff inspections. The Examiner rejected this defense and found that Garrison's own action of submitting misleading information caused the prior incorrect County approvals:

Appellants correctly assert that a Pierce County building inspector approved the location of the footings for the new residential dwelling within 35 feet of the drainage swale. However, as shown in the appellants' building permit application site plan, an "existing drive" separates the footing location from the drainage course (Attachment C to Exhibit "4"). Section 18E.60.050(A) PCC provides that the buffer for a DNR Water Type stream does not extend landward beyond "an existing substantial improvement such as an improved road, dike, levee, or a permanent structure." Thus, the inspector considered the buffer as ending at the edge of [the] drive. However, the 2003 site plan prepared by the appellants in response to a Pierce County enforcement action regarding illegal clearing shows a "trail" alongside the drainage course in the same location as the "existing drive." Numerous exhibits and substantial testimony show that a trail and not a "drive" existed historically along the east side of the drainage course. Appellants cannot, therefore, assert that they justifiably relied upon the Pierce County inspector's approval of the footing location. (Emphasis added.)

(AR 97-98). The Examiner sustained cease and desist order (AR 99) and that decision is now final. Thus, unless a buffer variance is sought and approved, Garrison would be required to remove the foundation and restore the buffer. (AR 78, 99.)

Rather than submit a variance application when the decision was issued in February 2005, Garrison continued to challenge the Examiner's finding that a regulated stream traverses the property and

filed a LUPA petition. (AR 103, 106, 335.) The LUPA appeal was never decided on the merits and Garrison agreed to dismiss the appeal and finally submitted a variance application in August 2007. (AR 45, 50-2.)

By that time, however, the regulations had changed. On March 1, 2005, a planned overhaul of the County's Critical Areas Ordinance took effect and significantly altered the development regulations for Garrison's project. The buffer was increased and the variance criteria are much more stringent. PCC 18E.60.050, 18E.40.060, 18E.20.070 (1997 Pierce County Ordinance No. 97-84 § 8).

E. Garrison's Applied for and the Examiner Approved an After-The-Fact Fish and Wildlife Variance to Allow Them to Maintain the Illegal Structure in the Buffer.

Garrison submitted their variance application under the old critical areas regulations, claiming that the 2004 building permit application – which resulted in a permit subject to a sustained cease and desist order – vested all subsequent applications under the laws in effect in 2004. (AR 44.) Their application was reviewed in a public hearing conducted by the Deputy Hearing Examiner. (AR 27, 103.)

Though the Deputy Examiner acknowledged that Garrison failed to depict the stream on the site plan and failed to include a variance application with the original application, he concluded that the 2004 building permit application vested Garrison's project to the old, less

stringent critical areas regulations. (AR 34-36.) Contrary to the directive in RCW 19.27.095(2), the Examiner did not evaluate the application for compliance with the applicable local ordinance governing completeness. Likewise, the Examiner failed to address the fact that RCW 19.27.095 only vests “valid and fully complete” applications for structures “permitted under the zoning and land use control ordinances in effect on the date of application.” Of course the regulations do not permit structures within a 35-foot stream buffer absent an approved variance and the Garrison application did not include a variance application that would have allowed such an approval. The Deputy Examiner acknowledged that the building application did not contain all of the requisite information for a complete application, to include depiction of the stream on the site plan, yet concluded that the application was complete because everything else was submitted. (AR 2, 34, 35.)

With regard to the Garrison’s conduct of excluding the stream, the Examiner stated at AR 36:

It is undisputed that the applicants submitted a building permit application in 2004. It did not acknowledge that a stream existed on the property and that there were associated buffers. This does not mean that they come to this hearing with unclean hands. The variance application would have applied standards in effect at the time of the building permit application whether or not a

stream was notated [on] the building permit application or not.

Of course, that Garrison “did not acknowledge that a stream existed on the property and that there were associated buffers” was an act of defiance. The 2003 code enforcement action made Garrison fully aware that there was a regulated stream on his property. Garrison knew that it was the County’s position that construction could not occur in the buffer without an approved variance. Garrison did not respond with an open challenge to the position, or submit a variance application under protest. Instead, Garrison omitted the stream and buffer from the site plan and, falsely depicted an existing drive next to the unidentified drainage course to create the false impression that a buffer, if any, was already occupied with existing improvements.

F. Petitioners’ :Land Use Petition Act Appeal (LUPA).

Petitioner appealed pursuant to LUPA, chapter 36.70C. (CP 1-11.) The superior court reversed the Examiner, holding that Garrison’s were aware of the regulated stream and associated buffer at the time they submitted the 2004 building permit application, the application was incomplete and did not vest development rights. (CP 502-13.) The trial court thus remanded to the Examiner for consideration of the variance application under regulations in effect in 2007. (*Id.*)

On further appeal, Division II determined that one issue was dispositive of the LUPA appeal: “whether the Garrisons’ 2004 building permit application was complete by operation of law.” (Opinion at 10.) Division II held that “the Garrisons’ 2004 building permit application was complete as a matter of law under RCW 36.70B.070(4)(a), vesting their rights under the laws and regulations in effect in 2004.” (*Id.* at 1-2.) With regard to the misleading information on Garrison’s site plan, Division II held that the record suggests an honest variety of viewpoints in 2004 about how the drainage course was to be characterized. (*Id.* at 11-12.) The record, however, is devoid of any such disagreement prior to the October 2004 stop work order. Garrison did not challenge the status of the stream following the 2003 stop work order and inquired about tight lining the Type 5 stream in December 2003. (AR 186, 188, 193, 258-60.) The challenge to the stream characterization was only presented, after-the-fact, to avoid the second stop work order issued in October 2004.

V. ARGUMENT IN SUPPORT OF REVIEW

Division II’s holding presents a matter of significant public interest, since it applies RCW 36.70B.070(4)(a) to shield and provide vested rights to applicants who knowingly submit inaccurate information with their application. The holding is also inconsistent with Division III’s

recent opinion in *Kelly v. Chelan County*, 157 Wn. App. 417, 237 P.3d 346 (2010), which holds that an application cannot vest if it proposes a project that is inconsistent with the applicable zoning code.

A. RCW 36.70B.070 Should Not Be Applied To Vest A Building Permit Application That Contained Inaccurate and Misleading Information And Resulted In A Permit Subject To An Affirmed Cease And Desist Order.

Petitioners recognize that Washington guards vested rights that are conferred with a valid and complete application. *Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d. 242, 218 P.3d 180 (2009). The question before this Court, however, is how far should courts go to protect vested rights. Will vested rights be granted and protected even in the context of deceitful conduct?

Our vesting doctrine is rooted in notions of fundamental fairness. *Id.* at 250.; *Erickson & Assoc. v. McLerran*, 123 Wn.2d 864, 872, 872 P.2d 1090 (1994). These notions of fairness do not only apply to the desire to create predictability in land use rules for the landowner. Rather, the goal, both in the common law and RCW 19.27.075, is to “strike a balance between the public’s interest in controlling development and the developer’s interest in being able to plan their conduct with reasonable certainty.” *Id.* at 251. “If a vested right is too easily granted, the public interest could be subverted. *Id.*; *Erickson*, 123 Wn.2d at 874.

Division II affirmed the Examiner's decision, holding that the application was complete, as a matter of law under RCW 36.70B.070(4)(a) (a basis not asserted by the Examiner). Despite that

- as a result of the 2003 stop work order, Garrison knew that construction in the buffer without a variance was illegal (AR 162);
- Garrison never challenged the status of the Type 5 Stream prior to submitting the application or at the time the application was submitted;
- the 2004 application contained inaccurate and incomplete information regarding the stream and its buffer (AR 263);
- the 2004 application was not accompanied by the required fish and wildlife variance application; and
- the County successfully issued a stop work order to cease further construction in the buffer in the absence of an approved variance reducing the buffer (AR 167);
- A Hearing Examiner sustained the 2004 stop work order and held that Garrison could not justifiably rely upon prior Pierce County approvals in light of the inaccurate and misleading information provided on the site plan (AR 97-98.)

To construe RCW 36.70C.070(4)(a) to automatically perfect an application that contains false information does not serve the public interest and will promote deceitful conduct in the application process.

Division II's assertion that it was the County's responsibility to discover the misrepresentation defies commonsense. To begin, Division II unfairly imputes all unique, site-specific information that one

staff member may know to all other staff that might receive an application. Moreover, Division II places an onerous burden on the County and, effectively excuses misconduct by an applicant if the County staff cannot discover a misrepresentation within 28 days.

The 1997 Uniform Building Code (UBC), which the County adopted (PCC 15.04.010) and was applicable in 2004, supports rejection of Division II's analysis. Section 106.4.3 provides:

Validity of permit. The issuance or granting of a permit of approval of plans, specification and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to giving authority to violate or cancel the provision of this code or other ordinances of the jurisdiction shall not be valid. (Emphasis added.)

UBC 106.4.5 provides:

Suspension or revocation. The building official may, in writing, suspend or revoke a permit under the provisions of this code whenever the permit is issued in error on or the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this code. (Emphasis added.)

(Appendix E). Vested rights should not be conferred to an applicant that presents inaccurate and misleading information. This Court should accept review to protect the public's interests.

B. The Garrison Application Was Not Complete As Defined By RCW 19.27.095 And The Applicable Local Code.

RCW 19.27.095 provides in relevant part:

(1) A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

(2) The requirements for a fully completed application shall be defined by local ordinance...¹ (Emphasis added.)

Thus, to be complete, a building permit application must (1) satisfy the local government's requirements for a complete application and (2) propose a structure that is permitted under the local zoning and land use regulations. Garrison's 2004 building permit application did not satisfy either requirement.

PCC 18.16.030 provides that vesting of building permit applications are governed by RCW 19.27.095 and Title 15 PCC. The County has since re-codified its building regulations to Title 17 PCC (CP 222-234). At the time Garrison's building permit application was

¹ RCW 36.70B.070(2) likewise provides that a project application is complete "when it meets the procedural submission requirements of the local government."

submitted in March 2004, however, the former Title 15 PCC was still in effect. (See CP 215-20 attached as Appendix D; CP 222-34.)²

Former 15.04.160 set forth the requirements for a complete application.:

Fully Completed Building Permit Application: A fully completed building permit application shall be any application including payment of all required fees containing all components that are applicable in Table 1-A-9 and those items set forth in RCW 19.27.095. Incomplete applications shall not be accepted.

Table 1-A-9 to PCC 15.04.160, entitled "Elements for a Complete Building Permit Application" includes the following:

Title 15 - Building Construction
15.04.160

TABLE 1-A-9 Elements for a Complete Building Permit Application	
Description	Comments
Site Development Permit:	When the project requires a Site Development Permit, it shall be applied for prior to or with the building permit application
...	...
Land Use Application:	Any land use permits required to approve the building permit application shall be applied for prior to or with the building permit application. Re-zone applications must be final prior to the building permit application being accepted as a complete application.
...	...

² Though assigned different numbering, the provisions relevant to this case were unchanged in subsequent code amendments. (See 235-42.)

Site Plan:	Site plans shall include, but not be limited to, the following: a vicinity map, all buildings on the same site, access drives, Emergency Vehicle Access, landscaping, on-site septic drain field location, parking, dimension all set backs from buildings and lot lines, hydrant location and grading contours if lot slope is 15% or greater.
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In addition to the fact that Garrison included false information on the required site plan – they depicted an “existing drive” where no such improvement existed – the site plan also omitted requirement components. Most, notably, despite the express requirement to denote all regulatory setbacks, Garrison did not depict the required 35-foot stream buffer on the site plan. Perhaps more significant, the 2004 building permit application did not include a Fish and Wildlife variance application. PCC 15.04.160 expressly requires that “[a]ny land use permits required to approve the building permit application shall be applied for prior to or with the building permit application.” (Emphasis added.) The 2004 application did not satisfy the completeness requirements of Chapter 15.04 PCC and, accordingly, cannot be deemed a “valid and fully complete application” under RCW 19.27.095 that confers vested rights.

Independently, the 2004 application cannot be deemed a “valid and fully complete application” because it did not propose a structure that was permitted under the County’s land use regulations. The

development regulations expressly prohibit construction within 35 feet of a Type 5 stream, absent an approved variance. Garrison's proposed the structure without a variance. As such the structure was not permitted under the local land use controls.

Division III's recent decision in *Kelly v. Chelan County, supra*, supports a holding that the application was not complete. In *Kelly*, the court acknowledged that Washington adheres to the minority rule that an applicant obtains a vested right to develop land when he or she makes a timely and complete application. 157 Wn. App at 350, *citing Hull v. Hunt*, 53 Wn.2d 125, 130, 331 P.2d 856 (1958). Division III clarified, however, that "[t]he rule assumes the project complies with the applicable zoning and building ordinances in effect on the date of the application. *Id.*, *citing, Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d. 242, 266-67 218 P.3d 180 (2009); *Erickson & Assoc. v. McLerran*, 123 Wn.2d 864, 877, 872 P.2d 1090 (1994); *Mercer Enterprises, Inc. v. City of Bremerton*, 93 Wn.2d 624, 627, 611 P.2d 1237 (1980). If the application cannot be approved as proposed, the application may not be deemed complete. *Id.*

In this case, Garrison proposed construction without a variance. Such construction was not lawful at the time the 2004 application was submitted. If Garrison wished to proposed construction with a

variance, then a variance application was a mandatory component to make the application complete.

VI. CONCLUSION

For the foregoing reasons, Petitioners request that this Court grant its Petition for Discretionary Review.

Dated this 8 day of October, 2010.

Respectfully submitted,

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**LOUISE LAUER AND DARRELL DE TIENNE, RESPONDENTS,
V.
PIERCE COUNTY, MIKE AND SHIMA GARRISON, AND BETTY GARRISON,
APPELLANTS**
(Court of Appeals, Division II, 38321-7-II)

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APPENDIX A

PUBLISHED OPINION, *LAUER V. PIERCE COUNTY* (No. 38321-7-II,
SEPTEMBER 8, 2010)

A1-A16

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STATE OF WASHINGTON

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LOUISE LAUER and DARRELL de TIENNE,
Respondents,

v.

PIERCE COUNTY; MIKE and SHIMA
GARRISON and BETTY GARRISON,
Appellants.

No. 38321-7-II

PUBLISHED OPINION

VAN DEREN J. — A Pierce County hearing examiner granted Mike and Shima Garrison's application for a fish and wildlife variance, enabling them to proceed with construction of their house within a stream buffer zone on their property. Neighbors, Louise Lauer and Darrell de-Tienne (Lauer), filed a petition under the Land Use Petition Act (LUPA)¹ in superior court, which reversed the hearing examiner's decision. The Garrisons ask us to reverse the superior court's decision and remand for reinstatement of the hearing examiner's decision,² asserting that the LUPA petition was untimely and that their rights had vested in 2004 when their application was completed, filed with Pierce County (County), and a permit was issued. We hold that the Garrisons' 2004 building application was complete as a matter of law under RCW

¹ Chapter 36.70C RCW.

² Because we review only the record before the hearing examiner, we review the hearing examiner's decision and not the trial court's decision. *J.L. Storedahl & Sons, Inc. v. Cowlitz County*, 125 Wn. App. 1, 6, 103 P.3d 802 (2004).

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36.70B.070(4)(a), vesting their rights under the laws and regulations in effect in 2004. Thus, the hearing examiner did not err, and we affirm the hearing examiner's decision.

FACTS

In December 2002, the Garrisons purchased waterfront property on Henderson Bay in Gig Harbor, Washington. The property contained an open drainage course. In 2003, the Garrisons cleared trees and vegetation from the property until neighbors complained and Pierce County issued a stop work order because the clearing activity was near the drainage course. With the County's supervision and approval, the Garrisons took steps to revegetate the area with native plants.

In March 2004, the Garrisons submitted a building permit application to the County, which granted the permit. The Garrisons began constructing a new residence on the property, but the County issued a stop work order in October 2004 when neighbors complained that the foundation poured for the new house encroached in a stream buffer. The stop work order included a corrective action notice directing the Garrisons to apply for a fish and wildlife variance within 60 days.

The Garrisons appealed the stop work order to a hearing examiner, who denied the administrative appeal on February 4, 2005, and the Garrison's subsequent request for reconsideration on March 18, 2005. The Garrisons filed a LUPA appeal, which settled and resulted in the Garrisons pursuing the fish and wildlife variance presently at issue.

On August 9, 2007, the Garrisons filed an application for a fish and wildlife variance. At the October 24, 2007, variance application hearing, witnesses included Mike Garrison, Louise Lauer, and Darrell de Tienne.

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On December 13, 2007, the hearing examiner approved the Garrisons' variance, applying the regulations in effect when the Garrisons filed their building permit application in 2004. On December 21, Lauer filed for reconsideration. On March 4, 2008, the hearing examiner denied Lauer's reconsideration motion.

On March 27, 2008, Lauer filed a LUPA petition in the superior court, seeking review of the hearing examiner's determination. The Garrisons filed a motion to dismiss and strike Lauer's claims, which the superior court denied. The superior court reversed the hearing examiner, holding that the Garrisons' 2004 building permit application was incomplete and did not vest development rights, and remanded to the hearing examiner for consideration of the variance application applying regulations in force in 2007. The Garrisons unsuccessfully moved for reconsideration based on *Futurewise v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 242, 189 P.3d 161 (2008), which our Supreme Court decided only days before the superior court heard the LUPA appeal.

The Garrisons filed a notice of appeal seeking review of three superior court orders: the order denying the Garrisons' motion to dismiss; the order reversing the hearing examiner's decision in the LUPA appeal, and the order denying the Garrisons' motion for reconsideration. While the appeal was pending, and after briefing had been submitted, we decided *Mellish v. Frog Mountain Pet Care*, 154 Wn. App. 395, 225 P.3d 439 (2010).³

³ We initially released *Mellish* on December 15, 2009, but we withdrew it and rereleased it on February 3, 2010, following reconsideration, after allowing both parties to submit supplemental briefing.

ANALYSIS

I. STANDARD OF REVIEW

LUPA governs judicial review of Washington land use decisions. *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 467, 61 P.3d 1141 (2003). We review the factual record before the hearing examiner, as the hearing examiner is the local jurisdiction's body or officer for this case with the highest level of authority to make a land use determination. See Pierce County Code (PCC) 1.22.080(A), (B)(1)(i), (s). "All land use decisions of the Examiner . . . shall constitute the final decision of the Council and shall be appealable to a court of competent jurisdiction." PCC 1.22.140(C); see also former RCW 36.70C.020(1) (1995); *Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Assocs.*, 151 Wn.2d 279, 288, 87 P.3d 1176 (2004); *HJS Dev., Inc.*, 148 Wn.2d at 468; *J.L. Storedahl & Sons*, 125 Wn. App. at 6.

Lauer, as the LUPA petitioner, continues to carry the burden of establishing that the hearing examiner erred under at least one of LUPA's six standards of review. See *Pinecrest Homeowners Ass'n*, 151 Wn.2d at 288. These 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.

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Former RCW 36.70C.130(1) (1995). We review questions of law de novo to determine whether the facts and law supported the land use decision. *HJS Dev.*, 148 Wn.2d at 468. On review of a superior court's land use decision, we stand in the shoes of the superior court and review the administrative decision on the record before the administrative tribunal—not the superior court record—reviewing the record and the questions of law de novo to determine whether the facts and law support the land use decision. *Satsop Valley Homeowners Ass'n, Inc. v. Nw. Rock, Inc.*, 126 Wn. App. 536, 541, 108 P.3d 1247 (2005).

II. THRESHOLD MATTERS

At the outset, the Garrisons argue two threshold matters and contend that either is dispositive. First, they assert that the Supreme Court's recent *Futurewise* decision renders Lauer's LUPA petition moot and, therefore, the superior court should have dismissed the petition. Second, they argue that under this court's recent *Mellish* decision, Lauer's LUPA petition is untimely and dismissal is required. Neither of these arguments is persuasive under the facts of this case.

A. *Futurewise*

The Garrisons rely on the lead opinion in *Futurewise*, which determined that “[c]ritical areas within the jurisdiction of the [Shoreline Management Act (SMA)]⁴ are governed only by the SMA.” *Futurewise*, 164 Wn.2d at 245. The Garrisons argue that, since only the SMA governs their shoreline property, the variance requirement under the County's critical areas ordinance, which was adopted under the Growth Management Act (GMA),⁵ is inapplicable. *See*

⁴ Chapter 90.58 RCW.

⁵ Chapter 36.70A RCW.

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e.g., PCC 18E.10.010. The Garrisons argue that under *Futurewise*, no GMA buffer requirements apply, no variance is required, and the issue of whether their rights vested in 2004 or 2007 is of no moment.

But the Garrisons' reliance on *Futurewise* is misplaced. Only four justices signed the lead opinion, with a fifth justice concurring in the result only without issuing an opinion. Such a plurality opinion has "limited precedential value and is not binding." *Kailin v. Clallam County*, 152 Wn. App. 974, 985, 220 P.3d 222 (2009) (quoting *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 302, 88 P.3d 390 (2004)). There being "no majority agreement as to the rationale for a decision, the holding of the court is the position taken by those concurring on the narrowest grounds." *Kailin*, 152 Wn. App. at 985-86 (internal quotation marks omitted) (quoting *W.R. Grace & Co. v. Dep't of Revenue*, 137 Wn.2d 580, 593, 973 P.2d 1011 (1999)). Accordingly, we glean no precedential rule from *Futurewise*, other than that it reversed the trial court and reinstated the Western Washington Growth Management Hearings Board's decision. See 164 Wn.2d at 248.

Moreover, apparently in response to *Futurewise*, the legislature passed Engrossed House Bill, *Laws of 2010*, chapter 107, effective March 18, 2010, which addressed the 2003 legislation that our Supreme Court interpreted in *Futurewise*, for the express purpose of "clarifying the integration of shoreline management act policies with the growth management act." LAWS OF 2010, ch. 107 pmbl. In a new section, the legislature "affirms that development regulations adopted under the growth management act to protect critical areas apply within shorelines of the state as provided in section 2 of this act." LAWS OF 2010, ch. 107, § 1(2). The act states that its provisions are to take effect immediately, that its purpose is "remedial and curative," and that it applies retroactively to July 27, 2003. LAWS OF 2010, ch. 107, §§ 5-6. Although the

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legislature's ability to retroactively modify the law in response to appellate decisions in this instance is not yet decided,⁶ the Garrisons' contention—based on *Futurewise*—that only SMA provisions apply to their shoreline property, fails.

B. *Mellish*

The Garrisons also contend that *Mellish* is dispositive of Lauer's LUPA appeal. *Mellish* addressed application of LUPA's strict 21 day filing deadline. See RCW 36.70C.040(2), (3). In *Mellish*, after the hearing examiner issued his land use decision, the petitioner filed a motion for reconsideration. 154 Wn.2d at 398-99. After the examiner denied the motion, the petitioner filed his LUPA appeal with the superior court. *Mellish*, 154 Wn.2d at 399. As in this case, the LUPA appeal in *Mellish* was filed within 21 days of the examiner's decision on petitioner's motion for reconsideration, but not within 21 days of the examiner's decision on the land use matter. 154 Wn.2d at 399. In *Mellish*, we held that the examiner's land use decision was final, that the subsequently filed motion for reconsideration did not render the examiner's decision not final while the reconsideration motion was pending with the examiner, that a reconsideration motion does not toll the deadline for filing a LUPA appeal, and that the petitioner's LUPA appeal was time barred. 154 Wn. App. at 403-04, 407.

The Garrisons argue that the same result should apply here.

LUPA's statute of limitations begins to run on the date a land use decision is issued. The statute designates the exact date a land use decision is "issued," based on whether the decision is written, made by ordinance or resolution, or in some other fashion. When a land use decision is written, it is issued either three days

⁶ This court recently applied the plurality decision in *Futurewise* when deciding *Kitsap Alliance of Prop. Owners v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 152 Wn. App. 190, 191, 217 P.3d 365 (2009), remanded, 168 Wn.2d 1031 (2010). On April 28, 2010, our Supreme Court remanded the case to this court for reconsideration.

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after it is mailed or on the date that the local jurisdiction provides notice that the decision is publicly available.

Habitat Watch, 155 Wn.2d at 408 (citations omitted).

Here, the hearing examiner's written decision was dated December 13, 2007; the decision cover letter stated that it was transmitted to the Garrisons, Lauer, and to other interested persons on that date.⁷ Under RCW 36.70C.040(4)(a), the hearing examiner's written decision issued on December 16, 2007, triggered the 21 day LUPA petition filing period. Lauer did not file the LUPA petition until March 27, 2008, more than 100 days after the land use decision issued. Accordingly, Lauer's LUPA petition was time barred. *See Mellish*, 154 Wn. App. at 407.

Lauer argues that even if *Mellish* applies, we should remand for a factual hearing so that the parties can create a record on the issue of equitable tolling. In *Mellish*, we sua sponte raised the possibility that equitable tolling might apply to a case addressing the LUPA appeal deadline "when justice requires such tolling." 154 Wn. App. at 405. But *Mellish* acknowledged that equitable tolling is an extraordinary remedy and declined to apply the doctrine under the facts of the case at issue. 154 Wn. App. at 405-06.

More recently, in *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 381-82, 223 P.3d 1172 (2009), we rejected a party's assertion that the LUPA deadline may be equitably tolled. "The LUPA deadline controls access to the trial court's jurisdiction over LUPA appeals . . . and, thus, cannot be equitably tolled." *Nickum*, 153 Wn. App. at 381. We explained:

⁷ The copy of the hearing examiner's decision attached to Lauer's request for reconsideration is stamped (presumably by Lauer's attorney's office) "RECEIVED DEC. 14, 2007." Clerk's Papers at 13.

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RCW 36.70C.040(2) clearly states that “[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.” Although the statute does not use the word “jurisdiction,” the legislature’s use of the phrases “is barred” and “may not grant review” demonstrate the legislature’s intent to prevent a court from considering untimely filings.

Nickum, 153 Wn. App. at 381 (alteration in original). See also *Keep Watson Cutoff Rural v. Kittitas County*, 145 Wn. App. 31, 37-38, 184 P.3d 1278 (2008) (LUPA filing deadlines and service on the proper parties are “jurisdictional requirements”), *review denied*, 165 Wn.2d 1013 (2009). Noting that numerous opinions have confirmed that the 21 day LUPA deadline is “absolute,” we concluded that LUPA’s time-of-filing requirements control access to the superior court’s substantive review of any LUPA decision, thus the failure to timely file an appeal prevents court access for such review, and further a party’s arguments “urging equitable tolling cannot be considered.” *Nickum*, 153 Wn. App. at 382. Consistent with *Nickum*, we hold that equitable tolling is not available in this case.

Lauer also counters in her supplemental briefing that *Mellish* is not dispositive because the Garrisons failed to raise an appropriate timeliness issue at the initial hearing in the superior court as RCW 36.70C.080 requires. We agree.

The statute provides that listed defenses including “untimely filing or service of the petition” are “waived” if not raised by a timely motion at an initial hearing on jurisdictional and preliminary matters following the filing of a LUPA appeal. RCW 36.70C.080(3). Here, the Garrisons filed a motion to dismiss Lauer’s LUPA petition, citing RCW 36.70C.080 and asserting in part that the petition was untimely. Additionally, they cite to RCW 36.70C.040(1) stating, “LUPA proceedings are ‘barred’ if the Petitioners fail to timely file a petition before this Court.” Clerk’s Papers at 42. The focus of the Garrisons’ timeliness argument, however, was

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not the filing date of the petition itself. Not having the benefit of *Mellish*,⁸ the Garrisons presented a timeliness argument, based on their contention that Lauer failed to exhaust all administrative remedies and, thus, lacked standing to pursue her LUPA appeal. That is, the Garrisons argued that Lauer failed to challenge the Garrisons' 2004 building permit application or the County's issuance of the Garrisons' 2004 building permit in 2004. Thus, Lauer was barred from arguing in the present matter (i.e., the LUPA appeal of the hearing examiner's 2007 decision granting the Garrisons a fish and wildlife variance) and that the Garrisons' 2004 building permit application was not complete and did not operate to vest their rights in regulations existing in 2004. In other words, the Garrisons argued that Lauer's collateral attack on the 2004 permit was untimely. But this was insufficient to preserve the issue of timeliness regarding the 21 day filing period for appeal of the hearing examiner's 2007 decision approving the Garrisons' fish and wildlife variance. As RCW 36.70C.080(3) requires, any timeliness challenge to a LUPA petition is waived if not raised at the initial hearing following the filing of the LUPA petition. Accordingly, we hold that the Garrisons waived their timeliness challenge to Lauer's LUPA petition by not asserting that specific timeliness challenge at the initial hearing.

III. MERITS

In reaching the merits of Lauer's and the Garrisons' claims, we determine that one issue is dispositive: whether the Garrisons' 2004 building permit application was complete by operation of law. We hold that it was.

⁸ The *Mellish* court acknowledged that before its decision, reasonable practitioners and litigants may have concluded that filing a reconsideration motion gave them more time to file a LUPA appeal. See 154 Wn. App. at 407.

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A. "Completeness" of the 2004 Permit Application

The issue before the hearing examiner was whether the Garrisons' 2007 application for a fish and wildlife variance should be granted. Essential to that decision was a determination regarding which regulations or criteria applied to the 2007 variance application. At the hearing on the variance application, Lauer's attorney contended that the Garrisons' 2004 building permit application contained misrepresentations and, as a result, it was incomplete and the Garrisons' building project was not vested based on the regulations in place in 2004. Accordingly, Lauer argued that the more stringent regulations that were in place in 2007, when the Garrisons filed their variance application, should be applied.

The hearing examiner rejected Lauer's argument, applied the 2004 regulations, and granted the variance with conditions. The hearing examiner's finding on the issue of stream depiction and the allegations that the Garrisons misled the County stated:

Neighboring property owners argued that the Vested Rights Doctrine should not apply in this case because the applicants have unclean hands. It is undisputed that the applicants submitted a building permit application in 2004. It did not acknowledge that a stream existed on the property and that there were associated buffers. This does not mean that they come to this hearing with unclean hands. The variance application would have applied standards in effect at the time of the building permit application whether or not a stream was notated [on] the building permit application or not.

Administrative Record (AR) at 36.

The record suggests an honest variety of viewpoints in 2004 about how the drainage

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course on the Garrisons' property was to be characterized.⁹ Reflecting that state of affairs, the site plan that the Garrisons submitted with the building permit application in 2004 does depict the drainage course traveling through the property and leading to a culvert, clearly labeled on the site plan, in the bulkhead/sea wall near the shoreline. Although the site plan does not expressly label the watercourse as a stream, the depiction of the contoured topography nevertheless shows the path of the watercourse leading to the bayside culvert.

Moreover, the record reflects that the County was aware of the drainage course's existence in 2004, as evidenced by the series of letters from the County to the Garrisons in 2003 regarding the Garrisons' efforts to revegetate the "drainage course." AR at 176. The County's

⁹ The administrative record in the present matter contains a report by the County's Department of Planning and Land Services staff. Attached to that report is the hearing examiner's decision in a prior appeal in which the Garrisons challenged the County's October 2004 stop work order. The report's summary notes in part:

This parcel has a drainage course located in the southwestern portion of the site. This drainage course discharges onto this parcel from the west through a culvert. The drainage course located on the parcels to the west was legally placed into an underground culvert system back in the early 1980s when the property was short platted On October 2, 2004, Pierce County Resource Management issued a Correction Notice/Cease and Desist Order and Stop Work Order and suspended Building Permit #383860 for building within a 35-foot stream buffer. The owners appealed this Correction Notice/Cease and Desist Order (AA9-04), and contended that the subject watercourse should not have been on their parcel at all and should have been tightlined to Henderson Bay by the conditions of the previously approved adjacent short plat. The Pierce County Hearings Examiner denied the Administrative Appeal on February 4, 2005 and a Request for Reconsideration was also denied on March 18, 2005.

Therefore, the applicant has now applied for a fish and wildlife variance to allow the existing single-family residential foundation to remain within the 35-foot buffer and to construct a pervious path in accordance with Pierce County Code Title 18E, effective February 2, 1992, under which the building application was vested. The applicant intends to construct a pervious path for purposes of private access to the shoreline. A portion of the path lies within the habitat buffer area. Under the new Critical Areas Regulations Title 18E, known as "Directions" (Effective March 1, 2005) a 65-foot buffer would be required.

AR at 44.

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environmental biologist, Scott Sissons, who testified at the hearing, visited the site before the Garrisons submitted the 2004 building permit application. Thus, the record shows that the County was familiar with the site and knew about the drainage course depicted on the site plan when the Garrisons submitted their 2004 building permit application. That the County then granted the permit shows that it accepted the application as complete, with the water course channel as depicted. Thus, based on the record, substantial evidence supports the hearing examiner's determination and he did not err in concluding that the Garrisons' 2004 permit application was complete and that they did not knowingly misrepresent salient features of the site and affirmatively mislead the County.

B. Vesting Following Completeness as a Matter of Law.

Furthermore, RCW 36.70B.070(4)(a) addresses completeness of permit applications, which, in turn, determines the vesting of applicable regulations. As our Supreme Court has explained:

Under [the vested rights] doctrine, developers who file a timely and complete building permit application obtain a vested right to have their application processed according to the zoning and building ordinances in effect at the time of the application. The Washington doctrine protects developers who file a building permit application that (1) is sufficiently complete, (2) complies with existing zoning ordinances and building codes, and (3) is filed during the effective period of the zoning ordinances under which the developer seeks to develop.

West Main Assocs. v. City of Bellevue, 106 Wn.2d 47, 50-51, 720 P.2d 782 (1986).

The common law vested rights doctrine is codified at RCW 19.27.095.¹⁰ This statute “establishes the ‘date certain’ standard for vesting[, which is] the filing date of a [complete] building permit application.” *Abbey Rd. Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 260, 218 P.3d 180 (2009). The statute also “leaves to the local authority the determination of when a building permit application is ‘fully complete[.]’” *Abbey Rd. Group*, 167 Wn.2d at 258 (alteration in original) (quoting RCW 19.27.095(2)).

As for the “completeness” determination, RCW 36.70B.070 additionally provides in pertinent part:

(1) Within twenty-eight days after receiving a project permit application,^[11] a local government . . . shall mail or provide in person a written determination to the applicant, stating either:

(a) That the application is complete; or

(b) That the application is incomplete and what is necessary to make the application complete.

....

2) A project permit application is complete for purposes of this section when it meets the procedural submission requirements of the local government and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the local government from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

¹⁰ RCW 19.27.095 provides in relevant part:

(1) A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

(2) The requirements for a fully completed application shall be defined by local ordinance.

¹¹ “[P]roject permit application’ means any land use or environmental permit or license required from a local government for a project action, including . . . building permits.” RCW 36.70B.020(4).

.....
(4)(a) An application shall be deemed complete under this section if the local government does not provide a written determination to the applicant that the application is incomplete as provided in subsection (1)(b) of this section.
.....

Only one published decision addresses RCW 36.70B.070(4)(a). In *Schultz v. Snohomish County*, 101 Wn. App. 693, 701, 5 P.3d 767 (2000), Division One rejected the argument that a local government's failure to respond to an applicant within the time period noted in subsection (1) results in automatic approval of the application. "RCW 36.70B.070(4)(a) . . . directs only that an application 'shall be deemed complete' if the government does not provide a written response to the applicant within the relevant time period." *Schultz*, 101 Wn. App. at 701. *Schultz* reiterates the statute's plain language that where a local government in receipt of a building permit application does not provide written notice to the applicant within 28 days that the application is incomplete, the application is deemed complete as a matter of law. Here, there is no indication in the record that the County ever provided such notice to the Garrisons. To the contrary, the County granted their building permit. Accordingly, as a matter of law, the Garrisons' 2004 building permit application was complete in 2004 and vested their rights to application of regulations in effect at that time.

We hold that the Garrisons' 2004 building permit application was complete as a matter of law under RCW 36.70B.070(4)(a), that substantial evidence supports the hearing examiner's decision, and that the decision was not erroneous as a matter of law; thus, the Garrisons are

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entitled to the fish and wildlife variance, enabling them to proceed with construction of their home.¹² The hearing examiner's opinion is affirmed and reinstated.

Van Deren, J.
VAN DEREN, J.

We concur:

Bridgewater, J.
BRIDGEWATER, J.

Hunt, J.
HUNT, J.

¹² Because this holding is dispositive, we need not reach other issues such as the Garrisons' assertion that Lauer lacked standing to pursue a LUPA appeal or that Lauer was estopped from challenging the Garrisons' vested rights.

APPENDIX B

PLANTING REPORT AND SITE PLAN

AR 258-260

Attn: Scott Sissons
Pierce County Planning & Land Services
2401 S 35th St
Tacoma Wa 98409-7460

Re: Voluntary Revegetation
Application # 362291

Dear Mr. Sissons

We regret that we were unable to deliver this report last week. We has substantial problems to deal with due to the storm runoff from the record setting rainfall.

We have planted the native plants. We previously provided invoice copies with our letter mailed 8/7/03. There were more than 80 plants. A few of the plants that were close to the drainage flow were destroyed and we plan to replace them *voluntarily* next spring.

The short fall weather hindered bamboo removal but we have made substantial progress on it. We continue to remove bamboo as weather permits.

We are enclosing pictures as requested.

Sincerely,



Mike Garrison

PIERCE COUNTY

NOV 01 2003

PIERCE COUNTY

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Native Plants for Voluntary Revegetation Plan
Application 362291 - Mike & Shima Garrison

Plant Code for sketch	Plant Name	Number Planted
1	Mock Orange	10
2	Salal	15
3	Kinnikinnick	25
4	Fescue	18
5	Nootka Rose	10
6	Pacific Rhododendrom	<u>4</u>
	Total Plants	82

Plants circled on sketch indicates plants destroyed by drainage from record rainfall. We plan to voluntarily replace them next spring.

NOV 0 1 2003

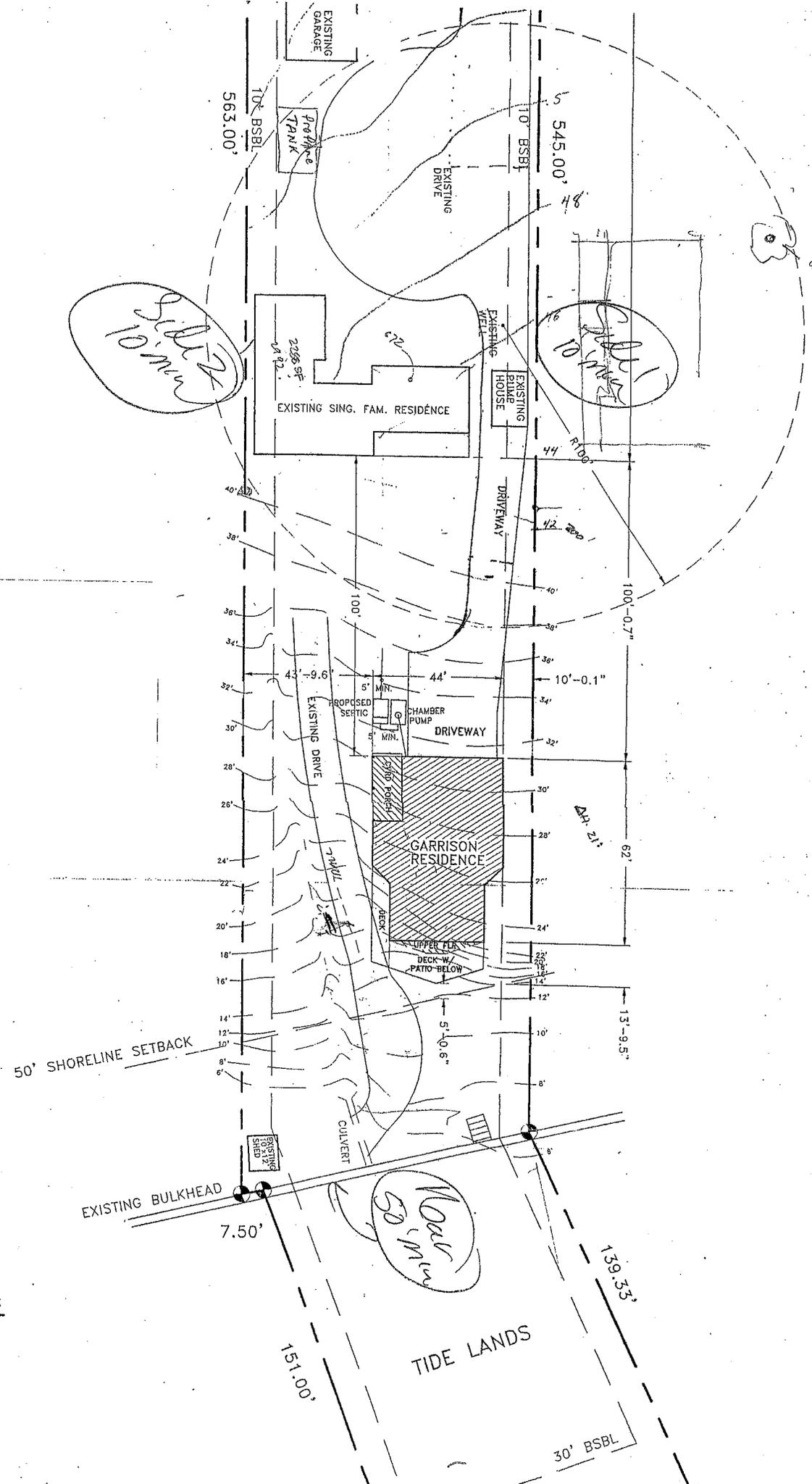
PIERCE COUNTY

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APPENDIX C

SITE PLAN – BUILDING PERMIT 383860

AR 263



303060 SITE RUN
 ← NORTH

MR 21

APPENDIX D

FORMER CHAPTER 15.04 PCC – UNIFORM BUILDING CODE
AR 215-220

*Chapter 15.04***UNIFORM BUILDING CODE****Sections:**

- 15.04.010** Adoption of Uniform Building Code.
- 15.04.020** Conflicts With Other Codes.
- 15.04.040** Violations and Penalties.
- 15.04.050** Building and Fire Codes Board of Appeals.
- 15.04.060** Work Exempt from Permit.
- 15.04.070** Denial or Conditioning of Permit Due to Significant Adverse Environmental Impact(s).
- 15.04.080** Non-issuance of Permit Prior to Sewage Disposal Approval.
- 15.04.090** Non-issuance of Permit Prior to Storm or Surface Water Drainage Control Approval.
- 15.04.100** Non-issuance of Permit Due to Noncompliance With State and County Laws or Regulations.
- 15.04.110** Expiration of Permit.
- 15.04.120** Building Permit Fees.
- 15.04.130** Plan Review Fees.
- 15.04.140** Fire Suppression and Alarm Permits and Inspection Fees.
- 15.04.160** Expiration of an Application for Building Permit.
- 15.04.170** Section 108.5.5 Lath or Gypsum Board Inspection.
- 15.04.180** Fire Alarm Systems.
- 15.04.190** Maximum Height of Buildings.
- 15.04.200** Premises Identification.
- 15.04.210** Automatic Fire-Extinguishing Systems.
- 15.04.220** Stair Rise and Run.
- 15.04.230** Moved Buildings.
- 15.04.240** Appendix Chapter 4, Special Use and Occupancy.
- 15.04.250** Appendix Chapter 15, Re-roofing, Inspections.

15.04.010 Adoption of Uniform Building Code.

The edition of the Uniform Building Code currently, or hereafter, adopted and amended by the State Building Code Council and included in Chapter 51-30 Washington Administrative Code, including Appendix Chapter 3 Divisions I and II, Appendix Chapter 4 Divisions I and II, Appendix Chapter 15 and Appendix Chapter 31 Divisions II and III, is adopted as the Building Code for the unincorporated areas of Pierce County. Provided, that the following amendments to the Uniform Building Code shall govern over the published provisions of the building Code. The effective date of subsequent editions of the Uniform Building Code in Pierce County shall coincide with the effective date of their adoption and amendment by the State Building Code Council. Public informational notice and meetings shall be conducted by the Building Official to notify the building industry community sixty (60) days prior to any impending Code changes. (Ord. 95-88 § 2 (part), 1995)

15.04.020 Conflicts With Other Codes.

In case of conflict among the Codes enumerated below, the first named Code shall govern over those following:

- A. Uniform Building Code and Uniform Building Code Standards;
- B. Uniform Mechanical Code;
- C. Uniform Fire Code and Uniform Fire Code Standards;
- D. Uniform Plumbing Code and Uniform Plumbing Code Standards.

(Ord. 95-88 § 2 (part), 1995)

15.04.040 Violations and Penalties.

Section 103 of the Uniform Building Code is deleted. (Ord. 95-88 § 2 (part), 1995)

15.04.050 Building and Fire Codes Board of Appeals.

Section 105 of the Uniform Building Code is deleted. (Ord. 95-88 § 2 (part), 1995)

15.04.060 Work Exempt From Permit.

Section 106.2 is amended by adding items 12, 13, 14 and 15 as follows:

12. The re-roofing of Group R, Division 3 One and Two-Family Dwellings and Group U, Division 1, private garages having a roof slope greater than 2" in 12", when the total load of all roof coverings does not exceed 7.5 pounds per square foot.

This exemption does not apply to the replacement of roof sheathing.

13. The re-siding of Group R, Division 3 One and Two-Family Dwellings and Group U, Division 1, private garages.

This exemption does not apply to the replacement of wall sheathing nor to the replacement of the weather-resistant barrier described in UBC Section 1402.1.

14. The installation or relocation of framed-covered structures or tent structures as defined in Appendix 31 Division II, are exempt from permit provided that:

1. Structure used only for protection or propagation of plants.
2. The structure is located so that it is 60' to property lines and other types of buildings. (grouping of greenhouses is permitted as long as the group has 60' to property lines and other buildings.)
3. Coverings shall be plastic less than 20 mills in thickness.

15. Minor construction and alteration activities to Group R, Division 3 and Group U, Division 1, as classified by the building official, PROVIDED:

1. That the construction and/or alteration activity does not affect any structural components, or reduce existing egress, light, air, energy and ventilation conditions.
2. That the construction and/or alteration activity does not exceed 500 square feet for Group R, Division 3 and 1,000 square feet for Group U, Division 1, in any 12 month period.
3. This exemption does not include electrical, plumbing or mechanical activities.
4. The permit exemption shall not otherwise exempt the construction or alteration from complying with the substantive standards of the codes enumerated in RCW 19.27.031, as amended and maintained by the State Building Code Council under RCW 19.27.074.
5. Unless otherwise exempted, separate plumbing, mechanical, and electrical permits will be required for the above exempted work.

Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of Pierce County.
(Ord. 95-113 § 1 (part), 1995; Ord. 95-88 § 2 (part), 1995)

15.04.070 Denial or Conditioning of Permit Due to Significant Adverse Environmental Impact(s).

Section 106.4.1.1 is added to the Code and shall state as follows:

The Building Official may deny or condition the issuance of any building permit for any project which will cause significant adverse environmental impact or impacts identified in any applicable environmental impact statement prepared pursuant to the State Environmental Policy Act. Any denial or conditional issuance of a building permit by the Building Official must be in writing. The denial or conditional issuance of a building permit shall be based upon policy(ies) set forth in ordinances adopted by the Pierce County Council.
(Ord. 95-113 § 1 (part), 1995; Ord. 95-88 § 2 (part), 1995)

15.04.080 Non-issuance of Permit Prior to Sewage Disposal Approval.

Section 106.4.1.2 is added to the Uniform Building Code and shall state as follows:

No building permit for the construction or alteration of any building requiring sewage disposal facilities of any kind shall be issued to any applicant until approved by the Tacoma-Pierce County Health Department and/or Pierce County Utilities Department. A copy of such approval shall be transmitted to the Building Official prior to the issuance of a building permit.
(Ord. 95-88 § 2 (part), 1995)

15.04.090 Non-issuance of Permit Prior to Storm or Surface Water Drainage Control Approval.

Section 106.4.1.3 is added to the Uniform Building Code and shall state as follows:

No building permits for the new construction of any building requiring storm or surface water drainage control facilities of any kind as noted on an approved subdivision, short subdivision or large lot division with drainage plan on file with the Pierce County Public Works Department shall be issued to any applicant until approved by the Pierce County Public Works Department. A copy of such approval shall be transmitted to the Building Official prior to the issuance of a building permit.
(Ord. 95-88 § 2 (part), 1995)

15.04.100 Non-issuance of Permit Due to Noncompliance With State and County Laws or Regulations.

Section 106.4.1.4 is added to the Uniform Building Code and shall state as follows:

No building permit shall be issued to any person who fails to provide sufficient evidence of compliance with all laws and regulations of the State of Washington and Pierce County relating to the use of land and/or the construction or improvement of structures thereon.
(Ord. 95-88 § 2 (part), 1995)

15.04.110 Expiration of Permit.

Section 106.4.4 of the Uniform Building Code is amended to state as follows:

Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not inspected within 180 days from the date of such permit, or within 180 days since the last inspection. All inspections must clearly be able to confirm progress on the construction has occurred since the date of the permit or previous inspection. It shall be the duty of the permittee to request inspections in a timely manner to prevent expiration.

Before such work can be recommenced, a new permit shall be first obtained to do so, and the fees therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that the time since the last inspection shall not exceed one year. In order to renew action on an expired permit after one year, the permittee shall make a new application and pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this Section. Upon written request, by the applicant made prior to expiration, the building official may extend the time for action for a period not exceeding 180 days. No permit shall be extended more than once. In order to grant an extension the building official must find: The delay in beginning construction was not the result of action or inaction by the applicant or his agent but was due to circumstances beyond his control.

EXCEPTION:

1. Projects with more than one building electing to phase the construction of those buildings, may be granted additional extensions provided that at least 30% of the buildings in the project be under construction at all times. The applicant shall request the extension in writing, showing steady and/or substantial progress on a minimum of 30% of the project has occurred since the date of the permit or previous extension. No permit shall be extended beyond five years from the date of issue.
2. Permits issued prior to June 30, 1994 shall be allowed one extension of an expired permit based on showing receipts for materials used in the construction. Receipts must be dated and be able to show that at least five hundred dollars have been spent in each six month period since the date of the permit or last inspection. After this one extension the applicant shall follow the requirement for an inspection to show progress as noted in this Section.

(Ord. 95-88 § 2 (part), 1995)

15.04.120 Building Permit Fees.

Section 107.2 of the Uniform Building Code is amended to state as follows:

The fee for each permit shall be as set forth in PCC 15.01.070 Tables 1-A, 1-B, 1-F and 1-G.

(Ord. 97-115S § 2 (part), 1997; Ord. 95-113 § 1 (part), 1995; Ord. 95-88 § 2 (part), 1995)

15.04.130 Plan Review Fees.

Section 107.3 of the Uniform Building Code is amended by adding the following Section as follows:

The plan review fee for each permit shall be as set forth in PCC 15.01.070 Tables 1-C and 1-G.

(Ord. 97-115S § 2 (part), 1997; Ord. 95-88 § 2 (part), 1995)

15.04.140 Fire Suppression and Alarm Permits and Inspection Fees.

Section 107.3 of the Uniform Building Code is amended to add subsection .1 which shall state as follows:

Fire suppression systems and fire alarms as required by the Uniform Building Code shall require permits, plan review fees and the payment of inspection fees in accordance with PCC 15.01.070 Table 1-F.

(Ord. 97-115S § 2 (part), 1997; Ord. 95-113 § 1 (part), 1995; Ord. 95-88 § 2 (part), 1995)

15.04.160 Expiration of an Application for Building Permit.

Section 107.4 of the Uniform Building Code is replaced with the following:

Expiration of an Application for Building Permit. Complete building permit applications for which no permit is issued within 365 days following the date of application shall expire, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on written request by the applicant made prior to expiration showing that circumstances beyond the control of the applicant have prevented action from being taken. In order to grant an extension the building official must find:

1. The delay in processing and/or reviewing the application was not the result of action or inaction by the applicant or his agent; and either
 - A. The delay in processing and/or reviewing the application was the result of an extended department review; or
 - B. The delay in processing and/or reviewing the application was the result of a required public hearing and/or an appeal hearing deriving from same.

No application shall be extended more than once.

Fully Completed Building Permit Application: A fully completed building permit application shall be any application including payment of all required fees containing all the components that are applicable in Table 1-A-9 and those items set forth in RCW 19.27.095. Incomplete applications shall not be accepted.

TABLE 1-A-9 Elements for a Complete Building Permit Application	
Description	Comments
Site Development Permit:	When the project requires a Site Development Permit, it shall be applied for prior to or with the building permit application.
Geotechnical Report/ Assessment:	A Geotechnical Report/Assessment is required when a project is located in a slope hazard area.
Hydrogeologic Report:	A Hydrogeologic Report is required when a project is located in an aquifer recharge area.
Critical Area Checklist:	A title notification is required when a project is located in an aquifer recharge area.
Land-Use Application:	Any land-use permits required to approve the building permit application shall be applied for prior to or with the building permit application. Re-zone applications must be final prior to the building permit application being accepted as a complete application.
Environmental Checklist:	A completed checklist is required if the project is located in a sensitive area.
Wetlands Application:	A Wetlands Application is required if the project is located in a wetland area.
Septic Application Approval:	Buildings served by on-site sewage systems require Approved As-Built plans or an application for an on-site system or system remodel submitted with building permit application.
Water Availability:	A water availability letter signed by the water purveyor shall be provided at time of building permit application. Water source, quantity and quality review. RCW 19.27.097
Health Sanitation Review:	Schools, pools, restaurants and camps require review by Tacoma Pierce County Health Department. Application for this review shall be made prior to or with the building permit application.
Sewer service:	If building is to be served by sewer, proof of sewer availability must be provided with building permit application.
Pretreatment:	A pretreatment application shall be applied for with or prior to building permit application when pretreatment is required.
Fire-Flow Letter:	Provide form signed by water purveyor indicating hydrant placement (location on vicinity map) and water flow in GPM.
Construction Drawings:	Plans shall include specifications, code analysis and statement of use, engineering calculations, diagrams, soil investigation reports, hazardous materials inventory statement (HMIS), special inspection and structural observation programs, deferred submittal information and architect/engineer stamp. Base plan work sheet. Mechanical Drawings, Plumbing Drawings, Fire Protection Drawings and Energy Code compliance information shall also be included with the construction drawings.
Site Plan:	Site plans shall include, but not be limited to, the following: a vicinity map, all buildings on the same site, access drives, Emergency Vehicle Access, landscaping, on-site septic drain field location, parking, dimension all set backs from buildings and lot lines, hydrant location and grading contours if lot slope is 15% or greater.

(Ord. 95-113 § 1 (part), 1995; Ord. 95-88 § 2 (part), 1995)

APPENDIX E

EXCERPT 1997 UNIFORM BUILDING CODE

1997 UNIFORM BUILDING CODE™

VOLUME 1



LIBRARY
Gordon, Thomas, Honeywell,
Malanca, Peterson & Daheim
2200 First Interstate Plaza
Tacoma, WA 98402

1997

**UNIFORM
BUILDING
CODE™**

VOLUME 1

**ADMINISTRATIVE, FIRE- AND LIFE-SAFETY,
AND FIELD INSPECTION PROVISIONS**



104.2.5 Occupancy violations. Whenever any building or structure or equipment therein regulated by this code is being used contrary to the provisions of this code, the building official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the building official after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this code.

104.2.6 Liability. The building official charged with the enforcement of this code, acting in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the building official or employee because of such act or omission performed by the building official or employee in the enforcement of any provision of such codes or other pertinent laws or ordinances implemented through the enforcement of this code or enforced by the code enforcement agency shall be defended by this jurisdiction until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by this jurisdiction.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or its parent jurisdiction be held as assuming any such liability by reason of the inspections authorized by this code or any permits or certificates issued under this code.

104.2.7 Modifications. When there are practical difficulties involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official shall first find that a special individual reason makes the strict letter of this code impractical and that the modification is in conformance with the intent and purpose of this code and that such modification does not lessen any fire-protection requirements or any degree of structural integrity. The details of any action granting modifications shall be recorded and entered in the files of the code enforcement agency.

104.2.8 Alternate materials, alternate design and methods of construction. The provisions of this code are not intended to prevent the use of any material, alternate design or method of construction not specifically prescribed by this code, provided any alternate has been approved and its use authorized by the building official.

The building official may approve any such alternate, provided the building official finds that the proposed design is satisfactory and complies with the provisions of this code and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

The building official shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any action granting approval of an alternate shall be recorded and entered in the files of the code enforcement agency.

104.2.9 Tests. Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that any material or construction does not conform to the requirements of this code, the building official may require tests as proof of compliance to be made at no expense to this jurisdiction.

Test methods shall be as specified by this code or by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures.

All tests shall be made by an approved agency. Reports of such tests shall be retained by the building official for the period required for the retention of public records.

104.2.10 Cooperation of other officials and officers. The building official may request, and shall receive, the assistance and cooperation of other officials of this jurisdiction so far as is required in the discharge of the duties required by this code or other pertinent law or ordinance.

SECTION 105 — BOARD OF APPEALS

105.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass on matters pertaining to building construction and who are not employees of the jurisdiction. The building official shall be an ex officio member of and shall act as secretary to said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

105.2 Limitations of Authority. The board of appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.

SECTION 106 — PERMITS

106.1 Permits Required. Except as specified in Section 106.2, no building or structure regulated by this code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a separate permit for each building or structure has first been obtained from the building official.

106.2 Work Exempt from Permit. A building permit shall not be required for the following:

1. One-story detached accessory buildings used as tool and storage sheds, playhouses, and similar uses, provided the floor area does not exceed 120 square feet (11.15 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) high.
5. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.
6. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18 927 L) and the ratio of height to diameter or width does not exceed 2:1.
7. Platforms, walks and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below.
8. Painting, papering and similar finish work.

9. Temporary motion picture, television and theater stage sets and scenery.

10. Window awnings supported by an exterior wall of Group R, Division 3, and Group U Occupancies when projecting not more than 54 inches (1372 mm).

11. Prefabricated swimming pools accessory to a Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed 5,000 gallons (18 927 L).

Unless otherwise exempted, separate plumbing, electrical and mechanical permits will be required for the above-exempted items.

Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

106.3 Application for Permit.

106.3.1 Application. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the code enforcement agency for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use or occupancy for which the proposed work is intended.
4. Be accompanied by plans, diagrams, computations and specifications and other data as required in Section 106.3.2.
5. State the valuation of any new building or structure or any addition, remodeling or alteration to an existing building.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as may be required by the building official.

106.3.2 Submittal documents. Plans, specifications, engineering calculations, diagrams, soil investigation reports, special inspection and structural observation programs and other data shall constitute the submittal documents and shall be submitted in one or more sets with each application for a permit. When such plans are not prepared by an architect or engineer, the building official may require the applicant submitting such plans or other data to demonstrate that state law does not require that the plans be prepared by a licensed architect or engineer. The building official may require plans, computations and specifications to be prepared and designed by an engineer or architect licensed by the state to practice as such even if not required by state law.

EXCEPTION: The building official may waive the submission of plans, calculations, construction inspection requirements and other data if it is found that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this code.

106.3.3 Information on plans and specifications. Plans and specifications shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and all relevant laws, ordinances, rules and regulations.

Plans for buildings of other than Group R, Division 3 and Group U Occupancies shall indicate how required structural and fire-resistive integrity will be maintained where penetrations will be made for electrical, mechanical, plumbing and communication conduits, pipes and similar systems.

106.3.4 Architect or engineer of record.

106.3.4.1 General. When it is required that documents be prepared by an architect or engineer, the building official may require the owner to engage and designate on the building permit application an architect or engineer who shall act as the architect or engineer of record. If the circumstances require, the owner may designate a substitute architect or engineer of record who shall perform all of the duties required of the original architect or engineer of record. The building official shall be notified in writing by the owner if the architect or engineer of record is changed or is unable to continue to perform the duties.

The architect or engineer of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building.

106.3.4.2 Deferred submittals. For the purposes of this section, deferred submittals are defined as those portions of the design that are not submitted at the time of the application and that are to be submitted to the building official within a specified period.

Deferral of any submittal items shall have prior approval of the building official. The architect or engineer of record shall list the deferred submittals on the plans and shall submit the deferred submittal documents for review by the building official.

Submittal documents for deferred submittal items shall be submitted to the architect or engineer of record who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and that they have been found to be in general conformance with the design of the building. The deferred submittal items shall not be installed until their design and submittal documents have been approved by the building official.

106.3.5 Inspection and observation program. When special inspection is required by Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the building official for approval prior to issuance of the building permit. The inspection program shall designate the portions of the work that require special inspection and the name or names of the individuals or firms who are to perform the special inspections, and indicate the duties of the special inspectors.

The special inspector shall be employed by the owner, the engineer or architect of record, or an agent of the owner, but not the contractor or any other person responsible for the work.

When structural observation is required by Section 1702, the inspection program shall name the individuals or firms who are to perform structural observation and describe the stages of construction at which structural observation is to occur.

The inspection program shall include samples of inspection reports and provide time limits for submission of reports.

106.4 Permits Issuance.

106.4.1 Issuance. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances,

and that the fees specified in Section 107 have been paid, the building official shall issue a permit therefor to the applicant.

When the building official issues the permit where plans are required, the building official shall endorse in writing or stamp the plans and specifications APPROVED. Such approved plans and specifications shall not be changed, modified or altered without authorizations from the building official, and all work regulated by this code shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of a partial permit shall proceed without assurance that the permit for the entire building or structure will be granted.

106.4.2 Retention of plans. One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than 90 days from date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant, and said set shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

106.4.3 Validity of permit. The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based on plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this code or of any other ordinances of this jurisdiction.

106.4.4 Expiration. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

106.4.5 Suspension or revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error or on the basis of

incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this code.

SECTION 107 — FEES

107.1 General. Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by the jurisdiction.

107.2 Permit Fees. The fee for each permit shall be as set forth in Table 1-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

107.3 Plan Review Fees. When submittal documents are required by Section 106.3.2, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be 65 percent of the building permit fee as shown in Table 1-A.

The plan review fees specified in this section are separate fees from the permit fees specified in Section 107.2 and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 106.3.4.2, an additional plan review fee shall be charged at the rate shown in Table 1-A.

107.4 Expiration of Plan Review. Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

107.5 Investigation Fees: Work without a Permit.

107.5.1 Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

107.5.2 Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Table 1-A. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

107.6 Fee Refunds. The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a

APPENDIX F

COLOR PHOTOGRAPHS OF GARRISON SITE
AR 265, AR 267, AR 269, AR 270, AR 273

location of stream
location of claimed

Existing Gramson Residence

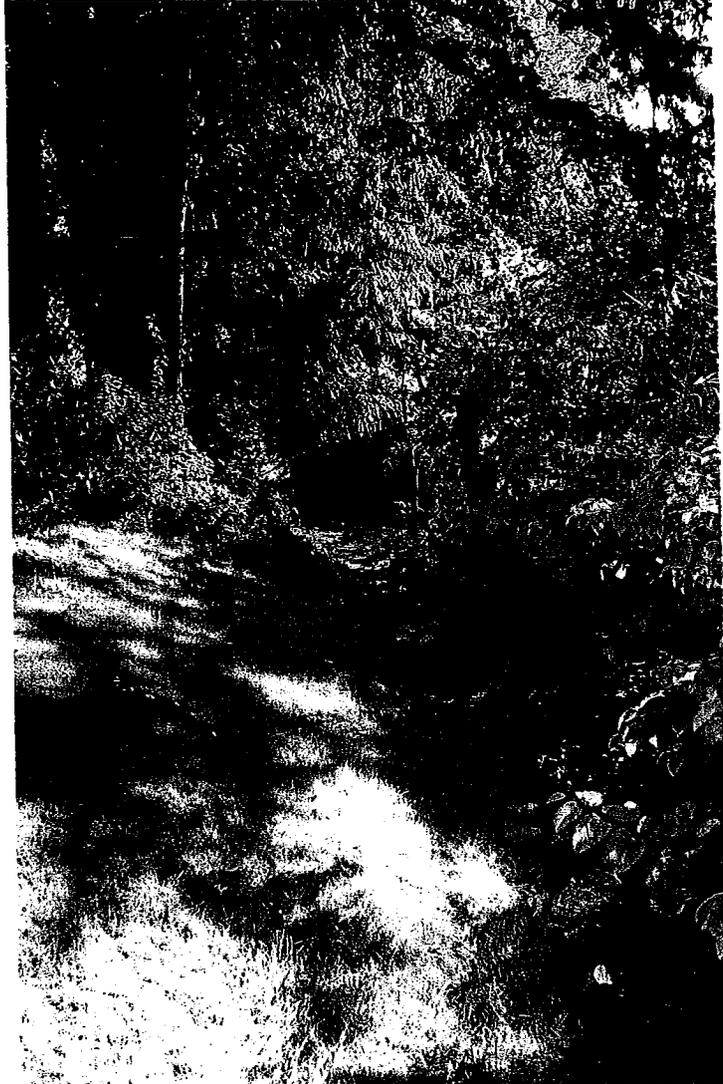
"existing
drive"

previously
identified
by Gramson
as "existing
trail"



Aerial photograph taken between
approximately 1987 and 1990

AR265
CP287

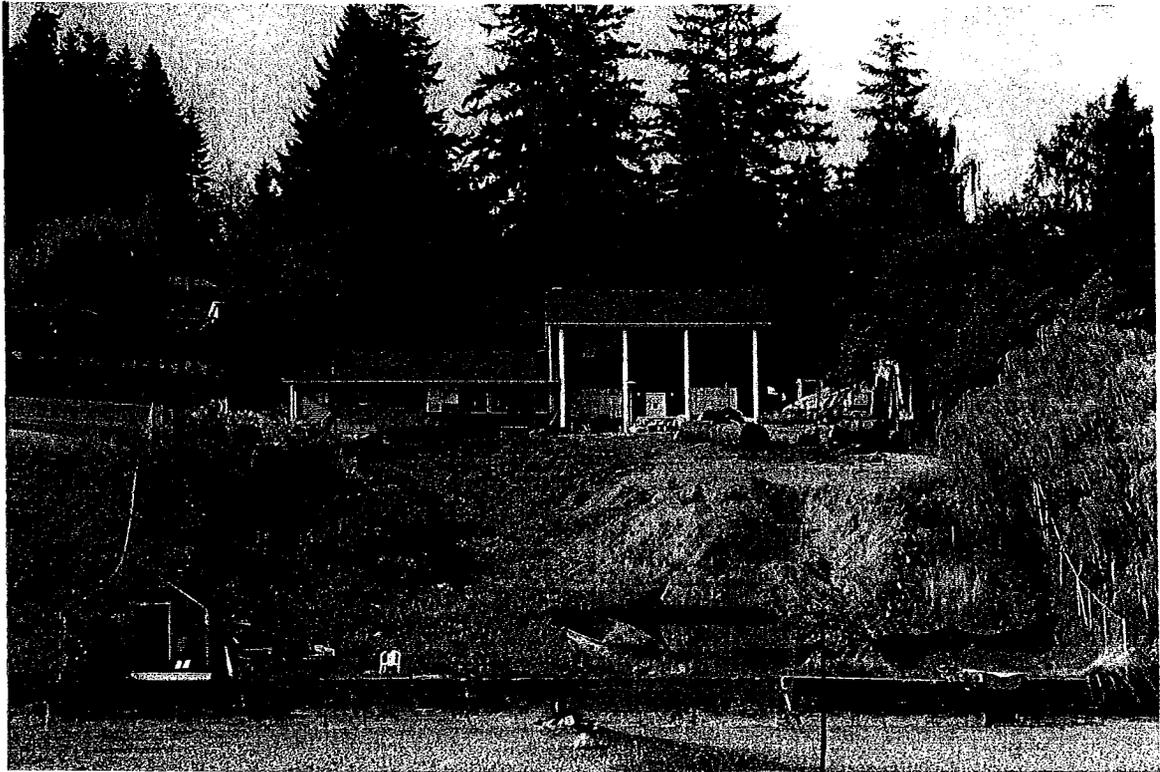


Existing footpath prior to removal
of trees.

AR 267
CP 291



footpath prior to tree removal
& excavation



location of stream
area & claimed
"existing drive."

Condition of site after removal of trees
& excavation for new residence.

AR 270
CP 297

Stream culvert before tree removal



AK073