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COURT OF APPEALS  
DIVISION II

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No. 37697-1-II

STATE OF WASHINGTON

BY  DEPUTY

COURT OF APPEALS,

DIVISION II

OF THE STATE OF WASHINGTON

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Michael Stanzel, Respondent

v.

Pierce County, a political subdivision, Appellant,

and

City of Puyallup, a municipal corporation, Appellant.

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BRIEF OF APPELLANT CITY OF PUYALLUP

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## **I. INTRODUCTION**

Michael Stanzel asked the City of Puyallup for a commercial water availability letter. The City asked Mr. Stanzel about his plans for his property. Mr. Stanzel told the City “it was really none of [the City’s] business, [he] just needed a commercial water availability letter.” Mr. Stanzel also failed to comply with the City’s application process for water service outside its city limits. The City did not issue a commercial water availability letter or provide commercial water service to Mr. Stanzel.

Mr. Stanzel asked the Pierce County Hearing Examiner to order the City to provide water to his property. The hearing examiner denied Mr. Stanzel’s request. The hearing examiner reasoned that he did not have authority to issue an order that compelled the City to provide water service to Mr. Stanzel’s property. The Pierce County Superior Court reversed the hearing examiner and ruled that the hearing examiner has the power to require the City of Puyallup to provide water service to Mr. Stanzel’s property.

## **II. ASSIGNMENTS OF ERROR**

### ***A. Assignments of Error***

1. The Pierce County Superior Court, in its order entered on October 26, 2007, erred by denying the City’s motion to dismiss Mr. Stanzel’s land use petition because he failed to exhaust his administrative

remedies, and thus lacked standing.

2. The Pierce County Superior Court, in its order entered on April 4, 2008, erred by:

(a) concluding that the land use decision of the hearing examiner was an erroneous interpretation of law, and failing to allow for such deference as is due the construction of applicable law by Pierce County and its hearing examiner;

(b) reversing the hearing examiner's decision when it ruled that the hearing examiner has the power to order the City of Puyallup to provide water service;

(c) entitling Mr. Stanzel to water service; and

(d) ruling that the hearing examiner has the power to determine the reasonableness of the conditions that the City may impose for providing water service to Mr. Stanzel.

***B. Issues Pertaining to Assignments of Error***

1. Did Mr. Stanzel fail to exhaust his administrative remedies, and thus, lack standing to bring an RCW 36.70C land use petition when he (a) failed to submit an application for water service that satisfied the form and content requirements of Puyallup's municipal code; (b) failed to engage in a pre-application conference pursuant to Puyallup's municipal code; (c) failed to pay an application fee as required by Puyallup's municipal code;

(d) failed to submit to a city council approval review; and (e) failed to seek review before Puyallup's hearing examiner? (Assignment of Error 1.)

2. Did Mr. Stanzel fail to establish that the land use decision of the hearing examiner, namely, that he did not have authority to order the City to provide water service, was an erroneous interpretation of law when, in the event of untimely or unreasonable service, (Pierce County Code) PCC 19D.140.090(H) allows a hearing examiner to adjust boundaries, and impose reasonable conditions pursuant to PCC 1.22.080 C, but nothing more? (Assignment of Error 2.)

### **III. STATEMENT OF THE CASE**

#### **A. Mr. Stanzel's Property and Business**

Respondent Michael Stanzel owns real property at 6224 114th Avenue Court East, in Pierce County, Washington. VT 31.<sup>1</sup> Mr. Stanzel refers to this property as the church property. VT 31. The church property contains a church building, paintball fields and a shed. VT 32.

Mr. Stanzel's recreation business has become a summertime only business. VT 69. The business starts out on weekends in February and opens in the springtime. VT 69, 70. To operate his business throughout

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<sup>1</sup> The Pierce County Superior Court Clerk sent the administrative verbatim reports of proceedings to the Court of Appeals under separate cover without page designations. CP 129. Thus, references herein to the June 20, 2007 administrative verbatim report of proceeding, which is entitled, "Verbatim Transcript of June 20, 2007 Hearing", will be abbreviated as "VT".

the year, rather than just seasonally, Mr. Stanzel wants to build a game room and install additional restrooms. VT 37, 70. The purpose of the game room would be to allow people to come indoors out of bad weather. VT 70. While inside the game room, patrons could use the facility to have a birthday party, and get something to eat, like a hamburger. VT 70. Mr. Stanzel believes that even during bad weather, patrons will ride his go-carts or play a round of putt-putt golf on his course for a while, and then come indoors, into his game room. VT 70. Mr. Stanzel envisions an indoor facility like Gameworks. VT 70.

Mr. Stanzel's church property receives residential water service. VT 37. Mr. Stanzel wants commercial water service so that the church can be renovated to meet code so that it can be used for church services. VT 37. Mr. Stanzel also wants commercial water service so that he can add the game room that he envisions, as well as additional restrooms. VT 37. He also wants commercial water service for any other buildings that he plans to build, but does not identify or describe these buildings. VT 37. In fact, he simply notes that "[he] also intends to construct additional buildings on the site." CP 6. In addition, Mr. Stanzel wants to install drain fields. VT 37.

According to Mr. Stanzel, Pierce County will require fire flow and fire hydrants for his proposed projects; and a water availability letter is a

pre-condition of getting a permit for a drain field. VT 37, 38.

A twelve-inch City of Puyallup water main is located in front of Mr. Stanzel's church property. In order to hook up the church property to the water main, Mr. Stanzel speculates that the City would only require Mr. Stanzel to change a water meter. VT 39.

**B. Mr. Stanzel Fails to Submit an Application for Service and Refuses to Describe His Proposed Development**

Despite his desire for commercial water service, Mr. Stanzel did not submit an application for water service that satisfied the form and content requirements of Puyallup's municipal code to the City. He also failed to engage in a pre-application conference, failed to pay an application fee, and failed to submit to a city council approval review. In fact, his requests for service were informal at best. They lacked any information about his proposed development projects, and Mr. Stanzel declined to provide any such information.

According to Mr. Stanzel, on June 25, 2004, he asked the Puyallup utilities department for a water availability letter so that he could get the church property up to code. VT 43. CAR 167.<sup>2</sup> Mr. Stanzel claims that Colleen Harris told him that the City was not providing water availability

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<sup>2</sup> The Pierce County Superior Court Clerk sent the administrative record to the Court of Appeals under separate cover without page designations. CP 129. Thus, references herein to the administrative record, which is entitled, "Certified Administrative Record", will be abbreviated as "CAR".

letters outside the city limits anymore. VT 43. According to Mr. Stanzel, Colleen Harris asked him what he was doing with the property, and Mr. Stanzel told her “it was really none of their business, [he] just needed a commercial Water Availability Letter”<sup>3</sup>. VT 43. Mr. Stanzel claims that Ms. Harris told him that if he changed the use of the property from residential to commercial, then they were going to turn the water off. VT 44.

Mr. Stanzel submitted a letter wherein he asked for a fire flow and/or water service availability letter to the Development Services Department of Puyallup on January 6, 2005. VT 45. CAR 166. According to Mr. Stanzel, the City responded by mailing a copy of the Puyallup Municipal Code to him. VT 46. Based on his review of the code, Mr. Stanzel concluded that the City was refusing service if there was not an annexation in the area in the first place, or an active annexation going on, and that he also had to sign an annexation agreement. VT 46. Mr. Stanzel is opposed to annexing his property into the City of Puyallup. VT 47.

### **C. Mr. Stanzel Fails to Timely Pursue Administrative**

#### **Remedies**

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<sup>3</sup> Mr. Stanzel provided the information about his property and business, set forth above, in his testimony before the hearing examiner on June 20, 2007, almost three years after his June 25, 2004 interaction with Ms. Harris.

Despite the City's alleged refusal to provide a water availability letter to Mr. Stanzel in June of 2004 and January of 2005, Mr. Stanzel never sought a hearing before the City of Puyallup hearing examiner. In fact, Mr. Stanzel delayed seeking any redress for either twenty-two or twenty-eight months, namely, until October 17, 2006. Strangely, rather than commencing his own action, Mr. Stanzel simply brought a motion for an order compelling the City of Puyallup to provide water service in a case before the Pierce County hearing examiner where he was not a party.

CAR 39. (The parties to the case were the City of Puyallup and Plexus Investments, LLC. CAR 39.) Pierce County and the City opposed Mr. Stanzel's motion on jurisdictional and other grounds. CAR 205-208 and 187.

Just as strangely, the Pierce County hearing examiner waived or excused Mr. Stanzel's procedural irregularities. CAR 8, 21. Specifically, the deputy hearing examiner concluded that the applicant did not go through the normal dispute resolution process because in a previous decision issued on January 12, 2006 in the Plexus Investments, LLC/Spice matter, the Hearing Examiner stated that properties located outside the City of Puyallup, yet in the City's exclusive water service provider area, could go directly to the examiner for resolutions of disputes. CAR 8, 21. The deputy hearing examiner's conclusion had a consequence, perhaps

unintended: It allowed Mr. Stanzel to bring a LUPA action when the period for timely filing of such an action would have expired months ago.

**D. The Hearing Examiner Declines to Order Puyallup to Provide Water Service**

The deputy Pierce County hearing examiner heard the merits of Mr. Stanzel's motion for an order compelling the City of Puyallup to provide water service on June 20, 2007. CAR 2, 15. After another hearing, the deputy hearing examiner issued his decision on July 30, 2007. CAR 1. Therein, the deputy hearing examiner denied Mr. Stanzel's request to compel the City of Puyallup to provide water service. CAR 10, 23. The deputy hearing examiner reasoned that he did not have authority to grant that specific relief. CAR 10, 23. However, the examiner allowed Mr. Stanzel to seek alternative sources of water and/or be removed from Puyallup's service area. CAR 10, 23.

**E. Mr. Stanzel Commences a Land Use Petition Action**

On August 17, 2007, Mr. Stanzel filed the land use petition action that underlies this appeal. CP 1. He asked the superior court to direct the Pierce County hearing examiner to require the City of Puyallup to provide him with water service and a water availability letter. CP 11.

**F. The Superior Court Denies Puyallup's Motion to Dismiss for Failure to Exhaust Administrative Remedies**

The City of Puyallup moved the superior court to dismiss Mr. Stanzel's land use petition because he failed to exhaust his administrative remedies, and thus lacked standing. CP 25-29. Specifically, the City contended that Mr. Stanzel failed to submit an application, failed to pay an application fee, failed to submit to a review and approval process before the City Council, and then failed to seek redress or remedy for any of his claims with the City's hearing examiner. CP 25-29.

On October 26, 2007, the Pierce County Superior Court denied the motion. CP 75, 76. RP-A 16.<sup>4</sup> The court ruled that because Puyallup's municipal code should be strictly construed, it only applied to new connections. RP-A 16. The court reasoned that Mr. Stanzel's property was already connected to the City's water supply, and thus, dismissal would require Mr. Stanzel to go through another process with the City. RP-A 16.

#### **G. The Superior Court Reverses the Hearing Examiner**

A hearing on Mr. Stanzel's petition occurred on April 4, 2008. The Pierce County Superior Court reversed the hearing examiner and ruled that the hearing examiner has the power to require the City of Puyallup to provide water service to Mr. Stanzel's property. CP 119. RP-

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<sup>4</sup> The verbatim report of proceedings is comprised of two transcripts. The first is from an October 26, 2008 hearing, and is abbreviated as "RP-A". The second transcript is from a February 21, 2008 hearing, and is abbreviated as "RP-B".

B 26. The court ruled that Mr. Stanzel is entitled to water service. CP 119. RP-B 25. The court also ruled that the hearing examiner has the power to determine the reasonableness of the conditions that the City may impose for service. CP 119. RP-B 26. The superior court remanded the matter to the hearing examiner for further proceedings. CP 119. RP-B 28.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

Under the Land Use Petition Act (LUPA), RCW 36.70C, the Court of Appeals stands in the shoes of the superior court and limits its review to the record before the hearing examiner. *Abbey Road Group, LLC v. City of Bonney Lake*, 141 Wash.App. 184, 192, 167 P.3d 1213 (2007). See *Milestone Homes, Inc. v. City of Bonney Lake*, 186 P.3d 357, 361 (2008) (noting that under LUPA, the Court of Appeals reviews the land use decision on the basis of the administrative record, not the superior court's record or decision.)

RCW 36.70C.130(b) presents a question of law that is reviewed de novo. *Milestone*, 186 P.3d at 361. *Abbey Road Group*, 141 Wash. App. at 193.

##### **B. The Superior Court Erred when it Denied the City's Motion to Dismiss for Failure to Exhaust Administrative Remedies**

In order to have standing to bring a land use petition under the

Land Use Petition Act (LUPA), the petitioner must exhaust his or her administrative remedies. RCW 36.70C.060(2)(d). *Samuel's Furniture, Inc. v. State, Dept. of Ecology*, 147 Wash.2d 440, 464, 54 P.3d 1194 (2002). *Chelan County v. Nykreim*, 146 Wash.2d 904, 938, 52 P.3d 1 (2002). *Post v. City of Tacoma, Dept. of Public Works, Bldg. & Land Use Services Div.*, 165 P.3d 37, 42 (2007). *Peste v. Mason County*, 133 Wash.App. 456, 467, 136 P.3d 140 (2006). *Harrington v. Spokane County*, 128 Wash.App. 202, 209, 210, 114 P.3d 1233 (2005). *West Coast, Inc. v. Snohomish County*, 104 Wash.App. 735, 742, 16 P.3d 30 (2000). This requirement applies to owners, applicants, and other aggrieved parties under RCW 36.70C.060. *Ward v. Board of County Com'rs, Skagit County*, 86 Wash.App. 266, 270, 936 P.2d 42 (1997).

The exhaustion of remedies doctrine is based on a number of legal policies: It avoids premature interruption of the administrative process, provides for full development of the facts, and allows the exercise of agency expertise. *Harrington*, 128 Wash.App. at 209, 210. The doctrine also protects the autonomy of administrative agencies by giving them the opportunity to correct their own errors. *Harrington*, 128 Wash.App. at 210. It discourages litigants from ignoring administrative procedures by resort to the courts. *Harrington*, 128 Wash.App. at 210.

Puyallup's administrative process for water and sewer connections

or extensions outside its city limits involves several steps. The first is an application.

**1. Mr. Stanzel Failed to Submit an Application with Required Form and Content to the City**

Puyallup's code required Mr. Stanzel to submit an application for water service. The application form and content requirements are:

- (1) Each applicant for service shall be required to sign, on a form provided by the city, an application which shall set forth:
  - (a) Date of application;
  - (b) Name and social security number of applicant;
  - (c) Location of premises to be served;
  - (d) Size and location of water service;
  - (e) Date applicant will be ready for service;
  - (f) Whether the premises have been heretofore supplied with water by the city or its predecessors;
  - (g) Purposes for which water service is to be used, including the number of dwelling units, if any, being served;
  - (h) Address to which bills are to be mailed or delivered;
  - (i) Whether the applicant is the owner or tenant of, or agent for the premises and if tenant, the name of the property owner;
  - (j) Such information as the city may reasonably require[.]

PMC 14.02.150.

To apply for commercial water service, Mr. Stanzel claims to have submitted a letter, dated June 25, 2004, to the City, and did submit a letter dated January 6, 2005 to the City. CAR 166, 167.<sup>5</sup> The June 25, 2004 letter does contain a date, Mr. Stanzel's name, the location of the premises

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<sup>5</sup> The June 25, 2004 letter (CAR 167) lacks a received stamp from Puyallup's Development Service, and is unsigned by Mr. Stanzel. The January 6, 2005 letter (CAR 166) contains a received stamp from Puyallup's Development Services, and is signed by Mr. Stanzel.

for which he wants service, and a statement that the property was currently being served by Puyallup's water utility. CAR 167. But, the letter otherwise fails to satisfy the form and content requirements of PMC 14.02.150. Specifically, the letter is not a form provided by the City, and it is unsigned. The letter lacks the social security number of Mr. Stanzel; the size and location of water service; the date Mr. Stanzel will be ready for water service; the purpose for which the water service is to be used, including the number of building units being served, if any; and the address to which bills are to be mailed or delivered. CAR 167.

Mr. Stanzel's January 6, 2005 letter has similar deficiencies. The letter is not a form provided by the City. CAR 166. The letter lacks the social security number of Mr. Stanzel; the size and location of water service; the purposes for which water service is to be used, including the number of dwelling units being served, if any; and the address to which bills are to be mailed or delivered. CAR 166.

Mr. Stanzel did not otherwise supply the information required by the application content provisions of PMC 14.02.150, especially information concerning the purposes for which the requested water service would be used. In fact, when Colleen Harris asked him what he was doing with his property, Mr. Stanzel told her "it was really none of their business, [he] just needed a commercial Water Availability Letter". VT

43.

**2. Mr. Stanzel Failed to Participate in a Pre-application Conference and Pay an Application Fee**

Puyallup's code required Mr. Stanzel to participate in a pre-application conference, and pay an application fee. PMC 14.22.011. The relevant text of PMC 14.22.011 is:

Prior to the acceptance of an application by the city, applicants shall participate in a pre-application conference for the purpose of establishing the application fee. The purpose of the application fee is to ensure the recovery of city costs and expenses associated with the review of the application and drafting or preparing any utility extension agreement, including but not limited to actual costs of city staff time and resources as well as any outside consultation expenses which the city reasonably determines are necessary to adequately review, prepare and analyze the application and any proposed extension agreement. The application fee shall be a minimum of \$2,500, with additional charges due depending upon estimated reasonable city costs and expenditures in review of the application. Disputes in the fee amount charged by the city shall be resolved by appeal to the hearing examiner. All applicants shall deposit the application fee with the city before the application will be processed. The application fee shall be applied towards actual expenses and costs of the city. Any unencumbered application fees in excess of \$2,500 shall be refunded to the applicant upon written request of the applicant within 60 days after granting or denial of the permit. . . .

PMC 14.22.011. The essential requirements of PMC 14.22.011 are as follows:

- a. An applicant must participate in a pre-application conference before his or her application will be accepted by the City.
- b. At the conference, the City and applicant must establish an application fee. The minimum application fee is \$2,500.

- c. The applicant must deposit the application fee with the City before his or her application will be processed.

Mr. Stanzel did not participate in pre-application conference. He and the City did not establish an application fee, and Mr. Stanzel did not pay an application fee to the City.

### **3. Mr. Stanzel Failed to Submit to a Review Before the City Council and Obtain its Approval**

Puyallup's code required Mr. Stanzel to submit to review before the City Council and obtain its approval for commercial water service.

PMC 14.22.010. The relevant text of PMC 14.22.010 is as follows:

It shall be the policy of the city of Puyallup that all applicants for the extension/connection of water or sewer service outside the corporate limits of the city of Puyallup shall be subject to review and require approval by the city council prior to the issuance of a permit for the extension/connection of water or sewer service . . . . The decision of the city council shall be a discretionary, legislative act. If approval is granted by the city council, it shall be in the form of [a] utility extension agreement approved by the city attorney.

PMC 14.22.010.

Mr. Stanzel did not present an application for commercial water service to the City Council for review; Nor has the Council approved or denied an extension or connection of water service to Mr. Stanzel's property.

### **4. Mr. Stanzel Failed to Seek a Hearing Before the City's**

### **Hearing Examiner**

The Council was the only entity that had authority to approve or deny an extension or connection of water service to Mr. Stanzel's property. PMC 14.22.010. If, however, a city official denied service, then Puyallup's code provided a remedy, namely, an appeal of the administrative denial to the City's hearing examiner. PMC 2.54.070(13). Under this code section, Puyallup's hearing examiner has express authority hear appeals of administrative decisions. The relevant text of PMC 2.54.070 is as follows:

The following cases shall be within the jurisdiction of the examiner under the terms and procedures of this chapter:

...

(13) Appeals of administrative decisions;

PMC 2.54.070.

The City did not issue a written denial of service to Mr. Stanzel, and thus, the remaining denial possibilities are an oral or de facto denial. If any oral statement of a city official, or the fact that the City did not provide commercial water service to Mr. Stanzel was, or is construed as a denial service, then Mr. Stanzel's remedy was to appeal the denial to the City's hearing examiner. But, Mr. Stanzel did not seek a hearing of any kind before the City's hearing examiner.

In this case, Mr. Stanzel failed to use Puyallup's administrative

processes. Mr. Stanzel failed to use the application process mandated under PMC 14.02 and PMC 14.22. He also failed to commence proceedings with the Puyallup hearing examiner to seek redress for the alleged service denial by the City. Rather than use the application process in the City of Puyallup, or invoke the jurisdiction of Puyallup's hearing examiner, Mr. Stanzel performed an end-run by attempting to persuade the Pierce County hearing examiner to order the City of Puyallup to supply water to his property. Thus, because Mr. Stanzel failed to exhaust his administrative remedies with the City, the superior court erred when it denied the City's motion to dismiss.

**C. The Superior Court Ruled that the Hearing Examiner had Powers that Exceeded its Actual Authority**

In order to obtain relief under the Land Use Petition Act, the party that seeks relief must establish one of the standards in RCW 36.70C.130(1). RCW 36.70C.130. *Milestone*, 186 P.3d at 361. In this case, the superior court used the standard found in RCW 36.70C.130(1)(b). The relevant text of this subsection is as follows:

The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

...

(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;

RCW 36.70C.130(1)(b).

Under this standard, Mr. Stanzel failed to establish that the land use decision of the hearing examiner, namely, that he did not have authority to order the City to provide water service, was an erroneous interpretation of law. Despite Mr. Stanzel's failure to establish that the hearing examiner's decision was an erroneous interpretation of the law, the superior court ruled, without any deference to Pierce County and its hearing examiner, that the hearing examiner has the power to order the City of Puyallup to provide water service and determine the reasonableness of the conditions that the City may impose for providing water service to Mr. Stanzel. As shown below, in the event of untimely or unreasonable service, the Pierce County hearing examiner has authority, at most, to (1) adjust water service boundaries, and (2) impose reasonable conditions that make a project compatible with its environment, or carry out the goals and policies of an applicable plan.

### **1. Hearing Examiner System Created**

In 1977, the Washington Legislature created the hearing examiner system. 1977 Wash. Laws 1st Ex. Sess., Ch. 213, § 3 (codified at RCW 36.70.970 with current amendments). In RCW 36.70.970, the Legislature allows county legislative authorities to adopt a hearing examiner system

under which an examiner can hear and decide issues that the county legislative authority believes should be reviewed and decided by the hearing examiner. RCW 36.70.970(1). The Legislature allows the issues that are subject to hearing or review and decision before the hearing examiner to vary, but the Legislature allows the county authority to vest only the power to hear or review and decide issues in the hearing examiner. RCW 36.70.970(1).

## **2. Pierce County Hearing Examiner System Implemented**

In 1978, pursuant to 1977 Wash. Laws 1st Ex. Sess., Ch. 213, § 3, Pierce County implemented the hearing examiner system. Pierce County, Wash., Resolution 20489 (February 28, 1978) (originally codified at PCC 61.20). Over the course of time, Pierce County amended its hearing examiner system code, and eventually recodified the hearing examiner code to its current location, PCC 1.22. Under PCC 1.22, Pierce County granted the hearing examiner authority to hear and decide various land use and non-land use matters. PCC 1.22.080. The various matters are specifically enumerated in PCC 1.22.080.B.

In addition, when acting upon any of the specifically enumerated applications or appeals in PCC 1.22.080, Pierce County gave its examiner “the power to attach any reasonable conditions found necessary to make a project compatible with its environment and to carry out the goals and

policies of the applicable comprehensive plan, community plan, Shoreline Master Program, or other relevant plan, regulations, Federal or State law, case law or Shorelines Hearing Board decisions.” PCC 1.22.080.D.

**3. The Hearing Examiner has Only the Power Granted to it by the Washington State Legislature**

The hearing examiner system is a creature of statute, namely RCW 36.70.970. Consequently, the powers or authority of hearing examiners are limited to those contained in RCW 36.70.970. Specifically, hearing examiners have the power to hear and decide issues that the county legislative authority believes should be reviewed and decided by the hearing examiner. RCW 36.70.970(1). However, RCW 36.70.970 provides no other power to hearing examiners, including the authority to compel a municipality to provide water service or a water availability letter. Thus, although the issues that a hearing examiner reviews can vary, their authority is limited to hearings and the issuance of decisions. Other creature of statute have similar limitations: *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wash.2d 201, 232, 5 P.3d 691 (2000) (School districts are creatures of statute and have only those powers and rights specifically granted to them by statute); *In re Marriage of Aldrich*, 72 Wash. App. 132, 137, 864 P.2d 388 (1993) (Administrative agencies, being creatures of statute, possess only such powers and authority as are expressly granted

by statute or necessarily implied therein); *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wash.2d 679, 686, 743 P.2d 793 (1987) (As creatures of statute, municipal corporations possess only those powers conferred on them by the constitution, statutes, and their charters); *Snohomish County v. Nichols*, 47 Wash. App. 550, 553, 736 P.2d 670 (1987) (A civil service commission is a creature of statute and is necessarily limited to the powers and duties authorized by the legislature).

**4. The Hearing Examiner's Authority to Provide Remedies is Limited to Boundary Adjustments and the Imposition of Reasonable Conditions**

The only authority of the hearing examiner to provide any relief in the event of untimely or unreasonable service is set forth in PCC 19D.140.090(H). The complete text of PCC 19D.140.090(H) is as follows:

**H. Boundary Line Adjustment Based Upon Determination of Untimely or Unreasonable Service.**

If the Hearing Examiner finds that a purveyor is unable or unwilling to provide timely or reasonable service within its exclusive water service area boundary, the Hearing Examiner shall readjust the purveyor's boundaries to an area which the purveyor will be able and willing to provide service and/or impose reasonable conditions pursuant to Pierce County Code subsection 1.22.080 C.<sup>6</sup>,

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<sup>6</sup>The reference to PCC 1.22.080 C. is likely an error. PCC 1.22.080 C. grants subpoena powers to the Pierce County hearing examiners. PCC 1.22.080 D. gives the hearing examiner "the power to attach any reasonable conditions found necessary to make a

to ensure timely and reasonable service. The Hearing Examiner's determination on readjustment of a water service area boundary and/or imposition of reasonable conditions shall be supported by substantial evidence in the record.

By its plain language, PCC 19D.140.090(H) allows a hearing examiner to adjust boundaries, and impose reasonable conditions, but nothing more.

The phrase "impose reasonable conditions pursuant to Pierce County Code subsection 1.22.080 C." is undefined. PCC 1.22.080 D. provides some guidance (see footnote 6). Specifically, it gives the hearing examiner "the power to attach any reasonable conditions found necessary to make a project compatible with its environment and to carry out the goals and policies of the applicable comprehensive plan, community plan, Shoreline Master Program, or other relevant plan, regulations, Federal or State law, case law or Shorelines Hearing Board decisions." PCC 1.22.080 D. Pursuant to the plain language of PCC 1.22.080 D., the conditions that can be imposed are those that "make a project compatible with its environment" and those that "carry out the goals and policies of the applicable . . . plan . . .". Nowhere does PCC 1.22.080 D. indicate that the hearing examiner can compel a municipality to provide water service.

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project compatible with its environment and to carry out the goals and policies of the applicable comprehensive plan, community plan, Shoreline Master Program, or other relevant plan, regulations, Federal or State law, case law or Shorelines Hearing Board decisions."

As used in PCC 1.22.080 D, the word “condition” appears to be used to mean an event which is essential to the occurrence of something else, i.e., a prerequisite. Thus, for example, an applicant could be granted a permit that is subject to conditions, which, must first be satisfied, or perhaps, if violated, would render the permit invalid.

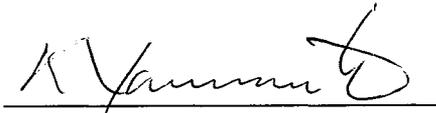
Accordingly, in the event of untimely or unreasonable service, the Pierce County hearing examiner has authority to (1) adjust water service boundaries, and (2) impose reasonable conditions that make a project compatible with its environment, or carry out the goals and policies of an applicable plan. However, the hearing examiner has no power to compel a municipality to provide water service. Thus, Mr. Stanzel failed to establish that the land use decision of the hearing examiner, namely, that he did not have authority to order the City to provide water service, was an erroneous interpretation of law, and the superior court erred when it ruled that the hearing examiner did have such authority.

## **VI. CONCLUSION**

Based on the foregoing, Appellant City of Puyallup requests that the Court of Appeals reverse the superior court, and reinstate the decision of the Pierce County hearing examiner in his Report and Decision, dated July 26, 2007.

Respectfully submitted,

Dated: August 15, 2008



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**IN THE COURT OF APPEALS OF THE STATE  
OF WASHINGTON DIVISION II**

MICHAEL STANZEL,

Respondent,

vs.

PIERCE COUNTY, a political  
subdivision, and CITY OF PUYALLUP,  
a municipal corporation,

Appellant.

**No. 37697-1-II**

**DECLARATION OF SERVICE**

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I, Kevin J. Yamamoto, declare that on the 15th day of August, 2008, I caused a true and correct copy of:

Brief of Appellant City of Puyallup,

to be served on the following in the manner indicated below:

Service by mailing a copy, postage prepaid, to the following address:

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Dated: August 15 2008

  
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By: Kevin J. Yamamoto 26787  
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