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BEFORE THE SHORELINES HEARINGS BOARD  
OF THE STATE OF WASHINGTON

**PATRICK TOWNSEND, KATHRYN  
TOWNSEND, and ANNEKE JENSEN,**

Petitioners,

v.

**CHANGMOOK SOHN, and THURSTON  
COUNTY,**

Respondents.

Case No. 17-009

**PETITIONERS' RESPONSE TO  
CHANGMOOK SOHN'S MOTION TO  
DISMISS FOR LACK OF JURISDICTION**

**I. INTRODUCTION**

Petitioners Patrick Townsend, Kathryn Townsend, and Anneke Jensen (hereinafter "Petitioners") file this response and accompanying Declarations of Thane W. Tienson ("Tienson Dec."), Jeri G. Zwick ("Zwick Dec."), and Patrick Townsend ("Townsend Dec.") in opposition to the Motion to Dismiss the Petition for Review filed by Respondent ChangMook Sohn. Petitioners submit that they timely and sufficiently complied with the jurisdictional requirements for service of their Petition for Review, and that consequently, there is no valid basis for denying the Board's jurisdiction and, therefore, the Motion to Dismiss should both be denied.

**II. FACTS**

Petitioners challenge a Shoreline Substantial Development Permit ("SSDP") issued by Thurston County to the Applicant/Respondent ChangMook Sohn for a commercial

1 intertidal geoduck aquaculture farm on Zangle Cove (*see* Petition for Review, pp. 2-8) by  
2 Respondent Thurston County. The Certificate of Service attached to the Petition for Review  
3 reflects the fact that on June 7, 2017, the same date as the Petition for Review was timely  
4 filed with the Shoreline Hearings Board (“SHB” or “Board”), true copies of the Petition for  
5 Review were both emailed and mailed by first class mail to the State Department of  
6 Ecology, the State Attorney General, to Donald “Rick” Peters, Thurston County Deputy  
7 Prosecuting Attorney -- and the attorney for Thurston County in the underlying hearing for  
8 this SSDP before the Thurston County Hearing Examiner and before the Board of County  
9 Commissioners, and to Samuel Plauché, attorney for ChangMook Sohn in the underlying  
10 hearing before the Thurston County Hearing Examiner and before the Board of County  
11 Commissioners. *See* Certificate of Service.

12 In the Thurston County Hearing Examiner’s Findings, Conclusions and Decision  
13 approving the SSDP, the Hearing Examiner notes that Mr. Sohn is represented by attorney  
14 Samuel Plauché and Jesse DeNike, and that Thurston County is represented by Donald  
15 “Rick” Peters, Deputy Prosecuting Attorney. Findings, Conclusions and Decision, p. 3. *See*  
16 Tienson Dec., Ex. A, p. 2. Both attorneys continued to represent Mr. Sohn and Thurston  
17 County in the Petitioners’ appeal to the Thurston County Board of County Commissioners  
18 (*see* Townsend Dec. and Tienson Dec., Ex. B), and they continue to represent the same  
19 parties in this appeal before the SHB. *See* Notices of Appearance and Motions to Dismiss  
20 filed by Thurston County and ChangMook Sohn on June 22, 2017. “Applicant’s Responsive  
21 Memorandum” dated April 17, 2017 submitted to the Thurston County Board of County  
22 Commissioners on behalf of Mr. Sohn by Mr. Plauché, identifies Mr. Plauché as counsel for  
23 Mr. Sohn, with an emailed copy to Mr. Peters as counsel for Thurston County. *See* Tienson  
24 Dec., Ex. B.

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1 Immediately following the filing of the Motion to Dismiss by Respondent Sohn, on  
2 June 22, 2017, Ms. Zwick personally served Mr. Sohn with a copy of the Petition for Review  
3 by first class mail and filed a Supplemental Certificate of Service with the SHB. See Zwick  
4 Dec., ¶ 6.

#### 5 **QUESTION PRESENTED**

6 The question presented by ChangMook Sohn's Motion to Dismiss is whether it was  
7 necessary to personally serve Mr. Sohn with a copy of the Petition for Review within seven  
8 (7) days of the filing of the Petition for Review with the SHB in order for the SHB to acquire  
9 jurisdiction over this matter? Petitioners submit the answer to that question is, "[N]o."

#### 10 **ARGUMENT IN OPPOSITION TO RESPONDENT SOHN'S MOTION TO DISMISS**

11 Petitioners hereby incorporate by reference the arguments they made in opposition  
12 to Thurston County's Motion to Dismiss since Respondent since Respondent Sohn joined in  
13 Thurston County's motion and since some of the arguments made by Petitioners in  
14 opposition to Thurston County's motion apply as well to Respondent Sohn's Motion to  
15 Dismiss.

16 Respondent ChangMook Sohn, as the Applicant, relies upon a different WAC  
17 provision and a different argument in support of its Motion to Dismiss than does Thurston  
18 County. The motion is not well-taken because the code provision Respondent Sohn relies  
19 upon, WAC 461-08-355(4), has been determined not to be jurisdictional. That provision  
20 provides, in pertinent part, as follows:

21 When petitioner is not the permit applicant, the petitioner shall serve the  
22 permit applicant with a copy of the petition for review.

23 First, unlike WAC 461-08-355(1), there is no time requirement for service, and as  
24 set forth in the Declaration of Jeri G. Zwick (¶ 5), the Applicant, Mr. Sohn, was served with a  
25 copy of the Petition for Review on June 22, 2017. Second, as this Board has previously  
26 recognized, service upon the Applicant is not a jurisdictional requirement:

1 Because this Board has found that Ecology was not required to serve the  
2 Applicant in order for jurisdiction to be obtained, Ecology's substantial  
compliance argument will not be addressed.

3 *State of Washington, Dept. of Ecology v. Lewis Co., et al.*, SHB No. 00-027 (Order Denying  
4 Motion to Dismiss, Jan 10, 2001), p. 5, n. 4; *Smith v. City of Redmond and King Co., supra* at  
5 p. 3, n. 2 ("In *Ecology*, this Board held that service upon the Applicant was not  
6 jurisdictional").<sup>1</sup>

7 Consequently, regardless of whether timely service of a copy of the Petition for  
8 Review on Respondent Sohn's attorney constitutes service upon him personally, there was  
9 no requirement to serve him personally in order for this Board to acquire jurisdiction over  
10 this matter, and Respondent Sohn has now been personally served with a copy of the  
11 Petition for Review consistent with the provisions of WAC 461-08-355(4).

12 **CONCLUSION**

13 For all of the foregoing reasons, the Motion to Dismiss filed by Respondent  
14 ChangMook Sohn should be **DENIED**.

15 DATED: July 6, 2017.

16 LANDYE BENNETT BLUMSTEIN LLP

17  
18 By: 

19 Thane W. Tienson, WSBA #13310  
20 [ttienson@lbblawyers.com](mailto:ttienson@lbblawyers.com)  
21 Of Attorneys for Petitioners

22  
23 <sup>1</sup>In his current Declaration, Mr. Sohn states that he was not served and his company, Pacific Northwest  
24 Aquaculture LLC, was also not served. Even though the Hearing Examiner mentioned in her findings "...  
25 ChangMook Sohn of Pacific Northwest Aquaculture LLC (Applicant)," Pacific Northwest Aquaculture LLC, as a  
26 separate entity, was never identified as a party to the proceedings in this matter in any of the pleadings in any  
of the proceedings in this matter. Moreover, it has now been served with a copy of the Petition for Review.  
*See* Zwick Dec., ¶ 7.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 6, 2017, I served the foregoing **RESPONSE TO SOHN'S**  
3 **MOTION TO DISMISS** on the following individual(s):

4 Samuel W. Plauché  
5 *billy@plauchecarr.com*  
6 Plauché & Carr LLP  
7 811 1<sup>st</sup> Avenue, Ste. 630  
8 Seattle, WA 98104-1426  
9 (206) 588-4255 (fax)

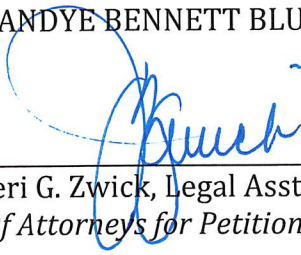
10 *Of Attorneys for Respondent ChangMook Sohn*

11 Donald R. Peters, Jr.  
12 *petersr@co.thurston.wa.us*  
13 Deputy Prosecuting Attorney  
14 2000 Lakeridge Dr. SW, Bldg. 5  
15 Olympia, WA 98502-6045  
16 (360) 709-3234 (fax)

17 *Of Attorneys for Respondent Thurston County*

18 by first class mail.

19 LANDYE BENNETT BLUMSTEIN LLP

20   
21 \_\_\_\_\_  
22 Jeri G. Zwick, Legal Asst. to Thane W. Tienson  
23 *Of Attorneys for Petitioners*