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BEFORE THE SHORELINES HEARINGS BOARD  
OF THE STATE OF WASHINGTON

PATRICK TOWNSEND, KATHRYN	)	
TOWNSEND, and ANNEKE JENSEN,	)	SHB No. 17-009
	)	
Petitioners,	)	RESPONDENT CHANGMOOK
	)	SOHN'S MOTION TO DISMISS
v.	)	PETITION FOR REVIEW
	)	
THURSTON COUNTY and CHANGMOOK	)	
SOHN,	)	
	)	
Respondents.	)	

**I. INTRODUCTION AND RELIEF REQUESTED**

Respondent ChangMook Sohn respectfully requests that the Shorelines Hearings Board ("Board") dismiss the petition for review ("Petition") by Petitioners Patrick Townsend, Kathryn Townsend, and Anneke Jensen ("Petitioners") in this matter. Petitioners failed to serve Respondents Thurston County and ChangMook Sohn, and hence the Board lacks jurisdiction over the Petition.

**II. FACTS**

The Petition challenges a shoreline substantial development permit ("SSDP") issued by Thurston County to the permit applicant, ChangMook Sohn of Pacific

1 Northwest Aquaculture, LLC, for a 1.1-acre intertidal geoduck aquaculture farm  
2 (“Farm”). Petition at 1-3. The Petition is dated June 7, 2017. *Id.* at 14.

3 The Certificate of Service attached to the Petition does not state that the Petition  
4 was served with: (a) the local government as designated in the SSDP; (b) the department  
5 or office within Thurston County that issued the SSDP; or (c) Thurston County pursuant  
6 to RCW 4.28.080. *Id.* The Certificate of Service also does not state that the Petition was  
7 served with the applicant of the SSDP, ChangMook Sohn. *Id.*

8 The Certificate of Service states the Petition was “served” on Samuel W. Plauché,  
9 “Of Attorneys for Respondent ChangMook Sohn” and Donald R. Peters, Jr., “Of  
10 Attorneys for Respondent Thurston County” by first class mail. Petition, Certificate of  
11 Service at 1. The Petition was the first document filed in this proceeding. At the time the  
12 Petition was filed, Samuel W. Plauché had not entered a notice of appearance for  
13 Respondent ChangMook Sohn and Donald R. Peters Jr. had not entered a notice of  
14 appearance for Respondent Thurston County. According to Thurston County’s motion to  
15 dismiss, filed earlier today, Petitioners never served a copy of the Petition with the  
16 department or office within Thurston County that issued the SSDP or with the Thurston  
17 County Auditor. Petitioners have not served ChangMook Sohn personally, by mailing, by  
18 leaving the Petition at Dr. Sohn’s usual place of abode with a person of suitable age and  
19 discretion, or by any other means. First Declaration of Dr. ChangMook Sohn (“Sohn  
20 Dec.”) at ¶ 6. Petitioners have similarly not served the Petition on any other agent,  
21 officer, or employee of Pacific Northwest Aquaculture, LLC, personally, by mailing, by  
22 leaving the Petition at such individual’s usual place of abode with a person of suitable age  
23 and discretion, or by any other means. *Id.* at ¶ 7.

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1 **III. ARGUMENT AND AUTHORITY**

2 **A. Petitioners Failed to Serve Thurston County and the Permit Applicant.**

3 As set forth in the motion to dismiss filed earlier today by Thurston County, the  
4 Petition must be dismissed because Petitioners failed to serve the Petition on Thurston  
5 County. Respondent Sohn agrees with, and joins, Thurston County’s motion to dismiss,  
6 and to avoid needless duplication will not repeat the information and analysis in Thurston  
7 County’s motion here. Petitioners’ failure to serve Thurston County, standing alone,  
8 requires dismissal of the Petition.

9 The Petition should be dismissed on the additional, independent basis that  
10 Petitioners failed to serve the permit applicant. WAC 461-08-355(4) states: “When the  
11 petitioner is not the permit applicant, the petitioner shall serve the permit applicant with a  
12 copy of the petition for review.” Dr. ChangMook Sohn submitted the application for the  
13 Farm’s SSDP on behalf of Pacific Northwest Aquaculture, LLC. Petition at Exhibit A;  
14 Sohn Dec. at ¶ 2. But neither ChangMook Sohn, nor any other officer, agent, or employee  
15 of Pacific Northwest Aquaculture, LLC has been served a copy of the Petition by  
16 Petitioners or anyone acting on their behalf, whether personally, by mail, by leaving the  
17 Petition at such individual’s usual place of abode with a person of suitable age and  
18 discretion, or by any other means. Sohn Dec. at ¶¶ 6, 7. Accordingly, Petitioners have not  
19 served the permit applicant with the Petition as required by WAC 461-08-355(4). WAC  
20 461-08-300; WAC 461-08-305(12); CR 4; RCW 4.28.080.

21 Petitioners’ Certificate of Service makes clear that Petitioners did not serve the  
22 permit applicant with the Petition, but only Samuel W. Plauché, “Of Attorneys for  
23 Respondent ChangMook Sohn.” Petition, Certificate of Service at 1. But original service  
24 of process can only be satisfied by serving the party—the permit applicant—not the  
25 party’s attorney. *Ashcraft v. Powers*, 22 Wn. 440, 442-444 (1900). Moreover, because

1 the Petition was the first document filed in this proceeding, neither Mr. Plauché, nor  
2 anybody else, had appeared on behalf of the permit applicant at the time the Petition was  
3 filed. The notice of appearance subsequently filed on behalf of Respondent Sohn makes  
4 clear the appearance is made without waiving several defenses, including lack of  
5 jurisdiction over the person and insufficient service of process. Notice of Appearance,  
6 Respondent ChangMook Sohn. *See also* CR 4(d)(5) (“A voluntary appearance of a  
7 defendant does not preclude the defendant's right to challenge lack of jurisdiction over the  
8 defendant's person, insufficiency of process, or insufficiency of service of process . . .”)

9 **B. The Petition Must Be Dismissed.**

10 Service of process requirements are jurisdictional, and failure to comply with these  
11 requirements results in a lack of personal jurisdiction over a defendant or respondent,  
12 requiring dismissal. This is true even when a defendant receives actual notice of the  
13 proceeding. *Weiss v. Glemp*, 127 Wn. 2d 726, 903 P.2d 455 (1995) (statutory service  
14 requirement must be met to avoid dismissal); *Ralph's Concrete Pumping, Inc. v. Concord*  
15 *Concrete Pumps, Inc.*, 154 Wn. App. 581, 225 P.3d 1035 (Div. 1 2010) (service by mail is  
16 ineffective, even if defendant acknowledges receipt of summons and complaint, when  
17 statute requires personal service).

18 Failure to serve either named respondent warrants dismissal. Petitioners failed to  
19 serve both Thurston County and ChangMook Sohn. The Petition must be dismissed.

20 Dated this 22nd day of June, 2017.

21 PLAUCHÉ & CARR, LLP

22  
23 By: 

24 Samuel W. Plauché, WSBA #25476

Jesse DeNike, WSBA #39526

25 *Attorneys for Respondent ChangMook Sohn*