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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. S17-009

THURSTON COUNTY'S MOTION TO
DISMISS FOR LACK OF JURISDICTION

COMES NOW THURSTON COUNTY, by and through JON TUNHEIM, Prosecuting
Attorney and Senior Deputy Prosecuting Attorney Donald R. Peters, Jr., and moves this Board to
DISMISS the underlying action filed by Petitioners against Thurston County for lack of jurisdiction.

This Motion is supported by the argument herein and the attached Declaration of Donald R.
Peters, Jr.

I. FACTS

The Thurston County Board of Commissioners [BOCC] issued their administrative decision
upholding the ruling of the Thurston County Hearing Examiner on May 18, 2017 [as acknowledged
at page 3, line 5 of the Petition]. The Petition for Review was filed with the Shorelines Hearings
Board [SHB] on June 7, 2017, twenty days after the issuance of the BOCC's decision. The Thurston
County Prosecuting Attorney was served copies of the Petition on June 12, 2017. The Petition has

1 not been served on the Thurston County Commissioners, Thurston County Resource Stewardship,
2 any of the Departments within Resource Stewardship, or the Thurston County Auditor [See
3 Declaration of Donald R. Peters, Jr., attached to this Motion and incorporated by this reference]. The
4 “Certification of Service” Provided by Petitioners only indicates service upon Donald R. Peters, Jr.,
5 of the Thurston County Prosecuting Attorney’s Office. The email indicating efileing with the SHB
6 only includes “Rick Peters” [Donald R. Peters, Jr.] in the “CC” line along with attorney for
7 Respondent ChangMook Sohn. [The “Certificate of Service” and efileing are attached to the
8 Declaration of Donald R. Peters, Jr., as Exhibit “A”].

9 **II. ARGUMENT**

10 The Shoreline Management Act [SMA], RCW Chapter 90.58 and the Washington
11 Administrative Code [WAC] 461-08-355 provide the statutory and rule provisions for service of
12 process. RCW 90.58.180(1) and WAC 461-08-355(1) requires that petitions for review of the
13 granting of a shoreline substantial development permit [SSDP] be filed with the SHB within 21 days
14 of the date of filing of the decision, and then served within seven days on the state Department of
15 Ecology, the Office of the Attorney General, and the local government. [*Garrison v. Pierce Co SHB*
16 13-016c at page 7].

17 Service on the local government shall be accomplished in one of three ways: 1) as designated
18 on the permit decision, 2) to the department or office that issued the decision, or pursuant to RCW
19 4.28.080, which requires service on the county auditor in an action against a county. WAC 461-08-
20 355(3), RCW 4.28.080(1).

21 Timely filing of the petition for review with the board...and timely service on the appropriate
22 agencies are required for the board to acquire jurisdiction. WAC 461-08-425(1).

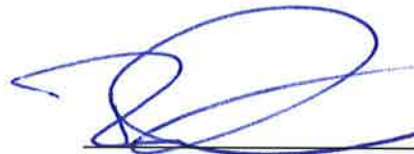
1 The only service that has been affected by the Petitioners upon Thurston County is to the
2 Prosecuting Attorney. Service of the Petition by email or post to the Prosecuting Attorney is not
3 sufficient by itself to effect proper service. *See Crass v. Ecology*, SHB No. 08-009 at 9 and *Garrison*
4 *v. Pierce Co.* at page 10, footnote 3. Petitioners have wholly failed to comply with the service
5 requirements found in statute and regulation. It is now too late for proper service to be effected on
6 Thurston County.

7 **III. CONCLUSION**

8 The Petition should be dismissed as to Thurston County. The SHB lacks jurisdiction to hear
9 this matter as Thurston County was not properly served according to state law and regulation and the
10 time for service has expired.

11 DATED this 22nd day of June 2017.

12 JON TUNHEIM
13 PROSECUTING ATTORNEY

14 

15 DONALD R. PETERS, JR., WSBA #23642
16 Deputy Prosecuting Attorney
17 2000 Lakeridge Dr SW, Bldg #5
18 Olympia, WA 98502

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on all parties or their counsel of record on this 22 day of June 2017, as follows:

| | |
|--|---|
| Thane W. Tienson Landye Bennett Blumstein LLP 1300 SW 5 th Avenue, Ste. 3600 Portland, OR 97201 <u>ttienson@lbblawyers.com</u> | <input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt Requested <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email |
| Samuel W. Plaché Jesse DeNike Plauché & Carr LLP 811 1 st Avenue, Ste. 630 Seattle, WA 98104-1426 <u>billy@plauchecarr.com</u> <u>jesse@plauchecarr.com</u> | <input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt Requested <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email |

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22 day of June 2017.



Nancy Jones-Hegg, Paralegal