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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 REPLY ON MOTION
v.	)	TO DISMISS PETITION FOR
	)	REVIEW
THURSTON COUNTY and CHANGMOOK	)	
SOHN,	)	
	)	
Respondents.	)	

**I. INTRODUCTION AND RELIEF REQUESTED**

The responses submitted by Patrick Townsend, Kathryn Townsend, and Anneke Jensen (“Petitioners”) in opposition to Thurston County’s and ChangMook Sohn’s motions to dismiss fail to demonstrate that Petitioners met their obligations to timely serve their petition for review (“Petition”) and invoke the jurisdiction of the Shorelines Hearings Board (“SHB”). Thus, the SHB lacks jurisdiction over, and must dismiss, the Petition.

**II. FACTS**

The material facts are not in dispute. Petitioners filed the Petition on June 7, 2017, challenging a shoreline substantial development permit (“SSDP”) issued to Respondent ChangMook Sohn (“Respondent Sohn”) to farm native shellfish on his property. Petition

1 at 14. The Certificate of Service accompanying the Petition states that Petitioners sent  
2 copies of the Petition to Samuel W. Plauché and Donald R. Peters, Jr. Neither Mr.  
3 Plauché nor Mr. Peters are respondents in this matter, nor had they entered appearances  
4 for Respondents ChangMook Sohn and Thurston County when the Petition was filed. The  
5 Thurston County Hearing Examiner decision approving the SSDP does not identify  
6 specific individuals upon whom service shall be made in the event of an appeal to the  
7 SHB. Petition at Exhibit B.

8 Petitioners did not send copies of the Petition to the Thurston County Auditor, the  
9 Pierce County Hearing Examiner, the Thurston County Resource Stewardship  
10 Department, the Thurston County Board of Commissioners, or ChangMook Sohn within  
11 seven days after the Petition was filed. On June 22, 2017, Thurston County filed and  
12 served a motion to dismiss the Petition for failure to serve Thurston County. Soon  
13 thereafter, Respondent Sohn filed a motion to dismiss the Petition, joining in Thurston  
14 County's motion and further arguing that Petitioners failed to serve Respondent Sohn.

15 Later in the afternoon on June 22, Petitioners filed a Supplemental Declaration of  
16 Mailing (Petition for Review) stating they sent a copy of the Petition to the Thurston  
17 County Auditor, the Pierce County Hearing Examiner, the Thurston County Resource  
18 Stewardship Department, the Thurston County Board of Commissioners, and ChangMook  
19 Sohn. Petitioners filed responses to Thurston County's and Respondent Sohn's motions  
20 on July 6, 2017.

### 21 **III. AUTHORITY AND ARGUMENT**

22 The Petition must be dismissed because Petitioners failed to satisfy the clear  
23 service requirements of the Shoreline Management Act, chapter 90.58 RCW ("SMA") and  
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1 the SHB rules, chapter 461-08 WAC. The SMA and SHB rules require Petitioners to  
2 serve Thurston County in one of the following ways: (a) serve Thurston County as  
3 designated on the permit decision within seven days of filing the Petition; or (b) serve the  
4 department or office within Thurston County that issued the permit decision within seven  
5 days of filing the petition; or (c) serve local government pursuant to RCW 4.28.080 within  
6 seven days of filing the petition. RCW 90.58.180(1); WAC 461-08-355(3). As stated in  
7 *Kane v. City of Redmond*, SHB Nos. 07-006 & 07-007 (Order of Dismissal, Aug. 28,  
8 2007), “[t]he [SHB] has consistently held that strict compliance with [WAC 461-08-355]  
9 is required for the Board to obtain jurisdiction over the case.” The SHB has also held in  
10 two prior cases that service upon a prosecuting attorney for the local government does not  
11 satisfy the service requirements of the SMA and WAC 461-08-335. *Garrison v. Pierce*  
12 *County*, SHB No. 013-016c (Order on Motions to Dismiss, Motions for Summary  
13 Judgment, and Motion to Intervene, Nov. 6, 2013) at 8-9, 10 n. 3; *Crass v. Ecology*, SHB  
14 No. 08-009 (Amended Order of Dismissal for Lack of Jurisdiction, July 21, 2008) at 9.

15 Petitioners’ response to Respondent Sohn’s motion to dismiss incorporates by  
16 reference the arguments made in opposition to Thurston County’s motion to dismiss  
17 “since Respondent Sohn joined in Thurston County’s motion and since some of the  
18 arguments made by Petitioners in opposition to Thurston County’s motion apply as well  
19 to Respondent Sohn’s Motion to Dismiss.” Petitioners’ Response to ChangMook Sohn’s  
20 Motion to Dismiss for Lack of Jurisdiction (“Response to Sohn Motion”) at 3. Petitioners  
21 do not articulate which arguments in their response to Thurston County’s motion “apply  
22 as well” to Respondents Sohn’s motion. Petitioners’ response to Thurston County’s  
23 motion includes numerous misguided arguments contending they satisfied their service  
24 requirements or that the Petition should not be dismissed despite their failure to timely  
25 serve Thurston County. Thurston County has replied to Petitioners’ response to the

1 County's motion to dismiss, demonstrating Petitioners' arguments lack merit and that the  
2 Petition must be dismissed. To avoid unnecessary duplication, Respondent Sohn joins in  
3 and incorporates by reference Thurston County's reply brief.

4 Petitioners were also required to serve the permit applicant, ChangMook Sohn.  
5 WAC 461-08-355(4). Petitioners suggest they satisfied this requirement by sending a  
6 copy of the Petition to Mr. Plauché, but Mr. Plauché did not appear as Respondent Sohn's  
7 legal representative until June 22, 2017. Notice of Appearance for Respondent  
8 ChangMook Sohn; WAC 461-08-390(1). Original service of process can only be satisfied  
9 by serving the party—the permit applicant—not the party's attorney. *Ashcraft v. Powers*,  
10 22 Wn. 440, 442-444 (1900). Petitioners failed to serve Respondent Sohn until they sent  
11 the Petition to him personally. While it is true that WAC 461-08-355(3) does not set a  
12 specific time limit for serving the permit applicant, Petitioners provide no authority for the  
13 proposition that they can wait to serve a permit applicant until after the applicant moves  
14 for dismissal. Further, Petitioners' suggestion that this case could proceed without ever  
15 serving Respondent Sohn and providing him an opportunity to participate is contrary to  
16 procedural due process protections.

17 Procedural due process requires that an individual have notice and an  
18 opportunity to be heard before he can be deprived of an established  
19 property right. Article 1, Section 3, Washington State Constitution. It  
20 follows that a person who has acquired a valuable property right as a result  
of a favorable zoning administration decision must be given notice when  
judicial review of that decision is sought.

21 *Veradale Valley Citizens' Planning Comm. v. Board of County Commr's*, 22 Wn. App.  
22 229, 233, 588 P.2d 750 (1978) (footnotes omitted).<sup>1</sup>

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25 <sup>1</sup> Respondent Sohn recognizes the SHB lacks jurisdiction to address alleged constitutional violations but  
preserves for appeal the right to allege such violations in any appropriate venue.

