



Sound Law Center

Dispute Resolution Services

www.soundlawcenter.com

(206) 628-0700

Attachment #3
RECEIVED
JAN 04 2012
COMMUNITY PLANNING
AND DEVELOPMENT DEPT.

January 2012

Olympia Planning and Development Department
601 4th Avenue East
Olympia, WA 98507-1967
Attn. Todd Stamm, Planning Manager, Contract Administrator

**RE: PROPOSAL TO PROVIDE
HEARING EXAMINER SERVICES**

Dear Sir:

We propose that Sound Law Center be designated to provide Hearing Examiner services for the City of Olympia, including hearings on applications, appeals and code enforcement. This letter with attachments provides detailed information on what Sound Law Center can do for the City of Olympia. Sound Law Center focuses exclusively on land use hearing examiner services, dispute resolution of land use conflicts and land use training. Individuals at Sound Law Center have extensive background and experience in land use law and hearing examiner services.

We provide in the attachments a detailed description of the qualifications and experience of Sound Law Center; rates of compensation; and references. We also provide an example of our decisions. Thank you for considering Sound Law Center's availability and interest to provide Hearing Examiner services. We look forward to hearing from you.

Sincerely yours,

Ted Hunter, Managing Partner
Sound Law Center, LLC
4500 Ninth Avenue NE, Suite 300
Seattle, WA 98105

206-628-0700

tph@soundlawcenter.com

Enclosures: Statement of Qualifications, Resumes, References & Example of Decision

**Sound Law Center Response to
City of Olympia RFP for Hearing Examiner Services**



I. STATEMENT OF QUALIFICATIONS & EXPERIENCE

A. The People

Individuals at Sound Law Center are recognized for their expertise in land use law throughout the Puget Sound region. The member of Sound Law Center who would be primarily dedicated to serving the City of Olympia is Kimberly Allen with support provided by Ted Hunter, Kristen Larson and others at Sound Law Center. All have extensive experience in the courts and administrative law system involving land use decisions, including all types of land use applications, appeals and code enforcement matters. Detailed information about each individual is provided below.

Mr. Hunter

Mr. Hunter is a graduate of the University of Washington School Of Law. He serves as Hearing Examiner on a contract basis in jurisdictions ranging in population from under 500 to nearly 300,000 residents. The types of hearings he conducts include variances and conditional uses, SEPA appeals, Shoreline Management Act permits and appeals, preliminary plats, PRD applications, city staff administrative appeals, search and seizure forfeitures, zoning enforcement actions, false alarm appeals, illegal sign violation appeals, noise abatement appeals, code appeals, and LID rolls and assessments. He has established Hearing Examiner systems in many municipalities and improved the efficiency of existing systems. He has also presented training programs in land use decision-making for councils and planning commissions on behalf of the Association of Washington Cities and the Washington Cities Insurance Authority. During his tenure as Hearing Examiner, less than one percent of his decisions have been appealed and no reported Court decision has overturned a decision made by him. Mr. Hunter's experience includes extensive litigation, arbitration and mediation experience. This experience can assist the City of Olympia if it is interested in finding alternative methods to resolve disputes outside the formal hearing examiner system. Mr. Hunter would be the contact person regarding the operations of the office of the Hearing Examiner and is responsible for the quality of the work provided by SLC.

Ms. Allen

Ms. Allen is a graduate of the University of Michigan where she received a Bachelor of Arts degree in Political Science, and Michigan State University College of Law, where she received her Juris Doctor Cum Laude. Ms. Allen has been involved in municipal law for many years. She currently is a member of the Redmond City Council with responsibility for review and evaluation of land use issues including comprehensive plan amendments, land use code changes, quasi-judicial oversight of land use decisions, and GMA compliance. Prior to joining the Council in 2005, Ms. Allen was Vice Chair of the Planning Commission with responsibility for preparation of transportation management plans, updates of critical area ordinances, updates of the shoreline master program, and review of zoning code amendments. In this role, Ms. Allen conducted numerous public hearings prior to making decisions on land use matters. Ms. Allen is the Chief Hearing Examiner for Kitsap County, and also provides services in the other jurisdictions where Sound Law Center serves as Hearing Examiner. In addition to her direct experience in municipal land use decisionmaking, Ms. Allen offers an extensive background in the judicial system including representation of state agencies in administrative, superior and

appellate court forums. She also has experience drafting proposed regulations and legislation. She is a member of the Washington State Bar Association and sits on the King County Growth Management Planning Council. Ms. Allen brings her breadth of experience to the bench as a Hearing Examiner. She knows land use issues and is intimately familiar with land use law as it applies to cities and counties. She also knows how to conduct a hearing, how to handle evidentiary issues, and how to avoid the pitfalls of liability for failure to follow proper procedures.

Ms. Larson

Kristen J. Larson is a Hearing Officer and Chief Legal Writer at Sound Law Center. She is a graduate of the University Of Washington School Of Law with an emphasis on environmental law, land use law, and mediation. She is a member of the Washington Bar Association. Kristen has expertise in water law, hazardous waste control, tribal relations, and Washington property law. Kristen's research on northwest fisheries regulation was published in the *Harvard Environmental Law Review*. Kristen has experience as a Hearing Examiner in Woodinville, Issaquah and Kitsap County. Kristen will be primarily responsible for conducting legal research and drafting decisions for the City of Olympia. She will also be available to conduct hearings with the consent of the City.

B. Availability & Approach

Availability

We are available immediately to provide high quality Hearing Examiner services to the City of Olympia during day and evening hearings. The SLC team consists of skilled individuals including law students, research attorneys, legal writers and hearing officers.¹ Mr. Hunter is responsible for the overall quality of the services provided, and all at SLC follow a consistent checklist approach to hearings and preparation of decision.

One critical aspect of availability is the ability to get decisions out on time. It is extremely important to avoid delays when deciding a land use application. State and federal courts have made it clear that a municipality will be held liable for costs caused by unreasonable delays and other violations of procedural due process. Sound Law Center carefully adheres to due process requirements, and provides legally defensible decisions.²

State law requires that Hearing Examiner decisions be issued within ten working days of the close of the public hearings on an application. We consistently meet this deadline. We have never missed a deadline in getting a decision out for over twenty years. There are several reasons for this record. Our firm focuses its practice exclusively on providing land use hearing examiner, training and dispute resolution services to cities. As a result, we are not distracted by lengthy trials or other legal work as is true at municipal law firms.

We also keep up on legal developments in the specialized field of land use law so we do not need to conduct extensive legal research when a legal issue is presented in an application (which is

1. A description of those affiliated with Sound Law Center is available on our website at www.soundlawcenter.com.

2 We produce over 150 decisions each year for several jurisdictions, always on time. Less than one percent has ever been appealed and no reported case has reversed us on appeal. This record translates to a significant cost savings for our jurisdictions, as they do not have to pay legal defense costs to defend our decisions.

increasingly the case). We maintain an online case law digest of land use decisions, and provide regular briefings to all of our municipalities on the current status of legal requirements for land use decisions. This helps reduce the time needed for making a decision, as the staff is also familiar with how to handle legal issues.

We at SLC have a proven method of decision writing that includes editing for clear and concise writing as well as legal defensibility. We use a 'checklist' approach for both initial writing and editing to ensure consistency in decision writing. We are given top ratings by attorneys for the Washington City Insurance Authority and by Law Clerks for the courts who review the record of our hearings if there is an appeal of a decision we make (which rarely occurs).

Approach

The purpose of the Hearing Examiner system is to provide an objective review of the facts of an application and then apply the goals and ordinances in making a decision. In order to develop the record necessary to make such a decision, it is imperative that all interested persons be encouraged to present all relevant facts at the hearings through oral or written testimony. The Examiner facilitates this process by creating an atmosphere that is courteous to witnesses and acknowledges their opinions.

We are successful in meeting the goals of the Hearing Examiner system. We are unbiased, fair, and respectful while being acutely aware of the exposure of municipalities to legal liability in all land use decision-making. Recent court decisions have made it clear that damages will be assessed if a jurisdiction does not follow appropriate decision-making procedures. We know how to adhere to legal requirements of procedural due process to help prevent exposure to liability.

Our skills have developed through many years of land use law practice. We take full responsibility for the legal accuracy of our decisions. Our decisions are written in plain English and are drafted to communicate simply and effectively. We work efficiently under time pressure and consistently meet deadlines. We work closely and efficiently with Hearing Examiner administrative staff in the jurisdictions we serve. We are familiar with the Olympia area as Mr. Hunter worked for several years as Legal Counsel to the Legislature and Ms. Allen visits Olympia often in her role as a Redmond City Council member. We are excited about the opportunity to work with the City of Olympia citizens, staff and elected officials.

II. COMPENSATION STRUCTURE

The cost of a hearing examiner system is part of the cost of land use review. Some cities charge applicants directly for hearing examiner services; others put the cost in a departmental budget. Where costs of the hearing examiner are 'passed through' to an applicant, the hourly rate is best. Some cities that have departmental budgets for hearing examiners also choose this method of compensation. We provide experienced hearing officers and writers at a range of rates so that the skill level is matched to the demands of the task, and so that costs are kept to a level commensurate with the expertise required to prepare a decision. Our professional hourly rates range from \$60 - \$175 per hour. This is lower than that of the legal profession generally, and is competitive with other experienced hearing officers. We offer a 'blended rate' for hearing and deciding applications and appeals that allows a jurisdiction to obtain high quality services in an efficient and cost-competitive manner. This means that the higher cost of an experienced Hearing Examiner is not also billed for the cost of legal research and the cost of preparing a

decision. The blended rate is approximately \$120 per hour, for comparison with other professional rates.³

We are well known for writing legally defensible decisions. Our rate of decisions appealed is below one percent, and no reported decision has overturned a decision we have made. We believe we provide the highest quality services at the lowest cost when considering the efficiency and legal defensibility of our hearing examiner services. It is important to remember that a City pays a **bill** for services and not a **rate**. Often, what appears to be a lower rate results in a higher cost, particularly where the individuals providing the service are not as efficient or as skilled as those at SLC. We provide hearings in compliance with due process and we prepare legally defensible decisions in an efficient manner. The fact that we have very few appeals of our decisions – and no decision overturned on appeal – is also a cost saving factor to consider. Please note that we do not charge for any costs, and do not require the presence of administrative assistance at the hearing as long as reliable recording equipment is provided.

We are eager to continue provide our services to the City of Olympia. Please feel free to contact us at any time for more information or to schedule an interview. We look forward to hearing from you!

³ The City of Port Angeles recently completed a comprehensive review of Hearing Examiner services, as it is in the process of implementing a Hearing Examiner system. That study determined that the cost of service ranges from \$75 to \$210 per hour, with an average cost of \$132 per hour.

III. REFERENCES

We hereby consent to City of Olympia officials contacting the following individuals with respect to our professional performance as Hearing Examiners for the jurisdictions identified, and likewise consent to the release of any relevant information provided:

Larry Keeton, Director
Department of Community Development
Kitsap County
(360) 337-5777
LKeeton@co.kitsap.wa.us
(For Sound Law Center, Ms. Allen & Mr. Hunter)

Heather McCartney, Director
Community Development Department
City of Mukilteo
(425) 263-8040
hmccartney@ci.mukilteo.wa.us
(For Sound Law Center, Ms. Allen & Mr. Hunter)

James Weaver, Director
Planning Department
City of Port Orchard
(360) 876-4991
planning@cityofportorchard.us
(For Mr. Hunter & Sound Law Center)

Rob Odle, Planning Director
City of Redmond
(425) 556-2417
rodle@redmond.gov
(For Ms. Allen)

IV. RESUMES

The attached resumes detail the experience the three members of Sound Law Center that would be assigned to serving the City of Olympia. Additional members of Sound Law Center could also be available if needed or desired by the City. For a complete listing of the members of Sound Law Center, please visit www.soundlawcenter.com.

Mr. Hunter

Ms. Allen

Ms. Larson

THEODORE PAUL HUNTER

SPECIAL EXPERTISE

Expert knowledge of land use law, SEPA appeals, code enforcement, municipal law and administrative procedure. Extensive experience in dispute resolution processes and in litigation at all state judicial levels. Skilled in negotiation, arbitration and mediation techniques.

EDUCATION

- J.D., University of Washington School of Law (1978)
- Coursework in Mediation & Negotiation Techniques, Harvard Negotiation Institute (1989)
- Coursework in Forestry, Marine Policy, Urban Planning, and Environmental Assessment; University of Washington School of Graduate Affairs (1979 – 1988)
- B.S., University Scholars Program, Portland State University (1973)

EXPERIENCE

LAND USE DECISIONMAKER, ATTORNEY, AND MEDIATOR 1984 – Present

Provide independent legal analysis of land use ordinances for city and county governments. Provide full Hearing Examiner services on a contract basis for cities and counties in Puget Sound region. Responsible for all activities of the Office of Hearing Examiner, including reviewing applications, facilitating settlement conferences, conducting hearings, interpreting ordinances, writing decisions, and promulgating rules of procedure. Provide mediation services to local governments to facilitate non-judicial resolution of land use disputes.

ARBITRATOR & MEDIATOR 1983-2003

Served as Arbitrator for King County Superior Court (fifteen years experience) for business and personal injury disputes. Served as Mediator for Washington Arbitration & Mediation Service (ten years experience) for land use and personal injury disputes. Past Chair of the Alternative Dispute Resolution Section of the Washington State Bar Association.

TRAINING CONSULTANT, WCIA, APA, & ICMA 1995-2000

Provided training to elected officials and staff on how to participate in a land use hearing. Training focused on legal liability for failure to follow procedural due process, hearing methodologies for avoiding liability, and mediation techniques to resolve disputes prior to formal hearings. Co-authored "You Be the Judge," a manual for public officials involved in land use decision-making that was published by the Association of Washington Cities.

DEPUTY PROSECUTING ATTORNEY, JEFFERSON COUNTY 1997-1998

Provided legal review and analysis of land use ordinances and comprehensive plan for compliance with state statutes and case law. Prepared amendments and revised ordinances to implement required changes. Provided comprehensive plan revisions to ensure consistency with legal requirements. Responded to specific legal concerns of Planning Department and Board of Commissioners.

LEGAL COUNSEL, ENERGY & ENVIRONMENTAL ISSUES, HOUSE OF REPRESENTATIVES (Olympia, WA) 1983-1988

Served as Legal Counsel to members of the House on energy and environmental issues. Selected to represent the Legislature as Chief Negotiator in interactions with the federal government on nuclear waste matters. Served as Special Counsel to the Environmental Affairs Committee on the State Environmental Policy Act, Shoreline Management Act, Solid Waste Management Act, and Model Toxics Control Act.

ACTIVITIES

Member: Washington State Bar Association, Environmental Lawyers of WSBA, Dispute Resolution Section of WSBA, Seattle Peace Chorus, Leland Neighborhood Association, KlapaDoWoPella

Participant: Sports (squash, tennis, and long distance running); music (trumpet, guitar and voice)

KIMBERLY A. ALLEN

EDUCATION

- Michigan State University-Detroit College of Law: Juris Doctor Cum Laude
- University of Michigan, Ann Arbor: Bachelor of Arts in Political Science

EXPERIENCE

- Elected member of the Redmond City Council with responsibility for policy formation, comprehensive review and evaluation of municipal land use matters including Comprehensive Plan amendments, municipal code changes, quasi-judicial oversight of land use decisions by the City, review of contracts and agreements to acquire or dispose of land on the City's behalf, annexation and GMA compliance.
- Legal representation of state agencies and employees, including formal and informal opinions, case evaluation, and representation in administrative, superior and appellate court matters.
- Criminal misdemeanor prosecution involving more than 500 hours of courtroom experience, including 65 jury trials and 100 bench trials. Primary and supervisory responsibility for pretrial motions and discovery.

EMPLOYMENT

- **Sound Law Center-Seattle WA-Member**
Hearing examiner conducting land use hearings for various municipalities in the Puget Sound region, including lead examiner for Kitsap County.
- **City of Redmond City Council**—first elected in 2005
Public Safety Committee, Former Chair and current member; Parks and Human Services Committee, member; Planning and Public Works Committee, member
- **Arizona Attorney General's Office**
Phoenix, Arizona. Assistant Attorney General, Civil Division, Employment Law Section
- **Shell Oil Company**
Universal City, California. In-House Counsel, West Coast Litigation
- **Freshman, Marantz, Orlanski, Cooper and Klein**
Beverly Hills, California. Litigation Associate
- **City of Phoenix**
Phoenix, Arizona. Assistant City Prosecutor

ACTIVITIES

Membership in Washington, California, Arizona & Michigan Bar Associations. Founder & Member of Redmond Kiwanis Club. Enjoy cooking and running.

KRISTEN J. LARSON

EXPERTISE AND SKILLS

Extensive knowledge of the Washington State Environmental Policy Act (SEPA), National Environmental Policy Act (NEPA), and related environmental laws; Washington Shoreline Management Act; and Washington property law, water law, municipal law, and administrative procedure. Knowledge of negotiation and mediation dispute resolution processes. Experienced hearing examiner, transactional and litigation attorney, and development project manager.

EXPERIENCE

- **LAND USE ATTORNEY AND HEARING EXAMINER.** 2006 – present
Provide full hearing examiner services on a contract basis for municipalities in the Puget Sound Region as a member of Sound Law Center in Seattle, WA. Review applications, manage hearing calendar, draft pre-hearing orders and rulings on motions, conduct hearings, interpret ordinances, draft application and appeal decisions and rules of procedure.
- **PROJECT FUNDING & AGREEMENTS COORDINATOR.** 2007 – present
Draft funding contracts and determine compliance with federal, state, and local environmental laws for over 200 commercial and residential development projects per year in Seattle, WA on behalf of the City of Seattle. Draft NEPA environmental impact statement for proposed Yesler Terrace 36-acre mixed-use redevelopment in Seattle, WA; manage cross-disciplinary team for joint SEPA-NEPA review and land use approval process.
- **GUEST SPEAKER AND EDUCATOR.** 2007 – present
National Business Institute *Ethics in Land Use Law* guest speaker; University Of Washington land use, Puget Sound water quality, and stormwater management guest lecturer.
- **LEGAL EXTERN, U.S. EPA OFC. OF GENERAL COUNSEL.** May-September 2005
Litigation assistance, legal research and writing in CERCLA cleanup cost recovery action.
- **LEGAL EXTERN, U.S. DEPT. OF JUSTICE ENV. DIVISION.** May-September 2004
Litigation assistance in defending the Bureau of Reclamation from ESA/Indian law suit and defending the Department of Energy from NEPA and contract suit. Drafted *amicus* brief in Washington state stream adjudication.

PUBLICATIONS

NEPA Compliance in Fisheries Management: The Programmatic Supplemental Environmental Impact Statement on Alaskan Groundfish Fisheries and Implications for NEPA Reform, Harvard Environmental Law Review, Spring 2006, with Beth Bryant, J.D. and Research Associate Faculty, University Of Washington.

EDUCATION

- J.D., University of Washington School Of Law, Seattle, WA 2006. Finalist, Pace National Environmental Moot Court Competition. National finalist, Robert G. Bosch fellowship.
- B.S. Biology/Environmental Studies, *cum laude*, University of Wisconsin, Madison, WI 2000. Roskilde Universitetscenter marine biology program, Copenhagen, Denmark, 1999.

ACTIVITIES

- Member, Washington State Bar Association and WSBA Environment and Land Use section.
- President, King County Washington Women Lawyers (approx. 500 members), 2010-2011.
- Pro bono immigration attorney, Northwest Immigrant Rights Project (NWIRP).
- Judge, ABA National Mediation Competition.
- Enjoys kayaking, rowing, sailing, photography, college basketball, travel, and cooking.

**V. EXAMPLE OF A SOUND LAW CENTER
HEARING EXAMINER DECISION**

Sound Law Center follows a consistent 'checklist' approach to writing its decisions. Each decision on an application or appeal follows the same process to make certain each decision is legally defensible and is written clearly and concisely. Each finding cites to exhibits or testimony in support of the facts and each conclusion cites to facts to support the conclusion. As a result, our decisions are rarely appealed and are upheld on appeal if challenged.

**BEFORE THE HEARING EXAMINER
FOR THE TOWN OF HUNTS POINT**

In the Matter of the Application of)	No. V11-01
)	
Robert Marcus, on behalf of)	
Hunts Point Trust:)	
Rodney & Janice Olson)	
)	
)	FINDINGS, CONCLUSIONS
<u>For Approval of a Variance</u>)	AND DECISION

SUMMARY OF DECISION

The request for a variance to establish 50-foot wide front yard setbacks from the north and west property lines; a 17-foot wide side yard setback from the east property line; and a 24-foot wide side yard setback from the south property line for a proposed Lot #1 on property located at 4450 Hunts Point Road, in Hunts Point, Washington, is **GRANTED**.¹ Conditions of approval are necessary to address specific impacts of the proposed development.

SUMMARY OF RECORD

Request:

Robert Marcus, on behalf of Hunts Point Trust: Rodney & Janice Olson, requests a variance to establish setbacks on property for a proposed Lot #1. The property subject to the request is located at 4450 Hunts Point Road, in Hunts Point.

Hearing Date:

The Town of Hunts Point Hearing Examiner held an open record hearing on the request on October 18, 2011.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Mona Green, Town Planner
- Stacia Schroeder, Town Engineer
- Sue Israel, Deputy Clerk
- James Stapper, Architect, for Applicant
- Rodney Olson, Applicant

Attorney Jack C. McCullough represented the Applicant.

¹ The Applicant has submitted a separate variance application (No. V11-02) for setbacks for a proposed Lot #2, which is the subject of a separate Hearing Examiner decision.

Exhibits:

The following exhibits were admitted into the record:

1. Variance Application V11-01 (Sheet No. A1.1), dated August 8, 2011
2. Applicant's Response Statement, dated August 24, 2011
3. Vicinity Map
4. Site Photo, looking towards the west (Lot #1 is on the far side of the peninsula)
5. Applicant proposed setback plan, dated August 24, 2011
6. Staff modified setback plan
7. Department of the Army Letter of Permission NWS-2007-533-NO, dated March 26, 2008
8. Staff Report, #V11-01, dated October 7, 2011
9. Hearing Examiner, Findings, Conclusions and Decision, Radandt Variance, No. V-06-01, dated April 11, 2006.
10. Affidavit of Notice, signed September 28, 2011, and Notice of Application for Two Variances
11. Revised Proposed Setback Plan (Sheet No. A1.1), dated October 17, 2011
12. Revised conditions
13. Legal Descriptions of Proposed Lot #1 and Lot #2

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application, Notice, and SEPA Review

1. Robert Marcus, on behalf of Hunts Point Trust: Rodney & Janice Olson (Applicant), requests a variance to establish setbacks for property in conjunction with a separate short plat application.² The property subject to the request is located at 4450 Hunts Point Road, in Hunts Point.³ *Exhibit 1; Exhibit 2, Exhibit 8, Staff Report, page 1.*
2. Sue Israel, Deputy Clerk, testified that the Town of Hunts Point (Town) gave notice of the variance application as required by Town ordinances. On September 28, 2011, the Town posted and mailed notice of the open record hearing on the request.⁴ *Exhibit 10; Testimony of Ms. Israel.*

² The Town Engineer is reviewing the short plat application (SP #11-01). *Exhibit 8, Staff Report, page 1.*

³ The existing property is identified by tax parcel number 3534900263. *Exhibit 3.* Stacia Schroeder, Town Engineer, testified that the designation on Exhibit 3, 132504HYDR, was issued by the Corps and is not a separate parcel. *Testimony of Ms. Schroeder.*

⁴ Hunts Point Municipal Code (HPMC) 11.10.160(1) requires the Town to issue a notice of application on all project permit applications requiring review by the Hearing Examiner, with limited exceptions. HPMC 11.10.160(4) requires that notice of the application and of the associated public hearing is posted on the street right-of-way adjacent to the subject property and at regular posting sites maintained by the Town. HPMC 11.10.160(4) (e)

*Findings, Conclusions and Decision
Town of Hunts Point Hearing Examiner
Olson Variance, No. V11-01*

3. Mona Green, Town Planner, testified that no environmental review of this application under the State Environmental Policy Act (SEPA) was required.⁵ *Testimony of Ms. Green, Town Planner.*

Comprehensive Plan and Zoning

4. The subject property is designated as “Residential” in the Town’s Comprehensive Plan, as are properties to the south. *Testimony of Ms. Green.* The Town’s primary goal in the Comprehensive Plan is to “maintain the existing land use pattern in recognition of the fact that Hunts Point is a mature, fully developed community.” *Town of Hunts Point Comprehensive Plan, Land Use Section, page 9 (2004).* According to the Comprehensive Plan:

The Town of Hunts Point is a residential community, three quarters of which is a wooded, narrow peninsula. The building density of the greatest area of the Town has been planned to avoid overcrowding on generally narrow lots, eliminate fire hazard and to protect the suburban, sylvan character of the town while permitting simultaneous safe access for each residential lot to both waterfront and arterial service.

Town of Hunts Point Comprehensive Plan, page 6 (2004).

5. The subject property is located at the tip of Hunts Point within the Town’s R-40 Single Dwelling Unit zoning district. Lots within the zone shall contain one single-family dwelling per lot. *Hunts Point Municipal Code (HPMC) 18.30.010.* Lots within the R-40 zone require a minimum of 40,000 square feet. *HPMC 18.25.020(1).* Lake Washington lies to the east, north and west. A single-family residence is located south of proposed Lot #1. *Exhibit 11.*

Town of Hunts Point Code

6. The Town Code contains a number of definitions relating to yards, lot lines and stringline setbacks:

Stringline and setbacks

A “Stringline” means, for a waterfront lot in the R-40 zone, a straight line connecting the stringline intersection points of the two adjacent zoning lots.” *HPMC 18.10.540.*

provides that the Town may give any additional notice deemed appropriate. *HPMC 11.10.160(1); HPMC 11.10.160(4); HPMC 11.10.160(4) (e).*

⁵ According to Washington Administrative Code (WAC) 197-11-305(1), WAC 197-11-800(6) (b), and Hunts Point Municipal Code (HPMC) 11.10.170(1), applications for variance applications based on special circumstances applicable to the subject property such as size, shape, topography, location or surroundings, and not resulting in any change in land use or density, are exempt from review under the State Environmental Policy Act (SEPA). *WAC 197-11-305(1); WAC 197-11-800(6)(b); HPMC 11.10.170(1).*

A “‘Stringline intersection point’ means, for a waterfront lot in the R-40 zone, the intersection of the zoning lot centerline and a line drawn at right angles to such centerline and passing through the point on the primary dwelling having the greatest projection toward the waterfront.” *HPMC 18.10.550.*

A “‘Setback’” means a set distance measured from a property line to the property interior within which placement of any part of a structure is prohibited unless otherwise specifically permitted by provisions of this title.” *HPMC 18.10.510*

Front Yard

A “‘front yard’ means, on lots abutting a body of water, an open space extending the full width of the lot between a primary residential building and the shoreline, the depth of which shall be the least distance between the shoreline and the front of the primary residential building;. . .” *HPMC 18.10.630.*

A “‘front lot line’ means the shoreline for lots abutting upon a body of water, or a waterway, . . .” *HPMC 18.10.320.*

The minimum front lot line setback is “No closer to the front lot line than the stringline setback or, in the absence of dwellings on the two adjacent lots, 25 percent of the depth of the lot, but no less than 125 feet.” *HPMC 18.25.020(2).*

Side Yard

A “‘side yard’ means an open space extending from the front yard to the rear yard, between the nearest extension of the primary residential building and the side lot line, measured horizontally from the nearest point of the side lot line to the nearest extension of the primary residential building.” *HPMC 18.10.650.*

A “‘side lot line’ means any lot line which is not a front or rear lot line.” *HPMC 18.10.340.*

The minimum side lot line setback is: “Not less than 10 percent of the width of the lot, and in no instance less than 10 feet.” *HPMC 18.020(4).*

Rear Yard

A “‘rear yard’ means, on lots abutting a body of water, an open space extending the full width of the lot the depth of which shall be the least distance between, from the lot line abutting the public right-of-way to the primary residential building, . . .” *HPMC 18.10.640.*

A “‘rear lot line’ means the street line for lots abutting upon a body of water or a waterway, otherwise it is any lot line other than a street line which is parallel to the front lot line, or within 45 degrees of being parallel to the front lot line.” *HPMC 18.10.330.*

The minimum rear lot line setback: “Not less than 25 percent of the depth of the lot.”
HPMC 18.020(3).

Proposed Lot #1

7. The Applicant has submitted a separate application (SP#11-01) to short plat the existing property into a west Lot #1 and an east Lot #2.⁶ This application involves proposed Lot #1. As proposed, Lot #1 would measure approximately 237 feet in length, north to south; approximately 180 feet wide, east to west; with an area of 44,603 square feet. It would be bounded to the north and west by Lake Washington, and to the south and east by residential properties. The proposed lot is presently vacant, with a bulkhead as the only site improvement. Ms. Green testified that the property is currently accessed through an easement across two private properties at the north end of Hunts Point Road. *Exhibit 2; Exhibit 8, Staff Report, page 1; Exhibit 11; Testimony of Ms. Green.*
8. A stringline connects the stringline intersection points of two adjacent zoning lots. There is no lot north of the property; therefore a stringline can not be drawn. *Exhibit 8, Staff Report, page 2; Exhibit 11.* In the absence of a stringline the HPMC specifies the minimum front lot line setback as 25 percent of the depth of the lot, but no less than 125 feet. *HPMC 18.25.020(2).* The average depth is 237 feet.⁷ *Exhibit 2; Exhibit 11.*
9. The Applicant proposes a 50-foot wide front yard setback from the property line on the north and west sides.⁸ The proposed Lot #1 would have two front yards because HPMC 18.10.630 defines a front yard as the full width of the lot between a primary residential building and the shoreline. Here there is shoreline on two sides of the proposed lot. *Exhibit 2; Exhibit 11.*
10. For proposed Lot #1, the Applicant states “if a line is projected for the neighbor’s home to the south, the proposed 50 foot wide setback exceeds the theoretical string line.” *Exhibit 2; Exhibit 11.*
11. The Applicant proposes a 17-foot wide side yard setback on the east side of proposed Lot #1. The minimum side lot line setback is: “Not less than 10 percent of the width of the lot, and in no instance less than 10 feet.” *HPMC 18.020(4).* The average width of the lot is given as approximately 170 feet. The proposed 17-foot wide side yard setback would be approximately 10 percent of the average width of 170 feet. *Exhibit 2; Exhibit 11.*
12. The Applicant proposes a 24-foot wide side yard setback on the south side. *Exhibit 2.* This would exceed the average side yard setback of 10 percent of the average width of

⁶ A legal description of proposed Lot #1 and Lot #2 is provided in Exhibit 13. *Exhibit 13.*

⁷ 25 percent of 237 feet is 59.25 feet.

⁸ Exhibit 11 depicts the 50-foot wide setback line from the Ordinary High Water Line (OHWL). *Exhibit 11.*

170 feet, but would be less than half of that required for a rear yard setback. The south property line does not abut a public right-of-way under HPMC 18.10.640; therefore no rear yard is required. *Exhibit 11.*

13. In 2008, the Corps of Engineers issued a Letter of Permission, and coverage under Nationwide Permits 3 and 27 (Reference: NWS-2007-533-NO) for shoreline work on the existing property, including a shoreline planting plan. *Exhibit 7.* In addition to rock bulkheading along the entire shoreline, a cove beach was constructed in the southwest corner of the property with a planting area for mitigation. Ms. Green testified that the proposed 50-foot wide setback on the Applicant's proposed setback plan (Exhibit 5) along the west front yard should be moved to the east to maintain the 50-foot width and align with the residence to the south (Exhibit 6). She testified that the building setback line should not abut a mitigation planting area. *Exhibit 5; Exhibit 6; Testimony of Ms. Green.*
14. Without a variance, the Applicant's proposed Lot #1 would require 125-foot wide front yard setbacks to the north and west, a 24-foot wide side yard setback to the south, and a 17-foot-wide side yard setback to the east for a total net buildable area of 4,400 square feet. The maximum gross floor area ratio is calculated at 8,460 square feet. *HPMC 18.25.020(5); Exhibit 2.* The proposed setbacks would cover 23,714 square feet or 53% of the property, leaving 20,899 square feet or 47% of the property for buildable area. The Applicant states that a similar Hunts Point lot (45,000 square feet) with standard setbacks would have a buildable area of approximately 23,000 square feet or 51% of the total area. *Exhibit 2.*
15. A previous variance was granted on April 11, 2006, establishing 50-foot wide setbacks from the east, west, and north property lines and a 23.75-foot wide setback from the south property line. Ms. Green testified that this variance expired 18 months after issuance because the residential project was never started. *Exhibit 8, Staff Report, page 2; Exhibit 9; Testimony of Ms. Green.*
16. The Town staff reviewed the variance application and supports issuance with conditions to modify the setback in the southwest corner of the property; to incorporate the setbacks into the short plat application; to ensure that there are no modifications from this variance to mitigation planting areas required by the Corps of Engineers; and to eliminate a reference to "proposed entry court" in the proposed setback plan. *Exhibit 8, Staff Report, pages 3 and 4.*
17. James Stapper, Applicant architect, testified concerning a revised proposed setback plan (Exhibit 11) and revised conditions (Exhibit 12) to modify the southwest corner setback and ensure that there are no modifications to mitigation planting areas required by the Corps. Ms. Green testified that the Town had no objections to the proposed modified conditions, including making the variance valid upon approval and recording of any future short plat. Rodney Olson, property owner, testified that the proposed setbacks

should become permanent with the short plat. Ms. Green testified that once a short plat is recorded the setbacks are part of the lot and do not expire. *Exhibit 8, Staff Report, page 4; Exhibit 11; Exhibit 12; Testimony of Mr. Stapper; Testimony of Mr. Olson; Testimony of Ms. Green.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to hear and decide applications for variances. *Section 35.63.130 of the Revised Code of Washington (RCW); Hunts Point Municipal Code (HPMC) Chapter 18.55.*

Criteria for Review

HPMC 18.55.040 provides that the Hearing Examiner shall not vary any of the rules, regulations, or provisions of the zoning ordinance unless he or she finds that the following criteria are satisfied:

- (1) The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the vicinity and zone in which the property, on behalf of which the application was filed, is located; and
- (2) That such variance is necessary because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and
- (3) That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

HPMC 18.55.040.

In addition, the Town Code requires that:

The Hearing Examiner's findings shall include a report in which a comparison is made of the applicant's request for a variance from the provisions of the zoning ordinance and of the present land utilization pattern within the neighborhood area of the applicant's land; such report may contain other pertinent information regarding any existing or preexisting conditions related to topography, geology, traffic, utilities, existing and proposed land utilization, and such conditions set forth by the official plans, development plans, and the comprehensive plan as may be included in the hearing examiner's findings. The Hearing Examiner's findings shall include all of the relevant facts of the applicant's request and such facts which support and oppose the contention of the Applicant.

HPMC 18.55.050.

Conclusions Based on Findings

1. **With conditions, the variance request would not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the vicinity and zone in which the property is located.** Approval of the requested variance would allow the Applicant to short plat the property within the general provisions applicable to all zones and within the R-40 zone. Properties to the south are similarly zoned and developed with single-family residences. Conditions are necessary to ensure that the modification to the proposed revised setback in the southwest corner appear on the setback map; that the setbacks are made part of any future short plat; that the variance causes no modifications to mitigation planting areas required by the Corps of Engineers for previously permitted bulkheading; and that the variance is conditioned upon the approval and recording of a short plat to create Lot #1. *Findings 1, 4-17.*

2. **The variance is necessary because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located.** The property subject to the request is vacant. The property has special circumstances because it is located at the tip of the Town of Hunts Point and surrounded on the west, north, and east by Lake Washington. The property is of such size as to allow for short platting into two lots, each larger than 40,000 square feet. Because there is no lot to the north, through no fault of the Applicant, a stringline setback can not be drawn. Using the Town Code alternative of 125-foot wide front yard setbacks, together with the side yard setbacks, results in a net buildable area of approximately 4,400 square feet or 10 percent of the proposed Lot #1. The Applicant and Town agree that a 50-foot wide setback along the north and west front yards; a 17-foot wide side yard setback on the east side; and a 24-foot wide side yard setback on the south side would meet the variance criteria. In addition, the 50-foot wide setback along the west side would be consistent with a stringline drawn north from the existing residence to the south. The proposal would continue to allow residential use on the property located within the Town's R-40 zoning district. Surrounding properties to the south are similarly zoned and developed with single-family residences. *Findings 1, 4-17.*

3. **With conditions, the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.** The property is surrounded by Lake Washington to the west, north, and east, with single family residences to the south. The proposed modified 50-foot setback on the west would align with the west side of the residence to the south in order to protect view lines. Scenic views to the north toward Lake Washington from the property to the south would be similar to the establishment of a stringline setback. Therefore, the proposed variance would not be injurious to property in the vicinity. The Town provided notice of the variance request and associated open record hearing. No testimony was offered other than testimony of the Town planner, the Applicant's representative and the Applicant. Variance applications are exempt from environmental review under SEPA. Conditions are necessary to ensure that the

modification to the proposed setback in the southwest corner appear on the setback map; to ensure that the setbacks are made part of any future short plat; to ensure that the variance causes no modifications to mitigation planting areas required by the Corps of Engineers for previously permitted bulkheading; and that the variance is conditioned upon the approval and recording of a short plat to create Lot #1. *Findings 1-17.*

DECISION

Based on the preceding Findings and Conclusions, a variance to establish 50-foot wide front yard setbacks from the north and west property lines; a 17-foot wide side yard setback from the east property line; and a 24-foot wide side yard setback from the south property line for a proposed Lot #1 on property located at 4450 Hunts Point Road, in Hunts Point, Washington, is **GRANTED**, subject to the following conditions:⁹

1. The proposed setback at the southwest corner shall be modified as shown in hearing Exhibit 6.
2. The setbacks shall be incorporated into the survey and engineering drawings that are part of Short Plat application SP#11-01 and shall be clearly identified.
3. Nothing in this variance approval shall modify the mitigation planting areas required by the US Army Corps of Engineers under "Department of the Army Letter of Permission NWS-2007-533-NO."
4. The variance exhibit shall eliminate references to "proposed entry court" and all proposed or existing structures as these are not part of any application or approval process.
5. This variance is valid upon approval and recording of a short plat to create Lot #1.

Decided this ___ day of October 2011.

KIMBERLY A. ALLEN
Hearing Examiner
Town of Hunts Point

⁹ This decision includes conditions required to reduce project impacts as well as conditions required to meet Town Code standards.