

Jacqueline Brown Miller

Experience

1348 Bridle Court, Southeast, Olympia, WA 98501; 360.489.7479; jacquibernie@comcast.net

Thurston County; 2010–Present; Pro Tem Hearing Examiner

Determine legality of county land-use decisions on appeal and issue written decisions.

WA Employment Security Dept.; April 2010–April 2011; Commissioner's Review Judge

Reviewed unemployment insurance cases on appeal from the WA Office of Administrative Hearings. Applied relevant provisions of the WA Employment Security Act and its applicable regulations. Determined disposition of cases and issued written decisions.

King County Executive; July–December 2009; Executive Assistant–Policy & Strategy

Oversaw preparation for Executive Transition. Lead flood sheltering efforts.

WA Oil Spill Advisory Council; 2005–July 2009; Executive Director

Directed activities of the Washington Oil Spill Advisory Council (Council). Duties included:

- Assisted Council in developing work plan priorities and strategy to implement priorities; then managed implementation thereof
- Conducted research and analysis needed to develop policies regarding oil spill prevention, response, and remediation
- Supervised professional staff and research consultants, and projects of both
- Oversaw coordination and management of Council meetings relating to business, committee work, and public outreach
- Act as public face of Council and coordinate with related organizations

Represented the Council as part of numerous organizations working on issues relating to the Council's priorities, including the Washington Governor's Natural Resources and Energy Subcabinet and Legislative Liaison Group, the Washington Puget Sound Partnership State Caucus, the Governor's Ocean Policy Work / Advisory Group, and the Pacific Oil Spill Prevention Education Team

Prepared and often presented written and oral reports / testimony / briefings to the Council and its committees, individual legislators and legislative staff, agency officials, and related organizations such as: the Puget Sound Partnership Leadership Council; the Senate Committee on Environment, Water, and Energy; the House Committee on Ecology and Parks; and the U.S. Senate Committee on Commerce, Science, & Transportation

Helped to plan and present information at various conferences such as the Puget Sound Georgia Basin Conference and the annual Clean Pacific Conference

Acted as a liaison to various entities such as the U.S. Coast Guard, the Puget Sound Harbor Safety Committee, the Regional Response Team / Northwest Area Committee, the Pacific States / British Columbia Oil Spill Task Force, the Olympic Coast National Marine Sanctuary, various Washington Tribal governments, and sister agency programs such as the Washington Department of Ecology Oil Spill Program, the Department of Fish and Wildlife's Oil Spill Team, and the Department of Natural Resources Derelict Vessel Program

Worked with various federal and state laws relating to oil spill prevention, planning, and response, and open government administration



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Experience
Continued

Worked with OPA 90, Refuse Act, International Treaty MARPOL, Washington Law relating to oil spill prevention, planning, and response (Chapters 88.40, 88.46, 90.48, and 90.56 RCW), Washington Open Public Meetings Act (Chapter 42.30 RCW), and related statutes and implementing regulations

Coordinated outreach and communications to media and related organizations and coordinate web page content

Performed budget functions

Washington Attorney General's Office; Olympia, WA; 1999 – 2004; Assistant Attorney General, Natural Resources Division

Represented the Department of Natural Resources' (DNR's) forest practices regulatory program in administrative appeals, primarily before the Forest Practices Appeals Board (FPAB) and superior courts, under the Forest Practices Act (FPA) and regulations, including defending permits issued and civil penalties issued

Provided client advice on programmatic and case-specific matters related to the FPA (provisions of Title 76 RCW), Clean Water Act (CWA), Endangered Species Act (ESA) (Habitat Conservation Plan (HCP), Section 7 consultation, Section 9 take), State and National Environmental Policy Acts (SEPA and NEPA) (Ch. 43.21C RCW), the impacts of evolving case law to its programs, and contracts

Performed litigation services: drafting interrogatories, conducting depositions, applying rules of administrative / civil procedure, drafting pre-trial motions, negotiations, applying evidentiary rules, examining trial witnesses, drafting appellate briefs, and arguing appeals

Represented DNR on U.S. v. Washington, fish-blocking culverts' case about interplay between state liability for take of listed species under ESA and Tribal treaty rights to fish; involved negotiating with tribes and strategizing with inter-agency legal team

From 1999 to 2001, represented DNR's proprietary side defending timber sale contracts on appeal before the FPAB and superior court

From 1999 to 2001, represented DNR proprietary on a variety of natural resource issues, including those relating to contract, the CWA, and the ESA

Worked with hydro-geologists, wildlife biologists, foresters, and engineers as expert witnesses for almost all cases on matters pertaining to unstable slopes, groundwater, endangered species, roads, and forestry issues such as harvesting in riparian management zones, channel migration zones, and wildlife reserve trees and green recruitment trees

Participated in internal ESA roundtable and created and distributed internal ESA News Digest

Presented ESA information to governmental bodies (such as DNR, EFSEC, and Park's Commission)

Washington Attorney General's Office; 2004–2005; Assistant Attorney General, Agricultural and Health Division

Represented Department of Health on drinking water issues (Chs. 70.119A 35.91 RCW)

Represented Department of Agriculture on issues of concentrated-animal-feed-operation discharges and plant-pest management (Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and CWA)

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Experience Continued

Pro Bono work, 2004

Litigated preliminary plat approval under SEPA, Growth Management Act (Ch. 36.70A RCW), and ESA; Filed motions and memoranda of law, and presented evidence before Hearing Examiner; worked with expert witnesses on geology, hydrology, and wildlife issues

Ohio Attorney General's Office; Columbus, Ohio, 1996–1999 Assistant Attorney General, Transportation Division

Performed litigation services: drafting interrogatories, conducting depositions, applying rules of administrative / civil procedure, drafting pre-trial motions, negotiations, applying evidentiary rules, examining trial witnesses, drafting appellate briefs, and arguing appeals

Analyzed proposed agency actions to determine defensibility under applicable law

Participated in coordination and planning meetings between client agency and environmental, transportation, and historic preservation agencies on proposed highway projects on issues under NEPA, Clean Air Act (CAA), Intermodal Transportation Efficiency Act, CWA, National Historic Preservation Act (NHPA), ESA, and Noise Control Act

Litigated against US and Ohio EPA enforcement actions under CAA (asbestos); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA); CWA (wetlands and dredge & fill issues); and federally delegated and state environmental laws

Litigated in federal court with third-party plaintiffs over CERCLA (cost recovery) and NEPA (highway planning) issues. Participated in CERCLA PRP meetings; negotiated settlements; and consulted on contamination levels, cleanup strategies, and cleanup levels.

Consulted on and negotiated over sale of contaminated properties, appropriating and appraising contaminated property, and underground storage tank management. Litigated eminent domain cases, including valuation of heavily contaminated properties

Education

The George Washington University National Law Center; Washington, DC 1993 – 1996; LLM – Environmental Law

Courses taken: CWA, CAA, Environmental Planning (NEPA, NHPA), Regulation of Pesticides and Chemicals (FIFRA / TSCA), Toxic and Hazardous Substances Control (CERCLA / RCRA), International Environmental Law, Natural Resources Law (SMCRA, MMPA, ESA, and FLPMA), Water Resources Law, and Department of Justice Internship – Natural Resources Division. Thesis: Preserving Species: The Endangered Species Act versus Ecosystem Management Regime, Ecological and Political Considerations, and Recommendations for Reform; Published at 12 J. Env'tl. L. & Litig. 151 (1997).

The University of Akron School of Law; Akron, Ohio 1990 – 1993; Juris Doctor

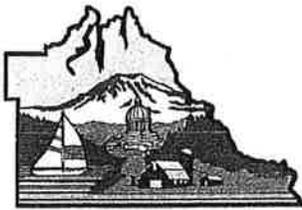
Upper 33 percent; American Jurisprudence Award – Torts; National Environmental Law Moot Court Team – Best Brief (NEPA), Published at 9 Pace Env'tl. L. Rev. 651 (1992)

The University of Akron; Akron, Ohio 1986 – 1990; Bachelor of Arts

COUNTY COMMISSIONERS

Cathy Wolfe
District One
Sandra Romero
District Two
Karen Valenzuela
District Three

HEARING EXAMINER



THURSTON COUNTY
WASHINGTON
SINCE 1852

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matters of the Applications of)	NO. 2010101760
)	
Brodie and Cindi Wood)	
)	
)	ORDER REOPENING
)	RECORD
For Shoreline Substantial)	
<u>Development Permit</u>)	

During deliberations, it has come to the attention of the Hearing Examiner that additional information is required to decide the pending application. The missing information was discussed at hearing but not supported by corroborative exhibits or testimony. Pursuant to Rule 9.4 of the *Rules of Procedure for Proceedings before the Hearings Examiner of Thurston County, Washington*, the record may be reopened for submission of necessary evidence.

9.4 Procedure for Reconsideration and Reopening Hearing

a. At any time prior to the filing of the final decision or recommendation, the Hearings Examiner may reopen the proceeding for the reception of further evidence. All parties of record who participate at the hearing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

Required Additional Information:

The following additional information is required to be submitted by the Applicant and the County, as indicated:

- 1) Evidence by the Applicants that they submitted a drainage and erosion control plan or an abbreviated plan as required by the Drainage Design and Erosion Control Manual (DDECM) for Thurston County (1994) as amended to satisfy the requirements of TCC 17.15.630(C)(1). This evidence should include any documents submitted to the county that purport to satisfy the above requirement.
- 2) A statement from Gayle Zeller, of the Thurston County Resource Stewardship Department that includes: What information the Applicant submitted that was used to form an opinion that the requirements outlined in the DDECM, as it relates to the subject

project, have been satisfied. What DDECM provisions apply and must be met by the subject project. How have these requirements been satisfied. This statement should identify the provisions of the DDECM that have been satisfied and specify how they have been satisfied already, not how they may be satisfied later on in the development process.

- 3) A statement from Gayle Zeller, of the Thurston County Resource Stewardship Department that includes: how the Applicant's proposal will satisfy all requirements of TCC 17.15.630(C)(1) and TCC 17.15.635(A), or why these requirements do not apply to the subject proposal.
- 4) An explanation from the Applicants and Mark Biever, of the Thurston County Water Resources Division, specifically as to how the May 9, 2011 letter from David Strong (Ex. 1, Attach j) satisfies the requirements set forth in TCC 17.15.635(E) for a Marine Bluff Geotechnical report, including the requirement that the Applicant submit a scaled site plan that indicates the location of proposed vegetation removal, and identifies where any grading activity will occur.
- 5) Any review by county staff of the May 9, 2011 letter that is not already made part of the record, including any review by the Thurston County Resource Stewardship Department under TCC 17.15.635(E)(5) through (7).
- 6) Alternatively, submission by the Applicant of a Marine Bluff Geotechnical report by the Applicant, or by the county if one has been submitted to the county already, that meets each requirement of TCC 17.15.635(C)(3). An analysis from the Thurston County Resource Stewardship Department of this report under TCC 17.15.635(E)(5) through (7).

Schedule for Submissions:

By Monday, **October 31, 2011**, the County shall submit the additional information requested above to the Office of the Hearing Examiner and to the Applicant. Any party wishing to submit responsive comments may submit them to the Hearing Examiner's office by Monday, **November 7, 2011**. The record shall close on November 7, 2011 and the Hearing Examiner's decisions shall be issued ten working days later on Monday, **November 21, 2011**. The undersigned will entertain extensions of this schedule if necessary to promote the interests of justice.

Ordered this 17th day of October 2011.



Jacqueline Brown Miller
Thurston County Hearing Examiner *pro tem*

**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER OF THE
THURSTON COUNTY**

CASE NO: 2009101125 (Supplemental Decision on Reconsideration -- Reasonable Use Exception).

SUMMARY OF DECISION

A Request for Reconsideration was made by Jeff Brown and Malanie Reimer, by and through their attorney, Allen Miller. The request remains **DENIED** regarding the block wall. Based on the supplemental materials submitted by the Applicants and based on the Addendum to the County Resource Stewardship Department's June 20, 2011, Land Use and Environmental Review Section Report, the request is now **GRANTED, subject to conditions**.

Background

Applicants requested a Reasonable Use Exception (RUE) to construct a single-family residence on a landslide hazard area slope. Applicants also requested that they be able to maintain two block walls constructed at the base of this slope. The above-captioned matter was heard by the undersigned Thurston County Hearing Examiner *pro tem* on June 20, 2011. On July 5, 2011, findings, conclusions, and a decision were issued (the Decision) denying the request for a RUE. Both the request to construct a single-family residence and the request to maintain the two block walls were denied. The Applicants made a Request for Reconsideration. Regarding the block wall, the request was **DENIED**. Regarding the residential structure, the request was **DENIED**, subject to the Applicant providing updated exhibits and reports outlined in the Decision. The Applicants thereafter timely submitted updated and supplemented materials, which have now been considered by the county and by the undersigned.

The Record

On September 12, 2011, the undersigned received an Addendum to the County Resource Stewardship Department's June 20, 2011, Land Use and Environmental Review Section Report. The undersigned designates this Addendum as Exhibit I, including attachments a through g and enters them into the record.

The following exhibits are admitted as part of the record:

1. Addendum to the County Resource Stewardship Department's June 20, 2011, Land Use and Environmental Review Section Report, Exhibit I.
2. Geotechnical Suitability Recommendation Letter, Attachment a.
3. Conceptual Site Plan, Attachment b.
4. Site Profile, Attachment c.
5. Grading and Erosion Control Plan, Attachment d.
6. Memorandum from John Ward, Thurston County Health Department, Attachment e.
7. Memorandum from Arthur Saint, PE, Thurston County Public Works Development Review, Attachment f.

Discussion Regarding the Residence

According to TCC 17.15.415 C, a reasonable use exception may be granted only if all of the following requirements are met:

1. No other reasonable use of the property as a whole is permitted by this chapter;
2. No reasonable use with less impact on the critical area or buffer is possible;
3. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site;
4. Any alteration to a critical area is the minimum necessary to allow for reasonable use of the property; and
5. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of this chapter.

On August 24, 2011, the county received and began to review updated documents submitted by the Applicants. To wit: an updated site plan, updated site profile, and an updated grading and erosion control plan (Attachments b, c, and d). The county also received and reviewed a letter addressing the geotechnical suitability of the modified residential structure set forth in attachments b, c, and d (Attachment a). The Public Works Department and the health Department also reviewed the above documents and submitted comments that were reviewed by the Resource Stewardship Department (Attachments e, f, and g).

As recognized by the Resource Stewardship Department, the revised site plan and site profile depicts a proposed residence with a smaller footprint than originally proposed and in a location shifted back from the edge of the slope, so that it does not fall directly on the landslide hazard slope. The proposal is for a single-story residence with no basement and is set back approximately 20 feet from the edge of the private road easement, which meets the minimum twenty-foot setback requirement.

In evaluating whether the five criteria of TCC 17.15.415 C are met, the undersigned finds and concludes as follows.

In general, the Applicants have now proposed a modest sized residence in a location that is least impacting of the critical area on the property. The home location will be stable and will not destabilize the slope if the applicant follows the construction recommendations set forth in the Geotechnical Suitability Recommendation Letter (Attachment a).

The first requirement of TCC 17.15.415 C is met. The undersigned has found that no residential structure could be constructed without being placed inside of the fifty foot buffer required by TCC 17.15.620 and thus, being prohibited by the CAA and subject to the RUE requirement.

The second requirement of TCC 17.15.415 C is met. There appear to be no residential design options that would post any less impact on the critical area or buffer.

The third requirement of TCC 17.15.415 C is met because there is no evidence in the record to indicate that the requested home site would result in any damage to other properties or threaten the public health, safety or welfare.

The fourth requirement of TCC 17.15.415 C is met. The current design avoids grading along the top of the slope. There is no evidence of record to indicate that the currently proposed home site design is anything other than the minimum necessary that would allow the Applicants to make reasonable use of the property.

The fifth requirement of TCC 17.15.415 C is also met. The evidence does not support a conclusion that the Applicant is at fault for being unable to make a reasonable use of the subject property without, first, being granted a reasonable use exception.

DECISION AND ORDER

1. Based on the foregoing, the Request for Reconsideration is GRANTED regarding the modified residential structure depicted in Attachments b, c, and d, subject to the following conditions:
 - a. Conditions A through F as set forth in Addendum to the County Resource Stewardship Department's June 20, 2011, Land Use and Environmental Review Section Report (Exhibit I), which are incorporated by reference into this Supplemental Decision.
 - b. The construction recommendations set forth in the Geotechnical Suitability Recommendation Letter (Attachment a), which are incorporated by reference into this Supplemental Decision.
2. This Supplemental Decision on Reconsideration shall be appended to the July 5, 2011 Decision and to the July 22, 2011 Decision on Reconsideration, along with the submittals identified herein.

Dated this date of September 14, 2011



Jacqueline Brown Miller
Thurston County Hearing Examiner *pro tem*

THURSTON COUNTY
PROCEDURE FOR APPEAL TO BOARD
AFTER HEARING EXAMINER RECONSIDERATION

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner after reconsideration, you may file an appeal. The appeal process is described in A below. Unless appealed, decisions of the Hearing Examiner after reconsideration become final on the 11th day after the date of the reconsideration decision. **The Board of Thurston County Commissioners renders decisions within 60 days following a notice of appeal unless the Board, the applicant, and the appellant mutually agree to a longer period.

An appeal of a SEPA decision must be filed in Superior Court pursuant to the Land Use Petition Act, RCW Chapter 36.70C. An appeal of a decision relating to SEPA shall be done in accordance with RCW 43.21C.075 and TCC 17.09.160 (T).

A. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of appeal and the appropriate fee must be filed with the Resource Stewardship Department within **ten (10) days** of the date of the Hearing Examiner's decision on a reconsideration request.
3. An appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of appeal shall concisely specify the error or issue which the Board is asked to consider on appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

B. STANDING All appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the appeal should be granted.

C. FILING FEES AND DEADLINE If you wish to appeal this determination, please do so in writing on the back of this form accompanied by a non-refundable fee of **\$820.00**. Any appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 above. **Postmarks are not acceptable.** If your application fee as well as completed application form is not filed by this time, you will be unable to appeal this determination. This deadline may not be extended.

** *Shoreline Permit decisions are not final until a 30-day appeal period to the state has elapsed following the date the County decision becomes final.*



Project No. _____ Appeal Sequence No. _____
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APPEAL OF HEARING EXAMINER DECISION AFTER RECONSIDERATION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this ____ day of _____ 20__, as an APPELLANT in the matter of a Hearing Examiner's decision
rendered on _____, by _____ relating
to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does
now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of
Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review
of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of
the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted
to the appellant.

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$595.00 Received: Initial _____
_____, 20__.

Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of

