

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: Appeals by Edelstein, Sanford, Koopmans, and Wittendorf of an Administrative Decision by Skagit County Planning and Development in PL 2007-0465 and BP21-0785 (Overlook Crest)

APL 2025-005

ORDER ON APPELLANT’S REQUEST TO
RECONSIDER

The Hearing Examiner, having reviewed the record, the pleadings and submissions of the consolidated Appellants as well as the Applicant (Overlook Crest, LLC), and Skagit County’s Department of Planning & Development (“Department”).

The Hearing Examiner hereby makes the following findings and resultant orders, with authority pursuant to the Skagit County Hearing Examiner’s Rules of Procedure (SCRE) §36:

LAW

The Hearing Examiner has the power to hear motions for Reconsideration,¹ pursuant to grounds outlined in the Skagit County Code.²

Any Party of Record may request reconsideration within 10 days of an order or decision,³ and the request may only be granted when “a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.”⁴ Consequently, the laws raised must be applicable at the time of the decision or to the application as vested,

¹ SCHE §36(C)

² SCC 14.06.440, formerly titled SCC 14.06.180; changed by Ord. 20240005 (Exh. A)

³ SCC 14.06.440(1)

⁴ SCC 14.06.440(4)

and the facts must have been introduced at the hearing. Any new facts in post-order motion practice being raised by any party will be set aside and disregarded as not admitted for the consideration of this matter, and any new law not applicable at the time will be disregarded.

SCRE §19 does require that all motions be filed with the Hearing Examiner and be served on all other parties.

FACTUAL FINDINGS

The Corrected Order to Dismiss was entered June 26, 2025.⁵ The Appellants' Joint Request for Reconsideration⁶ was filed on July 7, 2025. Ten days after June 26, 2025 is July 6, 2025, but that is a Sunday and it is not customary to count filings on such a date, and thus July 7, 2025 becomes the last date possible to file the Request for Reconsideration.⁷ The Reconsideration was filed timely.

The factual record as reflected in the Corrected Order to Dismiss entered on June 26, 2025 stands as accurate.

The Hearing Examiner does not have enough factual record made under penalty of perjury to determine whether the Request for Reconsideration was or was not served on the other parties pursuant to SCRE §19, though the allegation has been raised by the Applicant, who otherwise acquired a copy of the Appellants' pleadings. There is no certificate or declaration of service by the Appellants, but the Applicant's allegations are also not done under penalty of perjury in their response briefing.⁸

⁵ "Order on Applicant's Motion to Dismiss, Corrected – 6/26/25," *entered 6/26/25*

⁶ Collectively "Appeal or Request for Reconsideration Form" and "Appellants' Joint Statement of Errors to Support Request for Reconsideration" and supporting declarations.

⁷ Though never recommended to any party to ever wait for the last day to file motions or responses, so that such numerical debates need not be had.

⁸ Perhaps in the future, outside of a live hearing where such an issue might be raised if not already resolved between the parties or a motion of shorten time for relief, the correct approach would be a separate attorney's affidavit regarding procedural facts.

LEGAL CONCLUSIONS

The Applicant in this case, or any party in any case, is potentially severely prejudiced in situations where they are not served by other parties, or at best entitled to additional time for a response if time allows for a remedy and a motion of shorten time can be filed expeditiously. Were facts to come to definite light that other parties were not served with the pleadings filed by the Appellants and they had no timely remedy, any Hearing Examiner decision in the Appellants' favor would likely be reversed and overturned due to the procedural irregularity, and sanctions imposed or the malfeasant party's participation conditioned pursuant to SCRE §7, or have their case dismissed pursuant to SCRE §12(D). For the moment, however, that is not necessary due to what follows below, which does not prejudice the other parties.

No facts have been overlooked at the motion hearing or facts material misunderstood that are raised in the Appellants' Request; the appellants instead disagree with the Hearing Examiner's review and interpretation of the facts' relevance or meaning and their conclusions in the factual findings of the order. Indeed, the appellants raise "undisputed facts" several times, with which they are in concurrence with the Corrected Order to Dismiss. As noted in the Corrected Order to Dismiss, the parties themselves are in general agreement as to the facts. There is no major material disagreement as to the nature of the facts or the chronology of events raised in the Request to Reconsider, only the conclusions drawn from those facts. Nothing raised in the Request for Reconsideration is a basis for different factual conclusions in the Corrected Order to Dismiss based on a review of the record.

By and large, the Appellants are relitigating the same positions they put forward at the final hearing and the briefing leading thereto. No new points of law that have not already been raised and considered by the Hearing Examiner, such as overlooked case authority or other authority that leads to the conclusion that state law requires all permits and decisions have notice. The County Board of Commissioners, in following the State's Local Project Review

Statute, can exclude several types of permits from notice requirements, including the type at issue here, so long as they do so by ordinance or resolution;⁹ in this case it has been by ordinance in the promulgation of SCC 14.06, *et. al.* Presumably, the Board of County Commissioners has done this intentionally and with rational basis given that they have delineated a number of different procedures and notice and hearing requirements that appear objectively to be based on impact.

The facts and conclusions regarding the appeal time calculations are also not swayed by the restated arguments; noting that in the Corrected Order, an already liberal and forgiving calculation was used in favor of the Appellants. The ruling on the date of the decision was made in the light most favorable to the appellants rather than the position argued by the other parties of March 28, 2025.

ORDER

The Request to Reconsider is denied.

SO ORDERED this 22nd day of July 2025.



Rajeev D. Majumdar
Skagit County Hearing Examiner

⁹ RCW 36.70B.140