

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, viewed the property, and taken this matter under advisement.
2. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. The date and time of the hearing was published two (2) weeks prior to the hearing in the official Pierce County newspaper.
3. The applicant has a possessory ownership in property located at 6224 – 114th Avenue Court East. The property is currently improved with an existing building, and recreational facilities. The applicant wishes to construct and rebuild a building on his property for commercial purposes. This piece of property is subject to Pierce County zoning requirements. It is not located within the City of Puyallup. The construction would be consistent with Pierce County zoning.
4. In 1977 the Washington State Legislature adopted the Public Water System Coordination Act of 1977, which is presently codified in ch. 7.116 RCW. The Act requires that service area boundaries be established by written agreement among the purveyors. Pursuant to this Legislation, Pierce County adopted the Pierce County Coordinated Water System Plan ("CWSP"), which established water service boundaries within Pierce County. According to Section 1 of the CWSP, the objective is to assist water purveyors to effectively plan by establishing exclusive water service areas, thereby ensuring the most cost effective supply service to all properties within the County.
5. It is undisputed that the City of Puyallup is the exclusive water provider to this particular parcel. The City of Puyallup signed a standard service area agreement on August 29, 1994. As noted above, this particular parcel is outside of the city limits of Puyallup, but it is within the service area. The property is currently being provided water by the City of Puyallup. Pierce County is requiring a water availability letter to allow the commercial construction project to be commenced.
6. The applicant has requested numerous times that the City provide a water service availability letter to his property so that he can proceed with his commercial development. The City of Puyallup has refused to provide that water availability letter. The undisputed facts are that the City believes that the applicant must satisfy all Puyallup Municipal Code requirements prior to the City of Puyallup being required to provide water to his site. The main provision within the Puyallup Municipal Code relates to signing a pre-annexation agreement. The applicant, according to the City, must sign the pre-annexation agreement prior to him receiving water. The applicant refuses to sign this agreement. It is also undisputed that the applicant cannot reasonably receive water from any other source. A private water tank would be cost prohibitive for this particular parcel of property. The nearest

other water purveyor is over ¾ mile away and cannot provide water service to this site. This is not an extension of water service because this particular property is already being serviced by the City of Puyallup.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant did not go through the normal dispute resolution process because in a previous Decision issued on January 12, 2006 (Plexus Investments LLC – Ted Spice), the Hearing Examiner stated that properties located outside of the City of Puyallup, yet in their exclusive water service provider area, could go directly to the Examiner for the resolution of disputes. Pierce County Code (PCC) Section 19.D.140.090 (F) (2) states in part:

Unresolved timely and reasonable service disputes shall be referred by the lead agency to the Pierce County Hearing Examiner for final resolution of non-land use matters pursuant to Pierce County subsection 1.22.080(B)(2)(k).

PCC Section 19D.140.090(H) states as follows:

Boundary Line Adjustment Based Upon Determination of Untimely or Unreasonable Service. If the Hearing Examiner finds that a purveyor is unable or unwilling to provide timely and reasonable service within its exclusive water service area boundary, the Hearing Examiner shall readjust the purveyors boundaries to an area that the purveyor would be able and willing to provide service and/or provide reasonable conditions pursuant to Pierce County Codes subsection 1.22.080(C), to ensure timely and reasonable service. The Hearing Examiner's determination on readjustment of a water service area boundary and/or imposition of reasonable conditions shall be supported by substantial evidence in the record.

The above quoted sections authorize the Examiner to readjust the city's boundaries and/or impose reasonable conditions to ensure timely and reasonable service. The Hearing Examiner's previous Decision is consistent with the Code sections.

3. The City of Puyallup requested that the Hearing Examiner dismiss the case on jurisdictional grounds. The City argues that they were not properly served a Summons and Complaint. This is not a case of the type that encompasses a summons and complaint; rather it is a water service dispute that has been allowed to go directly to the hearing examiner. The City of Puyallup was provided ample notice of hearing. The hearing was continued for a couple months to provide more time for the City to respond. The City also argues that the applicant failed to exhaust all administrative remedies. As noted in the Findings, in a previous decision involving the City of Puyallup that was not appealed properties in similar situated areas such as Mr. Stanzel's could go directly to the examiner for relief.
4. Initially the issue is whether the requirement that a pre-annexation agreement be signed prior to obtaining water on this particular parcel is appropriate. If it is appropriate, then the applicant would be required to sign it and then go through the process of applying for water service through the City. The Pierce County Code does not require a potential customer to sign a pre-annexation agreement. PCC Section 19B.140.100 states:

Pre-annexation agreements were not contemplated in the designation of exclusive water service area boundaries by the Water Utility Coordinating Committee at the time of service area boundary designation and furthermore are not necessary for the provision of timely and unreasonable service within a purveyor exclusive water service area boundary. Therefore, a requirement that a potential customer enter into a pre-annexation agreement or a waiver of any statutorily or constitutional guaranteed right as a condition of service may be challenged as unreasonable through the dispute resolution process.

This section does not authorize a property owner to challenge a city's ability to require a pre-annexation agreement, and therefore does not conflict with R.C.W. 35.92.200. However, said section does allow a property owner to challenge the pre-annexation agreement from the limited perspective of "timely and reasonable service." A successful challenge, while not affecting the city's authority to require a pre-annexation agreement, would allow an applicant to seek an alternative water supply and/or other relief.

5. In this particular case, requiring the applicant to execute a pre-annexation agreement to receive water from the City is not reasonable because this is not an extension or significant expansion of water service. The applicant is already receiving water service from the City of Puyallup for residential use. The applicant

is requesting a commercial use on his property. There will be very limited improvement on the site. The increased water requirements, if any, will be very limited. This is a situation where water is already being provided and there will be no substantial increase in use levels. While the City is correct in that a municipality cannot be compelled to provide water outside its corporate limits, the City is already providing water service to this property. The City of Puyallup also agreed in 1994, in the Standard Service Agreement establishing water utility service area boundaries, that the City would provide water service to this particular piece of property. The City actually has provided water to this property. The requirement that the applicant must sign a pre-annexation agreement, is not reasonable given these circumstances.

The Hearing Examiner only has that authority which is granted to it by the Pierce County Code. The Hearing Examiner agrees with the county and city officials that there is no specific authority allowing the Hearing Examiner to compel the City of Puyallup to provide water service to the applicant's property. Requesting the City of Puyallup to provide water service goes too far to be considered an "imposition of reasonable conditions" which is allowed under PCC 19D.140.190 (f) (2). If a court determines the Hearing Examiner does have authority to order this type of relief, then in this particular case, the Hearing Examiner would order the City of Puyallup to provide the service given these specific facts.