



# Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36  
<http://www.kitsapgov.com>

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## NOTICE OF HEARING EXAMINER DECISION

October 16, 2008

To: Interested Parties and Parties of Record

RE: Project Name: **Radovich Appeal**  
Applicant: **Gordon Radovich**  
**6052 Chico Way NW**  
**Bremerton, WA 98312**  
**Central Kitsap County, Commissioner District #3**  
Application: **Administrative Appeal**  
Case Number: **080710-058 (4414-000-013-0007) LIS#08 53094**

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. **ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON OCTOBER 30, 2008.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

**The written appeal shall be made on or attached to an appeal form** provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County;
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

**NOTICE OF HEARING EXAMINER DECISION – RADOVICH APPEAL**

**October 16, 2008**

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3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

The complete case file will be available for review at the Department of Community Development, Monday through Friday, except holidays, 8:15 a.m. to 4:00 p.m.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft  
Clerk of the Examiner

Enclosure

See attached transmittal

RECEIVED

OCT 15 2008

KITSAP COUNTY DEPT OF  
COMMUNITY DEVELOPMENT  
Terrence P. McCarty



**Kitsap County Hearing Examiner**

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**OFFICE OF THE HEARING EXAMINER**

**KITSAP COUNTY**

**REPORT AND DECISION**

**CASE NO.:** 080710-058  
RADOVICH APPEAL

**APPELLANT/  
PARCEL OWNER:** Gordon Radovich  
6052 Chico Way NW  
Bremerton, WA 98312

**PROJECT APPLICANT:** Gordon Radovich  
6052 Chico Way NW  
Bremerton, WA 98312

**DESIGNATED  
REPRESENTATIVE:** Alan L. Overland (Attorney for Applicant)  
901 South "I" Street, Suite 202  
Tacoma, WA 98405

**SUMMARY OF REQUEST:**

Mr. Radovich is appealing from an administrative decision of the Director of Community Development, dated April 1, 2008, wherein he granted his approval of the Radovich Preliminary Short Subdivision. Mr. Radovich asserts that the Director is without lawful authority to impose conditions #3 and #4 of his administrative approval. The Director has reviewed this appeal and recommends denial of the same.

**SUMMARY OF DECISION:**

Appeal denied; short subdivision denied.

**PUBLIC HEARING:**

After reviewing Department of Community Development Staff Report and examining

available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was conducted in the chambers of the Kitsap County Board of Commissioners on July 10, 2008.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
1	Resolution 090-1998	5/4/98	N/A
2	Site Plan	3/3/05	3/7/05
3	Pre-Application Meeting Request	No Date	3/7/08
4	Pre-Application Conference Confirmation Letter	3/30/05	N/A
5	Written Summary of Pre-Application Meeting	5/9/05	N/A
6	GIS Kitsap County Parcel Search Map	4/7/06	N/A
7	KCHD Building Site Application	8/26/05	No Rec'd Date
8	Site Photos (12)	No Date	N/A
9	Environmental (SEPA) Checklist	2/20/06	7/10/06
10	Site Plan	No Date	7/10/06
11	Water Availability Letter Silverdale Water District	4/11/06	7/10/06
12	KCPW Application for Concurrency Test	2/28/06	7/10/06
13	Notice of Incomplete Letter	3/16/06	N/A
14	Preliminary Short Subdivision Application	2/28/06	5/8/06
15	Notice of Incomplete Letter	5/23/06	N/A
16	Site Plan	7/6/06	7/7/06
17	Lot Closures – Survey/Civil Solutions	7/6/06	7/7/06
18	Letter from Chester P & G Arlene Phillips	No Date	8/06
19	Letter from Chris & Gail Whitley	8/17/06	8/18/06
20	Determination of Non-Significance	9/28/06	N/A
21	E-mail from Meg Sands	8/22/06	8/22/06
22	Letter from Stella Vakares KCPW	1/19/07	N/A
23	Letter from Kerrie Crawford KCHD	1/29/07	3/16/07
24	E-mail from Jason Rice	3/14/07	3/14/07
25	Letter from Merita Trohimovich	4/30/07	N/A
26	E-mail from Meg Sands with attachments	7/30/07	7/30/07

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
27	Notice of Application	8/9/06	N/A
28	E-mail from Meg Sands	10/2/07	10/2/07
29	E-mail from Meg Sands	10/2/07	10/2/07
30	E-mail from Meg Sands	10/2/07	10/2/07
31	E-mail from Meg Sands	10/2/07	10/2/07
32	E-mail from Meg Sands	10/5/07	10/5/07
33	E-mail from Gary A Protor	10/5/07	10/5/07
34	Letter from Allan L Overland, Attorney	11/14/07	No Rec'd Date
35	Letter from Allan L Overland	11/14/07	11/15/07
36	KCPW Sewer Availability Agreement	12/27/06	11/30/07
37	E-mail from Meg Sands	12/21/07	12/21/07
38	Revised Site Plan	1/11/08	1/17/08
39	KCHD Short Plat Approval sheet – Revision	2/1/08	2/25/08
40	E-mail from Meg Sands	2/7/08	2/7/08
41	E-mail from Jim Bolger	2/12/08	2/12/08
42	E-mail from Kerrie Crawford	2/19/08	2/19/08
43	Notice of Administrative Decision	4/3/08	N/A
44	Affidavit of Mailing – NOD	4/3/08	N/A
45	Appeal of Administrative Decision	4/17/08	4/17/08
46	Hearing Examiner's Agenda for June 26, 2008	6/11/08	6/11/08
47	Affidavit of Mailing – HE Agenda	6/11/08	N/A
48	Letter from Allan L Overland	6/12/08	6/12/08
49	Letter from Allan L Overland	6/18/08	6/18/08
50	Re-Issued Notice of Administrative Decision	6/19/08	N/A
51	Affidavit of Mailing – NOD	6/19/08	N/A
52	Staff Report	6/27/08	N/A
53	Photos from Lot A & Lot B	7/7/06	7/7/06
54	E-mail from Jason Rice	7/30/07	7/30/07
55	Letter from Terrence F. McCarthy, Deputy Hearing Examiner	7/31/08	8/1/08
56	E-mail from Meg Sands	8/4/08	8/4/08
57	E-mail from Michael Barth	8/6/08	8/6/08
58	Dangerous Building – Notice & Order	8/12/08	N/A
59	E-mail from Jason Rice	8/20/08	8/20/08
60	Memo from Meg Sands	8/6/08	N/A

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
61	Memo from Terrence F McCarthy	8/29/08	9/3/08
62	Letter from Harold T Anderson, Quadra Engineering	9/2/08	9/2/08
63	Letter from Terrence F McCarthy	9/9/08	9/9/08
64	Memo from Meg Sands	9/15/08	9/15/08

Appearing was MEG SANDS, who briefly summarized the Staff Report which, with its attachments, was admitted into evidence. The revised application was declared complete on July 10, 2006. At that time, the .69 acre property was zoned Urban Reserve (URS), which required that all newly created lots be a minimum of ten acres. On December 11, 2006, the comprehensive plan was updated and the zoning changed from URS, a rural zone to Urban Restricted or Urban Zone. The URS Zone does not provide urban services and prohibits connections to sewers. Exhibits 1-53 were admitted into evidence. The Director's response is complete. Title 16.48.090.E gives the Director the authority to establish appropriate conditions. Condition #3 is appropriate; if the purpose of this subdivision is not for the sale of a structure, then there is no basis for subdivision. This is a very narrow provision of the code for a short subdivision. Condition #4 states the time limit for the sale. If the residences are not sold, there is no basis for this subdivision. The provisions of the code are designed to segregate residences for purposes of sale only. These particular residences are dilapidated and it is somewhat questionable as to whether or not they are habitable. It is questionable, considering their condition, whether they will actually sell. If the structure fell down, there would not be a basis for the subdivision. They would ask for an additional condition and that is that if the structures are deemed to be dangerous and condemned, then the subdivision would become void. If either building were declared dangerous then segregation would become voided.

Appearing was JASON RICE, Code Enforcement Officer for Kitsap County, who did conduct a site visit. There were quite a few conditions of concern. The dilapidation appeared everywhere. There appeared to be sheetrock problems and mold. The front porch of the wood structure appeared to be caving in. Both residences appeared to have somebody living in them. Habitability is questionable. The conditions, if they worsened any, would probably generate a dangerous building declaration.

Appearing was ALAN OVERLAND on behalf of the applicant. They are presenting no testimony. They had a quasi-legal question: Does the department Director have the power to rewrite the ordinance and require conditions #3 and #4? They do not believe this is a reasonable exercise of the powers granted to the Director. The time element is very difficult and not reasonable in this current real estate market.

Appearing was CANDACE MURCELL. She wanted to point out that the preliminary approval is good for five years.

Reappearing was MEG SANDS, who indicated that she believed both units were

connected to one single septic tank and drain field and that they will be hooking up to sewers.

Reappearing was ALAN OVERLAND, who raised a question about whether or not connecting to sewer had been approved.

Reappearing was MEG SANDS, who indicated that the whole subdivision was predicated upon each structure being connected to sewer.

No one spoke further in this matter and so the Examiner took the request under advisement.

**NOTE:** A complete record of this hearing is available in the office of Kitsap County Department of Community Development.

### **FINDINGS, CONCLUSIONS AND DECISION:**

#### **FINDINGS:**

1. The Hearing Examiner has viewed the site, admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. Appropriate notice was provided pursuant to the Kitsap County Code.
3. This appeal is exempt from review under SEPA.
4. The Staff Report appropriately sets out the issues, proposed findings and conclusions, and is hereby incorporated by reference.
5. This appeal is considered a *de novo* appeal, pursuant to Kitsap County Code 21.04.120.D. The appellant submitted no evidence and relied solely on what they termed a quasi legal argument.
6. Mr. Radovich appeals conditions #3 and #4 of the Director's approval of a preliminary short subdivision, which was issued on April 1, 2008.
7. Mr. Radovich has a possessory interest in a long, narrow parcel of property located at 6052 Chico Way NW, Bremerton, Washington 98312. This parcel is approximately 612.24 feet by 50.84 and is located on Dyes Inlet.
8. This long, narrow site has two dilapidated houses and a carport on site. From the photographs, which were submitted, neither of the houses looked to be habitable. Jason Rice, an employee of the county who inspected these houses, indicated that porches and roof systems are dilapidated and in disrepair, the roof system is failing

and leaking, there is mold/mildew present throughout. There is a leaking toilet and sink. The floor has been replaced in one bathroom. He was not sure how a person could live in such conditions. It was also identified that there are issues with setback and the lack of legal easement as it pertained to the adjoining property to the south. Both houses appear to be using a single septic tank and drain field, which would be in violation of county regulations.

9. From appearances, these two very small single-family cabins appear to be on top of each other. The applicants propose segregation of these two very irregularly shaped lots which will result in the cabin which is the second from the water, having no privacy as the people owning the unit in front will have to pass within a few feet of the front door of the second residence in order to get to their residence. They appear like fishing cabins, which were built in the '30s and '40s, and as if they were part of a network of small cabins similar to what was done at Dynes Point on Whidbey Island. Segregation of these dilapidated units would appear to anticipate one of the units falling down or being removed so that the second unit could be moved a good 300 feet from the first unit. This long, narrow lot will have two units right on top of each other close to the water. Sale may be impossible because of their close proximity to each other, the numerous repairs needing to be done and the resulting highly irregularly shaped lots, which would be produced by the segregation.
10. On March 8, 2006, Mr. Radovich submitted an application to Kitsap County Department of Community Development for a preliminary short subdivision. This application was declared complete on July 10, 2006. When he initially applied, this .69 acre site was zoned Urban Reserve (URS).
11. Mr. Radovich's preliminary short subdivision application was based upon Kitsap County Code 17.455.020, which provides in pertinent part:

If as of May 10, 1999, a lot of record was lawfully occupied by two or more single-family residences (excluding accessory dwellings), the owner of such a lot may apply for a short plat approval in order to permit the segregated sale of such residences, even though some or all of the resulting new lots will have lot areas or dimensions less than required for the zone in which they are located. All other provisions of the Short Subdivision Ordinance (Chapter 16.48 of this code) shall apply to the application.
12. On December 11, 2006, Kitsap County Comprehensive Plan updated the zoning of the site and changed it from URS, a rural zone, that generally does not provide urban services and prohibits connections to sewers to urban restricted zone. By agreement of the parties, the appellant revised their application to reflect that it was located in the UR zone.