

March 1, 2016

Roadwise, Inc.
Attn: Jeffery L. Dobson, owner
26828 Maple Valley Highway, #251
Maple Valley, WA 98038

RE: Administrative Appeal: AA14-15
Application Numbers: 824793

Dear Mr. Dobson:

Transmitted herewith is the Report and Decision of the Pierce County Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/jjp
cc: Parties of Record

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: **Administrative Appeal: AA14-15**
 Application Numbers: 824793

PROPERTY/PARCELS Golden Pacific Railroad, Inc.
OWNERSHIP: Attn: Louis Schillinger, owner
 8265 North Van Dyke Road
 Port Austin, MI 37312-9521

APPELLANT: Roadwise, Inc.
 Attn: Jeffery L. Dobson, owner
 26828 Maple Valley Highway, #251
 Maple Valley, WA 98038

AGENTS: Vandeberg Johnson & Gandara, LLP
 Attn: Darrel Addington
 and Mark Patterson
 1201 Pacific Avenue, Suite 1900
 P.O. Box 1315
 Tacoma, WA 98401-1315

COUNTY CONTACT: Mark Luppino, Code Enforcement Officer

SUMMARY OF REQUEST:

Appeal of a Written Decision on a Request for Remission or Mitigation of Penalty dated December 15, 2015, issued by the Pierce County Public Works Department, Jeffery Dobson, owner of Roadwise, Inc.

Project Location: Tax parcels 7745001900 and 7745001790, addressed as 9716-17th Avenue East, Tacoma, in unincorporated Pierce County.

SUMMARY OF DECISION: See Decision.

DATE OF DECISION: March 1, 2016

PUBLIC HEARING:

After reviewing the Planning and Land Services 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 opened on January 27, 2016, at 9:01 a.m.

Parties wishing to testify were sworn in by the Examiner.

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

- EXHIBIT "1" - Public Works Staff Report**
- EXHIBIT "2" - Application**
- EXHIBIT "3" - Staff Decision and Documents**
- EXHIBIT "4" - Notice of Appeal Hearing**
- EXHIBIT H-1 - Notice of Appearance from Handmacher and Ley**
- EXHIBIT H-2 - Order of Continuance dated December 1, 2015**
- EXHIBIT H-3 - Pierce County's Brief, Federal Preemption**
- EXHIBIT H-4 - Pierce County's Brief, Nonconforming Uses**
- EXHIBIT H-5 - Notice, Agenda, and Routing Documents**
- EXHIBIT H-6 - Declaration of David Fors**
- EXHIBIT H-7 - Fire Inspection**
- EXHIBIT H-8 - Exclusive Sale and Listing Agreement**
- EXHIBIT H-9 - Lease Agreement, February 1, 2014**
- EXHIBIT H-10 - Lease Agreement, January 1, 2015**
- EXHIBIT H-11 - Industry Track Agreement**
- EXHIBIT H-12 - Photograph of Century 21 Sign**
- EXHIBIT H-13 - Material Safety Data Sheet**
- EXHIBIT H-14 - Site Plan**
- EXHIBIT H-15 - Petition of Support**
- EXHIBIT H-16 - Drawing to Beautify**
- EXHIBIT H-17 - Email with Attachment to Mark Patterson from Jeff Dobson**
- EXHIBIT H-18 - Downtown Historic Midland Map**
- EXHIBIT H-19 - Submittal from Mr. Ley Including Chronology, CBA, and CBRE**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 2:45 p.m.

NOTE: A complete record of this hearing is available in the office of the Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, previously viewed the property, heard testimony, and taken this matter under advisement.
2. This Administrative Appeal is exempt from environmental review under SEPA.
3. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published on January 13, 2016, in the official County newspaper (Tacoma News Tribune).
4. Appellant, Roadwise, Inc., appeals a Written Decision issued by the Pierce County Public Works Department on December 15, 2015, on its Request for Remission or Mitigation of Penalty that concerned its activities on a site located at 9716-17th Avenue East, Tacoma.
5. In a letter dated November 24, 2015, Mark Luppino, Pierce County code enforcement officer, and Yvonne Reed, Pierce County code enforcement supervisor, imposed penalties in the amount of \$89,000.00 on Roadwise, Inc., for failing to correct violations at a site located at 9716-17th Avenue East. Subsequent to negotiations with appellant's attorney, Darrel Addington, Stephen C. Wambach, Sustainable Resources Administrator, Pierce County Public Works Department, authored a letter dated December 15, 2015, memorializing an agreement reached between Public Works and appellant. The agreement is summarized on page 2 of the letter as follows:

As we discussed in our meeting on December 8, 2015, all Civil Penalty fines will be waived if the property owners prevail at the hearing and comply with all of the Hearing Examiner's conditions and obtain all required permits, or if they do not prevail at the hearing and promptly remove all equipment and materials from the site.

At the hearing, a Roadwise, Inc., representative testified that the company could remove all equipment and materials from the site no later than two weeks from the date of the Examiner's decision if the owners do not prevail in their appeal and land use application.

6. In a Decision of even date the Examiner denied the request of the property owner, Golden Pacific Railroad, Inc., for a nonconforming use permit and also denied Golden Pacific Railroad, Inc.'s, appeal of Pierce County's denial of nonconforming use rights for Roadwise, Inc. Therefore, in accordance with the agreement Roadwise, Inc., must promptly vacate the premises. However, due to unknown contingencies to include adverse weather conditions the Examiner will retain jurisdiction over this matter such that appellant may request additional time to remove all equipment and materials.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.

DECISION:

Pursuant to the agreement between the parties set forth in the December 15, 2015, letter from Stephen C. Wamback (Exhibit 3VV), appellant, Roadwise, Inc., must within two weeks of this Decision promptly remove all equipment and materials from the site. Provided, however, that upon good cause shown, the two week period may be extended. For that sole purpose the Examiner will retain jurisdiction over this matter until completion of Roadwise, Inc.'s, vacation of the site.

ORDERED this 1st day of March, 2016.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 1st day of March, 2016, to the following:

PROPERTY/PARCELS

OWNERSHIP:

Golden Pacific Railroad Inc.
Attn: Louis Schillinger, owner
8265 North Van Dyke Road
Port Austin, MI 37312-9521

APPELLANT:

Roadwise Inc.
Attn: Jeffery L. Dobson, owner
26828 Maple Valley Highway, #251
Maple Valley, WA 98038

AGENTS:

Vandeberg Johnson & Gandara, LLP
Attn: Darrel Addington
and Mark Patterson
1201 Pacific Avenue, Suite 1900
P.O. Box 1315
Tacoma, WA 98401-1315

OTHERS:

Stacy Emerson
1809-99th Street East
Tacoma, WA 98445

Kim Pressel
1703 East 99th Street
Tacoma, WA 98445

Daniel Dobson
873 South 64th Street
Tacoma, WA

Ed Testo
2623-31st Avenue East
Tacoma, WA 98443

Sarah Brandon Gorenson
2623-31st Avenue East
Tacoma, WA 98443

Debra Metcalf
9716-17th Avenue East
Tacoma, WA 98445

Cathy Cumberson
1601-99th Street East
Tacoma, WA

Jim Bailey
P.O. Box 44246
Tacoma, WA

Andrew and Debra Metcalf
9709-16th Avenue East
Tacoma, WA 98445

John Wilson
1818-99th Street East
Tacoma, WA

Jenny Cardin
1703-97th Street East
Tacoma, WA

Morton McGoldrick, P.S.
Attn: Matthew J. Ley, Attorney at Law
James Handmacher, Attorney at Law
820 "A" Street, Suite 600
P.O. Box 1533
Tacoma, WA 98401

Parkland-Spanaway-Midland Land Use Advisory Commission (PSMAC)

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT
PIERCE COUNTY CODE ENFORCEMENT

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NOTICE

1. RECONSIDERATION:

Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. APPEAL OF EXAMINER'S DECISION:

The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.