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**BEFORE THE HEARING EXAMINER FOR THE CITY OF DUPONT**  
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7           **RE: Dupont Downtown Ace and**  
8           **Storage Center**

9           **FINAL DECISION**

10           **Site Plan and Design Review**

11           **File No. PLNG 2017-007 and**  
12           **PLNG 2017-008**

13           **SUMMARY**

14           The applicant has requested Type III site plan approval consolidated with Type I design review approval  
15           to construct a 3-story, 92,356 square foot building with 79,027 square feet of self-storage and leasing  
16           office; a 2,457-square foot covered loading bay; and 10,873 square feet of indoor/outdoor retail area to  
17           be located at 1585 McNeil Street, DuPont, WA. The applications are approved subject to conditions.

18           **TESTIMONY**

19           *[This summary is only provided for the convenience of the reader, to provide an understanding of the  
20           testimony presented at the hearing. The summary of testimony is not to be construed as containing any  
21           findings of fact or conclusions of law, or as indicating what information the examiner found pertinent  
22           or significant.]*

23           **Lisa Klein**, City of Dupont contract planner, summarized the staff report. Ms. Klein amended the staff  
24           report to add a sentence to the end of the DMC 25.10.190 definition of “storage, indoor” at the end of  
25           page 5 of the staff report, as follows: “*The access to the storage units is from building interiors.*” In  
26           response to questions from the examiner, Ms. Klein confirmed there are no critical areas on site. The  
27           City’s tree retention standards don’t require the installation of any trees for the project. A recyclable  
28           enclosure will be required as part of building permit review. Signs will be addressed during building  
29           permit review. Staff determined that parking was adequate for the storage use because of the large  
30           quantity of excess parking. Existing shared parking has historically only used up to 50% of available  
31           parking. Mr. Wilson added that parking for storage use is usually limited to using the loading spaces of

the storage facility.

**Jeff Wilson**, City of Dupont Planning Director, noted that one of the reasons staff found proposed parking to be adequate was because the parking spots would be used for multiple uses in the area. In response to questions from the examiner, Mr. Wilson noted that regulations that currently require a concurrency certificate of new development were not in place when the applicant vested its site plan application.

**Drew Bowlds**, applicant, noted that the focus of design has been to make it compatible with the high-quality design of surrounding uses, especially given its highly visible location. He has no problem in eliminating the exterior doors as recommended by staff to make all access to storage units from the interior of the building. He has been building storage units since 2005 and from an operational standpoint he can say that storage unit customers only stay for brief periods of time and use a nominal amount of parking. Only two to three people typically drive in per day.

## EXHIBITS

The June 8, 2017 staff report, along with attachments A-Y, were admitted into the administrative record as Exhibit 1 during the June 14, 2017 hearing. Additional exhibits admitted during the hearing are as follows:

Exhibit 2 Aerial Vicinity Map  
Exhibit 3 Photographs of surrounding land uses

## **FINDINGS OF FACT**

## Procedural:

1. Applicant. The applicant is Drew Bowlds, 25102 SE 30th Street, Sammamish, WA 98075.
2. Hearing. A hearing was held on the subject applications on June 14, 2017 at 10:30 am in the City of Dupont City Council Chambers.
3. Project Description. The applicant has requested Type III site plan approval consolidated with Type I design review approval to construct a 3-story, 92,356 square foot building with 79,027 square feet of self-storage and leasing office; a 2,457-square foot covered loading bay; and 10,873 square feet of indoor/outdoor retail area to be located at 1585 McNeil Street, DuPont, WA. The project also includes parking, access and landscaping improvements. Approximately 590 leased storage units will be provided. For parking, the applicant proposes to use an existing parking lot that is currently used by an adjacent daycare. The existing parking lot will be expanded to provide a total of 55 shared parking spaces. The proposal includes improvements to a City historic monument and park located in an easement on the property, including landscaping and the addition of new historical displays. The project is expected to be completed and occupied in 2018.

1       4. Conformity to Development Standards<sup>1</sup>. The project conforms to applicable development  
2 standards as follows:

3       A. Drainage. The drainage and conveyance system for the proposed development will be  
4 designed to meet City standards, which require conformance to the 2012 Washington State  
5 Department of Ecology Stormwater Management Manual for Western Washington with 2014  
6 Amendments (2014 Manual). The applicant has prepared a Preliminary Site Stormwater Site  
7 Plan (Ex. 1, att. H). The storm drainage design will partially infiltrate stormwater via an  
8 infiltration trench. Stormwater runoff will be conveyed to an existing regional stormwater  
9 detention facility for treatment and infiltration, which has been sized to accommodate the  
10 proposed project area. The preliminary stormwater plan has been reviewed by the City's  
11 engineer, who has put together a list of modifications required for final approval of the  
12 stormwater report. (See Ex. 1, att. Y.) Those modifications are made a condition of approval  
13 of this decision and must be implemented prior to issuance of a site development permit. As  
14 conditioned, the proposal will comply with the City's stormwater standards.

15       B. Transportation. Access will be provided via two driveways, one from McNeil Street and one  
16 from McDonald Avenue. The McDonald Avenue driveway is fully improved and the McNeil  
17 Street driveway will need to be constructed, however a curb cut is in place. The applicant has  
18 prepared a transportation impact study (Ex. 1, att. O). The transportation impact study  
19 concluded that the proposal will generate 526 new weekday daily trips with 18 new trips  
20 occurring during the weekday AM peak hour and 52 new trips during the weekday PM peak  
21 hour. The report further concluded that the intersection of Center Drive/McNeil Street is  
22 anticipated to operate at LOS D in 2018 with or without the proposal, which meets the City's  
23 LOS standards. The report concluded that no off-site mitigation is necessary. City staff have  
24 reviewed the transportation impact study and have found no need to require transportation  
25 improvements beyond those proposed. As conditioned, the proposed transportation  
26 improvements are found to be in conformance with applicable City standards, as modified by  
Conclusion of Law No. 6 regarding transportation concurrency requirements.

27       C. Parking. As detailed in the staff report, DMC 25.95.030 requires 66-100 spaces for the  
28 proposal. The applicant proposes shared parking with the daycare facility to the east and  
29 another shared parking lot to the south. These shared parking areas provide for 200 parking  
30 spaces within 500 feet of the proposal. It is unclear from the record how many of these shared  
31 parking spaces are necessary for the other shared uses, but staff testified that the lots are  
32 usually operating at only 25-50% capacity. Staff has determined that the proposed parking  
33 complies with applicable parking standards in Chapter 25.95 DMC.

24       1 Conformity to development standards is usually assessed via conclusions of law. However, site plan review standards are  
25 highly detailed and technical. In the absence of any disagreement over the application or any indication in the record of a  
26 code compliance issue, the examiner will rely upon assurances made by staff that standards are met, based upon the staff's  
exercise of professional judgment. Since these determinations of conformity are based upon staff expertise instead of  
application of law to fact, the determinations regarding conformance to development standards are treated as findings of fact.

1       D. Landscaping. DMC Chapter 25.90 regulates landscaping. DMC 25.90.020 requires that  
2       mixed use projects provide a minimum of 20 percent of landscaped area. The proposal  
3       provides 6,262 square feet or 12.7% of the site in landscaping, which does not meet the  
4       requirement. The staff report notes that the 12.7% landscaping can be found acceptable if  
5       authorized by a development agreement. However, the DMC does not contain any provisions  
6       authorizing reduction of landscaping requirements through a development agreement. RCW  
7       36.70B.180 requires development agreements to be consistent with applicable development  
8       regulations. Absent a DMC provision authorizing reduction in landscaping standards via a  
9       development agreement<sup>2</sup>, the applicant must increase its landscaping to conform to the 20%  
10      requirement as required by the conditions of approval.

11      Parking lots with 10 or more stalls are required to provide at least one tree per six stalls. The  
12      proposal provides 12 new parking areas and 11 trees, exceeding the requirement. A “moderate  
13      buffer” is required between the parking lot and adjacent McNeil Street right of way. A  
14      moderate buffer is defined in DMC 25.10.020 as providing 50 percent screening within three  
15      years of planting, even in winter months, with a strip of trees, shrubs, and ground cover. The  
16      planter area is screened appropriately with trees and shrubs however groundcover is not  
17      provided. The conditions of approval require that landscape plans submitted at the time of site  
18      development or building permit shall include groundcover in the parking lot planter areas. As  
19      conditioned, the proposal will comply with applicable landscaping requirements.

20      E. Project Design. Compliance with DMC Chapter 25.70, Commercial and Mixed-Use Design  
21      Regulations and Guidelines, and Design Review approval is required. Section 4(A)(4) of the  
22      staff report includes a detailed application of these design standards and concludes that the  
23      design standards are met if recommended conditions are implemented. All staff recommended  
24      conditions of approval are adopted by this decision. Consequently, it is determined that the  
25      proposal conforms to the City’s design standards.

26      F. Critical Areas. There are no critical areas on or near the project site. Consequently, the City’s  
27      critical area regulations, Chapter 25.105 DMC, do not apply.

28      G. Fire Services. The proposal has been subject to review by the City’s fire marshal for  
29      conformance to the City’s fire safety standards (specifically the International Fire Code,  
30      Chapter 13.05 DMC with associated National Fire Protection Association standards). (See Ex.  
31      1, att. X.) The comments of the fire marshal have been adopted into the conditions of approval  
32      of this decision. As conditioned, the proposal conforms to the City’s fire safety standards.

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24      <sup>2</sup> For example, DMC 25.36.080 authorizes a modification to specified design standards by development agreement. The staff  
25      report correctly applies DMC 25.36.080 to conclude that a development agreement is an option the applicant may use to  
26      reduce the amount of required pedestrian-oriented retail space on the ground floor of the proposal. A similar provision needs  
27      to be in place to authorize a reduction in landscape cover. If the examiner has overlooked such a provision in the DMC, the  
28      applicant and/or City are invited to request reconsideration so that this error can be expeditiously remedied.

H. Commute Trip Reduction. The City's Commute Trip Reduction requirements, Chapter 25.75 DMC, only apply to employers with 100 or more employees. Given that the proposed retail space is limited to 10,873 square feet, it doesn't appear that any uses within the proposal will be subject to the commute trip reduction standards. However, a condition of approval requires conformance to the commute trip reduction standards should any use or tenant meet or exceed the 100-employee threshold. As conditioned, the proposal complies with Chapter 25.75 DMC.

I. Cultural Resources. Chapter 25.80 DMC prohibits construction at or within 50 feet of cultural resource sites designated in DMC 25.80.020. The proposal is not near any of the sites identified in DMC 25.80.020. It is concluded that the proposal conforms to the requirements of Chapter 25.80 DMC.

J. Affordable Housing. Chapter 25.85 DMC, Affordable Housing, is inapplicable as that chapter applies to housing projects.

K. Street Corner Setbacks. Chapter 25.110 DMC imposes height limits on structures and landscaping that can be placed within the sight triangle of street corners. The landscaping and site plans for the project appear to show compliance with these requirements for the Center Drive/McNeil Street intersection, but it is difficult to ascertain the height of some of the proposed landscaping in this area. To assure compliance, a condition of approval has been added requiring conformance to DMC 25.110.010.

L. Sign Code. The applicant has not yet proposed any signs for this stage of review. Signs are regulated by Chapter 25.116 DMC and sign code compliance shall be assessed upon the submission of a sign permit application, as required by DMC 25.116.140.

M. Tree Retention. There are no trees at the project site, so no tree retention is required under Chapter 25.120 DMC, Tree Retention.

N. Wireless Communication Facilities. No wireless communication facilities are proposed, so Chapter 25.125 DMC, Wireless Communication Facilities, does not apply.

## CONCLUSIONS OF LAW

1. Authority. DMC 25.175.010 classifies site plan applications as Type III permits and design review as Type I permits. DMC 25.175.010(2)(b) provides that projects involving multiple permits of different classifications may be processed under the highest classification. Pursuant to DMC 25.175.010(2)(b), the subject site plan application and design review have been consolidated into one Type III review. DMC 25.175.010(2)(b) provides that the hearing examiner shall hold a hearing and issue a final decision for Type III permit applications.

2. Zoning/Comprehensive Plan Designations. The Comprehensive Plan Designation is Mixed Use District and the Zoning Map designation is Mixed Use District 2.

1       3. Review Criteria. DMC 25.150.030 governs the criteria for site plan review. DMC 25.70.010  
2 governs the criteria for design review in mixed use zoning districts. Applicable criteria<sup>3</sup> are quoted below  
3 in italics and applied through associated conclusions of law.

4       **DMC 25.70.010(1): Design Review Required.** *All applications for site plan and conditional use permits  
5 in the commercial and mixed-use land designations or districts are subject to the regulations and  
6 guidelines in this chapter.*

7       4. Proposal complies with design review standards. Section 4(A)(4) of the staff report includes a  
8 detailed application of Chapter 25 DMC design standards and concludes that the design standards are  
9 met if recommended conditions are implemented. All staff recommended conditions of approval are  
10 adopted by this decision. Consequently, it is determined that the proposal conforms to the City's design  
11 standards.

12       **DMC 25.150.030:** *In order to obtain site plan approval, all of the development regulations and criteria  
13 specified in the district applicable to the property must be satisfied in addition to any general  
14 development requirements in Chapters 25.75 through 25.95 and 25.105 through 25.125 DMC.*

15       5. Proposal complies with site plan criteria. Excepting Traffic Concurrency, Chapter 25.115 DMC,  
16 Finding of Fact No. 4 assesses compliance with the DMC chapters referenced in the DMC 25.150.030  
17 criterion above and finds the project conforms to each of those chapters. Further, as conditioned by  
18 Conclusion of Law No. 6, below, the requirements of Chapter 25.115, Traffic Concurrency, will also be  
19 met to the extent they apply. For these reasons, it is concluded that the proposal meets all the  
20 requirements for site plan approval.

21       6. Proposal must comply with Chapter 25.115 DMC, or in the alternative a development agreement  
22 must vest prior development regulations. At the hearing staff took the position that the concurrency  
23 standards of Chapter 25.115 DMC do not apply to the proposal because those standards were adopted  
24 after the applicant submitted his site plan application. However, the courts have ruled that the vested  
25 rights doctrine doesn't apply to site plan applications. *See Abbey Road Group, LLC v. City of Bonney  
26 Lake*, 167 Wn.2d 242 (2009)(vested rights doctrine doesn't apply to site plan applications); *Potala  
Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004  
2015)(vested rights doctrine only applies to permits designated by state legislature, which is currently  
21 building permits, subdivisions and development agreements). Unless the applicant submitted a complete  
22 building permit prior to the City's adoption of Chapter 25.115 DMC, those regulations apply to the  
23 applicant's site plan application.

24       <sup>3</sup> In addition to applying site plan and design review criteria, the staff report does an analysis of consistency with the City's  
25 comprehensive plan. The DMC site plan and design review criteria do not require consistency with the comprehensive plan.  
26 However, RCW 36.70A.120 requires the City to perform its activities in conformity with its comprehensive plan. Arguably,  
27 since the City's site plan and design review criteria are consistent with the City's comprehensive, any permitting decision  
28 made pursuant to those criteria would also be consistent. To the extent that a separate finding of consistency is required by  
29 RCW 36.70A.120, it is concluded that the proposal is consistent with the City's comprehensive plan for the reasons outlined  
30 in the staff report

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2 Since the City and applicant are considering the execution of a development agreement, that agreement  
3 may provide a means of avoiding application of Chapter 25.115 DMC. RCW 36.70B.180 authorizes a  
4 development agreement to vest specified development standard. This arguably would enable the  
5 development agreement to specify that the vested development standards are those that were in place at  
6 the time the applicant submitted his site plan application (before Chapter 25.115 DMC was adopted). It  
7 is arguable that a development agreement can vest standards that are not in place at the time of  
8 development agreement approval, given the RCW 36.70B.180 requirement that “[a] development  
9 agreement shall be consistent with applicable development regulations adopted by a local government  
10 planning under chapter 36.70A RCW.” City staff should confer with the City Attorney to ascertain  
11 whether the development agreement can vest standards that were in place only prior to execution of the  
12 agreement. In the alternative, the applicant will have to comply with Chapter 25.115 DMC. The  
13 conditions of approval address these two options.

## DECISION

10 The Type III site plan and Type I design review applications are approved subject to the following  
11 conditions.

- 12 1. On May 15, 2017, the city issued a SEPA Mitigated Determination of Non-significance. All  
13 mitigation measures are incorporated herein by reference as conditions of approval.
- 14 2. If the ground floor pedestrian-oriented retail use is less than 80 percent, but no less than 25  
15 percent, a development agreement shall be approved by the City prior to issuance of any  
16 permits.
- 17 3. If at any time either of the proposed uses or tenants employs 100 or more people, the  
18 requirements of Chapter 25.75 Commute Trip Reduction shall apply.
- 19 4. A sign permit will be required.
- 20 5. Access to the storage units is to be from building interiors. The roll up doors showing on the  
21 east elevation shall be removed or relief may be sought through the development agreement.
- 22 6. This project is subject to the Geographic Information System (GIS) requirements as stated in  
23 DuPont Municipal Code (DMC) Chapter 24.10.
- 24 7. A title report shall be provided together with the site development permit applications including  
25 all encumbrances and easements.

1       8. All landscaping and structures proposed within the sight triangle of the Center Drive/McNeil  
2       Street intersection shall comply with the height restrictions of DMC 25.110.010.

3 **Prior to issuance of Site Development Permits**

4       9. A “moderate buffer” is required between the parking lot and adjacent McNeil Street right of  
5       way, which requires trees, shrubs, and ground cover. The planter area is screened appropriately  
6       with trees and shrubs however groundcover is not provided. The landscape plans submitted at  
7       the time of site development or building permit shall include groundcover in the parking lot  
screening area.

8       10. The landscape plans shall include the new parking area in the southeastern area and planter  
9       there shall be landscaped in accordance with DMC 25.70.030(3(a)).

10      11. The landscape and irrigation plans will be reviewed for compliance with the requirements  
11       listed in Attachment Y, specifically 41-43. In addition, the landscaping plans shall increase  
12       the total amount of landscaping to conform to the 20% landscaping standard of DMC  
25.90.020.

13      12. Accessibility provisions per WAC 51-50-005, Chapter 11 and other International Building Code  
14       requirements for barrier-free access, including ICC A117.1-2009 and Appendix E, shall be  
15       incorporated into the design, including, but not limited to, the arrangement and minimum  
number of accessible parking stalls.

16      13. Recyclable Materials, Compost, and Solid Waste Storage provisions per WAC 51-50-009 shall  
17       be incorporated into the design.

18      14. Sewer service and permitting is required through Pierce County Utilities. Be aware, prior to  
19       issuance of a building permit for the structure, the applicant will be required to provide a copy  
20       of Pierce County Sewer Service Permit for city record. (Please note that Pierce County Sewer  
21       Utility requires a pre-treatment review and approval be completed prior to their issuance of  
22       service connection permit. Additionally, where sewer connection is provided to a multi-tenant  
23       building, each tenant must also complete a pre-treatment review with the utility, and must  
provide copy of sewer service permitting, where applicable, prior to obtaining a building permit  
for associated improvements.)

24      15. One Additional fire hydrant shall be required and located on the property for fire ground  
25       operations. The fire hydrant shall be a minimum of 50 feet or 1 & 1/2 times the height of the  
26       structure away from the building. (Fire Department approval for location)

1       16. Property owners will be required to enter a formal written agreement, to demonstrate  
2       maintenance compliance with the Section 3.1.2.4 of the DuPont Public Works Standards  
3       (PWS), for any proposed joint-use accesses not included within the existing ingress, egress, and  
4       public utilities easement.

5       17. A parking lot lighting plan, which includes a photometric exhibit showing the lighting levels  
6       within the parking lot, will be required to demonstrate that parking areas are lit in accordance  
7       with City code requirements. The Applicant should note that DMC 25.70.070 allows 25-  
8       foot-tall lighting fixtures in parking lots, except at entries and for parking adjacent to buildings,  
9       where lighting remains restricted to 15 feet in height.

10      18. Documentation from LeMay, Inc. of their approval of the proposed shared trash enclosure with  
11       the DuPont Learning Center shall be furnished by the Applicant.

12      19. A Final Stormwater Report and Stormwater Pollution Prevention Plan must be developed for  
13       the site. See attachment Y for specific details required for the stormwater report.

14      20. The submitted Geotechnical Report by JEBC states that, “No specific perc or infiltration testing  
15       was done at the time of our site inspection the rate of 20 inches per hour is an assumed rate.”  
16       For more site specific infiltration/percolation values on-site tests will be required for validation  
17       of the design infiltration rate.

18      21. The preliminary construction plans are required to provide the details and information listed in  
19       attachment Y, specifically items 25 – 40.

20      **Prior to issuance of a Building Permit**

21      22. The roll up doors on the east elevation appear to be a different and brighter blue color than the  
22       siding. Also, sheet A-2 calls the color of these doors “taupe”. The roll up doors, if maintained  
23       as a part of the final design and allowed per the development agreement, shall either be painted  
24       to match the blue siding, or be a taupe color as indicated on the plans.

25      23. The structure will be required to comply with the requirements of the building construction  
26       codes that are in effect at the time of building permit application submittal. The following codes  
      are currently enforced by the City of DuPont: the 2015 International Building Code, the 2015  
      International Residential Code, the 2015 International Fire Code, the 2015 International  
      Mechanical Code, the 2015 International Fuel Gas Code, the 2015 Uniform Plumbing Code  
      (each as amended and adopted by the State of Washington); and the 2015 Washington State  
      Energy Code. All other applicable municipal, regional, or state requirements shall also apply.

1       24. Separate Building, Plumbing, Mechanical and Fire Systems Permits shall be required for each  
2       portion of the structure as may be applicable. Plans showing the details for construction for  
3       each shall be submitted to the city for review and approval prior to permit issuance.

4       25. Electrical permits may be obtained through WA. St. L&I.;

5       26. An automatic fire sprinkler system shall be installed. The system shall comply with NFPA 13  
6       Standard for Automatic Fire Sprinkler System. Three (3) sets of plans, hydraulic calculations  
7       and material specification sheets for all equipment used in the system shall be submitted by a  
8       State of Washington Licensed Contractor for review, approval and permits issued prior to  
9       commencing work.

10      27. An automatic fire alarm system shall be installed. The system shall comply with NFPA 72  
11      Standard for Fire Alarm System. Three (3) sets of plans, material specifications sheet for all  
12      equipment used in the system shall be submitted by a State of Washington Licensed Contractor  
13      for review, approval and permits issued prior to commencing work.

14      27.5 As outlined in Conclusion of Law No. 6, the applicant shall either acquire a certificate  
15      of concurrency as required by Chapter 25.115 DMC or vest to regulations that precede the  
16      adoption of the current version of Chapter 25.115 DMC as part of a development agreement.

### **During Construction**

17      28. Pursuant to RCW 19.122.033, the applicant shall consult with all utility and pipeline companies.

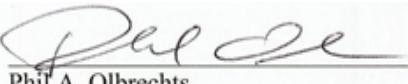
### **Prior to Certificate of Occupancy**

18      29. An underground fire line shall be installed. The system shall comply with NFPA 24 Standard  
19      for Installation of Private Fire Service Mains. Three (3) sets of plans, material specifications  
20      sheets for all equipment used in the system shall be submitted by a State of Washington  
21      Licensed Contractor for review, approval, and permits issued prior to commencing work. The  
22      FDC shall be a minimum of 50 feet or 1&1/2 times the height of the structure away from the  
23      building. The FDC shall be within 50 feet of a hydrant and be 5 inch with a locking cap. (Fire  
24      Department approval for location).

25      30. Fire apparatus access roads shall have approved striping or signs.

26      31. A Knox key box system shall be required. Knox applications may be picked up at the DuPont  
27      Fire Department located at 1780 Civic Drive DuPont, WA 98327. A key shall be required to be  
28      placed in the Knox key box.

1       32. Fire extinguishers are required to be installed as directed by City of DuPont Fire Department.  
2       Prior to installation the client is directed to request a fire inspection to confirm the locations of  
3       the fire extinguishers.  
4       33. All new building shall have approved emergency responder radio coverage per section 510 of  
5       the 2015 International Fire Code.  
6       34. The proposed project is located within the boundaries of LID No. 88-1. Prior to finalization of  
7       the proposed project, the applicant will need to pay any outstanding costs associated with the  
8       City LID No. 88-1.

9       Decision issued June 28, 2017.  
10        
11      Phil A. Olbrechts  
12      Hearing Examiner  
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#### **Appeal Right and Valuation Notices**

15      DMC 25.175.010 provides that this decision, as a Type III decision, is final, subject to appeal to Pierce  
16      County Superior Court. Appeals are governed by Chapter 36.70C RCW.  
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18      Affected property owners may request a change in valuation for property tax purposes notwithstanding  
19      any program of revaluation.  
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