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**COMMUNITY PLANNING &
ECONOMIC DEVELOPMENT DEPARTMENT**

Creating Solutions for Our Future

Joshua Cummings, Director

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2019100758
)	
Scott Manke)	FINDINGS, CONCLUSIONS,
)	AND DECISIONS ON
For a Reasonable Use Exception,)	RECONSIDERATION
Shoreline Conditional Use Permit, and)	
<u>Shoreline Substantial Development Permit</u>)	

SUMMARY OF DECISIONS ON RECONSIDERATION

As detailed in the following additional findings and conclusions, the requested applications for reasonable use exception and shoreline conditional use permit must be denied.

SUMMARY OF RECORD

Request

Scott Manke (Applicant) requested a reasonable use exception (RUE), shoreline conditional use permit (SCUP), and shoreline substantial development permit (SSDP) to authorize the following construction at 9020 Baird Road NW, Olympia, Washington:

RUE

- Approximately 1,100 square foot addition to an existing single-family residence within stream, shoreline, landslide hazard and wetland buffers
- 2,151 square foot detached garage apron, and shed (previously constructed without permits) within shoreline, landslide hazard, and wetland buffers
- 784 square foot detached home office (previously constructed without permits) within shoreline, landslide hazard, and wetland buffers

SCUP

- Retaining walls within Conservancy shoreline (previously constructed without permits)

Findings, Conclusions, and Decisions on Reconsideration

*Thurston County Hearing Examiner
Manke RUE, SCUP & SSDP, No. 2019100758*

SSDP

- Stair tower within Conservancy shoreline (previously constructed without permits)

Hearing Dates

The Thurston County Hearing Examiner conducted an open record public hearing on the request on October 22, 2019, at the conclusion of which the record was taken under advisement. A decision denying the reasonable use exception (RUE), shoreline substantial development permit (SSDP), and shoreline conditional use permit (SCUP) for the various previously built structures on the subject property, and for construction of a new residential addition, was issued on November 14, 2019 (Decision).

On November 25, 2019, a request for reconsideration of the Decision was timely submitted by the Applicant. Pursuant to Hearing Examiner Rules of Procedure, Rule 9.4(b)(2), the undersigned issued a December 23, 2019 Order requesting a response to the reconsideration request from the County and a reply by the Applicant. Following the post-hearing submittals, a second Order was issued February 24, 2020 reconvening the hearing. The first mutually agreeable hearing date among all necessary parties was April 28, 2020. On April 28th, a virtual hearing was conducted on the Zoom Webinar online platform. Members of the public were invited to submitted written comment and/or attend and participate in the reconvened hearing.

The instant decision document is appended to the original November 14, 2019 Decision, supplementing/completing rather than replacing it.

Testimony

During the April 28, 2020 open record public hearing, the following individuals presented testimony under oath:

Chad Wallin, Applicant Representative
Scott Manke, Applicant
Ron Pickinson, Applicant's contractor
Kathy Hargrave, Applicant Representative
Leah Davis, Associate Planner, Thurston County
Dawn Peebles, Thurston County Environmental Health
Mark Biever, LPG, L.E.G, County Geologist/Water Resources Specialist

William Lynn, Attorney, presented argument on behalf of the Applicant.

Exhibits

In the October 2019 proceedings, Exhibits 1 through 10 were admitted. After that hearing, the following additional exhibits were admitted into the record:

11. County Planner response to Applicant's reconsideration request, dated December 9, 2019

12. County Geologist/Water Resources Specialist response to reconsideration request, dated December 10, 2019
13. Applicant's reply to County responses, dated December 11, 2019
14. Applicant's additional critical areas documentation (following Order Reopening Record), dated January 24, 2020, including:
 - a) Letter to the record from William Lynn (Applicant's attorney), dated January 24, 2020
 - b) Geotechnical Letter, from Sitts & Hill Engineers, Inc., dated January 20, 2020
 - c) Project revision letter from Sitts & Hill Engineers, Inc., dated January 22, 2020
 - d) Compensatory Mitigation Plan Prepared by Grette Associates LLC, dated January 2020
 - e) DNR's guidance on the use of treated wood, online publication from Washington Department of Natural Resources
15. County comments on Applicant's additional documentation, dated February 3, 2020
16. Applicant's reply to County comments, dated February 5, 2020
17. Request for reconsideration of November 14, 2019 Hearing Examiner Decision, dated November 25, 2019
18. Notice of reconvened hearing for April 28, 2020, published April 17, 2020

Additional documents included in the record are:

- Order Reopening the Record, issued December 23, 2019
- Order Reconvening Hearing, issued February 24, 2020

Based upon the record developed these proceedings, the Hearing Examiner enters the following findings, conclusions, and revised decisions.

FINDINGS¹

30. Having succeeded in their request to reopen the record for consideration of additional evidence, the Applicants submitted a revised proposal. The revised proposal removed requests for permitting to legitimize the unpermitted stairway to the beach, detached garage, detached garage's paved apron, and utility/woodshed and proposed to physically remove these items. The revised proposal also offered a compensatory mitigation plan (detailed in following findings) that proposed native plantings in an area nearly twice the size of the footprint of the structures to be removed, restoring the footprints of the removed structures. *Exhibits 14a, 14c, and 14d.*

¹ Because these follow the findings in the previous decision and the two decisions together create one final decision, the numbers for findings pick up where they left off in the November 14, 2019 decision.

31. The originally requested shoreline substantial development permit (SSDP) was sought for the purpose of officially permitting the existing stair tower to the beach, built sometime around the time of residential construction but never permitted. Since this amenity is now proposed to be removed, the Applicant no longer seeks the SSDP for this feature. The revised proposal indicates that the stair tower would be carefully removed with as little soil disturbance as possible. Because only the foundation for each of the column supports touches the substrate and there is no slab under the stair tower, its removal would not significantly disturb the beach. The Applicant indicates that the area surrounding the base of the stair tower is currently in a native vegetated state. No planting is proposed in the area of the stair tower removal. *Exhibit 14.c.*
32. The revised proposal retains the request for shoreline conditional use permit to legitimize the three- to six-foot tall wood retaining wall installed along the existing road down to the beach. Although the Applicant provided in the post-hearing submittal, it is not clearly stated which members of the retaining wall are made from treated wood, or if all of the wall is treated wood.² The project revision letter asserts that the retaining wall is needed to provide ongoing erosion protection for the Baird Cove Beach and associated Wetland A and that treated lumber is necessary in the case of a wall in contact with earth. The submitted guidance from DNR related to when the state agency allows the use of treated wood in shoreline areas states that treated wood can be allowed to be used for above-water structural framing only. The Applicant noted that the retaining walls are more distant from marine environment than a pier or other typical shoreline improvements would be. *Exhibits 14.c and 14.e.*
33. County representatives noted that retaining walls greater than four feet in height that hold a surcharge require structural engineering and building permits. The Applicant offered to reduce the wall's height to four feet or lower. However, acknowledging the erosion control provided by the feature, County Staff indicated that reduction in height is not preferred to building permit review for the existing wall. *Testimony of Leah Davis, Mark Biever, Scott Manke, and Ron Dickinson.* The Applicant's engineer testified that her firm has analyzed the retaining walls and found them to be structurally sound; the firm is prepared to apply for the retaining wall building permit. *Kathy Hargrave Testimony.*
34. Reasonable use permit approval was originally requested by the Applicant for the unpermitted detached garage and associated concrete apron. However, the revised project calls for removal of the detached garage and apron, as well as of a small woodshed nearby. *Exhibit 14.c.*
35. The only remaining subjects of the request for RUE approval are the unpermitted detached home office and the proposed residential addition. The home office and associated patio created 784 square feet of impervious surface, and the proposed new impervious surface resulting from addition to the residence (not including the portion

² The Applicant's project revision letter references an "attached Safety Data Sheet for the treated wood used to construct the walls." *Exhibit 14.c.* However, none was attached.

proposed to be constructed over the existing garage) is 872, bringing the footprint of the structures and amenities under the RUE request to 1,656 square feet. *Exhibit 14.c.*

36. During the reconvened hearing, the Applicant submitted a professionally prepared geotechnical letter addressing stability of the marine bluff adjacent to the locations of the home office and the retaining wall. The geotechnical consultants reviewed the greater area of the marine bluff in its environs and determined, that:

[In] addition to hazardous geologic/hydrogeologic conditions, and manmade alterations, the leading cause of bluff regression in the South Sound region is toe erosion, which ultimately leads to the over-steepening of banks and sloughage. However, ... coastlines west and north of Baird Cove have a right to left drift cell orientation, whereas coastlines east and south of Baird Cove have a left to right drift cell orientation. As a result ... a natural spit has formed along the base of western marine bluff adjacent to the project area [which] provides a natural buffer from turbid waters, and significantly minimizes the risk for active erosion and bluff regression along the west side of the property, along which the subject home office/sanctuary and retaining walls were constructed. ...

[ultimately concluding] [B]ased upon the geologic/hydrogeologic conditions onsite, and the erosional setting along Baird Cove, the marine bluffs adjacent to the project area, particularly along the west side of the site, are relatively stable under their natural configuration. ... Furthermore, we have found that the presence of the new home office/sanctuary building has no influence on the relative stability of the region.

Exhibit 14.b, pages 2-5. The geotechnical consultants also reviewed the wooden retaining wall constructed along the eastern bank of the road-cut for the gravel access road down to the beach, noting its maximum height as three to six feet. Concerning this wall, the geotechnical letters stated:

Given the limit[ed] size of this structure, and the stable geology of the site, it does very little actual “retaining”, but does provide excellent erosion control against runoff waters coming down the roadway, and provides a barrier to siltation from the slope face behind the wall. This improves the quality of discharge water carried into the bay. The wall also limits the rate of bank retreat along the road-cut, thus improving overall stability of the slope.

Exhibit 14.b, page 4.

37. In order to compensate for the unavoidable impacts of the home office and proposed residential additions, the Applicant submitted a compensatory mitigation plan. The primary actions of the mitigation proposal include:
- Removal of the unpermitted shoreline stairs, removing approximately 300 square feet of impervious surface within critical area buffers;

- Removal of the unpermitted detached garage, garage apron, and utility/woodshed, removing approximately 2,457 square feet of impervious surface within critical area buffers;
- Restoration of approximately 2,457 square feet of the shoreline buffer in the general area where the garage, garage apron, and utility/woodshed were located; and
- Enhancement of approximately 5,568 square feet of shoreline buffer in the degraded areas where prior land use (logging) removed forested vegetation.

In total, the revised project would reduce impervious surface area for which authorization is sought from 4,313 square feet to 1,856 square feet, representing a 57% reduction in impervious surfaces within buffers for which approval is sought.³ Further, while the County Code requires buffer impacts to be mitigated at a 1:1 ratio (*TCC 24.30.080*), the proposed mitigation is a 3:1 mitigation to impact ratio in which approximately 550 total plants would be installed, including 160 trees. Asserting that the area to be enhanced currently provides low buffer functions, the Applicant's critical areas consultant concluded that the mitigation plan would provide a net lift to the critical area buffers functions and values. The plantings would be monitored for five years with the goal of ensuring a minimum 80% survival rate among plantings and a maximum 10% invasive species return. Replacement plantings are provided for among other contingencies. *Exhibit 14.d*. The Applicant argued that the proposed mitigation would not occur without permit approval and that the proposed enhancement would result in better buffer function than could be achieved through the removal of unpermitted structures alone. *Exhibits 14.c*. The mitigation plan's author testified that there would be no net loss of buffer functions and values. *Chad Wallin Testimony*.

38. Regarding potential adverse impacts arising from the detached home office structure, the Applicant testified that sanitary discharge from the home office is connected to the on-site septic system for the house and has been for several years without problem. He testified that the septic system maintains an approved operational certificate and the system is dye tested and inspected every two years; it has always passed inspection. The Applicant is of the understanding that the County believes a larger septic tank is required to address the addition of effluent from the home office. Applicant representatives contended that the septic system has not been finally approved because the Applicant was awaiting the outcome of the instant proceedings. The Applicant submitted that he would be happy with a condition that required the septic to meet all code requirements. *Scott Manke Testimony; William Lynn Argument*.
39. Speaking to potential damage from stormwater runoff from the detached home office, the Applicant testified that upslope drainage that used to sheet flow across his property is now diverted into the drainage system installed with the home office. The beach access road retaining wall construction was undertaken as part of the drainage project. The Applicant's contractor installed a vapor barrier between the wood and earth cut,

³ The mitigation plan asserted it was a 43% reduction in impervious surface area, but - with respect - it undercalculated the extent of the reduction; in fact only 43% of previously proposed additional impervious surface area remains proposed, resulting in a 57% reduction. *Exhibit 14.d*.

with pea gravel behind it. Runoff is collected at the bottom of the wall and directed into the drainage system, which according to Applicant witnesses has been working perfectly for years. This drainage system has dried out his yard and vehicles no longer get stuck. The road down to the beach used to wash out every year, requiring equipment down on the beach to fix the road before it could be used; rock and sediment used to run off directly onto beach. Since installation of the drainage system and the retaining walls, this no longer occurs. Now, this upslope sheetflow and the roof runoff from the home office are collected and sent to a piped system that carries the flow volume under the road and discharges into brush upland of the beach. *Testimony of Scott Manke and Ron Dickinson.*

40. In conclusion, Applicant representatives argued that the project revisions constitute a significant effort on the part of the Applicant to show good faith, in that the removal of the valuable structures not only costs money but removes useful improvements from the site. Applicant representatives contended that what constitutes reasonable use on this large, nearly five-acre parcel is necessarily more extensive than would be the minimum to be considered reasonable on a smaller parcel, and also that what constitutes typical, reasonable use of a residential parcel has changed since the time the residence was built in the 1990s. Addressing the RUE criterion that asks whether a proposal is the minimum encroachment necessary to allow reasonable use, the Applicant argued that in removing useful structures and creating a net environmental benefit in the mitigation plan, the proposal satisfies the minimum encroachment criterion. Addressing the question of whether there is an alternative location at which the home office structure could have resulted in less encroachment into critical area buffers, the Applicant argued there is a very little area in the southeast corner of the site that is not encumbered by critical areas or buffers, but it is within zoning setbacks, which would also have precluded placement of the detached home office. Noting there have been no complaints lodged with the County since the unpermitted structures were installed, Applicant representatives reiterated that the wood retaining wall serves a function, and that without the wall there might be worse conditions of erosion onto beach. Regarding the proposed residential additions, the Applicant reiterated that the kitchen addition is small, 341 square feet extending only eight feet over what is currently a deck and that the attached two-car garage addition would be 531 square feet of new structure placed on an area that is already paved, while the upstairs bonus room addition would be over existing attached garage. Applicant representatives contended that these modest expansions of the residence would be more than adequately mitigated by the proposed mitigation plan. *Scott Manke Testimony; William Lynn Argument.*
41. While acknowledging that the mitigation plan proposed meaningful, substantial compensatory mitigation, Planning Staff does not agree that the revised project now meets criteria for reasonable use exception. Staff characterized the offer to remove some of the unpermitted improvements and add mitigation to compensate for retaining other unpermitted improvements as “swapping one code violation for another.” The home office structure cannot meet the criteria because the property was already developed with reasonable uses prior to its construction. Staff submitted that the materials in the revised project do show compliance with criteria for shoreline

conditional use permit to authorize the wood retaining wall; she agreed the retaining wall is protecting the beach and that its removal would result in less protection for the shoreline. However, Staff argued that the neither the home office nor the proposed residential addition appear approvable. *Leah Davis Testimony*.

42. Staff also submitted that the proposed residential additions do not satisfy criteria established in the critical areas ordinance for expansion of legal nonconforming uses or structures. Pursuant to TCC 24.50.025, legally nonconforming uses and structures within critical area buffers may expand impervious surface area by up to 500 square feet if several criteria are met; however, Staff determined that these criteria are not satisfied by the proposal because the expanded impervious surface area would not be set back farther from the critical area (regulated drainage to the east) than the existing structure, and because the proposed residential additions would be within 100 feet of the regulated stream. Addressing the proposed kitchen expansion of 341 square feet extending eight feet over what is currently a deck, Staff noted that the County does not consider decks impervious surfaces. Planning Staff submitted the position that the record as a whole does not demonstrate compliance with either set of criteria under the critical areas ordinance for either the home office or the residential additions. *Leah Davis Testimony; Exhibits 11 and 15*.
43. County Staff from the Environmental Health Division noted that the on-site septic is currently operating without an approved operational certificate (expired in February 2020) because although the system has been pumped and inspected in trying to renew, deficiencies were identified. The Applicant submitted a plan and is working with EHD to correct the identified deficiencies; however, currently that system is considered nonconforming and is in violation of applicable sanitary code requirements, so EHD was unable to recommend approval of the requested permits. *Dawn Peebles Testimony*.
44. Notice of the April 28, 2020 reconvened hearing was mailed to owners of property within 500 feet and published in the County's paper of record. *Exhibit 18*.

CONCLUSIONS

Conclusions Based on Findings

C. Reasonable Use Exception⁴

1. The submitted project revisions accomplish two major changes in the reasonable use exception proposal. First, they reduce proposed impervious surfaces to be permitted within regulatory buffers to less than half of the originally proposed amount: from an initial request for permission for from 4,313 square feet of impervious surfaces within buffers for which approval is sought down to a total of 1,856 square feet, representing a

⁴ Jurisdiction, criteria for approval, and additional applicable provisions of the Thurston County and Washington Administrative Codes are included in the first Decision and are not repeated or amended herein. Conclusions Based on Findings in the instant Decision on Reconsideration follow from those entered in the November 14, 2019 Decision and therefore the numbering picks up where the previous conclusions left off.

57% reduction. Second, the revision proposes substantial compensatory mitigation in the form of invasive species removal and native species plantings within disturbed portions of the marine riparian habitat buffer. The critical areas information submitted in the post-hearing phase of these proceedings, including the relatively robust compensatory mitigation plan, successfully demonstrates that the revised project including mitigation would result in no net loss of critical area buffer functions and values. *Findings 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40.*

2. While the revised project and proposed mitigation/enhancement of degraded buffer areas are a much more attractive proposal than the one originally put forth, the instant request for RUE approval must nevertheless be held to the same standards as any RUE request. Nothing offered on reconsideration successfully addressed conclusion A.1 of the November 2019 decision that the subject property already enjoyed reasonable use in the legally nonconforming residence, meaning RUE criterion 1 is still not satisfied. Addressing the RUE criteria that require a proposal to show no use with less impact on critical area is possible (criterion 2) and that a proposal is the minimum encroachment into the critical area necessary to allow reasonable use (criterion 4), the Applicant argued that in removing useful structures and creating a net environmental benefit in the mitigation plan, the proposal satisfies the minimum encroachment requirement. While the evidence credibly showing “net environmental benefit” succeeded in addressing criterion 6, the offer to remove illegally placed structures does not speak to any of the criteria. The record contains no evidence demonstrating compliance with criteria 2 and 4. Conclusions A.1, A.2, and A.4 of the November 14, 2019 Decision are upheld unmodified. Because all of the RUE criteria must be satisfied, and the proposal has not satisfied those three, RUE approval cannot be granted. *Findings 3, 4, 17, 18, 19, 20, 21, 22, 23, 25, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41.*
3. Speaking only to the proposed residential expansion, the critical areas ordinance contains provisions expressly establishing a scheme by which legally nonconforming structures may be expanded without a quasi-judicial process. Even without meeting RUE criteria, an expansion of the subject residence can be allowed if it can satisfy the criteria in TCC 24.50.025(A through I). Pursuant to TCC 24.50.025 legally nonconforming structures (such as the subject residence) may be altered within their existing building footprint. Additionally, attached decks, porches, and patios may be altered in their existing footprint, excluding the addition of permanent roof structures. Specifically regarding the proposed expansion of the kitchen over an existing deck, the Code states attached nonconforming decks, porches, or patios shall not be enclosed for use as livable space, unless the deck, porch, or patio is already covered by an existing permanent roof structure as determined by the approval authority. (This was not shown.) Because the total proposed area of expansion would be greater than 500 square feet, because both proposed expansion areas would be within 100 feet of the stream to the east, and because both expansions would be sited closer to the stream than the existing nonconforming residence, these two expansions would appear not to meet the criteria at TCC 24.50.025.A and B. However, vertical additions within the legally nonconforming footprint can be allowed subject to compliance with maximum height restrictions. This means the proposed bonus room expansion over the existing attached

garage may be approvable without an RUE, subject to compliance with the parameters established in TCC 24.50.020.D.⁵ *Findings 6, 22, 35, 40, and 42.*

D. Shoreline Conditional Use Permit

1. Based on the record submitted, the road down to the beach appears to predate construction of the residence; it was apparently cut to facilitate beach access from the upland portion of the property. As a use unclassified in the SMPTR, the retaining wall is reviewed for shoreline conditional use permit approval. Credible testimony in evidence supports the conclusion that the access road was subject to seasonal failures and erosion events resulting in significant amounts of deposited material on the beach. Protection of the access road is a use that is consistent with the Shoreline Management Act and the County's SMPTR, in that it promotes shoreline access while preserving the shoreline environment, and is a reasonable and appropriate use of the subject shorelands. *Findings 4, 6, 9, 16, 30, 31, 32, 33, 36, and 39.*
2. The subject property is private land, meaning the retaining wall has minimal impact on public access to shorelines; however, the wall preserves access to the marine shoreline by residents and guests of the subject property. It also functions to protect water quality on surrounding beaches, which are known to provide habitat for species fed upon by salmonids. *Findings 4, 6, 9, 16, 30, 31, 32, 33, 36, and 39.*
3. Conditioned to require submittal of structural engineering as-built plans and completion of the building permit process, the retaining wall would be compatible with the authorized uses of the property, as well as consistent with the County Comprehensive Plan land use designation and the SMPTR's Conservancy shoreline environment designation. *Findings 4, 6, 9, 16, 30, 31, 32, 33, 36, and 39.*
4. Conditioned to require submittal of structural engineering as-built plans and completion of the building permit process, the record as a whole supports a conclusion that retention of the retaining walls would not result in significant adverse effects to the shoreline environment. Competent geotechnical evidence determined that the slope retained by the wall is stable and that the wall effectively reduces and/or prevents erosion onto the beach which could have the impact of undercutting the upland slope. The Applicant's engineer testified that the wall has been studied in place and found to be structurally adequate for its purpose, and that building permit as-built plans are prepared. Any treated wood members of the retaining wall are well above the ordinary high water mark. The record supports the conclusion that the wall as built poses no significant detriment to the public health or to shoreline functions and values. *Findings 4, 6, 9, 16, 30, 31, 32, 33, 36, and 39.*

⁵ TCC 24.50.020.D, Vertical Additions. Expansion of the established nonconforming portion of the structure is prohibited, except for vertical additions consistent with applicable height regulations in the zoning district. Additions shall not be cantilevered to extend beyond the existing structure's footprint (outside wall at the foundation) into a critical area or associated buffer. Vertical additions to legally established portions of a nonconforming structure are only allowed within marine bluff or landslide hazard areas, or their buffers, if a geological assessment demonstrates that it will not negatively impact slope stability

5. As conditioned, officially permitting the existing retaining wall would result in no detrimental effect to the public interest. *Findings 4, 6, 9, 16, 30, 31, 32, 33, 36, and 39.*
 6. Approval of the requested shoreline conditional use permit, if finally upheld by the Washington State Department of Ecology, would not result in adverse cumulative impacts to the shorelines of the state. *Findings 4, 6, 9, 16, 30, 31, 32, 33, 36, and 39.*
 7. Conditions of approval would be needed to ensure that the documentation submitted in pursuit of building permit approval for the retaining wall fully responds to and addresses the shoreline stabilization requirements of the critical areas ordinance at TCC 24.25.300.
 8. Unfortunately, pursuant to the County's Shoreline Master Program regulations set forth at TCC 19.14.010, "no permit or approval shall be granted pursuant to this title if there exists on the subject property any land use violation known by the approval authority unless explicitly authorized by this section. For purposes of this section, a land use violation is any violation of the Thurston County Critical Areas Ordinance" *TCC 19.14.010.* There are structures on site that constitute violations of the CAO and no shoreline permit can be granted until such violations are resolved in some manner. *Conclusions A1 through A6, C2, C3, and C4.*
- E. The undersigned acknowledges that resolution of the unpermitted structures is not achieved in the instant hearing process. Witnesses for both parties attempted to provide evidence that removal of various improvements would pose greater environmental harm than retention and legitimization of some structures. These arguments were excluded from these proceedings, because evidence of harm that could arise from removal of an unpermitted structure does not squarely address the permit criteria; it is a consideration outside the scope of the inquiry whether the criteria for permit approval can be met or not. Requiring the owner of unpermitted improvements to attempt to obtain the necessary permits for those improvements is often a first step towards bringing a property into compliance. However, as concluded above, the record presented does not (and cannot) demonstrate compliance with RUE criteria. The facts that the violations still need correction and that removal may not be the best answer do not effectively combine to 1) trump the criteria for permit approval or 2) confer some kind of equity jurisdiction on the County's hearing examiner to apply standards other than the adopted criteria for permit approval.

DECISIONS ON RECONSIDERATION

Based on the preceding findings and conclusions, the requested applications for reasonable use exception and shoreline conditional use permit must be denied.

DECIDED May 19, 2020.



Sharon A. Rice
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$750.00** for a Request for Reconsideration or **\$1,051.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____ Appeal Sequence No.: _____

Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
 on this _____ day of _____, 20___, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20___, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.