



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. SSDP
)	2008102727
Annette and Werner Baumgartner)	
)	
For Approval of a Shoreline Substantial)	FINDINGS, CONCLUSIONS,
Development Permit)	AND DECISION
)	

SUMMARY OF DECISION

A Shoreline Substantial Development Permit to construct a new stairway from the top of a marine bluff to the top of the bulkhead on property located within the Rural Shoreline Environment and adjacent to Eld Inlet at 4849 Cooper Point Road, NW, Olympia, WA in Thurston County, Washington is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Annette and Werner Baumgartner (Applicants) requested approval of a Shoreline Substantial Development Permit (SSDP) to construct a new stairway from the top of a marine bluff to the top of the bulkhead on property located within the Rural Shoreline Environment and adjacent to Eld Inlet at 4849 Cooper Point Road, NW, Olympia, WA in Thurston County, Washington.¹

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on January 4, 2010.

Testimony:

At the hearing the following individuals presented testimony under oath:

Gayle Zeller-Thurston County Resource Stewardship Department
 John Ward- Environmental Health Department

¹ In the Staff Report the legal description of the property was presented as: A portion of Section 28, Township 19, Range 2W known as Parcel No. 12928321101 in Thurston County, Washington.

Arthur Saint, P.E., Public Works Department
Annette Baumgartner-Applicant
Werner Baumgartner-Applicant

Exhibits:

At the hearing the following exhibits were admitted in the record:

EXHIBIT 1 Resource Stewardship Department Report including the following exhibits:

Attachment a	Notice of Hearing
Attachment b	Zoning/Parcel Map
Attachment c	Aerial View of Subject Parcel
Attachment d	Aerial View of Subject Parcel and Adjacent Parcels
Attachment e	JARPA Application dated July 10, 2008
Attachment f	Site Plan
Attachment g	Topographic Map of Parcel
Attachment h	Cross-Sections of Stairtower
Attachment i	Mitigated Determination of Nonsignificance Issued December 1, 2009
Attachment j	September 18, 2008 Geotechnical Report prepared by D. Strong, Bradley Noble Geotechnical Services
Attachment k	November 18, 2009 Structural Analysis for Beach Access Stairs Prepared by M. Szramek, PE SE, MC Squared, Inc.
Attachment l	Correspondence dated August 1, 2008 by J. Goode, Environmental Health Department
Attachment m	Correspondence dated September 18, 2008 by C. Hoff, Roads and Transportation Services Department
Attachment n	Photos of Site: <ol style="list-style-type: none">1. Facing down the marine bluff from top of slope of subject property2. Facing subject parcel with marine bluff waterward of bulkhead3. Native vegetation located in the 50-foot buffer upland from top of slope4. Profile view of top of slope

EXHIBIT 2 Photo of Public Hearing Notice Posting

EXHIBIT 3 Color Aerial of Site

EXHIBIT 4 Color Aerial of Site and Surrounding Parcels

EXHIBIT 5 Color Photos of Site (Exhibit 1, attachment n)

EXHIBIT 6 January 12, 2010 Response from David C. Strong, Bradley-Noble Geotechnical Services

EXHIBIT 7 January 13, 2010 Response from Arthur Saint, Public Works Department

Based on the record developed at hearing, the following Findings and Conclusions are entered:

FINDINGS

1. The Applicants requested approval of as SSDP Shoreline Substantial Development Permit (SSDP)) to construct a new stairway from the top of a marine bluff to the top of the bulkhead on property located within the Rural Shoreline Environment and adjacent to

Eld Inlet at 4849 Cooper Point Road, NW, Olympia, WA in Thurston County, Washington. *Exhibit 1, Pages 1-2; Testimony of Ms. Zeller; Exhibit 1, Attachment e, JARPA application.* The property is privately owned and the beach is not a public beach. *Testimony of Ms. Zeller.*

2. The staintower would be 32.4-foot high and would extend from the top of the marine bluff to the area of fill landward of the existing bulkhead. It would be located ten (10) feet from the northeast property line and 156 feet from the northwest property line *Exhibit 1, attachments e through h.* The project site is on a marine bluff that includes a regulated critical area pursuant to the Thurston County Critical Areas Ordinance (TCC 17.15). In addition, because of its proximity to Puget Sound and because it exceeds the monetary threshold limit, the project is subject to shoreline jurisdiction as regulated by the Shoreline Master Program for the Thurston Region (SMPTR). *Exhibit 1, Staff Report, pg. 2; Exhibit 1, attachments c, d and n-Photos 1 through 4.*
3. In the SMPTR the subject property is designated as being within the Rural Shoreline Environment. In a Rural Shoreline Environment stairways and stairs are allowed uses with a SSDP. *Exhibit 1, Staff Report, pgs. 2 and 3; Testimony of Ms. Zeller.* A marine bluff on the property is a critical area as defined by the Thurston County Critical Areas Ordinance (CAO). *Exhibit 1, attachment n, photos 1-4.* The Coastal Zone Atlas of Washington shows the marine bluff as unstable. *Exhibit 1, Staff Report, pg. 2*
4. The subject property is zoned Rural Residential/Resource One Dwelling Unit per Five Acres (RRR-1/5). In this zone the allowed density is one dwelling unit per five acres. The lot is nonconforming because the total area is only 1.51 acres. *Exhibit 1, Staff Report, pg. 3.* Even though it is a substandard lot in area, development of the site is consistent with other RL 1/2 zoning district standards. The SSDP would not impact development standards of this zone. The SSDP would not be detrimental or create impacts to other properties in the area. *Exhibit 1, Staff Report, pg. 2; Testimony of Ms. Zeller.*
5. The Shoreline Management Act of 1971 (RCW 90.58) regulates substantial development for any development project in which the total cost or fair market value exceeds \$5000.00. The proposed stairway's fair market value is approximately \$60,000.00. *Exhibit 1, attachment e; Testimony of Ms. Zeller.*
6. The Applicant had a geotechnical evaluation for the proposed new stair tower prepared by Bradley-Noble Geotechnical Services of Olympia Washington. In preparing a report dated September 18, 2008, the engineer considered the plans of the structure, the geologic background of the site and the erosion history. The conclusion was "...we have no objection to the proposed project based on geotechnical concerns. The tower itself will have no construction effects on the bluff". *Exhibit 1, attachment j, pg. 2.*
7. The property is currently protected from marine erosion processes by a reinforced concrete bulkhead.² Immediately above the bulkhead is the marine bluff (as described

² The Applicant's design indicated that the options for reaching the beach from the stairwell are either the continuance of a natural transition to the angled end of the bulkhead, or an aluminum ladder secured to the bulkhead.

- in Finding No. 3) facing Eld Inlet. The vertical relief is approximately 29 feet. The soils of the bluff consist of a thin Vashon recessional outwash soil that crops out at the top of the bluff. Below the outwash soils is Vashon subglacial till. The type of soils on site allow for stability and slow erosion that supports the development of overhanging soil masses that support vegetation at the top of the bluff. *Exhibit 1, attachment j pgs. 1 and 2.*
8. The Applicant proposes foundation support with piers excavated in the bulkhead backfill. To ensure lateral support for the piers, backfill must be placed in lifts that do not exceed eight inches in loose thickness and compacted to a firm and non-yielding surface before placement of the next lift. *Exhibit 1, attachment j, pg. 2.*
 9. In the geotechnical report there was a reference to collection of storm water that would flow down the walkway from the existing residence to the landing. This storm water must be controlled and the engineer recommended that a catch basin be installed in the path at the landing and that the collected water be conveyed to the back of the beach by use of a tightline. *Exhibit 1, attachment j, pg. 2.* On January 12, 2010, the GeoEngineers submitted a follow up report on the issue of storm water drainage. The recommendation for the collection of stormwater remained the same. The engineer commented that he had observed flow of water on footpaths on other projects and that the impacts from such activity included erosion of soils supporting landings and flows of water over bluff. *Exhibit 6.* On January 13, 2010, the Thurston County Department of Public Works submitted agreement with the recommendation of the geotechnical report.³ *Exhibit 7*
 10. As noted in Finding of Fact No. 2, the marine bluff is a critical area and therefore construction of the stairway must comply with the Thurston County Critical Areas Ordinance (CAO). In the geotechnical report (*Exhibit 1, attachment j*) there is a conclusion that the staintower structure would not impact the stability of the marine bluff. The foundation supports would include piers excavated in the bulkhead backfill and they would extend through any fill to subglacial till. In the geotechnical report, it was also recommended that the landing be located landward at least three feet from the top of bluff because of increased risk of damage or loss of soil support by dicing events. *Exhibit 1, attachment j, pg. 2. Exhibit 1, Staff Report, pg. 4.*
 11. An alder tree that is located at the toe of the slope would be removed. The only other types of vegetation that would be disturbed are small grasses and bushes. *Testimony of Ms. Zeller, Exhibit 1, Staff Report, pg. 4; Exhibit 1 attachment n, photo 2.*
 12. The location of the landing at the top of the marine bluff has a natural clearing, while the surrounding area in the buffer contains native vegetation. The County recommended that there be no tree removal on the marine bluff or top of bluff buffer during construction of the staintower and landing. *Testimony of Ms. Zeller, Exhibit 1, Staff Report, pg. 4*

Exhibit 1, attachment i.

³ The post hearing submittal from the Department of Public Works was submitted pursuant to direction of the Hearing Examiner made at the January 4, 2010 hearing.

13. The proposed stairway and staitower would not obstruct any views enjoyed by adjoining property owners and users. *Testimony of Ms. Zeller; Exhibit 1, Staff Report, pg. 3; Exhibit 1, attachment k.*
14. Thurston County Department of Roads and Transportation Services (Roads) submitted that the requirements outlined in the County Road Standards and Drainage Design and Erosion Control Manual are satisfied with the request. Roads recommended approval subject to conditions and compliance with the Geotechnical report. *Testimony of Mr. Saint; Exhibit 1 attachment j; Exhibit 1 attachment m; Exhibit 7.*
15. Thurston County Public Health and Social Services (Health) submitted that the stairway does not create an adverse public health impact and does not conflict with sewage system components. Health had no objection to approval. *Exhibit 1, attachment l.*
16. Pursuant to the State Environmental Policy Act (SEPA) (RCW 43. 21C) the County had jurisdictional authority for environmental review of impacts that would be related to the proposed project. On December 1, 2009, a Mitigated Determination of Non-Significance (MDNS) was issued and it became final on December 15, 2009. *Exhibit 1, attachment.*
17. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on December 25, 2009, at least ten (10) days prior to the hearing. The site was posted on December 23 2009. *Exhibit 1, Page 2; Exhibit 1, Attachment a*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction for Shoreline Substantial Development Permits pursuant to RCW Chapter 36.70, TCC 19.04.010(c), WAC 173-27-020, and Section One, Part V of the Thurston County Shoreline Master Program.

Criteria for Review

RCW 90.58.020. The primary goal of the state of Washington Shoreline Management Act (SMA) is to protect at a statewide level the public's interest in the State's shorelines through a coordinated management and development process. The SMA allows all reasonable and appropriate uses of the shorelines that will promote and enhance the public interest. The SMA mandates protection against adverse effects to the public health, the land, vegetation, wildlife, waters and preserving to the greatest extent feasible the physical and aesthetic qualities of the natural shoreline. Permitted uses in the shorelines must be designed and conducted in a manner that minimize resultant damage to the ecology and environment of the shoreline area and interference with the public's use of the water.

WAC 173-27-140⁴ requires that all use or development on shorelines of the state must:

- (1) Be consistent with the policy and provisions of the Shoreline Management Act and the master program
- (2) Be more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

Shoreline Substantial Development Permits criteria are set forth in WAC 173-27-150.

- (1) A shoreline substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the Shoreline Management Act;
 - (b) The provisions of this regulation, and
 - (c) The applicable master program adopted or approved for the area.

The Shoreline Master Program for the Thurston Region. The relevant section is:

Section Three—Policies and Regulations for Use Activities

XVI. Residential Development, C. General Regulations

11. All stair towers meeting one of the following conditions must be designed by a licensed civil engineer:
 - a. The location proposed is mapped as “Unstable” or “Intermediate Stability” in the Washington Coastal Zone Atlas prepared by the State Department of Ecology.
 - b. All stair towers 24 feet in height or greater
 - c. Other instances where the building official determines that site conditions dictate the preparation of plans by a licensed civil engineer.
Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.

Conclusions Based on Findings

1. The Applicants requested approval of as SSDP to construct a new stairway from the top of a marine bluff to the top of the bulkhead on property located within the Rural Shoreline Environment and adjacent to Eld Inlet at 4849 Cooper Point Road, NW, Olympia, WA in Thurston County, Washington. *Finding of Fact No. 1* The stairtower would be 32.4-foot high and would extend from the top of the marine bluff to the area of fill landward of the existing bulkhead. It would be located ten (10) feet from the northeast property line and 156 feet from the northwest property line. *Finding of Fact No. 2*. Because of the location of the project and the cost of the improvements, the project is subject to SSDP review. *Findings of Fact Nos. 2 and 5*.

⁴ TCC 19.04 and the County’s Shoreline Master Program references WAC 173-14. This section of the WAC was repealed in 1995 and replaced by WAC 173-27.

2. Pursuant to Section Three, Policies and Regulations for Use Activities, of the Shoreline Master Program for the Thurston Region the stairtower, which will exceed 24 feet, has been designed by a licensed civil engineer. *Findings of Fact Nos. 2 and 6.*
3. **The proposed stairway on the subject property would be consistent with the policies set forth in RCW 90.58.020 and the Shoreline Master Program for the Thurston Region.** Thurston County's SMPTR provides regulations for development within the shorelines of Thurston County. The applicable policies and regulations of the SMPTR are satisfied by the Applicants' proposal. The policies of the SMA include the planning for and fostering all reasonable and appropriate uses to promote and enhance the public interest of the shorelines. *RCW 90.58.020.*
4. A goal of the SMPTR is to preserve to the fullest possible extent the scenic, aesthetic and ecological qualities of the shorelines of the Thurston Region in harmony with those uses which are deemed essential to the life and well-being of Thurston County's citizens. *SMPTR, Section 2, Part I.* All development must ensure that water quality, public health, shoreline integrity, and habitat are protected. *SMPTR, Section 2, Part V.* The stairway would be developed in a manner that was not significantly damage the shoreline. The soils on site can adequately support the structure. It would be in harmony with other uses and would preserve the scenic, aesthetic and ecological qualities of the shoreline. *Findings of Fact Nos. 6, 7, 8, 10 and 13.*
2. **The stairway will not interfere with the normal public use of public shorelines.** The subject property is in private ownership and is not a public area. *Finding of Fact No. 1.* The stairway will not create any visual and aesthetic impacts on the shoreline. *Finding of Fact Nos. 1 and 13.*
3. **The stairway is compatible with other uses within the area and with uses planned for under the Comprehensive Plan and Shoreline SMPTR.** *Finding No. 4.*
4. **As conditioned, the proposals will not cause significant adverse effects to the shoreline environment.** Conditions of approval ensure that proper erosion control measures are imposed with the stairway. Additional permits may be required. *Finding of Fact Nos. 7 and 8, 9 and 10*
5. **As conditioned, the public interest will not suffer substantial detrimental effect.** As conditioned, the stairway has been reviewed and determined to provide soil stability. It is structurally sound and the public interest will not be impacted. *Findings of Fact Nos. 6, 7, 8, 9, 10, 13, 14 and 15.* Removal of vegetation would be minimized and the small area to be disturbed would be restored to prevent erosion and other environmental impacts. The proposal is consistent with the general and specific "Regulations" and specific "Environmental Designation and Regulations" for "XVI. Residential Development" contained within the Shoreline Master Program for the Thurston Region (1990), as amended.

6. The Applicant's design options for reaching the beach from the stairwell are either the continuance of a natural transition to the angled end of the bulkhead, or an aluminum ladder secured to the bulkhead. *Finding of Fact No. 7.*
7. **The stairway is consistent with the policies of RCW 90.58.020 and will not have a substantial adverse effect on the shoreline environment.** *Findings of Fact Nos. 3-16.*
8. The proposed stairtower is consistent with the policies and procedures of the Shoreline Management Act (RCW 90.58), the provisions of *WAC 173-27-140*, and the Thurston County Shoreline Master Program. *Findings of Fact Nos. 3-16.*

DECISION

Based upon the preceding Findings and Conclusions, a Shoreline Substantial Development Permit to construct a new stairway from the top of a marine bluff to the top of the bulkhead on property located within the Rural Shoreline Environment and adjacent to Eld Inlet at 4849 Cooper Point Road, NW, Olympia, WA in Thurston County, Washington is **GRANTED** subject to the following conditions:

1. Prior to or in conjunction with the issuance of a building permit, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Public Works Department, Thurston County Resource Stewardship Department must be satisfied. These conditions have been incorporated into this permit. In addition all conditions as set forth in the December 1, 2009 Mitigated Determination of Nonsignificance shall be satisfied.
2. The Applicant must obtain a building permit from the Thurston County Permit Assistance Center prior to construction of the stairway/stair tower structure. Engineered plans are required.
3. The development of the stairtower and its base on the toe and at the top of the bank shall incorporate best management practices for the treatment of stormwater as per the Drainage Design and Erosion Control Manual for Thurston County, Washington, as implemented by Thurston County Public Works Department. Storm drainage shall include collection of storm water that would flow down the walkway from the existing residence to the landing. This storm water must be controlled with a catch basin that is to be installed in the path at the landing and the collected water shall be conveyed to the back of the beach by use of a tightline.
4. A detailed erosion control plan shall be developed and submitted prior to work on the site. This plan shall address the use of the barge for delivering materials and the methods necessary to avoid water quality impacts. Erosion control and stormwater runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges, and shall not alter nor impact the existing drainage on this or adjacent properties.

5. No discharge of sediments into Puget Sound is allowed during and after construction.
6. Erosion control best management practices must be installed prior to the construction phase of the project and maintained throughout the construction phase. Erosion control best management practices include, but are not limited to, installation of silt control fences and bank stabilization material.
7. There shall be no tree removal on the marine bluff or top of the bluff buffer during construction of the staintower and landing.
8. The landing at the top of the bluff shall be moved upland from the top of slope as recommended in the September 18, 2008 geotechnical report.
9. The terminus of the stairway shall be at the filled area landward of the bulkhead.
10. Washington State Water Quality Laws, Chapter 90.48 RCW Water Pollution Control and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, define quality of state waters. Any discharge of sediment-laden runoff or of other pollutants to waters of the state is in violation of these state laws and may be subject to enforcement action.
11. As a condition of approval, those areas meeting landslide hazard and Marine Bluff criteria and the 50-foot vegetated buffer shall be depicted on the final construction documents along with the following language:

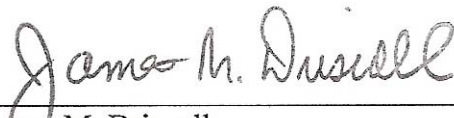
"To minimize damage to the shoreline due to erosion, sliding, earthquake, or other geological events no clearing, grading, filling, logging, removal of native trees or other native vegetation, or other construction activities shall be allowed within the landslide hazard or buffer areas except where exempted by and when prior authorization is obtained from Thurston County Development Services."
12. As a condition of approval, the following notation shall be placed on the construction documents:

"No clearing, grading, filling or other construction activities shall be allowed within the Shoreline Master Program jurisdiction except as approved under this SSDP. There shall be no additional clearing or development prior to stair tower development except where exempted by and when prior authorization is obtained from Thurston County Development Services, Environmental/Shoreline Section."
13. The proposal lies adjacent to Eld Inlet which is a shoreline within the jurisdiction of the Shoreline Management Act of 1971 (RCW 90.58) and the Shoreline Master Program for the Thurston Region. Approval of this project does not exempt the Applicant from satisfying the requirements of the Master Program or the Act that are relevant to development within a Rural Shoreline Environment. The boundary of the shoreline jurisdiction is: (a) 200-foot horizontal distance from the edge of the ordinary high-water mark; (b) the edge of the 100-

year flood plain based upon the Flood Insurance Rate Map; or (c) the edge of a wetland associated with Eld Inlet, whichever is greater.

14. Construction must commence within two years and all construction must be complete within five years of the effective date of this permit. The effective date is the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed.
15. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
16. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use will require approval of a new or amended Shoreline Substantial Development Permit. The Resource Stewardship Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
17. Construction pursuant to this permit shall not begin and is not authorized until 21 days from the date of filing of the Hearing Examiner's decision with the Department of Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).
18. If the Applicant opts to use the ladder over the bulkhead as the access to the beach all required permits from the Department of Fish and Wildlife must be secured.

Decided this 3rd day of February 2010.



James M. Driscoll
Thurston County Hearing Examiner