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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. 2009102617
)	
)	
Sam and Carolyn Giannini)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

A Reasonable Use Exception (RUEX) to construct a single-family residence within five feet of the top of a slope classified as a landslide hazard area in Yelm, Washington is **APPROVED**, subject to conditions.

SUMMARY OF RECORD

Request

Sam and Carolyn Giannini (Applicants) requested approval of a RUEX to construct a single-family residence within five feet of the top of a slope classified as a landslide hazard area pursuant to the Thurston County critical areas ordinance. The subject property is located at 17733 Clearlake Blvd. SE, Yelm, in unincorporated Thurston County.

Hearing Date

The Thurston County Hearing Examiner *pro tem* held an open record public hearing on the request on May 3, 2010.

Testimony

At the open record public hearing, the following individuals presented testimony under oath:

- Robert Smith, Senior Planner, Resource Stewardship Department
- John Ward, Thurston County Public Health and Social Services Department
- Sam Giannini, Applicant

Exhibits

At the open record public hearing, the following exhibits were admitted into the record: **SENT**

DATE: 5-17-10 *CS*

EXHIBIT 1 Land Use and Environmental Review Section Report with the following Attachments:

Attachment a Notice of Public Hearing

Attachment b Zoning/Site Map

Attachment c Master Application, received December 14, 2009

Attachment d Reasonable Use Exception Application, received December 14, 2009

Attachment e Site Plan, dated December 14, 2009

Attachment f Revegetation Plan, received February 19, 2010

Attachment g Letter from Sam Giannini regarding proposal, received February 19, 2010

Attachment h Geotechnical Engineering Slope Stability Evaluation, Terra Associates, dated November 25, 2009

Attachment i Drainage Analysis, Terra Associates, dated January 9, 2010

Attachment j January 28, 2010 Comment Memorandum from John Ward, Thurston County Public Health and Social Services Department

Attachment k January 5, 2010 Comment Memorandum from Chuck Meyers, Thurston County Public Works Department

Attachment l Comment Letter from the Washington State Department of Ecology, dated January 5, 2010

Attachment m Comment Letter from Delores and Renee Tallman, dated March 1, 2010

Attachment n Letter from Sam Giannini responding to comments, dated March 15, 2010, with attached resume

Attachment o Letter from Terra Associates responding to comments on slope stability, dated March 17, 2010

EXHIBIT 2 Site Plan (11x17), dated received December 14, 2009

EXHIBIT 3 Color copy of photograph of posted notice

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicants requested approval of a RUEX to construct a single-family residence within five feet of the top of a slope classified as a landslide hazard area pursuant to the Thurston County critical areas ordinance. The 0.25-acre subject property is located at 17733 Clearlake Blvd. SE, Yelm, Thurston County, Washington. The legal description of the subject property is Lot 421 of Clearwood Division Six, recorded in 1970. The site is also known as Tax Parcel 41200042100. *Exhibit 1, pages 1-3; Exhibit 1, Attachments c and d, Application.*
2. The parcel has a Residential LAMIRD Two Dwelling Units per Acre (RL 2/1) zoning designation. Single-family residential development is allowed in the RL 2/1 zone. Surrounding land uses include single-family residential development in the Clearwood subdivision to the north, east, and south, and open space to the west. The eastern site boundary abuts Clearlake Boulevard. The Clearwood Community Trail is located in the greenbelt west of the site downhill from the slope. *Exhibit 1, page 2; Exhibit 1, Attachment b; Exhibit 1, Attachment i; Thurston County Code (TCC) 20.13A.020 and .030.*
3. The 10,890-square foot subject property is 74.5 feet wide and 143 feet deep. It is bisected by a steep slope running north-south, approximately 23 feet tall over a horizontal distance of about 60 feet. The western half of the site, which is completely encumbered by the slope, is forested with a mix of mature native trees and understory. The eastern half of the site, above the slope, was previously cleared of native vegetation except for several mature trees. *Exhibit 1, page 4; Exhibit 1, Attachment d, Application; Exhibit 2, Site Plan.*
4. Soils on the slope are identified as Baldhill Sandy Loam, 30 to 50% slopes. The Thurston County critical areas ordinance (CAO) classifies this soil type as a landslide hazard soil. The CAO requires a 50-foot buffer vegetated with native species at the top of landslide hazard slopes. *Exhibit 1, page 2; Giannini Testimony; Thurston County Code (TCC) 17.15.200 and 17.15.620.A.1.*
5. The proposal would construct a two-story single-family residence with the footprint setback five feet from the top of the steep slope. The ground floor would consist of a 616 square foot living area and 950 square foot garage. The upper floor would provide an additional 1,566 square feet of living space. The primary septic drainfield and the reserve area would be placed in the southeast corner of the site, adjacent to Clearlake Boulevard. A stormwater vault is proposed in the northeast corner of the site. No mature trees would be removed from the building site, and no clearing or construction would occur on the slope. The Clearwood public water system would provide domestic water. *Exhibit 1, pages 2-3; Exhibit 1, Attachment g; Giannini Testimony.*

6. The Applicants propose a 33-foot setback from Clearlake Boulevard. Any development of the site would be required to infiltrate runoff from new impervious surfaces. Good engineering practices and County standards require the drywell to be set back as far from the top of the slope (as close to the street) as possible and at least ten feet away from the foundation. There are mature trees along the street that the Applicants wish to retain, and the drywell is proposed to be placed immediately west of the dripline of those trees. The drywell is proposed to be 12.5 feet from the foundation. *Exhibit 1, Attachment g; Exhibit 3.*
7. The Applicants submitted a professional geotechnical engineering evaluation prepared by Terra Associates. In conducting the evaluation, the consultants assessed the stability of the west-facing slope, completed geologic reconnaissance, verified slope gradient and local elevation relief, reviewed geologic mapping for the area, and studied well logs in the vicinity on file with the Washington State Department of Ecology (DOE). The site reconnaissance revealed no evidence of existing erosion or instability on the slope. The consultants concluded that with measures to address drainage, construction of a single-family residence with a five-foot setback from the top of the slope would not have adverse effects on slope stability or on surrounding properties. *Exhibit 1, Attachment h; Exhibit 3.*
8. As proposed, runoff from new impervious surfaces would be collected and conveyed to the dry well in the northeastern corner of the site, where it would infiltrate. The Applicants submitted a professional drainage analysis prepared by Terra Associates. The consultants found no evidence of natural or man-made surface drainage conveyances on-site. They concluded from their evaluation that the soils in the steep slope are very well drained and submitted the position that single-family residential development as proposed would mimic the natural drainage patterns. *Exhibit 1, Attachment i.*
9. The parcels adjacent to the east and west are developed with residences above the slope. *Exhibit 1, Attachment h; Exhibit 3.*
10. The proposal includes additional plantings of native species (salal, Oregon grape, and sword fern) in the five-foot setback from the top of the slope, and in the area of the septic drainfields south of the house. The new plantings would assist with erosion control and slope protection. Mature trees along the eastern site boundary would be retained undisturbed. *Exhibit 1, Attachments f and g; Giannini Testimony.* The Applicants' landscaping plan was reviewed and approved by Environmental Review Section Staff. *Smith Testimony.*
11. Thurston County Public Health and Social Services Environmental Health Division (EHD) reviewed the proposed RUEX application, site plan, and proposed sewage treatment. The Applicants' septic design received preliminary approval and EHD recommended approval of the RUEX. *Exhibit 1, Attachment j.*

12. The Thurston County Public Works Development Review Section reviewed the application and site plan for compliance with applicable roads standards and drainage design requirements. The Development Review Section recommended approval of the RUEX with a condition requiring all future permits associated with build out of the proposal to comply with applicable road standards and the requirements of the Drainage Design and Erosion Control Manual. *Exhibit 1, Attachment k.*
13. DOE submitted comments that did not include concerns about or opposition to the proposed development of the site. *Exhibit 1, Attachment l.*
14. The subject property has an assessed value of \$49,000. Surrounding lots are similar in size, shape, slope, and vegetation to the subject property. The footprint of the modestly-sized proposed residence would not be inconsistent with the sizes of homes on nearby parcels. *Exhibit 1, page 3.*
15. Staff noted that the site could be used to park a recreational vehicle, but that such a use would be inconsistent with the uses to which surrounding parcels have been put. *Exhibit 1, page 3.* According to the Applicants, Clearwood Community Association restrictive covenants allow only single-family residential development of the lots in the subdivision. *Exhibit 1, Attachment d.*
16. Staff argued that the purpose for slope setbacks is safety, rather than protection of habitat or other environmental function. Citing the Applicants' consultants' recommendation for a five-foot setback to protect the slope, Staff argued that the size and placement of a residence anywhere on-site - outside the five-foot setback - would have the same impact on the critical area. *Exhibit 1, page 3.*
17. The slope occupies approximately half of the site, leaving only roughly 5,400 square feet for placement of a residence, driveway, drainfield and reserve area, existing and additional landscaping, and the drywell. The buildable portion of the site, from the street to the top of the slope, is approximately 75 feet deep. Setbacks are required between the foundation and the drywell, as well as between the residence and the septic components, further restricting use of the site. *Exhibit 2; Exhibit 1, page 4.*
18. Written notice of the public hearing was sent to all property owners within 500 feet of the site on April 20, 2010. Notice of the hearing was posted on-site on April 8th and published in The Olympian on April 22 and 23, 2010, respectively. *Exhibit 1, page 2; Exhibit 1, Attachment a; Exhibit 3.*
19. The County received public comments from a neighboring property owner opposing RUEX approval. The neighbor asserted that approval would result in clearing of trees, destabilize the slope, and contribute to ground and surface water contamination in nearby Horse Shoe Lake. The neighbors asserted that the house constructed on Lot 425 (on the same slope) has an extensive history of structural problems. *Exhibit 1, Attachment m.*

20. The Applicants submitted comments from the geotechnical engineers, who reviewed the neighboring property owners' comments. The consultants reiterated their professional opinion that the slope is stable, with no evidence of erosion or instability, and that the proposed development would not destabilize it. The consultants stated that the concerns in the neighbors' letter appear to be unfounded. *Exhibit 1, Attachment o.*
21. Mr. Giannini (Applicant) is a construction-industry professional with years of building experience, as evidenced by his resume which is in the record. In 2000, the Applicants purchased Lot 420 (the adjacent lot) and constructed a residence that has been occupied since 2003. On Lot 420, the Applicants have had no foundation cracking, no sheetrock cracking, and no door or window malfunctions, which are common complaints in residences built on unstable lots. The Applicants asserted that they are developing the instant proposal for family use and that they intend to retire to their Clearwood residences. *Exhibit 1, Attachment n.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for Reasonable Use Exception pursuant to Chapter 36.70 of the Revised Code of Washington and Chapters 2.06 and 17.15 of the Thurston County Code.

Criteria for Review

Reasonable use Exception:

Pursuant to TCC 17.15.415, the Hearing Examiner shall grant the Reasonable Use Exception if the following five specific findings can be made:

1. No other reasonable use of the property as a whole is permitted by this chapter.
2. No reasonable use with less impact on the critical area or buffer is possible.
3. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site.
4. Any alteration to a critical area is the minimum necessary to allow for reasonable use of the property.
5. The inability of the Applicant to derive reasonable use of the property is not the result of actions by the Applicant in subdividing the property or adjusting a boundary line thereby creating an undevelopable condition after the effective date of this chapter.

Conclusions Based on Findings

1. The property is located in a single-family residential subdivision and is surrounded by residential development. Based on the size, location, and assessed value of the site, a residence is the only reasonable use of the property. *Findings 1, 2, 3, 14, and 15.*
2. Single-family residential development is the only reasonable use of the site. Half of the site is encumbered by the slope, leaving a relatively small area for use. Application of the 50-foot slope setback would leave only the 25 feet of lot depth immediately adjacent to the street for development, which would not be enough room for a residence, septic components, dry well, driveway and the required setbacks for the drywell and septic components. The proposed modestly-sized home would be consistent in size and lot placement with the existing residential development in the area. Given the constraints resulting from the size of the buildable area and the improvements required for residential development, any residence would intrude into the required slope buffer. There is no reasonable use with less impact to the critical area and buffer. *Findings 3, 5, 6, 14, 15, 16, and 17.*
3. As conditioned, the proposal would not result in harm to the slope, to other properties, or to the public welfare. All runoff from new impervious surfaces would infiltrate in a drywell set as far back from the top of the slope as possible. There would be no clearing or alteration of the slopes, which are very well drained in the existing condition. Additional plantings are proposed along the top of the slope. All mature trees on-site would be retained. Thurston County Environmental Health Division preliminarily approved the proposed septic system, concluding that no public health issues would be raised. The Public Works Development Review section reviewed the proposed drainage plan and recommended project approval. The geotechnical evaluation and drainage study support the conclusions that, with erosion control during construction, the project would not destabilize the slope on- or off-site. No other threats to public welfare were identified in the record. *Findings 5, 6, 7, 8, 10, 11, 12, 13, 20, and 21.*
4. No alteration of any critical area is proposed. Because residential development is the only reasonable use of the site, and because the majority of the buildable area is encumbered by the slope buffer, the proposed use is the minimum necessary alteration to the critical area and associated buffer that would allow reasonable use. *Findings 5, 16, and 17.*
5. The Applicant did not create the circumstances that result in the need for RUEX. *Findings 1, 3, and 4.*

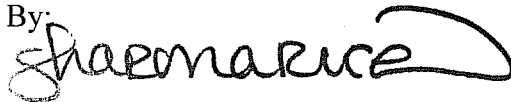
DECISION

Based on the foregoing findings and conclusions, the request for reasonable use exception to construct a single-family residence within five feet of the top of a slope classified as a landslide hazard area at 17733 Clearlake Boulevard, Yelm, Washington is **APPROVED** subject to the following conditions:

- A. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal and Thurston County Resource Stewardship Department shall be met.
- B. There shall be no clearing of existing trees and other vegetation on the landslide hazard slope.
- C. During and after construction, all runoff from the proposal's new impervious surfaces shall be controlled consistent with the recommendations of the drainage analysis, in the record at Exhibit 1, Attachment i, and consistent with the drainage plan preliminarily approved by the Development Review Section in Exhibit 1, Attachment k, as modified by subsequent County approvals. All future permits must satisfy the edition of the Thurston County Road Standards and Drainage Design and Erosion Control Manual in effect on the date of complete application.
- D. Revegetation of the site shall be completed prior to final inspection of the residence. Revegetation shall follow the submitted and approved revegetation plan.
- E. Erosion control measures approved by the Land Use and Environmental Review Section must be in place prior to any clearing, excavation, grading, or construction. These measures must prevent soil from being carried into surface water by stormwater runoff.
- F. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).

DECIDED May 17, 2010.

By:



Sharon A. Rice

Thurston County Hearing Examiner *pro tem*



Project No. 2009102617 RULX
 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 _____

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 Development Services 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 Development Services 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 **\$595.00** for a Request for Reconsideration or **\$820.00** an Appeal). Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance 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.