



COUNTY COMMISSIONERS

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 District One
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 District Two
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 District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2012100314
)	
)	
Elaine Gilmour and Alwyn Hindman)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

A reasonable use exception to allow construction of a driveway on a steep slope to serve a single-family residence on a separate parcel is **APPROVED**, subject to conditions.

SUMMARY OF RECORD

Request

Elaine Gilmour and Alwyn Hindman (Applicants) requested approval of a reasonable use exception to allow construction of a driveway on a steep slope classified as a landslide hazard area pursuant to the Thurston County critical areas ordinance. The driveway would provide access to a single-family residence located on a separate lot.

Hearing Date

The Thurston County Hearing Examiner *pro tem* held an open record public hearing on the request on June 18, 2012.

Testimony

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

- Mike Kain, Planning Manager
- John Ward, Environmental Health
- Arthur Saint, P.E., Development Review
- Alwyn Hindman, Applicant
- Elaine Gilmour, Applicant
- John Fleener
- Del Sutterfield

Exhibits

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

Exhibit 1 Resource Stewardship Department Report including the following attachments:

- Attachment a Notice of Public Hearing
- Attachment b Notice of Application, dated March 26, 2012
- Attachment c Reasonable Use Exception Application, dated February 6, 2012
- Attachment d Project Narrative
- Attachment e 2009 General Aerial Photo of Site
- Attachment f 2009 Close Up Aerial Photo of Site
- Attachment g 2009 Contours Aerial Photo of Site
- Attachment h Site Plan
- Attachment i Calculation Submittal, dated October 19, 2011
- Attachment j Geotechnical Response to Abbreviated Drainage Plan, dated December 2, 2011
- Attachment k Geotechnical Response to December 9, 2011 letter, dated January 3, 2012
- Attachment l Letter to Chris Merrit, Olympic Engineering, from Fern Shultz, Resource Stewardship Department, dated December 9, 2011
- Attachment m Comment Letter from Department of Ecology, dated February 27, 2012
- Attachment n Comment Letter from Department of Ecology dated April 16, 2012
- Attachment o Comment Memorandum from John Ward, Environmental Health Department, dated February 17, 2012
- Attachment p Comment Memorandum from Kevin Chambers, Public Works Department, dated February 16, 2012

Attachment q Comment Email from Mark P. Biever, Water Resources Division, dated February 24, 2012

Attachment r Photos of the site:

1. Public notice sign
2. Upper road
3. Cut bank on upper road
4. Road meander to mid level
5. Cut bank on mid level road
6. View from home site
7. View of parcel from below
8. Access point off of Turkey Road

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 reasonable use exception (RUEX) to allow construction of a driveway on a steep slope classified as a landslide hazard area pursuant to the Thurston County critical areas ordinance. The parcel subject to the RUEX request is addressed as 1049 Turkey Road, Olympia, Washington. The driveway would continue off-site in an easement across adjacent 1124 Summit Lake Shore Road, which contains no slopes or other critical areas that would be affected. The single-family residence the driveway would serve (which is not under consideration in the instant proceedings) would be built on the landlocked parcel addressed as 1105 Turkey Road (the home site). *Exhibit 1, Attachments b, c, d, e, and f.*
2. The subject property is within the Plat of Summit Lake, which created 171 lots between 0.2 and 1.0 acres in 1954. Previous owners combined three of the original lots through a boundary line adjustment in 2007, resulting in the subject parcel. The proposed home site was segmented off of a separate lot in 1959. Never developed due to the lack of access, the home site parcel is .23 acres and has a view of Summit Lake and the surrounding hills. In May 2011, the County granted a variance to allow a residence on the home site to be placed 25 feet from the top of a hazardous slope, half of the standard setback of 50 feet. The home site variance is not on the same slope as on the driveway RUEX request. *Exhibit 1, page 3; Exhibit 1, Attachment e.*
3. The driveway 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 consist of residences to the north, south and west, interspersed with vacant residential lots. Across Turkey Road to the east, the Washington State Department of Natural Resources owns a large forested tract. The shoreline of Summit Lake sits about 250 feet below the driveway site in elevation and is about 720 feet down slope to the west of the driveway site. *Thurston County Code (TCC) 20.13A.020 and .030; Exhibit 1, page 2; Exhibit 1, Attachments e and f.*

4. The 0.93-acre subject parcel slopes steeply downward from Turkey Road for about 40 feet, before becoming more moderate for another 65 feet, and finally slopes more gently downward for an additional 100 feet to the home site. The construction of Turkey Road decades ago increased natural steepness of the slope. The southern half of the site contains trees and in the northern half contains scattered shrubs and grass where the driveway is proposed. *Exhibit 1, page 2; Exhibit 1, Attachment g.*
5. The Thurston County Critical Areas Ordinance (CAO) defines any area with a vertical height of 15 feet or more and slopes over fifty percent as a landslide hazard area. The CAO requires a 50-foot no-disturb buffer of native vegetation be maintained from the top of the hazard area and a 25-foot buffer no-disturb from the toe. *TCC 17.15.200.* The slope in question is approximately seventy percent and 35 feet high. The landslide hazard slopes extend from Turkey Road across the site's eastern boundary and into the eastern and northeastern portions of the site. The east-most off-site portion of the driveway in the right-of-way would cross landslide hazard slopes. Approximately 250 feet of the 500-foot on-site driveway would pass through the toe buffer and the steep slope area within the site. *Exhibit 1, page 2; Exhibit 1, Attachment h.*
6. An unauthorized access driveway was cut into the site by previous owners in 2007, intended to serve a proposed residence on the subject property as well as a residence on the adjacent parcel to the north. After it was discovered, compliance action was initiated, and the property owners submitted an application for a road and a residence on the subject property. However, the applications were allowed to lapse and have now expired. The current Applicants purchased the property in 2010 and in May 2011 submitted a new design for a road to serve the subject property and several nearby parcels. An easement needed for the road could not be obtained and the road was abandoned in favor of the current driveway proposal. During the review of the grading permit for the proposed driveway, Resource Stewardship Staff informed the Applicants that a reasonable use exception would be required to cross the slope. A portion of the steep slope segment of the proposed driveway is within the Turkey Road right-of-way. The proposal would allow proper permits to be obtained, bring site access up to code, and install retaining walls for stability. *Exhibit 1, pages 2-3; Exhibit 1, Attachments d, f, and l.*
7. The proposed driveway would enter the site from Turkey Road in the southeastern corner of the site and make an "S" as it meanders to the northwest corner. An emergency service vehicle turnaround would be provided near the top of the "S" in the northwest corner near where the driveway would extend off-site to the north. Five ecology block retaining walls are proposed along steeper segments of the roadbed along its eastern, uphill edge. Aside from the driveway, retaining walls, and vegetation, no other development of the subject property is proposed. No mature trees would be removed. The roadbed would be a minimum of ten feet paved width with a minimum one-foot clear zone on either side. The driveway would be cross-sloped towards the downhill side and a minimum ten-foot vegetated buffer strip would be provided to address stormwater runoff that would sheetflow off the paved surface. In areas of fill, the ten-foot buffer strip would be provided with compost amended soils. Erosion control blankets would be

placed on all fill slopes greater than four feet in height and disturbed areas would be hydroseeded. Surface drainage from the driveway would infiltrate into the natural soil. No more stormwater than exited the property in its undeveloped condition would be allowed to exit during or after construction. Clearing, grading, and vegetation removal would be kept to a minimum to minimize slope disruption. Prior to construction permit issuance, the Applicants would be required to submit a landscape plan showing proposed vegetation for erosion control and the plan must receive County approval prior to soil disturbing activities. *Exhibit 1, pages 3-5; Exhibit 1, Attachments h and i.*

8. The Applicants submitted a professional geotechnical engineering evaluation that disputed the landslide hazard area designation of the site. The consultants noted that state statutes and regulations reserve the identification of landslide hazard areas to licensed engineers and geologists. While the Applicants' consultants acknowledged that the property is classified as a landslide hazard according to the criteria in the County Code, they submitted the professional opinion that based on geologic considerations and with an understanding of the history of stability of the slope in question, the project area does not constitute a landslide hazard area. *Exhibit 1, Attachment k.*
9. The same geotechnical consultants reviewed the abbreviated drainage plan for the proposed driveway project. The consultants agreed with the use and the proposed locations of the five ecology block retaining walls for the purpose of retaining the cut slopes of the driveway and controlling erosion. The consultants also concurred with the proposed infiltration of stormwater runoff into native site soils along the driveway. The geotechnical engineers noted that site soils have high infiltration rates as they are both permeable and porous. It is not anticipated that concentrated surface flows would develop towards the steeper slopes to the northwest. The consultants concluded that the driveway would not destabilize the slope or cause erosion. *Exhibit 1, Attachments i and j.* The County's staff geologist agreed with the Applicants' consultants' conclusions and waived objections to the proposal, noting that erosion control would need to be maintained. *Exhibit 1, Attachment q.*
10. The proposed road width is the minimum driving surface width allowed by the County Road Standards. If a house were to be placed on this residential parcel, the same driveway design would be required. *Exhibit 1, pages 5-6.*
11. Although protected by the Critical Areas Ordinance for safety reasons, the slope in question is not protected as habitat. Approval of the application would not result in impacts to endangered species or damage important habitats. *Exhibit 1, page 5.*
12. Without approval of vehicular access, neither the driveway parcel nor the home site could be used to even park a recreational vehicle or for any other use allowed by the zoning code aside from walk-in camping. Resource Stewardship Staff submitted the position that restricting the parcels to a walk-in camping use would be out of character with the surrounding uses and would be less than full use of the parcels. *Exhibit 1, page 4; Kain Testimony.*

13. Thurston County Public Health and Social Services Environmental Health Division (EHD) reviewed the proposed RUEX application and site plan. EHD Staff noted the site has an approved septic system design and asserted that the route for the proposed driveway would not interfere with the approved drainfield or septic components. EHD Staff submitted that the proposal does not result in any issues of public health concern and recommended approval without condition. *Exhibit 1, Attachment o.*
14. The Thurston County Public Works Development Review Section reviewed the application and site plan for compliance with applicable roads standards and drainage design requirements. Development Review Section Staff submitted the opinion that all requirements could be satisfied by the proposal and recommended approval subject to a condition requiring the Applicants to apply for and comply with a construction stormwater permit from Washington State Department of Ecology (DOE), if the project triggers compliance thresholds. Staff noted that the driveway would not exceed 15% grade and that emergency access was adequately provided for. *Exhibit 1, Attachment p; Saint Testimony.*
15. DOE submitted comments noting that erosion control measures were required to be in place prior to ground disturbing activities. The agency's comments did not include concerns about or opposition to the proposed development of the site. *Exhibit 1, Attachments m and n.*
16. Written notice of the public hearing was sent to all property owners within 500 feet of the site on June 5, 2012 and posted on-site on June 7, 2012. Notice of hearing was published in The Nisqually Valley News on June 8, 2012. *Exhibit 1, page 3; Exhibit 1, Attachments a and r.*
17. At hearing, members of the public testified regarding concerns about increased impacts to existing off-site seasonal flooding in the roadside ditches and in existing culverts along Lake Summit Shore Road. One member of the public testified from personal knowledge of the construction of area roads and of the shallow depth to basalt bedrock that occurs randomly throughout the slopes surrounding Summit Lake, leading to increased concerns about off-site flooding as a result of the new impervious surfaces proposed. *Fleener Testimony; Sutterfield Testimony.*
18. Resource Stewardship Department Staff reiterated that any runoff from the project's improvements would infiltrate on-site, meaning no increase in runoff volume or rates is anticipated. Staff noted that the existing driveway on-site was built without permits and does not conform to County road and drainage standards, but that the proposed driveway would conform. New plantings and amended soils would be placed on-site adjacent to the new road to address stormwater runoff. *Kain Testimony.*

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

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 parcels. Based on lot size, location, and zoning, residential uses are the only reasonable uses of the property. The only potential use of the site without vehicular access identified in the record is walk-in camping, which would not be compatible with surrounding parcels and would not constitute full or reasonable use of the subject parcel. A driveway to access the site from existing roads is required to make any reasonable use of the site. *Findings 1, 2, 3, 5, and 12.*
2. There is no way to enter the site from Turkey Road without crossing landslide hazard slopes and the toe buffer of landslide hazard slopes. The site does not front any other road. It is necessary to cross the critical areas to have any reasonable use of the site. There is no reasonable use with less impact to the critical area and buffer. *Findings 4, 5, 7, and 12.*
3. As conditioned, the proposal would not result in harm to the slope, to other properties, or to the public welfare. According to the County Code, the slope is a geologic hazard, but does not contain endangered species or priority habitat. In the opinion of professional geotechnical engineers, the site does not represent a landslide hazard based on geologic considerations. Conditions of approval would ensure that erosion control measures are in place prior to ground disturbing activities. As conditioned, the proposed design would prevent impacts to slope stability and would address erosion concerns. There would be

no increased runoff from the property. All mature trees on-site would be retained. The Public Works Development Review section recommended project approval. The record shows that, with erosion control during construction, the project would not destabilize the slope or increase flooding on- or off-site. No other threats to public welfare were identified in the record. *Findings 5, 6, 7, 8, 9, 11, 12, 13, and 14.*

4. The driveway is proposed to have the minimum paved surface width allowed pursuant to County Road Standards. To reduce its impacts, the project would utilize retaining walls and includes plantings to enhance erosion control and slope stability. Impacts to the critical area have been minimized to the extent possible while allowing use of the parcel. *Findings 7, 9, and 10.*
5. The Applicant did not create the circumstances that result in restricted access to the subject parcel or the home site parcel. *Findings 2 and 6.*

DECISION

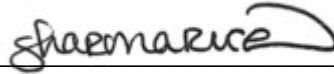
Based on the foregoing findings and conclusions, the reasonable use exception to allow construction of a driveway on a steep slope to serve a single-family residence on a separate parcel is **APPROVED** subject to the following conditions:

- A. Prior to or in conjunction with the issuance of any grading or encroachment permit, all applicable Critical Areas Ordinance regulations, all requirements of the Public Works Department, the Fire Marshal and Thurston County Resource Stewardship Department shall be met.
- B. Prior to grading permit issuance, a landscape plan must be submitted to and approved by the Resource Stewardship Department. The plan shall show revegetation of the non-driving surface areas disturbed by construction. The purpose of the revegetation should be to stabilize the slope and contain erosion.
- C. Prior to grading permit issuance, the applicant shall record with the Thurston County Auditor a document similar to the attached Appendix A, along with a copy of the approved site plan, a copy of the landscape plan and a copy of the Hearing Examiner Decision.
- D. Revegetation of the site shall be completed prior to final inspection of the driveway. Revegetation shall follow the submitted and approved landscape plan.
- E. Prior to issuance of a building permit for a residence for which this driveway will provide access, the driveway shall receive final approval from the Public Works Department.
- F. A geotechnical monitoring report that evaluates the slope stability and erosion issues after construction of the driveway shall be submitted prior to final occupancy of the future proposed residence to be served by the approved driveway. If the report identifies issues of concern, such issues shall be addressed prior to final occupancy of the residence.

- G. Erosion control measures must be in place prior to any clearing, excavation, grading or construction and must be approved by the Public Works Department. These measures must be effective to prevent soil from being carried down slope onto adjacent properties.

DECIDED July 2, 2012.

By:



Sharon A. Rice
Thurston County Hearing Examiner *pro tem*

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 Resource Stewardship 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.



Project No. <u>2012100314</u> 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 \$595.00 for Reconsideration or \$820.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20___.