



COUNTY COMMISSIONERS

Cathy Wolfe
District One

Sandra Romero
District Two

Bud Blake
District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE THURSTON COUNTY
HEARING EXAMINER**

In the Matter of the Application of)	NO. 2009101125 (Collins Residence)
)	
Jonathan Cronk)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The request for an amendment to a reasonable use exception granted in 2011 to allow construction of a two-story single-family residence in a smaller footprint than the approved one-story residence and to allow implementation of a shoreline restoration and landscape plan within a landslide hazard area is **APPROVED**, subject to conditions.

SUMMARY OF RECORD

Request

Jonathan Cronk (Applicant), on behalf of Patricia and Christopher Collins (owners), requested an amendment to a reasonable use exception granted in 2011 to allow construction of a two-story single-family residence and implementation of a shoreline restoration and landscape plan within a landslide hazard area at 17127 Lakepoint Drive SE, Yelm, Washington.

Hearing Date

The Thurston County Hearing Examiner held an open record public hearing on the request on March 16, 2015.

Testimony

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

- Leah Davis, Associate Planner, Resource Stewardship Department
- Dawn Peebles, Environmental Health Division
- Arthur Saint, Public Works Development Review
- Jonathan Cronk, Applicant Representative

Exhibits

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

- Exhibit 1 Land Use and Environmental Review Section Report with the following Attachments:
- Attachment A Notice of Public Hearing
 - Attachment B Master Application, received September 16, 2014
 - Attachment C Reasonable Use Exception Application, received September 16, 2014
 - Attachment D Aerial photo of parcel/zoning map (2012)
 - Attachment E Zoning map
 - Attachment F Site Development Plans (4 sheets)
 - Attachment G Notice of Application, dated February 20, 2105
 - Attachment H Comment Memorandum from Dawn Peebles, Thurston County Environmental Health, dated January 22, 2015
 - Attachment I Comment email from Mark Biever, Thurston County Licensed Engineering Geologist, dated March 4, 2015
 - Attachment J Geotechnical Report by Kane Environmental, Inc., dated January 12, 2010
 - Attachment K Geotechnical Letter from Stantec Consulting, dated July 14, 2011
 - Attachment L Geotechnical Letter from E³RA, dated September 5, 2014
 - Attachment M Findings, Conclusions and Decision of the Hearing Examiner of Thurston County, dated July 5, 2011 (denial of RUE)
 - Attachment N Findings, Conclusions and Decision of the Hearing Examiner of Thurston County, dated July 11, 2011 (denial of Reconsideration)
 - Attachment O Findings, Conclusions and Decision of the Hearing Examiner of Thurston County, dated September 14, 2011 (approval of

reconsideration allowing residence but requiring removal of walls)

Attachment P Decision of the Board of County Commissioners, dated November 21, 2011 (denial of request on reconsideration to allow two-story house)

Exhibit 2 Color copies of photos of posted hearing notice

Exhibit 3 Oberhansly comment email, submitted March 13, 2015

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 Applicant requested an amendment to a reasonable use exception granted in September 2011, which if approved would allow construction of a two-story single-family residence and the implementation of a shoreline restoration and landscape plan within the landslide hazard area at 17127 Lakepoint Drive SE, Yelm, Washington.¹ *Exhibit 1, page 1; Exhibit 1, Attachments B and C.*
2. The 0.22-acre subject property is located on the Lawrence Lake shoreline. All approved and proposed structures would be located outside the 50-foot setback from the ordinary high water mark of the lake. The property is bisected by a steep slope that is regulated as a landslide hazard area by the Thurston County Critical Areas Ordinance because the gradient is approximately 100 percent and the height is approximately 15 feet. The minimum buffer required from the top of the slope is 50 feet. *Exhibit 1, page 2; Exhibit 1, Attachments J and O; TCC 24.15.015; former TCC 17.15.*
3. The subject property is zoned Residential Limited Areas of More Intensive Rural Development (RL 2/1), a designation which allows two dwelling units per acre. The County has determined that the subject property is a legally nonconforming lot. *Exhibit 1, page 3; Exhibit 1, Attachment E.*
4. In July 2011, the Hearing Examiner denied a request for reasonable use exception to allow construction of a residence within the slope setback on-site. Following denial, the then-owners requested reconsideration, which was eventually approved in September 2011, granting a reasonable use exception to allow construction of a one-story single-family residence at the top of the steep slope. This approval required removal of rock walls and requested the ability to place a two-story residence on-site instead of a one-story residence. The request for reconsideration was denied on appeal to the Board of

¹ The legal description of the submit property is a portion of Section 20 Township 16 Range 2E Quarter SW SE Plat EDWARDS LAKE LAWRENCE DIV 3 Lt 7 Document 015/030; also known as Tax Parcel: 45870000600. *Exhibit 1, page 1.*

County Commissioners on November 21, 2011, on which date the County's decision in the matter became final. The approved single-story residence was not built, and ownership of the property has since changed. *Exhibit 1, pages 2-3; Exhibit 1, Attachment O.*

5. The current owners seek to amend the approved RUEX in order to allow construction of a two-story single-family residence in approximately the same location as the one-story residence approved in 2011. The two-story design reduces the building footprint within the landslide hazard buffer and increases the building setback from the top of the slope. As proposed, the building setback from the top of the slope would be six feet at the closest point and approximately 12 feet elsewhere. The residence would have a footprint of 1,475 square feet. *Exhibit 1, Attachments F and L.*
6. The proposed location of the residence is as far from the top of the slope as possible without infringing on other required building setbacks, existing septic system components, and the required setbacks from septic components. *Exhibit 1, Attachment F.*
7. A geotechnical report prepared in 2010 was submitted in support of the original residence. This report contemplated a one-story residence with a daylight basement in approximately the same location as the current proposal. A 2011 geotechnical report addressed some modular block walls which, at the time, were located at the base of the slope. The walls were not allowed to be retained per the Hearing Examiner's September 2011 decision and they have since been removed. Both geotechnical reports contained recommendations to ensure slope stability. *Exhibit 1, Attachments I, J, K and O.*
8. Geotechnical review of the instant proposal was provided by both the Applicants' engineer and by Thurston County's engineering geologist. The conclusions of the Applicants' engineer included the following: that slope failure is unlikely; that if slope failure occurred, the area of failure would be at least eight feet from the building envelope; and that the planned construction would not adversely affect slope stability if the recommendations contained in the previous geotechnical reports were followed. The County's engineering geologist concurred with this assessment and further noted that a majority of the homes in the vicinity are two or more stories. *Exhibit 1, Attachments I and L.*
9. The Applicant submitted an erosion control plan and a landscaping and restoration plan. At present, the subject property is sparsely vegetated with trees, blackberries, and grasses. The Applicant proposes to remove invasive species and plant native groundcover, trees, and shrubs within the critical area, for the purpose of restoring the area disturbed by installation and removal of the modular block walls and improving slope stability. *Exhibit 1, page 3; Exhibit 1, Attachment F.*
10. The Thurston County Health Department approved the proposed residence's connection to the existing on-site septic system. Potable water would be provided through the residence's connection to the existing Lake Lawrence Group A public water system. The Health Department recommended approval of the reasonable use exception subject to a

condition that the staging area for construction avoid the on-site sewage system components. *Exhibit 1, Attachment H; Peebles Testimony.*

11. The Thurston County Resource Stewardship Department reviewed the application and submitted that it satisfies all of the criteria of the original approval, with conditions. *Exhibit 1, page 4; Davis Testimony.*
12. Reasonable use exceptions are considered non-project actions exempt from the requirements of the State Environmental Policy Act (SEPA). *WAC 197-11-800.*
13. Notice of the application was issued on February 20, 2015 with a 20-day comment period. Written notice of the public hearing was sent to all property owners within 500 feet of the site on March 4, 2015, and posted on-site and published in The Olympian on March 6, 2015. *Exhibit 1, page 3; Exhibit 1, Attachments A and G.*
14. The County received one public comment on the application expressing the following concerns: existing congestion for traffic and parking on Lakepoint Drive SW; that the lot appears too small to be accommodate a residence and all required setbacks; that owners of small lots have been told in previous decades that they could not build residences but instead needed to restrict use of small lots to recreational uses; and that all parties be held to the same standards. *Exhibit 3.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for Reasonable Use Exception pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.06 and 24.45 of the Thurston County Code.

Criteria for Review

The 2011 approval was based on the following criteria (former TCC 17.15.415):

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 reasonable use of the property; and
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 the undevelopable condition after the effective date of this chapter.

Conclusion Based on Findings

As conditioned, the amended proposal continues to comply with the applicable criteria for approval of a reasonable use exception. The property is already approved for construction of a one-story residence; any appeal of that approval is untimely. The use as proposed in this amendment application is the same use approved in 2011 - single-family residence. Geotechnical evaluation in the record credibly supports the requested amendment to reduce the building footprint within the steep slope buffer, increasing the setback from the top of the slope. With conditions of approval, including implementing the erosion control and landscaping plans, the amended use would not adversely affect the public health, safety, or welfare. The Applicants did not create the undevelopable condition of the property. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.*

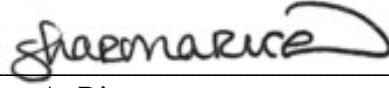
DECISION

Based on the preceding findings and conclusions, the request for an amendment to a 2011 reasonable use exception to allow construction of a two-story single-family residence with a smaller footprint in the steep slope buffer and the implementation of a shoreline restoration and landscape plan within the landslide hazard area at 17127 Lakepoint Drive SE, 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, and Thurston County Resource Stewardship Department shall be met.
- B. The Site Development Plan, Landscaping and Restoration Plan, Erosion Control Plan, and Drainage Plan shall be implemented as submitted and approved by Thurston County Development Review Department, Building Permit section, and Land Use and Environmental Permit section, including all project conditions and final conditions.
- C. The staging area for all construction vehicles, equipment, and materials shall be maintained off the on-site sewage system components and drainfield area to ensure they are protected from damage during construction.
- D. All development on the site shall be in substantial compliance with the approved reasonable use exception application, as conditioned, and with the geotechnical evaluations in the record as amended by geotechnical experts in the course of civil plan/building permit review. Any further alteration of the proposed use of the property will require approval of a new or amended Reasonable Use Exception. The Land Use and Environmental Review Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DECIDED March 30, 2015.

By:

A handwritten signature in black ink, appearing to read "sharonarice", written over a horizontal line.

Sharon A. Rice
Thurston County Hearing Examiner

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 **\$651.00** for a Request for Reconsideration or **\$866.00** 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. _____
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 \$652.00 for Reconsideration or \$870.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

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