

OFFICE OF THE HEARING EXAMINER PRO TEM

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2014105346 Dutton Reasonable Use Exception

SEQUENCE NO.: 15 115027 XI

LOCATION: 2510-46th Avenue N.W.
Olympia, WA 98502

TAX PARCEL NO.: 35100000700

APPLICANTS: Shawna and Chris Dutton and
Holly and Thomas Ward
2510-46th Avenue N.W.
Olympia, WA 98502

ATTORNEY: Phillips Burgess PLLC
Attn: Heather L. Burgess
724 Columbia Street N.W., Suite 140
Olympia, WA 98501

PLANNER: Leah Davis, Associate Planner

SUMMARY OF REQUEST:

Reasonable Use Exception to expand the footprint of a single-family residence that will result in further encroachment into a steep slope hazard located at 2510-46th Avenue N.W., Olympia.

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: January 13, 2016

PUBLIC HEARING:

After reviewing the Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on December 21, 2015, at 10:30 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Resource Stewardship Department Staff Report with Attachments**
- EXHIBIT "2" - Heather Burgess Presentation with Attachments**
- EXHIBIT "3" - Photograph of Notice Sign**
- EXHIBIT "4" - Photograph of House**
- EXHIBIT "5" - Photograph of Area Behind House**
- EXHIBIT "6" - Photograph of Retaining Wall**
- EXHIBIT "7" - Photograph of Beach Bulkhead**
- EXHIBIT "8" - Site Plan (11 by 17)**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

LEAH DAVIS appeared, presented the Environmental Review Section Staff Report, and introduced Exhibits 3-8. Approval of the variance will allow further encroachment into the steep slope area. The site is within a Rural Shoreline Environment and staff has reviewed the request under the Critical Areas Ordinance, zoning, and reasonable use exception criteria. A JARPA was approved for an exemption for a new bulkhead that was necessary to prevent the existing house from falling into the water. The applicant received the approval for the exemption on June 15, 2015, that authorized construction of a new bulkhead four feet waterward of the existing, collapsed bulkhead. A previous owner built the home in 1967, and the bulkhead subsequently failed causing the house to fall onto the beach. After the most recent failure, the present owners installed pilings on both the beach and slope and tied them together. The applicants now want to raise the home and expand the footprint landward by four feet that would enclose the beams and pilings. The project is essentially an extension of an already permitted project. Impacts to the slope and beach have already occurred by the permitting of the bulkhead system. All County agencies recommend approval as does ECY, but the applicant must also comply with the Shoreline Master Program and Critical Areas Ordinance. A nonconforming use permit allows a vertical expansion of a structure within the same footprint. Furthermore, it is a longtime interpretation by Thurston County staff that expansions of nonconforming structures landward do not require a shoreline variance.

HEATHER BURGESS, attorney at law, appeared on behalf of the applicants and introduced Exhibit 2, their presentation. She agrees with the Staff Report. They are simply filling a void or gap as shown on Attachment A2 to Exhibit 2. Thurston County is in the

process of updating its Shoreline Master Program, and until they do, the Critical Areas Ordinance trumps the shoreline provisions. She has reviewed conditions of approval and has no objection.

CHARLIE FRANK appeared and testified that the applicant proposes a great project and he supports it wholeheartedly.

ANDY HOMIER appeared and testified that he has lived in the property upslope for 38 years and approves the project wholeheartedly.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:50 a.m.

NOTE: A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. A Mitigated Determination of Nonsignificance (MDNS) was issued on May 22, 2015, for other aspects of the project following review pursuant to the State Environmental Policy Act (SEPA). The MDNS assessed impacts of the present application and is final.
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site on December 11, 2015 and notice was published in The Olympian on December 11, 2015, at least ten (10) days prior to the hearing. The site was posted on December 11, 2015.
4. The applicants have a possessory ownership interest in an irregularly shaped, 1.42 acre parcel of property that abuts the west shoreline of Budd Inlet in unincorporated Thurston County. Improvements on the site include a single-family residential home, two detached garages, shed, bulkhead, and retaining wall. A driveway extending across an abutting parcel provides access to the site.
5. The topography of the parcel consists of a narrow, flat area adjacent to the shoreline and a significant slope approximately 50 vertical feet in height with a 60 to 90 percent slope immediately east of said flat area. All improvements are located on the narrow, flat area at the bottom of the slope. The slope and flat area adjacent to the shoreline are both within a landslide hazard area. The Thurston County

Critical Areas Ordinance prohibits development or expansion of improvements in landslide hazard areas. However, the site is located within the Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5) zone classification of the Thurston County Code (TCC) that authorizes single-family residential homes as an outright permitted use.

6. Storms during the winter of 2014 severely damaged the bulkhead and threatened the house. The applicants applied for and received an exemption from the shoreline substantial development permit process to allow the following improvements:

The proposal is to replace a bulkhead waterward of the existing bulkhead. The project entails driving large, steel piles on the beach and behind the house and connecting them by steel beams. The existing residence is built on fill which is held back by the existing, failing bulkhead. The existing home shall be lifted during bulkhead repair and then placed on the beams that connect the beach piling to the upland pilings....

The applicants constructed the improvements authorized by the exemption. A condition of approval for the exemption requires the applicants to process a reasonable use exception (RUE) for the proposed, increased intrusion of the home into the landslide hazard buffer. The applicants have therefore applied for the present RUE.

7. The applicants request the RUE to expand the footprint of the home from its present location to the concrete retaining wall and to install a third story at the basement level. The RUE would authorize expansion of the house landward to the retaining wall, a distance of between three and five feet. Denial of the RUE would leave a void between the home and the new retaining wall. Expansion of the home as proposed would extend the home closer to the landslide hazard area (steep slope). While the site is also within the jurisdiction of the Shoreline Master Program For The Thurston Region (SMPTR), and while the expansion would occur within the shoreline setback, the Resource Stewardship Department has consistently interpreted the SMPTR as not requiring a shoreline variance for landward expansions of exiting structures. Thus, a shoreline variance is not required.
8. Prior to obtaining the RUE to allow expansion of the house landward from the present rear wall of the house to the retaining wall, the applicants must show that the request satisfies the criteria set forth in TCC 24.45.030. Findings on each criteria are hereby made as follows:
 - A. No other reasonable use of the property as a whole is permitted by the TCC. The home is a legal, nonconforming structure constructed prior to adoption of the SMPTR and must be expanded to eliminate a potential safety hazard. Furthermore, encroachment into the critical area with a retaining wall and the

construction of the bulkhead have already occurred pursuant to the approved exemption to the substantial development permit process.

- B. No reasonable use with less impact on the steep slope critical area is possible. The authorized bulkhead system that ties the retaining wall and bulkhead together has already been constructed. Increasing the house footprint to enclose the entire project and eliminate a void creates no additional impact.
- C. Approval of the RUE will not result in damage to other properties, nor will it threaten the public health, safety, or welfare on or off the site. The applicants submitted three geotechnical reports that evaluated the slope above the home. These reports confirm that the slopes are stable and that the risk of landslide is unlikely.
- D. The proposed RUE is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. The previously approved bulkhead repair created the encroachment into the landslide hazard area. Expanding the house to the retaining wall is the minimum necessary to achieve stability of the home and to eliminate a potential safety hazard.
- E. The RUE results in the minimum alteration of the critical area. Again, the previous approval authorized the alteration.
- F. The RUE will not cause a net loss of critical area functions and values and therefore no mitigation plan is required. However, extensive mitigation is required for the bulkhead exemption that includes replanting the steep slope to improve slope stability. Furthermore, the applicants will remove an existing shed that will reduce the amount of impervious coverage.
- G. The use will not result in unmitigated, adverse impacts to species of concern. The applicants submitted a Habitat Assessment showing that most species utilize the upland portion of the property.
- H. The location and scale of existing development on surrounding properties has no bearing on this RUE.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.

2. The applicant has shown that the request for a critical areas reasonable use exception satisfies all criteria set forth in TCC 24.45.030 and therefore should be 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. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at:
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>.
It is the applicant's responsibility to obtain this permit if required.
 - C. 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].
 - D. The Applicant shall complete all mitigation in the upland area required in the SSDP Exemption permit issued June 9, 2015. The mitigation work shall be completed prior to final occupancy approval of the residence. If the work is not able to be completed prior to final occupancy (because of time of year) a surety and bond, prepared in compliance with TCC 24.70, shall be submitted.
 - E. Per Thurston County Zoning Ordinance (TCC20.09A.050(4)) the maximum height of the structure shall be 35 feet (measured by averaging the height from highest point to grade on four sides of the structure).
 - F. All development on the site shall be in substantial compliance with the approved Reasonable Use Exception application, as conditioned. Any alteration to the proposal 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.
 - G. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional

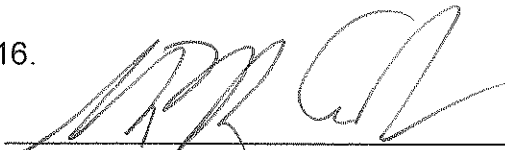
hearings.

- H. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for a critical areas reasonable use exception to allow expansion of the footprint of a single-family residence located at 2510-46th Avenue N.W., Olympia, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 13th day of January, 2016.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 13th day of January, 2016, to the following:

APPLICANTS: Shawna and Chris Dutton and
Holly and Thomas Ward
2510-46th Avenue N.W.
Olympia, WA 98502

ATTORNEY: Phillips Burgess PLLC
Attn: Heather L. Burgess
724 Columbia Street N.W., Suite 140
Olympia, WA 98501

OTHERS:

Environmental Health
Attn: Dawn Peeble

Public Works
Attn: Arthur Saint

Charlie Frank

Andy Homier

THURSTON COUNTY

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___.