

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2017105854, ARNESEN REASONABLE USE EXCEPTION

SEQUENCE NO.: 17-114104 XI

TAX PARCEL NO.: 13702130303

LOCATION ADDRESS: 6509 Arnesen Lane S.W., Olympia

APPLICANT: Cathy Arnesen
6509 Arnesen Lane S.W.
Olympia, WA 98512

PLANNER: Robert Smith, Senior Planner

SUMMARY OF REQUEST:

Reasonable Use Exception to retain two previously constructed porches and a lean-to connected to a single-family residence and a detached garage within a stream and landslide hazard buffer. The structures were built without permit approval. The site is located at 6509 Arnesen Lane S.W., Olympia

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: November 14, 2018

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department Staff 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 November 5, 2018, at 10:00 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"** - **Community Planning and Economic Development Department Staff Report**
- Attachment a** - **Notice of Public Hearing**
- Attachment b** - **Zoning/Site Map**
- Attachment c** - **Master Application**
- Attachment d** - **Reasonable Use Exception Application**
- Attachment e** - **Supplemental Application Information Sheet**
- Attachment f** - **Letter from Applicant with Corrected Information**
- Attachment g** - **Letter from Applicant with Additional Project Information**
- Attachment h** - **Site Plan Set**
- Attachment i** - **Complete Application Letter**
- Attachment j** - **Notice of Application**
- Attachment k** - **Boundary Line Adjustment BLA 16105976TC Map**
- Attachment l** - **Boundary Line Adjustment BLAD 978022 Map**
- Attachment m** - **Short Subdivision SS-2640 Map**
- Attachment n** - **Comment Memorandum from Thurston County Public Health and Social Services Department**
- Attachment o** - **Email from Thurston County Water Resources**
- Attachment p** - **Comment Letter from Washington State Department of Ecology**
- Attachment q** - **Comment Letter from Nisqually Indian Tribe**
- Attachment r** - **Comment Letter from Michael Shaffer**
- EXHIBIT "2"** - **Notice of Continuation of Public Hearing**
- EXHIBIT "3"** - **Photograph of Notice of Public Hearing Posting**
- EXHIBIT "4"** - **Riparian Buffer Critical Areas Report**
- EXHIBIT "5"** - **Letter from City of Lacey**
- EXHIBIT "6"** - **Geotechnical Assessment from KPFF**

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.

ROBERT SMITH appeared, presented the Community Planning and Economic Development Department Staff Report, along with Exhibits A-R. He then introduced photographs of public notice signs and the notice provided for the public hearing as Exhibits 2 and 3. The hearing was continued from a previous date because notice was not published in the paper. The applicant requests a reasonable use exception to allow retention of structures within critical area buffers. The applicant attached two porches and a lean-to to the mobile home and constructed a detached garage. The garage has been on the site since 1994. Staff has analyzed the request pursuant to applicable ordinances and criteria. The garage was constructed in 1994 and the other structures in 2003. When the garage was constructed it complied with the critical areas ordinances in effect, but no permit was obtained. The porches attached to the mobile home residence are normal

appurtenances. The riparian buffer is functioning properly and the improvements do not create issues. The geotechnical engineer found no issues regarding any of the structures. None of the structures are threatening the stability of the slope. Staff therefore recommends approval.

DAWN PEEBLES, environmental health, appeared and testified that she recommends approval. Her department has found that the project meets the sanitary code and her Department's letter is at Attachment N to the Staff Report.

CATHY ARNESEN, applicant, appeared and testified that Mr. Smith made a thorough and accurate presentation. She has no other space in which to accommodate a front porch. Her father, an old timer, built the house on the site. She is in the process of obtaining permits for all structures and is awaiting the decision on the RUE. The hillside is stable and they did not clear any vegetation to install the structures. The only clearing that was done was for the mobile home. She has no concerns with conditions of approval.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:15 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. This application is exempt from review pursuant to the State Environmental Policy Act (SEPA).
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site on October 8, 2018 and notice was published in The Olympian on October 12, 2018, at least ten (10) days prior to the hearing. The site was posted on October 12, 2018.
4. The applicant, Cathy Arnesen, has a possessory ownership interest in a rectangular, 5.56 acre parcel of property that abuts the west side of Arnesen Lane S.W. in the Olympia area of unincorporated Thurston County. The parcel measures approximately 322 feet in width and 792 feet in depth. Improvements on the site include a mobile home oriented in a north-south direction with two porches attached to the west side and a lean-to attached to the east side. A detached garage is located to the northeast of the mobile home. A gravel driveway provides access

from Arnesen Lane located near the east property line to the improvements that are located in the western portion of the site. The parcel also supports a drinking water well located to the east of the garage and a septic tank and drainfield south of the well.

5. Beatty Creek, a salmon bearing stream, flows within a ravine across the southwest corner of the parcel. The Thurston County Critical Areas Ordinance, and specifically Section 24.25.020 of the Thurston County Code (TCC), requires a 200 foot wide, riparian buffer for Beatty Creek from the improvements on the site. The front porch measures 103 feet from the creek and the back porch 112 feet from the creek. The lean-to measures 96 feet and the garage 171 feet from the creek. The ravine separating Beatty Creek from the improvements meets the definition of a landslide hazard area. Section 25.15.015 TCC requires a 50 foot wide structural setback from the top of the slope. The porches are located 25 feet and 35 feet from the top of the slope. The lean-to measures 21 feet from the top of the slope and the garage 50 feet therefrom. The applicant requests a reasonable use exception (RUE) to allow retention of the structures in their present location.
6. As required by the TCC, the applicant submitted a Riparian Buffer Critical Areas Report prepared by KPFF Consulting Engineers dated June 17, 2018, and a Geotechnical Assessment prepared by Envirotech Engineering dated August 20, 2018, to substantiate her request for a RUE. The Critical Areas Report noted that the Beatty Creek channel has had limited lateral migration for many years and will likely remain in its present channel for a very long time. Flooding events outside of the channel are rare if at all. Beatty Creek flows to Puget Sound and coho salmon utilize its lower gradient. The report concludes:

The parcel does not demonstrate evidence of mapped or observed riparian, aquatic, wetland, or fish and wildlife critical areas that are or would be affected by the existing structures or proposed remodeling on the property....
7. The Envirotech Geotechnical Assessment concludes that “the proposed development is not subjected to or cause adverse impacts to a landslide hazard area or its associated buffer or setback”. Furthermore, the location of the proposed development meets the minimum factor of safety for static and dynamic conditions.
8. The County’s engineering geologist reviewed the Geotechnical Assessment and agrees with its opinion.
9. Prior to obtaining a RUE the applicant must show that the request satisfies the criteria set forth in TCC 24.45.030. Findings on each criterion are hereby made as follows:

- A. No other reasonable use of the property as a whole is permitted by Title 24. The applicant currently uses the parcel for a single-family lot, and the porches, garage, and lean-to are common appurtenances for a single-family home. The primary permitted uses in the applicable Rural Residential Resource-One Dwelling Unit Per Five Acres (RRR 1/5) are single-family residential dwellings and agriculture.
- B. No reasonable use with less impact on the critical areas and buffers is possible. The total structural coverage on the 5.56 acre lot to include the garage, porches, and lean-to and their eaves calculates to 3,314 square feet. The area of the existing driveway calculates to 2,710 square feet for a total impervious coverage of 6,024 square feet. The total surface area of the parcel calculates to 242,194 square feet. Therefore, the impervious coverage measures two percent of the site. Thus, it is not reasonable to reduce the size of the use, to change the use, or change the vision of project design. All structures with the exception of the lean-to are located at least 100 feet from Beatty Creek. A 100 foot buffer width was required until 2012.
- C. The applicant's structures will not damage other property and will not threaten the public health, safety, or welfare on or off the developed portion of the site. The buildings will not increase public safety risks on or off the subject property. All structures maintain significant setbacks from all property lines. The house and porches are located approximately 70 feet from the west property line and the garage 80 feet from the north property line. All structures have existed for several years without causing any health, safety, or welfare issues.
- D. The locations of the proposed uses are limited to the minimum encroachment into critical areas and buffers necessary to prevent denial of all reasonable use of the property. The two porches and lean-to are attached to the existing residence. The greatest outward extension of the porches measures ten feet, and the applicant could not place the porches at a location that would have a lesser impact. The mobile home separates the garage from Beatty Creek. The garage has been in its present location for approximately 24 years and has caused no issues. Porches, a garage, and storage area are necessary for a reasonable use of a five acre parcel.
- E. Retention of the proposed structures will not result in an alteration of the critical areas or additional impacts to vegetation, fish and wildlife resources, hydrological conditions, or geologic conditions. The small structures were constructed years ago and have resulted in minimal alteration to the site. The safety of neighboring properties and the ravine are not compromised pursuant to the geotechnical assessment.

- F. Retention of the structures will ensure no net loss of critical area functions and values. The applicant submitted a Riparian Buffer Critical Areas Report that concludes the Beatty Creek riparian area is highly functioning in its current condition and that the structures do not compromise its functionality. Therefore, no mitigation is necessary.
- G. The structures will not result in unmitigated adverse impacts to the coho salmon that utilize Beatty Creek pursuant to the Critical Areas Report.
- H. The applicant has not relied upon existing development to substantiate her request for a 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, Fire Marshal and Thurston County Community Planning and Economic Development 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 contact the proper authorities, including Nisqually Tribe Preservation Officer, Jackie Wall (360) 456-5221, if during excavation there are discoveries of archaeological artifacts or human burials.

- E. 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 Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
- F. 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.
- G. 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 retention of two porches and a lean-to connected to an existing, single-family residential dwelling as well as a previously constructed, detached garage a minimum of 96 feet from the ordinary high watermark of Beatty Creek and 21 feet from the top of a landslide hazard slope area is hereby granted for a site located at 6509 Arnesen Lane S.W., Olympia, subject to compliance with the conditions contained in the conclusions above.

ORDERED this 14th day of November, 2018.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this day of November, 2018, to the following:

APPLICANT: Cathy Arnesen
6509 Arnesen Lane S.W.
Olympia, WA 98512

OTHERS:

Michael Shaffer
6606 Westhill Drive S.W.
Olympia, WA 86512

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 Community Planning & Economic Development 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 **\$688.00** for a Request for Reconsideration or **\$921.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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 \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____ 20__.