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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2018101307
)	
Tracy Johnson)	Westman RUE
)	
For a Reasonable Use Exception)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception to construct a single-family residence within a wetland and stream buffer is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Tracy Johnson (Applicant) requested a reasonable use exception (RUE) to construct a single-family residence within a wetland and stream buffer. The subject property is located at 20123 Ashbrook Court SW in Centralia, Washington.

Hearing Date:

The Thurston County Hearing Examiner conducted an open record public hearing on the request on August 14, 2018.

Testimony:

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

Robert Smith, Senior Planner
Nikki Westman, Applicant Representative

Exhibits:

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

Exhibit 1 Community Planning and Economic Development Department Staff Report, with the following attachments:

- A. Notice of public hearing
- B. Zoning/site map
- C. Master application, received March 15, 2018
- D. Reasonable Use Exception application, received March 15, 2018
- E. Supplemental application information letter, dated March 15, 2018
- F. Site plan, received March 15, 2018
- G. Mitigation and revegetation plan, Skookum Environmental, received June 4, 2018
- H. Ashbrook Estates final plat map
- I. Complete application letter, dated May 30, 2018
- J. Notice of application, dated May 31, 2018
- K. Comment memo from Jeremy Baarsma, Thurston County Public Health and Social Services Department, dated June 28, 2018
- L. Email from Jack King, Thurston County Public Works Department, dated June 25, 2018
- M. Comment letter from the Washington State Department of Ecology, dated April 20, 2018
- N. Letter from Eric Rickerson, US Fish and Wildlife Service, dated September 21, 2017

Exhibit 2 Photo of posted notice

Based upon the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions.

FINDINGS

1. The Applicant requested a reasonable use exception (RUE) to construct a single-family residence within a wetland and stream buffer. The subject property is located at 20123 Ashbrook Court SW, Centralia, Washington.¹ *Exhibits 1, 1.C, 1.D, and 1.E.*
2. The RUE application was submitted on March 15, 2018 and determined to be complete on April 12, 2018. *Exhibit 1, 1.C, 1.D, and 1.J.*

¹ The subject property is Lot 8 of Ashbrook Estates, also known as Tax Parcel Number 32090000800. *Exhibit 1.*

3. The subject property is within the Ground Mound Urban Growth Area of Thurston County and is zoned Residential - Three to Six Dwelling Units Per Acre (R 3-6/1). The R 3-6/1 zone allows single-family residential development as a primary use. It also allows multifamily residential development, home occupations, and agriculture. The purpose of the zone is described in TCC 20.15.010 as follows:

The intent of this district is to preserve and establish peaceful low-density neighborhoods in which owner-occupied single-family structures are the dominant form of dwelling unit. This district is intended to provide a minimum density of three units per acre and maximum of six units per acre to promote the efficient use of land within the Grand Mound urban growth area. This district will allow infilling with a variety of housing types and at a relatively low urban density to maintain the existing character of the Grand Mound community.

TCC 20.15.010; Exhibits 1 and 1.B.

4. Ashbrook Estates is a 14-lot residential subdivision that was recorded in 2009. Prairie Creek, a fish-bearing stream, and an associated Category III wetland encumber the southern edge of the subdivision. The subdivision was reviewed under a previous version of the County's critical areas ordinance, which required a 100-foot wetland buffer. At the time Lot 8 was created, this 100-foot buffer covered the southern portion of the subject property but provided for a building area outside the buffer on-site. *Exhibits 1, 1.G, and 1.H; Testimony of Mr. Smith.*
5. The 0.35-acre subject property is the only lot in Ashbrook Estates that is undeveloped; the rest have been developed with single-family residences. Vegetation on the lot is similar to that which was present at time of subdivision approval, consisting mainly of grasses with a few trees along the southern property line. *Exhibits 1 and 1.G.*
6. Because the lot is still vacant, the more recently adopted critical areas regulations apply. Under the current CAO, Prairie Creek requires a 200-foot riparian habitat buffer, and the Category III wetland requires a 140-foot buffer. These buffers envelop the entire lot, rendering it undevelopable. Although the current CAO would allow for a 3,500 square foot development area in the outer 25% of the buffer through an administrative review process, the 25% reduction would still not result in a feasible building envelope. The present RUE proposal would reduce the buffer to the 100-foot width that applied when the subdivision was originally approved. *Exhibits 1, 1.E, and 1.G.*
7. The Applicant proposes to construct a two story residence with a building footprint (including garage and porch) of 1,255 square feet. The proposal would place the residence as far north on the lot (and away from the stream and wetland) as possible. The irregular shape of the lot, which narrows to approximately 20-feet wide at the cul-de-sac street frontage, prevents placement of the residence closer to the street. *Exhibits 1 and 1.F.*

8. The proposal would mitigate impacts associated with the development by enhancing the function of the outer 50 feet of the proposed 100-foot buffer through planting several species of trees and shrubs. The proposed mitigation area would be approximately 4,500 square feet. The intent, as described in the Applicant's mitigation and revegetation plan, is to improve on the mitigation plan from the original subdivision approval, which resulted in the establishment of trees and shrubs within an 8,500 square foot area within 50 feet of Prairie Creek and the placement of fencing and critical areas protection signs. Having reviewed and accepted the Applicant's mitigation proposal, Community Planning and Economic Development Department Staff are satisfied that the project, as mitigated, would result in no net loss of critical area functions and values. *Exhibit 1.G; Robert Smith Testimony.*
9. Water and sewer services are available to the subject property from the Ground Mound public utility. The Thurston County Environmental Health Division reviewed the proposed RUE and determined that the requirements of the Thurston County Sanitary Code are satisfied. *Exhibits 1.K and 1.L.*
10. US Fish and Wildlife Service (USFWS) staff visited the site to evaluate it for the presence of the federally-protected Mazama pocket gopher, which has been listed as endangered pursuant to the Endangered Species Act. No mounds characteristic of the gopher were observed during the visit, and due to that and other site conditions, USFWS staff determined that it is unlikely that the project would result in a "take" of the species. *Exhibit 1.N.*
11. Notice of the open record hearing was mailed to property owners within 500 feet of the site on July 27, 2018, published in *The Olympian* on August 3, 2018, and posted on-site on August 3, 2018. There was no public comment on the application. *Exhibits 1, 1.A, and 2.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted jurisdiction to hear and decide applications for Reasonable Use Exceptions pursuant to TCC 2.06.010(F) and TCC 24.45.030.

Criteria for Review:

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if:

- A. No other reasonable use of the property as a whole is permitted by this title; and
- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design. This may include a variance for yard and setback standards required pursuant to Titles 20, 21, 22, and 23 TCC; and

- C. 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, or increase public safety risks on or off the subject property; and
- D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and
- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish, and wildlife resources, hydrological conditions, and geologic conditions; and
- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site; and
- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

Conclusions Based on Findings:

1. No other reasonable use of the property as a whole is permitted by the Critical Areas Ordinance. Based on the small area of the lot, the allowed uses and adopted purpose of the R 3-6/1 zone, and the existing use of surrounding parcels, single-family residential development is the only reasonable use of the subject property. There is insufficient area to construct a single-family residence in the outer 25% of the wetland buffer as authorized by the current CAO. *Findings 3, 4, 5, and 6.*
2. No reasonable use with less impact on the critical areas or buffer is possible. The proposed development site is modest in scale and is as far from the critical areas as possible given the irregular shape of the lot. *Finding 7.*
3. The requested residential development would not result in damage to other property and would not threaten the public health, safety, or welfare on or off the development site. The record contains no evidence that construction of a residence set back only 100 feet from the critical areas would increase public safety risks on or off the subject property. The proposal is compatible with the character of surrounding development. The residence would be served by public water and sewer utilities. *Findings 5 and 9.*
4. The proposed reasonable use is limited to the minimum buffer encroachment necessary to prevent denial of all reasonable use of the property. The residence would be modest in scale and would be sited as far from the critical areas as possible, minimizing the encroachment into the stream/wetland buffer. The outer 25% of the buffer does not allow a reasonable building footprint. *Findings 6 and 7.*

5. With conditions of approval, the proposed reasonable use would result in no direct impact to the critical areas and only minimal alteration of the critical area buffers on-site. The reduced buffer was established when the land was originally subdivided, and impacts were mitigated at that time. The proposed mitigation would provide further enhancement. *Findings 4 and 8.*
6. Conditioned to require the proposed mitigation plantings, the proposal ensures no net loss of critical area functions and values. *Findings 4 and 8.*
7. No species of concern would be impacted by approval. *Finding 10.*
8. The location and scale of existing surrounding development was not the sole basis for granting the reasonable use exception, but rather the fact of the wetland/stream buffer encumbering the entire parcel. *Finding 6.*

DECISION

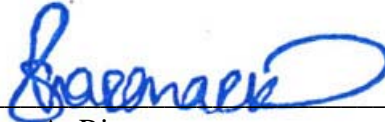
Based on the preceding findings and conclusions, the request to construct a single-family residence within a wetland and stream buffer at 20123 Ashbrook Court SW, providing only a 100-foot buffer, is **GRANTED** subject to the following conditions:

1. 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.
2. 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.
3. 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.
4. The Applicant shall contact the proper authorities, including Nisqually Tribe Preservation Officer, Jackie Wall at 360-456-5221, if during excavation there are discoveries of archaeological artifacts or human burials.
5. The Applicant shall complete all buffer mitigation as proposed in the mitigation and revegetation plan prepared by Skookum Environmental and received June 4, 2018
6. On April 8, 2014, the US Fish and Wildlife Service listed the Mazama Pocket Gopher under the Endangered Species Act. The subject parcel contains the soil type considered

potential pocket gopher habitat. It is the responsibility of the landowner to comply with applicable federal regulations. Approval of this and other county permits may be superseded by federal law.

7. Fencing and critical area signs shall be installed along the reduced buffer edge, subject to the standards of TCC 24.60.
8. 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.

DECIDED August 27, 2018.



Sharon A. Rice
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.

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___.