

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2018104407
SHORELINE SUBSTANTIAL DEVELOPMENT
PERMIT (SSDP), CONDITIONAL USE PERMIT (CUP),
CRITICAL AREA REVIEW PERMIT (CARP)

SEQUENCE NO.: 18 110525 XC

TAX PARCEL NOS.: 65950003200

LOCATION ADDRESS: 3122 Leeward Court N.W., Olympia (Lot 32 of Oldport
Community)

APPLICANT/OWNER: Patrick E. Kehoe
3122 Leeward Court N.W.
Olympia, WA 98502

PLANNER: Scott McCormick, MES Associate Planner

SUMMARY OF REQUEST:

After the Fact Approval of a Shoreline Substantial Development, Conditional Use Permit, and Critical Area Review Permit for a landslide retaining structure. The steel mesh and soil nail system was installed in the marine bluff below the applicant's residence at 3122 Leeward Court N.W., Olympia (Lot 32 of Oldport Community) within 200 feet of a shoreline of the state. The Parcel No. is 65950003200.

SUMMARY OF DECISION: Request granted.

DATE OF DECISION: June 10, 2019

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 May 28, 2019, 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** - **Master and JARPA Application**
- Attachment c** - **Vicinity and Zoning Maps**
- Attachment d** - **Applicant's Project Narrative**
- Attachment e** - **Site Plan Showing Slide Area**
- Attachment f** - **Site Plan with Photo and Proposed Retaining Structure**
- Attachment g** - **Project Information with Estimates and Site Plans**
- Attachment h** - **Geotechnical Investigation**
- Attachment i** - **Notice of Application with Adjacent Home Owners List**
- Attachment j** - **Emergency Approval to Install Steel Mesh Retaining Structure**
- Attachment k** - **Approval Memo from Environmental Health**
- Attachment l** - **Comments from DOE**
- Attachment m** - **Comments from Nisqually Tribe**
- Attachment n** - **Email from Bill Halbert dated August 7, 2018**
- EXHIBIT "2"** - **Photograph of Public Notice Sign Posted and Photos of Prior to Landslide Repair**

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.

SCOTT McCORMICK appeared, presented the Community Planning and Economic Development Staff Report, and introduced photographs of the public notice and a corrected first page of the Staff Report. The applicant installed a steel mesh and soil nail system to stabilize a landslide slope below his single-family residence. The site is located within the Rural Shoreline Environment and requires a substantial development permit, conditional use permit, and critical area review. The County provided proper notice and recommends approval of the project. The County previously issued an emergency authorization that allowed the applicant to construct the mesh and nail system.

DAWN PEEBLES, environmental health, appeared and testified that she reviewed the application, recommends no conditions, and recommends approval.

PATRICK KEHOE, applicant, appeared and testified that the slide occurred in April, 2018. He went through the process of obtaining an engineer and applying for the permits. The project was completed previously and all conditions recommended in the Staff Report have

been satisfied.

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 Pro Tem has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The project was determined by staff to be categorically exempt from review pursuant to the State Environmental Policy Act (SEPA). No grading or in-water work is involved with the project.
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site on May 17, 2019, and notice was published in The Olympian on May 17, 2019, at least ten (10) days prior to the hearing. Notice was posted on-site on May 17, 2019.
4. The applicant, Patrick Kehoe, has a possessory ownership interest in a .3 acre parcel of property located at 3122 Leeward Court N.W., Olympia. The site is Lot 32 of Oldport Community and is a conforming lot in terms of size. Improvements on the site include a single-family residential dwelling. The parcel is adjacent to the west shoreline of Budd Inlet in unincorporated Thurston County.
5. The applicant's home is located near the top of a steep slope descending from the uplands toward Puget Sound. An Oldport Community parking area, water access, and a portion of Oldport Drive separate the parcel from Budd Inlet. In 2013 a previous owner installed a low retaining wall at the toe of the slope pursuant to a shoreline permit. The slope inclination on the applicant's parcel ranges between 60 to 70 degrees.
6. Following heavy precipitation in April, 2018, the steep slope on the applicant's parcel failed. The failure extended from the rear of the house to the access road at the base of the slope and measured about 40 feet by 40 feet in area. The applicant retained Insight Geologic, Inc., a qualified geotechnical engineering firm to prepare a Geotechnical Report on the failure. Based upon said report the applicant applied for a permit to perform work on the slope prior to commencement of the 2018-2019 rainy season. On August 9, 2018, Thurston County Community Planning and

Economic Development approved the applicant's "Request for Emergency Approval". Staff authorized all emergency repair of the slope failure subject to four conditions of approval to include future application for a building permit and future applications for a shoreline substantial development permit, shoreline conditional use permit, and critical area review permit. Thurston County Public Health and Social Services Department also approved the emergency repair by Memorandum dated November 19, 2018. The applicant now requests approval of the shoreline and critical area permits as required.

7. The applicant's parcel is located within the Residential 4 Dwelling Units Per Acre (R-4) zone classification of the Thurston County Code (TCC) and is within the City of Olympia's Urban Growth Area. The parcel is also located within the Rural Shoreline Environment of the Shoreline Master Program for the Thurston Region (SMP). Abutting parcels are improved with single-family dwellings and also located within the R-4 classification and Rural Shoreline Environment.
8. The parcel is located within a geologic hazard area, which because of susceptibility to landsliding, is not considered suitable for residential development. However, the applicant's Geotechnical Report discusses existing and preexisting site conditions and noted that the slide was in the nature of a surficial surface movement and did not affect the underlying stability of the slope. The County accepted said report. Therefore, the parcel remains suitable for single-family residential development and satisfies critical area review.
9. Prior to obtaining approval of a shoreline conditional use permit the applicant must show that the application satisfies the criteria set forth in Section 173-27-160 of the Washington Administrative Code (WAC). The project satisfies said criteria as analyzed on pages 6-7 of the Staff Report. Furthermore, the applicant constructed the steel mesh and soil nail system in accordance with conditions of approval imposed in the emergency approval. Therefore, the project also satisfies all criteria for a shoreline substantial development permit.

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 shoreline substantial development permit, shoreline conditional use permit, and critical area review permit satisfies all criteria set forth in the Thurston County Code to include the SMP and therefore should be approved. At the hearing Thurston County staff agreed that the project complied with conditions of approval during construction. Therefore, no conditions are added hereinafter.

DECISION:

The request for a shoreline substantial development permit, shoreline conditional use permit, and critical area review permit to allow retention of the previously installed steel mesh and soil nail system on the marine bluff for a site located at 3122 Leeward Court N.W., Olympia, is hereby granted.

ORDERED this 10th day of June, 2019.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner Pro Tem

TRANSMITTED this day of June, 2019, to the following:

APPLICANT/OWNER: Patrick E. Kehoe
3122 Leeward Court N.W.
Olympia, WA 98502

OTHERS:

John Warsonie
P.O. Box 11759
Olympia, WA 98508

Deb Kime
2906 French Road N.W.
Olympia, WA 98502

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 **\$750.00** for a Request for Reconsideration or **\$1,020.00** 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 \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.