



COUNTY COMMISSIONERS

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 District One  
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 District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
 FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2020100123 Jefferson Addition & Shed
	)	
<b>Tim Dickey</b>	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
For a Reasonable Use Exception	)	
_____	)	

**SUMMARY OF DECISION**

The request for a reasonable use exception to allow construction of two minor residential additions and replacement of an existing shed within a stream and wetland buffer is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

Tim Dickey of Dickey’s Remodel & Repair (Applicant) on behalf of property owner Sanoma Jefferson requested a reasonable use exception (RUE) to construct two residential additions and replace a shed within a stream and wetland buffer. The subject property is located at 4207 88th Avenue SW, Olympia, Washington.

**Hearing Date**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on August 11, 2020. In an abundance of caution, the record was held open two business days (through August 13, 2020) to allow for public comment from members of the public may have had difficulty joining the virtual hearings, with additional time arranged for responses by the parties. No post-hearing public comment was submitted, and the record closed on August 13, 2020.

**Testimony**

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

Scott McCormick, Associate Planner, Thurston County Community Planning & Economic Development Department

Tim Dickey, Applicant

Sanoma Jefferson, Property Owner  
Erin Hall, Olympia Master Builders

**Exhibits**

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

Exhibit 1 Community Planning and Economic Development Report including the following attachments:

- A Notice of Public Hearing
- B Zoning/Site Map
- C Master Application, received January 10, 2020
- D Reasonable Use Exception application, received January 10, 2020
- E Applicant Narrative, received January 10, 2020
- EE Additional project narrative, dated July 16, 2020
- F Email and narrative of shed remodel dated May 27, 2020
- G Impervious surface calculations
- H Site plans, date stamped January 10, 2020, with photo of shed to be replaced
- I Critical Areas Report, dated December 14, 2019
- J Notice of Application for Reasonable Use Exception, dated February 20, 2020 with adjacent property owner list, dated February 11, 2019
- K Approval memo from Amy Crass with TC Environmental Health, dated June 4, 2020
- KK Memo from Amy Crass, TC Environmental Health, dated March 6, 2020 with response from Timothy Dickey, dated April 7, 2020.
- L Comment email from the Squaxin Tribe, dated February 24, 2020
- M Comment letter from the WA Department of Ecology, dated February 12, 2020
- N Comment letter from the Nisqually Indian Tribe, THPO, dated January 31, 2020
- O Comment email from the Squaxin Tribe, dated January 29, 2020
- P Comment email from ORCAA, dated January 28, 2020

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

## FINDINGS

1. On behalf of Sanoma Jefferson (owner), Tim Dickey (Applicant) requested a reasonable use exception (RUE) to construct two residential additions and to replace a shed within a stream and wetland buffer. The subject property is located at 4207 88th Avenue SW, Olympia, Washington. *Exhibits 1, 1.C, 1.D, and 1.E.*
2. The RUE application was submitted on January 10, 2020 and determined to be complete for purposes of commencing project review on February 8, 2020. *Exhibits 1.C, 1.D, and 1.H.*
3. The subject property is within the rural portion of the County and is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). *Exhibits 1 and 1.B.* Primary permitted uses in the RRR 1/5 zone include single-family and two-family residences, agriculture, home occupations, and accessory farm housing. *Thurston County Code (TCC) 20.09A.020.* At two acres in area, the subject property is nonconforming with respect to the minimum lot area of the RRR 1/5 zone, but the County considers the lot to be a legal lot under the criteria of TCC 18.04.045. *Exhibit 1.*
4. The subject property is developed with a single-family residence and several small outbuildings. The residence, which was constructed in 1976, has 1,096 square feet of living area and a 420 square foot attached garage. The existing outbuildings include an eight- by 12-foot shed on a nine- by 16-foot slab, located approximately four feet from the southeast corner of the residence. *Exhibits 1 and 1.H.*
5. The Applicant proposes the following construction activities on site that could be covered by the requested RUE:<sup>1</sup>
  - Construct a six-foot deep by 16-foot wide covered deck and ramp on the north side of the residence, over what is currently a compacted gravel area associated with a former deck and walkway.
  - Construct a nine-foot deep by 24-foot wide covered patio and ramp on the south side of the residence, over an existing compacted gravel area that previously contained a deck.
  - Rebuild the existing eight- by 12-foot shed within its current footprint and install plumbing.

The additions total 312 square feet. The purpose of the improvements is to improve the owner's usability of the outdoor areas of the home, making them accessible via walker or motorized wheelchair to facilitate again in place, and allowing for installation of a sink and toilet in the reconstructed shed. The shed would also house the owner's water treatment equipment. The purpose of the proposed improvements is to allow the owner to age in place. *Exhibits 1.E, 1.EE, 1.F and 1.H; Testimony of Scott McCormick, Tim Dickey, and Sanoma Jefferson.*

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<sup>1</sup> Interior remodeling not requiring a RUE is also proposed. *Tim Dickey Testimony; Exhibit 1.E.*

6. The subject property is completely encumbered by the buffers associated with wetlands on the west and east sides of property and a nearby stream.<sup>2</sup> The administrative 25% buffer reductions authorized by the County's critical areas ordinance would not be adequate to allow the proposed development. However, because the proposed improvements would be located over existing impervious surfaces there would be no new buffer impacts associated with the proposed construction. There would be no net loss of any wetland functions, and no impacts to wildlife. No trees or native vegetation would need to be removed. *Exhibits 1 and 1.I; Testimony of Scott McCormick and Tim Dickey*
7. The subject property is served by a single-family well and individual on-site septic system. Thurston County Environmental Health Division reviewed the proposal and recommended approval, subject to a condition requiring compliance with Thurston County Sanitary Code separation requirements with respect to sewer distribution lines, water supply lines, and non-public water suction lines, and requiring the Applicant to obtain a building permit for the shed. *Exhibits 1 and 1.K; Dawn Peebles Testimony.*
8. Consistent with comments submitted by the Washington Department of Ecology, County Planning Staff recommended a condition of RUE approval that would require the Applicant to install erosion control measures (such as silt fencing and/or straw wattles) prior to building permit issuance to prevent stormwater runoff from reaching the wetlands. *Exhibits 1 and 1.M.*
9. Consistent with comments submitted by the Olympic Region Clean Air Agency, County Planning Staff recommended as a condition of RUE approval that the Applicant conduct a good faith asbestos survey prior to demolition activities. *Exhibits 1 and 1.P.*
10. Notice of the virtual open record hearing was mailed to property owners within 500 feet of the site on July 29, 2020 and published in *The Olympian* on July 31, 2020. *Exhibits 1 and 1.A.* Public comment submitted at hearing supported approval, concurring that the additions and shed replacement over existing disturbed areas would not result in impacts to the critical areas. *Erin Hall Testimony.*
- 11.

## CONCLUSIONS

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exception 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 a reasonable use exception if:

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<sup>2</sup> The location of the stream was not clearly identified in the record; one witness said it was east and another said west of the residence. By the owner's testimony, it is a seasonal drainage from road runoff. *Testimony of Tim Dickey and Sanoma Jefferson.* Its location and classification were not identified; however, because the wetland buffer encumbers the entire property and all improvements are proposed in existing disturbed areas, this omitted information is not determinative.

- 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. The existing single-family residential use is the only reasonable use of the property considering the area and zoning of the property, and the proposed accessibility improvements should be considered part of the reasonable use. *Findings 3, 4, and 5.*
2. Given that the entire property is encumbered by critical area buffer, that the existing single-family residential use is a reasonable use of the property, and that the proposed improvements are modest in scale and would be wholly located over existing impervious surfaces, approval of the request would have negligible if any impact on the critical area buffers; no ecological benefit to the critical area could be achieved by denying the needed accessibility improvements. Conversely, denial of the exception would deny a property owner the ability to continue to enjoy an existing reasonable use. *Findings 4, 5, 6, and 10.*
3. As conditioned to ensure compliance with the Thurston County Sanitary Code and the requirements of the Olympic Region Clean Air Agency, the requested development would not result in damage to other property and would not threaten the public health,

safety, or welfare, or increase public safety risks on or off the subject property. *Findings 7 and 9.*

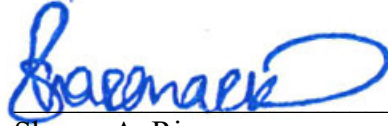
4. The proposed alterations are limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. No new buffer encroachment would result from the development, as proposed improvements would be located over existing impervious surfaces. *Findings 4, 5, and 6.*
5. The proposed reasonable use would not result in alteration of the critical area or regulated buffers. *Findings 5 and 6.*
6. With conditions addressing erosion control requirements, the proposal ensures no net loss of critical area functions and values. *Findings 6 and 8.*
7. The record contains no evidence indicating the project would result in unmitigated adverse impacts to species of concern. *Finding 6.*
8. The location and scale of existing development is not the sole basis for granting the reasonable use exception. The RUE is needed because wetland buffers preclude any exterior improvements to the existing residence. *Finding 6.*

#### **DECISION**

Based on the preceding findings and conclusions, the request for a reasonable use exception to construct two residential additions and replace a shed within a wetland buffer is **GRANTED** subject to the following conditions:

1. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston CPED Staff. Erosion and storm water controls (i.e. silt fencing and / or straw wattles) must be installed landward of the reduced buffer such that uncontrolled storm water cannot reach the adjacent wetlands.
2. Photos of the installed erosion control shall be submitted to Staff prior to building permit issuance.
3. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
4. A good faith asbestos survey must be conducted prior to demolition activities.
5. Per Article IV of the Thurston County Sanitary Code, the minimum setback from a building sewer collection or sewer distribution line to a pressurized water supply line is 10 feet and the setback to a non-public water suction line is 50 feet. A separate building permit application must be submitted for the proposed shed structure.

**Decided** August 26, 2020.



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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 **\$750.00** for a Request for Reconsideration or **\$1,041.00** 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.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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**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 \$1,041.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.