



COUNTY COMMISSIONERS

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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. 2019103988 (Haderman Property)
)	
McCain Construction & Development)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	
For Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The request for reasonable use exception to install a manufactured home and septic system within a frequently flooded area is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

McCain Construction & Development (Applicant), on behalf of property owner Ridley Haderman, requested a reasonable use exception to install a manufactured home and septic system within a frequently flood area. The subject property is located at 639 Old Pacific Highway SE, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on March 9, 2021. The record was held open until March 11, 2021 to allow the Applicant to submit a written response to Exhibit 2.A, and to allow any members of the public who had difficulty joining the virtual hearing to submit written public comments, with time scheduled for responses from the parties. The Applicant timely submitted its response, and no post-hearing public comments were submitted. The record closed on March 11, 2021.

Testimony

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

Sharon Lumbantobing, Senior Planner, Thurston County Community Planning & Economic Development Department

Dawn Peebles, Environmental Health Specialist, Thurston County

Holli Hearn, Applicant representative

Dan McCain, Applicant representative

Exhibits

At the open record public hearing, the following exhibits were admitted in 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 and Reasonable Use Exception application, received August 6, 2019
- D. Revised site plan and boundary and topographic survey date stamped November 13, 2020
- E. Elevation certificate
- F. Structural Calculations for Manufactured Home Foundation date stamped November 13, 2020
- G. Notice of Application for Reasonable Use Exception, dated February 10, 2021
- H. Approval memo from Amy Crass with Thurston County Environmental Health, dated January 22, 2021
- I. Comment letter from Washington Department of Ecology, dated January 23, 2020
- J. Comment email from the Squaxin Tribe dated, February 11, 2020
- K. Comment letter from the Nisqually Tribe, dated August 21, 2019
- L. Comment letter from the Nisqually Tribe, dated February 24, 2021

EXHIBIT 2 Comments received after staff report published:

- A. Comment from Howard Glastetter, received February 26, 2021
- B. Comment from Tanairi Spurlock, received March 8, 2021

EXHIBIT 3 Email from Holli Hearn re: Post hearing schedule, dated March 9, 2021

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

FINDINGS

1. McCain Construction & Development (Applicant), on behalf of property owner Ridley Haderman, requested a reasonable use exception (RUE) to install a manufactured home and septic system within a frequently flood area. The subject property is located at 639 Old Pacific Highway SE, Olympia, Washington.¹ *Exhibits 1 and 1.C.*
2. The RUE application was submitted on August 6, 2019, placed on hold on August 19, 2019, and determined to be complete for purposes of commencing project review on February 3, 2021. *Exhibits 1, 1.C and 1.G.*
3. The subject property is zoned Rural Residential One Dwelling Unit per Five Acres (RR 1/5). *Exhibit 1.* Primary permitted uses in the RR 1/5 zone include single-family and two-family residences and agriculture (including forest practices). *Thurston County Code (TCC) 20.09.020.*
4. The subject property is 0.8 acres in area and is considered a legal lot pursuant to the criteria of TCC 18.04.045. The property was previously developed with a manufactured home and septic system, but the manufactured home was removed between July of 2012 and May of 2013. The septic system is still on site. The proposal is to install a new 1,080 square foot manufactured home in the southeastern portion of the property along the Pacific Avenue SE property frontage and a new septic system to the northwest of the residence. *Exhibits 1 and 1.D; Dawn Peebles Testimony.*
5. Surrounding land uses are primarily single-family residential on parcels zoned RR 1/5. *Exhibit 1.*
6. Frequently flooded areas are critical areas that are regulated under the Thurston County Critical Areas Ordinance (CAO). The CAO defines “frequently flooded areas” as follows:

... lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year or areas within the highest known recorded flood elevation, or within areas subject to flooding due to high ground water. This includes all areas within unincorporated Thurston County identified on flood insurance rate maps prepared by the Federal Insurance Administration, as supplemented by "The Flood Insurance Study for Thurston County," dated November 17, 1980, as amended...

TCC 24.03.010. The 500-year floodplain of the Nisqually River covers the northwestern third of the property, while development is proposed in the southeastern portion of the property. Although the proposed development area is outside of the FEMA flood zone, and there is no buffer required for the FEMA flood zone, the entire parcel is within the highest known recorded flood elevation, which was the flood of 1996. Because TCC 24.20.135 prohibits residences within frequently flooded areas unless allowed under the

¹ The legal description of the property is Lot 2, Division 5, Valley Acres Ranchette, Volume 15 of Plats, Page 38, Records of Thurston County Auditor; Tax Parcel Number 81290000200. *Exhibits 1, 1.D and 1.E.*

CAO or other applicable sections of the County Code, a RUE is required for the proposed development as previous residential use of the property was abandoned more than 12 months prior to application. *Exhibits 1, 1.D, and 1.E; Sharon Lumbantobing Testimony.*

7. A small portion of the subject property is under the jurisdiction of the Shoreline Master Program for the Thurston Region due to proximity to the Nisqually River. However, the proposed development area is outside of the regulated shoreline. Planning Staff recommended as a condition of RUE approval that all construction debris be removed to an approved landfill or recycling center outside of shoreline jurisdiction. *Exhibit 1; Sharon Lumbantobing Testimony.*
8. As mitigation for the development location within a frequently flooded area, the Applicant would be required to elevate the manufactured home two feet above the base flood elevation, measured to the bottom of the floor joist. In addition, the manufactured home would be placed on a permanent foundation with secure anchoring against floatation, earthquake, and wind. The Thurston County Flood Plain Manager submitted that the engineered foundation design must show the bottom of the flood venting not more than one foot above grade, the base flood elevation line, and the elevation required for the bottom of the floor joist, and that the new driveway not extend above existing grade. *Exhibits 1, 1.C, and 1.F.*
9. The proposed building location would not require trees or other vegetation to be cleared; it is within the area that was previously developed. *Dan McCain Testimony.*
10. The Thurston County Environmental Health Division previously reviewed and approved an on-site septic system application and design for the property; however, the application expired prior to construction in 2019. The proposed site plan depicts the same design as previously approved. The Environmental Health Division reviewed the current application and did not identify any issues of concern. Environmental Health recommended approval of the RUE on condition that the new septic system be installed and that the existing septic system, installed onsite in the 1970s or earlier, be abandoned pursuant to Article IV of the Thurston County Sanitary Code prior to final occupancy approval of the manufactured home. *Exhibits 1 and 1.H; Dawn Peebles Testimony.*
11. The manufactured home would be served by the City of Lacey public water system. *Exhibits 1 and 1.C.*
12. The subject property is located in an area that had been previously identified by the Washington Department of Ecology (DOE) as potentially contaminated with arsenic and lead due to air emissions originating from the former Asarco smelter in nearby Ruston, Washington. However, based on analysis of soil samples, the DOE has concluded that arsenic and lead concentrations on site do not exceed the maximums allowed and that no remediation is required. *Exhibit 1.I.*
13. The Nisqually Indian Tribe and the Squaxin Island Tribe commented that they have no issues of concern; however, both requested to be notified if there are any inadvertent

discoveries of archaeological resources or human burials. This request was incorporated into the recommended conditions of RUE approval. *Exhibits 1, 1.J, 1.K, and 1.L.*

14. The proposal is exempt from review under the State Environmental Policy Act pursuant to TCC 17.09.055.B, which exempts the construction of up to four residential structures outside of the urban growth area. *Exhibit 1; TCC 17.09.055.*
15. Notice of the open record hearing was mailed to property owners within 500 feet of the site on February 23, 2021 and published in *The Olympian* on February 26, 2021. *Exhibits 1 and 1.A.*
16. Public comment on the application included a request from a neighbor that construction activities and equipment be kept within the subject property boundaries, and testimony in support of the application that the subject property does not flood frequently. *Exhibits 2.A and 2.B.* There was no public comment offered during the virtual hearing process. With respect to the construction issue, the Applicant agent indicated that construction traffic would not need to cross the neighbor's property. *Holly Hearn Testimony.*
17. Having heard all testimony and considered all application materials, Planning Staff maintained their recommendation of approval subject to the conditions in the staff report. *Exhibit 1; Sharon Lumbantobing Testimony.* The Applicant representatives waived objection to the recommended conditions. *Testimony of Dan McCain and Holly Hearn.*

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 area's ordinance. Single-family residential use is the only reasonable use of the property considering the area and zoning of the property and existing surrounding land uses. *Findings 3, 4, and 5.*
2. No reasonable use with less impact on the critical area or buffer is possible. The modestly sized manufactured home would be placed outside of the FEMA flood zone and shoreline jurisdiction, within an area previously used for residential development. *Findings 4, 6, 7, and 9.*
3. As conditioned, the proposed 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. The conditions of approval incorporate the recommendations of the County Flood Plain Manager with respect to required home elevation and foundation design. No soil remediation is required by the Department of Ecology. The proposal has been reviewed for public health impacts and no issues of concern were identified. As proposed and conditioned, the existing septic system would be abandoned, and the new septic installed prior to building occupancy. Any construction impacts would be contained on site. *Findings 8, 10, 11, 12, 13, and 16.*
4. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. The entire parcel is designated a frequently flooded area. The modestly sized manufactured home would be placed outside of the FEMA flood zone and shoreline jurisdiction, within an area previously used for residential development. No significant vegetation would be removed. *Findings 4, 6, 7, and 9.*
5. The proposed reasonable use would result in minimal alteration of the critical area. The manufactured home would be placed in a previously disturbed area and would not require vegetation removal. *Finding 9.*

6. As conditioned, the proposal ensures no net loss of critical area functions and values. Conditions address building construction standards that are applicable to frequently flooded areas. The manufactured home would be placed in a previously disturbed area and would not require vegetation removal. *Findings 8 and 9.*
7. The use would not result in unmitigated adverse impacts to species of concern. No potential impacts were identified during the review process. The manufactured home would be placed in a previously disturbed area and would not require vegetation removal. *Finding 9.*
8. The location and scale of existing development is not the sole basis for granting the reasonable use exception. The RUE is needed because the entire parcel is within the 1996 flood of record, and such designation precludes residential development of the property without approval of an exception. *Finding 6.*

DECISION

Based on the preceding findings and conclusions, the request for a reasonable use exception to install a manufactured home and septic system at 639 Old Pacific Highway SE is **GRANTED** subject to the following conditions:

1. Prior to final occupancy approval for the mobile home, the new on-site sewage system must be installed, and the existing on-site sewage system must be properly abandoned per Article IV of the Thurston County Sanitary Code.
2. The residence must be elevated two feet above base flood elevation (BFE) measured to the bottom of the floor joist. The engineered foundation design shall be revised to show the bottom of the flood venting not more than one foot above grade and also show the BFE line and the elevation required for the bottom of the floor joist. The proposed new driveway may not extend above existing grade. If the concrete or CMU wall is greater than four feet, then the crawl space elevation must be at the same elevation as the exterior grade elevation (Figure 8 on the elevation certificate), or it is considered a below grade floor (Figure 2a).
3. Prior to earth disturbing activities, erosion control best practices shall be implemented. The erosion control methods must be maintained to ensure ongoing protection throughout construction until there is no longer risk of erosion polluting waters of the state. Erosion control best practices shall be monitored and approved through the building site review associated with the building permit application.
4. The Applicant shall stop work and contact the proper authorities, including Nisqually Tribe Cultural Resources Preservation Officer, the Squaxin Tribe, Chehalis Tribe, Thurston County Community Planning and Economic Department and Washington State Department of Archaeology and Historic Preservation (DAHP) if during excavation there are discoveries of archaeological artifacts or human burials.

5. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of shoreline jurisdiction.
6. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of Thurston County Public Health and Social Services, Public Works, and Thurston County Planning Departments shall be met. All required permits shall be obtained prior to commencing construction.
7. A construction stormwater permit from 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.

DECIDED March 19, 2021.



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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** 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 \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.