

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2018106263
SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT
(SSDP)

TAX PARCEL NO.: 5655100600

LOCATION ADDRESS: 9410 Lohrer Lane N.E., Olympia

APPLICANT: Jason Reese
9410 Lohrer Lane N.E.
Olympia, WA 98516

CONTACT: Brad Smith
5018 Lambskin Street S.W.
Tumwater, WA 98512

PLANNER: Tony Kantas, Senior Planner

SUMMARY OF REQUEST:

Shoreline substantial development permit to allow construction of a stair tower extending from the top of a 42 foot tall, marine bluff to Puget Sound. The site is located at 9410 Lohrer Lane N.E., Olympia, and is described as a portion of Section 4, Township 19, Range 1W; Lot 3 of the Plat of Johnson Point, and is Tax Parcel No. 56551000600.

SUMMARY OF DECISION: Request granted, subject to conditons.

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 10:15 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 Hearing
- Attachment b** - Master Application
- Attachment c** - JARPA Application
- Attachment d** - Site Plan
- Attachment e** - 2018 Aerial Vicinity Map
- Attachment f** - Notice of Application
- Attachment g** - MDNS
- Attachment h** - Memo from Environmental Health Department
- Attachment i** - Comment Letter from DOE dated January 24, 2019
- Attachment j** - Comment Letter from DOE dated December 14, 2018
- Attachment k** - Biological Evaluation
- EXHIBIT "2"** - Photographs of Stairway

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.

TONY KANTAS appeared, presented the Community Planning and Economic Development Department Staff Report, and introduced Exhibit 2, photographs of the existing stairway. The applicant proposes a 42 foot tall, stair tower that will provide access to the beach. The site is an irregularly shaped, 6.4 acre parcel located in the RRR-1/5 zone classification. The code considers the stair tower a residential accessory use. No land use permit is necessary. The site is located within the Conservancy Shoreline Environment. To build a stair tower the applicant must obtain a shoreline substantial development permit and building permit. A dilapidated stairway exists on the site and was evidently constructed subsequent to adoption of the Shoreline Master Plan. However, the former owner that constructed the stairway did not obtain any permits. The applicant purchased the parcel in 2017. Single-family uses surround the site. The applicant submitted a Biological Evaluation along with the application. All State and Federal agencies have reviewed the request, and he has received no comments. Pages 3 and 4 of the Staff Report provide staff's evaluation of applicable County codes. Staff finds that the request complies with all criteria, and he has received no comments from any agencies or the public. Staff recommends approval subject to 13 conditions.

DAWN PEEBLES, environmental health, appeared and testified that her department reviewed the project against applicable health codes. Following such review she recommends approval.

JASON REESE, applicant, appeared and testified that he purchased the parcel when it was in foreclosure and was unaware of what improvements were permitted. He was in the process of obtaining a permit for an ADU when the inspector found the stairs. Everything was then placed on hold until he obtained approval for the stair tower. He cannot obtain approval of the present stairs due to building code requirements. He has no problem with conditions of approval nor with anything in the Staff Report.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:30 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 Thurston County Community Development and Economic Development Department (CPED) serves as responsible official for review pursuant to the State Environmental Policy Act (SEPA). CPED issued a threshold Mitigated Determination of Non-Significance (MDNS) on April 9, 2019 (Attachment g). This determination was not appealed and became final on April 16, 2019. Since the stairway is located within the 100-year flood plain associated with the Puget Sound, the applicant submitted a Biological Evaluation Report dated March 12, 2019 (Attachment k). The Biological Evaluation was routed to all applicable state and federal agencies for review. No comments were received. A condition of approval requires compliance with all mitigation measures set forth in said report.
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on May 17, 2019 at least ten (10) days prior to the hearing. The site was posted on May 17, 2019.
4. The applicant, Jason Reese, has a possessory ownership interest in an irregularly shaped, 6.4 acre parcel of property located at 9410 Lohrer Lane N.E., Olympia, in unincorporated Thurston County. Improvements on the site include a single-family residential home and driveway, both of which are adjacent to a steep bank descending to Puget Sound. Additional improvements include an onsite septic disposal system and a site for a future accessory dwelling unit.

5. According to the applicant's Biological Evaluation, a former owner constructed the single-family dwelling approximately 120 feet (as measured horizontally) from the ordinary high watermark of Nisqually Reach, Puget Sound. A near vertical, 40 foot tall, shoreline bluff separates the single-family residential home from the shoreline. Without the benefit of a building permit or shoreline permit a former owner constructed a stair system extending from the top to the bottom of the shoreline bluff. The stair system is dilapidated and is beyond repair.
6. The applicant requests a shoreline substantial development permit to allow removal of the existing stairs and replacement with a new stairway system within the existing stairway footprint that will utilize ACZA treated lumber. Three inch, galvanized, steel pilings will support the structure. Any portion of the system constructed overwater will include fiberglass grating that meets the State Department of Fish and Wildlife's minimum of 50 percent. All concrete pads and steps of the existing stairs located on the beach will be removed as part of the project. Mitigation also includes installation of a native planting plan along the top of the bluff and at the south end of the parcel where native trees and shrubs are scarce. Construction may require a small amount of trimming of existing bluff vegetation. The applicant's contractor will use hand-held equipment to install the stairs.
7. The parcel is located within the Rural Residential/Resource One Dwelling Unit per Five Acres (RRR-1/5) zone classification of the Thurston County Code (TCC) that authorizes single-family residential dwellings at a density of one dwelling unit per five acres. Staff considers the stairway system as an accessory use to the single-family dwelling, and therefore no zoning permits are required.
8. The site is located within the Conservancy Shoreline Environment of the Shoreline Master Program for the Thurston Region (SMP). The Residential Development chapter of the SMP authorizes stair towers within the Conservancy Environment. However, the SMP also requires that a licensed civil engineer design the stair tower if the location therefore is mapped "unstable" or "Intermediate Stability" slope; if stair tower is 24 feet in height or greater; or if it is necessary to ensure that the tower minimizes view obstruction from adjoining residences. Although the slope is mapped as "Stable", a licensed engineer has designed the stairs since the bank is 40 feet in height. The stair tower will be located below the top of the slope, and therefore will not interfere with views of adjoining residences. Furthermore, a stairway system has existed at the site for many years without complaint.
9. Prior to obtaining approval of the stair tower the applicant must show that the request satisfies applicable criteria set forth in the Thurston County Critical Areas Ordinance set forth in Title 24 TCC. The TCC allows stair towers within a marine bluff hazard area and a Fish and Wildlife Habitat Conservation Area subject to meeting the criteria set forth in TCC 24.15.160. The proposed stair tower satisfies said criteria as it is a permitted use within the Conservancy Environment of the SMP and will be constructed in accordance with criteria set forth therein. Furthermore,

the stair tower is designed by an engineer and construction will avoid adverse impacts to existing, slope conditions. The applicant will construct the stair tower using hand tools within the footprint of the existing, dilapidated, unpermitted stairway. Construction will not require removal of vegetation.

10. Prior to obtaining approval of the stair tower the applicant must show that the request satisfies the criteria set forth in TCC 24.25.310. Findings on each criterion are hereby made as follows:
 - A. The stair tower will not ground on serf smelt, Pacific sand lance, or herring spawning beds; or eelgrass beds. The tower will not be located within any habitat area associated with Puget Sound.
 - B. The applicant proposes to construct the tower of wood and steel piles that will not leach materials into Puget Sound. The stairway will cause no adverse impacts to water quality.
 - C. The applicant proposes no riprap or other types of armoring.
 - D. The applicant proposes the stair tower at the same location as an existing stairway, and therefore proposes the minimum footprint necessary.

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 satisfies applicable criteria set forth in the Shoreline Master Program for the Thurston Region and applicable criteria set forth in Title 24 TCC, the Thurston County Critical Areas Ordinance. Therefore, said permit should be approved subject to the following conditions:
 1. Prior to or in conjunction with the issuance of any building permit, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Public Works Department, and the Thurston County Community Planning and Economic Development Department shall be met.
 2. The applicant shall remove all existing stairway improvements that have been constructed prior to constructing the new stairway. All construction debris must be placed in an upland approved location.

3. Comply with all conditions of the Mitigated Determination of Non-Significance dated April 9, 2019 (Attachment g).
4. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
5. The applicant must obtain a building permit from the Thurston County Community Planning and Economic Development Department for the stair tower structure. Engineered plans must be submitted with the building permit application.
6. Even though a stormwater plan and a stormwater permit is not required, the proposed development shall still incorporate best management practices for the treatment of stormwater as per the Drainage Design and Erosion Control Manual for Thurston County, as implemented by Thurston County Public Works Department.
7. No discharge of sediments into Puget Sound shall be permitted at any time.
8. There shall be no additional vegetation removal on the marine bluff face, toe of marine bluff, or top of bluff.
9. The applicant shall comply with all outlined mitigation of the March 12, 2019 Biological Evaluation (Attachment I).
10. Construction must commence within two years and all construction must be complete within five years of the effective date of this permit. The effective date is the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed.
11. All development shall be in substantial compliance with the drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use will require approval of a new or amended Shoreline Substantial Development Permit. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
12. This approval does not relieve the applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the applicant.

13. Construction pursuant to this permit shall not begin and is not authorized until 21 days from the date of filing of the Hearing Examiner's decision with the Department of Ecology as required in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filing have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).
14. 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.
15. 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 shoreline substantial development permit to allow construction of a stair tower that will provide access to the shoreline from the top of a 40 foot tall, marine bluff is hereby granted for a parcel located at 9410 Lohrer Lane N.E., Olympia, subject to compliance with the conditions contained in the conclusions above.

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: Jason Reese
 9410 Lohrer Lane N.E.
 Olympia, WA 98516

CONTACT: Brad Smith
 5018 Lambskin Street S.W.
 Tumwater, WA 98512

OTHERS:

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____.