

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
THURSTON COUNTY, WASHINGTON

In Re the Matter of,

Scott Manke  
For a Reasonable Use Exception and  
Shoreline Conditional Use Permit

No. 2019100758

AMENDED DECISION

THIS MATTER came before the Board of County Commissioners (Board) on July 9, 2020, due to an appeal filed by Scott Manke of the Hearing Examiner's Reconsideration Decision dated May 19, 2020. This decision denied Mr. Manke's request for (1) a reasonable use exception (RUE) to (a) add an 1,100 square foot addition to an existing single-family residence, and maintain a 784 square foot detached home office previously constructed without permits, all within shoreline, landslide hazard and wetland buffers; and (2) a shoreline conditional use permit for retaining walls within a Conservancy shoreline previously constructed without permits.

The Hearing Examiner determined that Mr. Manke's property *already* enjoyed reasonable use of his property as a result of the legally nonconforming residence and, therefore, did not meet the Thurston County Code criteria to expand his residence, nor keep the unpermitted home office. In addition, the Hearing Examiner denied the shoreline conditional use permit for retaining walls, because without approval of the RUE, there would be unpermitted structures on site, and thus could not be approved.

The issue before the Board is whether the evidence presented to the Hearing Examiner demonstrated that Mr. Manke's application complied with the RUE permit criteria.

The Board reviewed the Hearing Examiner's decision and the evidence presented to the Hearing Examiner. In addition, one Board member, Commissioner Hutchings, conducted a site visit for purposes of understanding the location of the proposed development on the property. No one objected to Commissioner Hutchings' participation in the case.

For the reasons discussed below, a majority of the Board disagrees with the Hearing Examiner's conclusion that the shoreline conditional use permit should not be approved, and that the applicant has not satisfied the RUE criteria. The fundamental purpose of the RUE criteria is to balance a property owner's right to reasonable use of his property against the government's interest in protecting the public and the environment.

### **FINDINGS**

A majority of the Board adopts the following findings of the Hearing Examiner:

1. In this case, the property owner submitted a substantially revised proposal after the initial hearing before the Hearing Examiner. The revised proposal removed initial requests for permitting to legitimize the unpermitted stairway to the beach, detached garage, detached garage's paved apron, and utility/woodshed and proposed to physically remove these items. Hearing Examiner Finding No. 30.

2. The revised proposal indicates that the stair tower would be carefully removed with as little soil disturbance as possible. Because only the foundation for each of the column supports touches the substrate and there is no slab under the stair tower, its removal would not significantly disturb the beach. Hearing Examiner Finding No. 30

3. In order to compensate for the unavoidable impacts of the home office and proposed residential additions, the Applicant submitted a compensatory mitigation plan that proposed native plantings in an area nearly twice the size of the footprint of the structures to be removed, restoring the footprints of the removed structures, with the exception of the stair tower. Hearing Examiner Finding No.37, *Exhibits 14a, 14c, and 14d*.

4. The primary actions of the mitigation proposal include:

a. Removal of the unpermitted shoreline stairs, removing approximately 300 square feet of impervious surface within critical area buffers;

- b. Removal of the unpermitted detached garage, garage apron, and utility/woodshed, removing approximately 2,457 square feet of impervious surface within critical area buffers;
- c. Restoration of approximately 2,457 square feet of the shoreline buffer in the general area where the garage, garage apron, and utility/woodshed were located; and
- d. Enhancement of approximately 5,568 square feet of shoreline buffer in the degraded areas where prior land use (logging) removed forested vegetation.

Hearing Examiner Finding No. 37.

5. In total, the revised project would reduce impervious surface area for which authorization is sought from 4,313 square feet to 1,856 square feet, representing a 57% reduction in impervious surfaces within buffers for which approval is sought.<sup>1</sup> Further, while the County Code requires buffer impacts to be mitigated at a 1:1 ratio (*TCC 24.30.080*), the proposed mitigation is a 3:1 mitigation to impact ratio in which approximately 550 total plants would be installed, including 160 trees. Asserting that the area to be enhanced currently provides low buffer functions, the Applicant's critical areas consultant concluded that the mitigation plan would provide a net lift to the critical area buffers functions and values. Hearing Examiner Finding No.37.

6. Staff acknowledged that the mitigation plan proposed meaningful, substantial compensatory mitigation. Hearing Examiner Finding 41, *Leah Davis Testimony*.

7. Regarding potential adverse impacts arising from the detached home office structure, the Applicant testified that sanitary discharge from the home office is connected to the on-site septic system for the house and has been for several years without problem. He testified that the septic system maintains an approved operational certificate and the system is dye tested and inspected every two years; it has always passed inspection. The Applicant is of the understanding that the County believes a larger septic tank is required to address the addition of effluent from the home office. Applicant representatives contended that the septic system has not been finally approved because the Applicant was awaiting the outcome of the instant proceedings. The Applicant submitted that he would be happy with a condition that required the septic to meet all code requirements. Hearing Examiner Finding No. 38, *Scott Manke Testimony*; *William Lynn Argument*.

8. The revised proposal retains the request for shoreline conditional use permit to legitimize the three- to six-foot tall wood retaining wall installed along the existing road down to the beach. The project revision letter asserts that the retaining wall is needed to provide ongoing erosion protection for the Baird Cove Beach. County representatives noted that retaining walls greater than four feet in height that hold a surcharge require structural engineering and building

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<sup>1</sup> The mitigation plan asserted it was a 43% reduction in impervious surface area, but - with respect - it undercalculated the extent of the reduction; in fact, only 43% of previously proposed additional impervious surface area remains proposed, resulting in a 57% reduction. *Exhibit 14.d*.



permits. The Applicant offered to reduce the wall's height to four feet or lower. However, acknowledging the erosion control provided by the feature, County Staff indicated that reduction in height is not preferred to building permit review for the existing wall. In addition, staff acknowledged that the retaining wall is protecting the beach and that *its removal would result in less protection for the shoreline. Testimony of Leah Davis, Mark Biever, Scott Manke, and Ron Dickinson.* The Applicant's engineer testified that her firm has analyzed the retaining walls and found them to be structurally sound; the firm is prepared to apply for the retaining wall building permit. *Kathy Hargrave Testimony.* Hearing Examiner Findings 32, 33, and 34.

9. The Applicant has agreed comply with the "the department recommendation set forth in the original staff report with the listed requirements deemed necessary by the department to 'ensure compliance with applicable development standards and regulations'" provided "minor editorial modifications are made to address the fact that certain components (the stair tower) would be removed." Exhibit 14.

### **CONCLUSIONS**

For the reasons discussed above, a majority of the Board makes the following conclusions:

1. The fundamental purpose of the Reasonable Use Exemption criteria is to balance a property owner's right to reasonable use of his property against the government's interest in protecting the public and the environment.

2. To deny the Applicant's proposed modest additions to his home, considering the significant enhanced improvements to the existing critical area buffers and functions and values, would be an unreasonable and unnecessary infringement on the property owner's right to the reasonable use of his property.

3. In light of the approval of the RUE, and removal of structures and fixtures identified in Finding No. 4, there will not be any building violations on site. Therefore, the shoreline conditional use permit can be approved.

### **IT IS HEREBY ORDERED AS FOLLOWS:**

Upon review of the Hearing Examiner's Findings cited above, and the Board of County Commissioners' Conclusions, discussed above, the Hearing Examiner's Decision is reversed and the revised RUE application, and shoreline conditional use permit are approved subject to the following conditions:

- A. The Applicant shall obtain (1) building permits for (a) an approximately 1,100 square foot addition to an existing single-family residence; and (b) a 784 square foot detached home office; and (2) Environmental Health approval of an on-site septic system that meet the needs of the detached home office and single-family residence.
- B. The Applicant shall remove the (1) stair tower beach access; (2) garage and associated concrete apron; and (3) a small woodshed.

- C. The Applicant shall complete all revegetation mitigation as proposed in the Compensatory Mitigation Plan, dated January 2020.
- D. The Applicant shall abide by the Monitoring, Maintenance and Contingency Plans, set forth in the Compensatory Mitigation Plan, dated January 2020, for years 1, 2, 3, and 5 post-construction.
- E. The Applicant shall comply with the department recommendation set forth in the original staff report with the listed requirements deemed necessary by the department to 'ensure compliance with applicable development standards and regulations' provided minor editorial modifications are made to address the fact that certain components (the stair tower) would be removed.
- F. Approval of the shoreline conditional use permit is conditioned upon the issuance of a building permit approval for the retaining wall.

DATE:

AUGUST 26, 2020

ATTEST:

[Signature]

Clerk of the Board

BOARD OF COUNTY COMMISSIONERS  
Thurston County, Washington

[Signature]

Chair Hutchings

**Voted No**

Vice-Chair Menser\*

[Signature]

Commissioner Edwards

\*Commissioner Menser voted no because he concurs with the hearing examiner's findings and conclusions which support her decision to deny a RUE to the applicant and believes the majority has failed to properly interpret and apply the eight legal criteria for a RUE set forth in TCC 24.45.030(A-H).