



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. 2019103224
	)	
<b>Eric Veloni</b>	)	Veloni Retaining Wall
	)	
	)	
	)	
For Approval of a	)	<b>FINDINGS, CONCLUSIONS,</b>
Shoreline Conditional Use Permit	)	<b>AND DECISION</b>
	)	

### SUMMARY OF DECISION

The request for a shoreline conditional use permit is **GRANTED** subject to conditions.

### SUMMARY OF RECORD

#### **Request:**

Eric Veloni requested after-the-fact approval of a shoreline conditional use permit to replace a retaining wall within a Rural shoreline. The subject property is located at 5725 Sunrise Beach Road NW, Olympia, Washington.

#### **Hearing Date:**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on December 12, 2023. The record was held open through December 14, 2023 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted, and the record closed on December 14, 2023. No in-person site visit was conducted, but the Examiner viewed the subject property and environs on Google Maps.

#### **Testimony:**

At the hearing the following individuals presented testimony under oath:

Abbie Adams, Associate Planner, Thurston County Community Planning & Economic Development Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Eric Veloni, Applicant

**Exhibits:**

At the 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 Vicinity Map
  - C. Master Application, received June 28, 2019
  - D. JARPA permit Application, received June 28, 2019
  - E. Site plan, received June 28, 2019
  - F. Notice of Application, dated January 3, 2020
  - G. Shoreline Administrative Exemption, Approval letter, Scott McCormick, dated July 1, 2020; Project #2019103224 Folder Seq. No. 19 108060 XL - Boathouse Repair
  - H. Comment memorandum from Amy Crass, Thurston County Public Health & Social Services Department, dated August 8, 2019
  - I. Comment letter, Nisqually Indian Tribe, dated January 13, 2019
  - J. Comment letter, Squaxin Island Tribe, dated January 3, 2020
  - K. Site Assessment - Parcel 13936340700. Technical Memorandum, KPFF; dated June 3, 2019; submitted June 28, 2019
  - L. Steep Slope/Landslide Hazard Assessment, Insight Geologic, dated September 24, 2018; received June 28, 2019
  - M. Comment letter, Department of Ecology, Southwest Regional Office, dated January 23, 2020
  - N. Comment letter, Department of Ecology, Southwest Regional Office, dated July 29, 2019
  - O. Email, Department of Ecology, Lizzie Carp, dated August 15, 2023
  - P. FEMA Habitat Assessment, KPFF Consulting Engineers, dated February 6, 2020

Based on the record developed through the open record hearing process, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

## FINDINGS

1. Eric Veloni (Applicant) requested after-the-fact approval of a shoreline conditional use permit (SCUP) to replace a retaining wall within a Rural shoreline.<sup>1</sup> The subject property is located at 5725 Sunrise Beach Road NW, Olympia, Washington.<sup>2</sup> *Exhibits 1, 1.C, and 1.D.*
2. The subject property is developed with a single-family residence built in the 1940s, a boat house, a bulkhead, and a retaining wall. The current retaining wall, which was installed in 2006, was a replacement for a derelict, 50-year old retaining wall in the same location. The current retaining wall is 83 feet long, 5.14 feet tall, and set back approximately 10 feet landward of the bulkhead. It is constructed of stacked/interlocking cottage stones that are similar in appearance to the concrete blocks used in the original retaining wall, but which provide improved stability. *Exhibits 1, 1.D, 1.E, and 1.P; Eric Veloni Testimony.*
3. The subject property is zoned Residential LAMIRD One Dwelling Unit per Acre (RL 1/1). *Exhibits 1 and 1.B.* Primary permitted uses in the zone include single-family and two-family residences, agriculture, and home occupations. *Thurston County Code (TCC) 20.11A.020.* The subject property, at 1.08 acres in area, is a legally conforming lot. *Exhibit 1.* Adjacent shoreline parcels are also zoned RL 1/1 and are developed with single-family residences. *Exhibits 1.B and 1.D.*
4. The subject property is located on the western shoreline of Eld Inlet of Puget Sound. *Exhibit 1.K.* The Shoreline Master Program for the Thurston Region (SMPTR) designates the subject shoreline as Rural. Residential development is allowed in the Rural shoreline environment, subject to the applicable policies and regulations of the SMPTR. *Exhibit 1; SMPTR Section Three, Chapter XVI.*
5. The SMPTR does not contain a use category that is applicable to retaining structures; the closest category is “shoreline protection,”<sup>3</sup> which includes structures such as bulkheads. The County does not consider a retaining wall that is not physically attached to a residence it supports to be a normal appurtenance to a residential use. However, the SMPTR does not prohibit retaining structures. Pursuant to Washington Administrative Code (WAC) 173-27-160, an unclassified use may be authorized with a shoreline conditional use permit. *WAC 174-27-160; WAC 173-27-030(4); Exhibit 1.*

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<sup>1</sup> The application describes a larger project that also included improvements to a boathouse. The County issued a shoreline substantial development permit exemption for the boathouse component on July 1, 2020. As boathouses are an allowed use in the Rural shoreline (see SMPTR, Section Three, Chapter IV(D)(2)), no SCUP is required for the boathouse and this decision addresses the retaining wall component of the project only. *Exhibits 1.C, 1.D, and 1.G.*

<sup>2</sup> The staff report provides the following legal description for the subject property: “36-19-3W 1.08 A L 2 & SE SW COM SW SEC COR S 49-2-0 E 441. 6 F N 6.” It is also known as Tax Parcel No. 1396340700. *Exhibit 1.*

<sup>3</sup> The SMPTR defines “shoreline protection” as “action taken to reduce adverse impacts caused by current, flood wake or wave action. ...” *SMPTR, Section 3, Chapter XVIII, Section A.*

6. Although the retaining wall is within 200 feet of a regulated shoreline, no SSDP is required for the project because its stated value does not exceed the statutory permit threshold. The Applicant valued the cost of all shoreline improvements described in the permit application (including boathouse repairs that are outside the scope of this SCUP decision) at \$2,500. The Applicant performed the work himself. *Exhibits 1 and 1.D; WAC 173-27-040; Washington State Register (WSR) 22-11-036; Eric Veloni Testimony.*
7. The existing residence is on top of a steep marine bluff, which descends to the south. The bluff is approximately 42 feet high as measured from the top of the slope to the shoreline and has an inclination of up to 80%. Based on geotechnical evaluation, the probability of failure along the bluff is low to moderate, with the predicted failure type being sloughing of the surficial weathered material along the face of the slope, an event with a recurrence interval of 20 to 40 years. The expected rate of erosion for the bluff face is 0.5 to two inches per year. *Exhibit 1.L.*
8. The subject property is classified as a Geologic Hazard Area under the Thurston County critical areas ordinance (CAO) (Title 24 Thurston County Code). *Exhibit 1.* The CAO allows slope stabilization if necessary to protect a lawfully established existing structure, provided the project satisfies the requirements of the SMPTR and the selected stabilization technique is supported by a geological assessment. *TCC 24.15.150.* A critical area permit is also required. *TCC Table 24.15-1.* The Applicant submitted a geotechnical report, and the critical area permit review process would be completed in conjunction with review of the building permit. *Exhibits 1 and 1.L.*
9. The geotechnical report recommends that low growing vegetation be encouraged within 10 feet of the slope face and on the slope face to reduce erosion and increase soil strength resulting from the root systems. *Exhibit 1.L.* The current hillside vegetation is predominantly comprised of English Ivy and Sala. Although English Ivy is an invasive species, in this case it is deeply rooted and functions to stabilize the slope. Wholesale removal of the ivy would destabilize the topsoil. The Applicant's environmental consultant recommended that instead of removing the ivy, the Applicant plant small pockets of native species to promote species diversity. *Exhibit 1.K.*
10. Because the retaining wall is within the 100-year floodplain, the Applicant submitted a habitat assessment for compliance with FEMA requirements. The report did not identify any adverse effects with respect to water quality, flood velocities, flood storage, native riparian vegetation, habitat forming processes, refuge from higher velocity floodwaters, or spawning substrate. The retaining wall still allows sufficient sediment input to the beach to support forage fish spawning habitat. *Exhibit 1.P.*
11. Washington Department of Ecology (DOE) staff reviewed the proposal and did not recommend mitigation for compliance with the SCUP criteria. DOE staff submitted that the retaining wall did not appreciably increase the development footprint or cause significant environmental impacts, and that removing the ivy would likely destabilize the steep slope. *Exhibit 1.O.*

12. The retaining wall was built into the hillside and it has not had any impacts on shoreline views. *Exhibits 1, 1.E, and 1.P (see photos pages 6 and 7).*
13. The Thurston County Environmental Health Division reviewed the project and did not identify any conditions needed to comply with the Thurston County Sanitary Code. *Exhibit 1.H.*
14. The project is categorically exempt from review under the State Environmental Policy Act. *Exhibit 1; WAC 197-11-800.*
15. Notice of the open record hearing was mailed to property owners within 500 feet of the site on November 28, 2023 and published in *The Olympian* on December 1, 2023. *Exhibit 1.A.* There was no public comment on the application prior to or through the open record hearing process. *Abbie Adams Testimony.*
16. At the conclusion of the hearing, Planning Staff maintained their recommendation that the conditions identified in the staff report be imposed if SCUP approval is granted. These conditions spell out requirements as if there is future work to be completed; however, despite the requirement to obtain an after the fact building permit, there is no additional or future work expected as part of the instant permit application. *Exhibit 1; Abbie Adams Testimony.* The Applicant waived objection to the recommended conditions. *Eric Veloni Testimony.*

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline permits pursuant to RCW Chapter 36.70, WAC 173-27, TCC 19.04.010, and Section One, Part V of the Shoreline Master Program for the Thurston region. Pursuant to WAC 173-27-200, decisions to approve a shoreline conditional use permit must be submitted to the Washington State Department of Ecology for a final decision to approve, approve with conditions, or disapprove the permit.

### **Criteria for Review**

The criteria for approval of a shoreline conditional use permit are set forth in Washington Administrative Code (WAC) 173-27-160:

1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
  - A. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
  - B. That the proposed use will not interfere with the normal public use of public shorelines;

- C. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
  - D. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
  - E. That the public interest suffers no substantial detrimental effect.
2. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
  3. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.
  4. Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

*RCW 90.58.020, the Shoreline Management Act*

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The Shoreline Management Act (SMA) mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

*Shoreline Master Program Policies*

The SMPTR contains the following regional criteria (Section Two, Chapter V) that are applicable to all shoreline development:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.

- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic, or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

### **Conclusions Based on Findings**

1. As conditioned, the retaining wall use is consistent with the policies of RCW 90.58.020 and the SMPTR. It is consistent with SMA policies to protect against adverse effects to public health, the land, its vegetation, and wildlife and to preserve the character of the shoreline. The retaining wall is consistent with the regional criteria contained in the SMPTR. It has not adversely affected aquatic habitat, does not affect public access to the shoreline, and does not degrade the scenic qualities of the shoreline. Further critical area review would occur in conjunction with the building permit. No public health issues were identified during the review process. *Findings 2, 7, 8, 9, 10, 11, 12, 13, and 16.*
2. Because the retaining wall is on a private, residentially developed parcel, it does not affect public use of public shorelines. *Findings 2 and 3.*
3. The project is compatible with authorized uses in that it is protective of the existing single-family residential use of the property, which use is allowed under the adopted zoning and shoreline designations. *Findings 3 and 4.*

4. The retaining wall has been in place since 2006 and, based on the submitted habitat assessment, it has not caused significant adverse effects to the Rural shoreline environment and is not expected to cause significant adverse effects to the Rural shoreline environment in the future. *Findings 10 and 11.*
5. The public interest would suffer no substantial detrimental effect as a result the official approval of the retaining wall. The retaining wall aids with slope stability and does not affect scenic views from surrounding residences. *Findings 2, 7, and 12.*
6. No evidence was submitted capable of supporting a conclusion that the cumulative impact of the retaining wall and any similar projects would adversely affect the shoreline. The retaining wall was a replacement of a 50-year old retaining wall in the same location. No specific adverse impacts were identified in the habitat assessment. *Findings 2 and 10.*
7. The retaining wall is an unclassified use, and its consistency with the SCUP criteria is described above. *Finding 5.*
8. The retaining wall use is not prohibited by the SMPTR. *Finding 5.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a shoreline conditional use permit is **GRANTED** subject to the following conditions:

1. The Applicant must obtain a building permit from the Thurston County Building Department.
2. 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.
3. All development shall be in substantial compliance with 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 and/or shoreline conditional use permit. The Community Planning & Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
4. Washington State Water Quality Laws, Chapter 90.48 RCW Water Pollution Control and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, define quality of state waters. Any discharge of sediment-laden runoff or of other pollutants to waters of the state is in violation of these state laws and may be subject to enforcement action.



5. A construction stormwater permit from the 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 December 28, 2023.



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Sharon A. Rice  
Thurston County Hearing Examiner

**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

<b>NOTE:</b> 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).
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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 **\$821.00** for a Request for Reconsideration or **\$1,112.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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 ☐ \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.