

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2016102668; HAMMOND REASONABLE USE EXCEPTION

SEQUENCE NO.: 16 112297 XI

APPLICANT: Aaron Hammond
6063 Illinois Lane S.E. #B
Lacey, WA 98513

PROPERTY OWNER: Lois Strid-Roalsvig
42645 Dehli Place
Bermuda Dunes CC, CA 92203

PROPONENT: Erik Ainsworth
110 Ruby Street S.E.
Tumwater, WA 98501

LOCATION : 1948 Summit Lake Shore Road N.W. and
2004 Summit Lake Shore Road N.W., Olympia

TAX PARCEL NO.: 77120218400

PLANNER: Leah Davis, Associate Planner

SUMMARY OF REQUEST:

Reasonable Use Exception to allow construction of a single-family residence on a 2.17 acre parcel within a landslide hazard, located in the RL ½ zoning district in rural Thurston County at Section 07 Township 18 Range 3W PLAT SUMMIT LAKE DIV 2 B P LT 184 Doc 012/043/ UND INT IN COM PK 341 & 110.

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: April 5, 2018

PUBLIC HEARING:

After reviewing the Environmental Review Section 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 March 27, 2018, at 10:00 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" - Staff Report with Attachments A-S**
- EXHIBIT "2" - Photographs of Posted Notice**
- EXHIBIT "3" - Overall Site Plan-Part 1**
- EXHIBIT "4" - Six Sheets of Data**
- EXHIBIT "5" - Handwritten Agreement, Revised Condition B**
- EXHIBIT "6" - Email from Dianne Chapin dated March 23, 2018**

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.

LEAH DAVIS appeared, presented the Environmental Review Section Staff Report, and introduced Exhibit 2, photographs of the posted notice, and Exhibit 3, a site plan to scale. The applicant proposes to construct a single-family residential home within a landslide hazard area. A previous owner conducted unpermitted work and installed a retaining wall and fill that currently impacts the parcel to the west. The building pad for the single-family dwelling is encumbered by steep slopes. As part of the request the applicant proposes to remove the retaining wall installed on the neighbor's property, meet required structural setbacks, and reconstruct the building pad. The site is located within the rural area of Thurston County in the Residential LAMIRD zone that allows one dwelling unit per two acres. The applicant's parcel meets the minimum size requirement. The Thurston County Critical Areas Ordinance allows development a minimum of 50 feet from a steep slope, and a reduction of said setback if approved by a geotechnical engineer. In the present case the Geotechnical Report authorizes the applicant to build the home with no setback from the slope. The applicant submitted a completed application for a reasonable use exception in October, 2016. The project underwent SEPA review due to the amount of grade and fill. The applicant also needed the signature on the application of the neighbor to the west to allow work on her property. The County did receive the neighbor's signature and confirmed it via email. Chapter 24.45 TCC sets forth eight criteria for a reasonable use exception. Staff has made findings on each of the eight criteria and finds that the application meets all. Of note, the driveway is too steep for a fire truck and the applicant has received a variance to said standards subject to sprinkling the structure. The Thurston County

Comprehensive Plan contemplates residential development in the area. Staff recommends approval subject to compliance with five conditions.

AARON HAMMOND, applicant, appeared and testified that he proposes to construct a 2,800 square foot single-family residential home that will have approximately 1,400 square feet per floor.

ERIK AINSWORTH, project engineer, appeared and introduced Exhibit 4, the site plan that was part of the application. The total footprint measures 2,859 square feet and includes the attached garage.

MS. DAVIS reappeared and in response to the Examiner's question regarding the size of the structure, testified that the site work has already been done, and that she did not review the size of surrounding houses as the work was already accomplished. The size of the structure is not relevant. The geotechnical engineer did not recommend a setback.

MR. AINSWORTH reappeared and testified that he agrees with the Staff Report and staff's presentation. Page 2 of Exhibit 4 shows the unpermitted graded area. The flattened area will allow a yard around the house. The new retaining walls will measure four feet in height or less and therefore will not require a setback. They will construct the retaining walls about one foot from the west property line. He then questioned proposed Condition (B) that prohibits issuance of a building permit until impacts to the neighboring property have been "rectified". He questioned the meaning of "rectified" and testified that they intend to remove the retaining wall and the gravel from the slope and plant the area with an erosion control plant mix.

CANDICE BUEHLER, owner of the property to the west, appeared and testified her main concern is the huge wall on her property. She is also worried about storm drainage and just wants the property back the way it was originally.

MR. AINSWORTH responded by testifying that they will construct a four foot wall and a house. They will reduce the height of the wall from six feet to four feet and pull it back onto the applicant's property.

The Examiner then suggested that staff, the property owner to the west, the applicant, and Mr. Ainsworth consult together regarding the condition and see if agreement could be reached on a specific requirement. Following a 30 minute recess the hearing was reconvened and Mr. Ainsworth testified that the parties had reached agreement and a new condition was introduced as Exhibit 5. He noted that one of the terms allows the parties to meet and change the conditions, and he agreed to provide the agreement to the County for its approval.

MS. DAVIS reappeared and testified that late Friday she received an email comment regarding the landslide area. The writer was concerned with the timing of the work and its impact on water quality. She noted that the applicant proposed to install erosion control

measures and also that the County had addressed the setback through the Geotechnical Report.

MR. AINSWORTH reappeared and testified that the Geotechnical Report is on record and that they will implement erosion control methods. They have conducted an in-depth drainage analysis based on the Thurston County Design Manual. They plan to use a slope spreader where the water will leave the site in a gentle way and will not create gullies or rivulets. Their plan was reviewed by the County and deemed adequate.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 11:00 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 has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.
2. Review pursuant to the State Environmental Policy Act (SEPA) was required due to the filling and grading of more than 500 cubic yards by the previous owner in preparing a building pad. Following review of an Environmental Checklist submitted by the present applicant, the Thurston County responsible official issued a threshold Mitigated Determination on Nonsignificance (MDNS) on December 21, 2017. No appeals were filed.
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site on March 12, 2018 and notice was published in The Olympian on March 16, 2018, at least ten (10) days prior to the hearing. The site was posted on March 15, 2018.
4. The applicant, Aaron Hammond, has a possessory ownership interest in a long, narrow, rectangular, 2.17 acre, unimproved parcel of property that abuts the north side of Summit Lake Shores Road in the Summit Lake area of unincorporated Thurston County. The parcel abuts Summit Lake Shores Road for 106 linear feet and varies in depth from 979 feet along the west property line to 913 feet along the east property line. An asphalt drive that provides access to a number of parcels crosses the applicant's parcel from east to west approximately 150 feet uphill and to the north of Summit Lake Shores Road. A joint gravel driveway extending north from said private drive provides access to the applicant's building site.

5. A previous owner conducted unpermitted filling and grading on a portion of the applicant's parcel commencing approximately 225 linear feet north of Summit Lake Shores Road and extending north therefrom. The fill and grade operation encroached upon the abutting parcel to the west. The previous owner also constructed a six foot tall, concrete block, retaining wall along the parcel's west property line and onto the abutting parcel to the west. The previous owner also placed fill behind said wall. At present, a portion of the retaining wall and fill area extend over the property line. The applicant proposes to construct a single-family residential home on the illegally prepared pad.
6. As part of the present application, the applicant proposes to remove the retaining wall and fill from the neighbor's parcel. The applicant will then relocate the retaining wall onto his own property a minimum of one foot from the west property line and will lower the height of the retaining wall from its present six feet to four feet. Upon completion of said work the applicant will re-vegetate the slope with an erosion control seed mix. The neighbor to the west has consented to the applicant's proposal by signing the application and by helping draft and by reaching agreement on the language of revised Condition B.
7. The entire, previously prepared, building pad is located within a landslide hazard area as defined by Chapter 24 of the Thurston County Code (TCC). Sections 24.15.015(A) and (C) TCC require an undisturbed, 50 foot wide buffer of approved vegetation from the top of a critical areas slope, or the minimum buffer width recommended by a geotechnical professional in a geological assessment of the parcel. In the present case the applicant engaged Envirotech Engineering, PLLC, to prepare a Geotechnical Report for his parcel, and to specifically evaluate the stability of the building pad. Both the Geotechnical Report (Exhibit J to the Staff Report) and the Addendum thereto (Exhibit L) determine that no evidence of previous landslides exist and that the slope is stable. The geotechnical engineer recommends a 20 foot wide, footing setback from the face of slopes exceeding 40 percent and a five foot setback from the cut slope. According to the site plan, the proposed building footprint is well-removed from the 40 percent slopes to the south, and will meet the five foot wide, minimum setback from both the toe and top of the cut slopes near the east and west property lines.
8. The applicant requests a reasonable use exception (RUE) to allow construction of a single-family residential home and attached garage on the previously prepared, building pad. The footprint will measure 2,859 square feet and will include a 615.5 square foot garage. The site plan shows an onsite septic disposal drainfield located near the north property line.
9. Prior to obtaining a RUE the applicant must show that the request satisfies the criteria set forth in TCC 25.45.030. Findings on each criterion are hereby made as follows:

- A. No other reasonable use of the property as a whole is permitted by Title 24. Primary uses in the Residential LAMIRD are limited to single-family residential homes, duplexes, and agriculture. The site is too small, steep, and rocky for an agricultural use and a duplex is prohibited by density restrictions.
- B. No reasonable use with less impact on the critical area is possible. The entire parcel is encumbered by a landslide hazard area or buffer, and a previous owner prepared a home site on a ridge surrounded by steep slopes. Requiring the applicant to relocate the home site would increase impacts to the critical slope.
- C. The proposed use will not result in damage to other property and will not threaten the public health, safety, or welfare on or off the site. The project will likewise not increase public safety risks on or off the subject property. The applicant has worked with the neighbor to the west to resolve the encroaching retaining wall and fill. The building footprint is well removed from the slope descending to Summit Lake Shores Road, and a geotechnical professional has determined that the site is stable. Thurston County has accepted the geotechnical evaluation. Conditions of approval require compliance with erosion control methods, and the building permit process will assure compliance with the geotechnical evaluation.
- D. The applicant's proposed home location represents the minimum encroachment into the critical area to prevent denial of all reasonable use of the property. No encroachment on any other portion of the parcel will have less impact on the critical area. The entire parcel is located in either a landslide hazard area or landslide hazard buffer. A previous owner prepared a flat building site that the applicant proposes for his home.
- E. The proposed reasonable use results in the minimum alteration to the critical slope and also to vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions. The building pad provides an area for a house, garage, driveway, onsite septic tank, and a small yard. The unpermitted work impacted vegetation in the manner expected for a single-family dwelling under ordinary circumstances. Staff could find no impacts to fish and wildlife resources or hydrological conditions. The Geotechnical Report determined that impacts to the landslide hazard area are minimal, and that remediation work will reduce the impacts even more.
- F. Approval of the reasonable use exception will not create a net loss of critical area functions and values. The Geotechnical Report establishes that the project will create no net loss of critical area functions and values, especially considering the remedial work on the western slope that will incorporate an engineered design. The Geotechnical Report establishes that the onsite

geological conditions require no mitigation for a landslide hazard.

- G. The reasonable use does not impact species of concern. The Washington Department of Fish and Wildlife and Thurston County Geodata layers show no species of concern on either the subject property or in the immediate vicinity.
- H. The applicant does not base his request for a RUE upon the location and scale of existing development on surrounding properties.

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 reasonable use exception satisfies all criteria set forth in TCC 24.45.030 and therefore should be approved subject to the following conditions:
 - A. Prior to, or in conjunction with, the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, and Thurston County Planning Department shall be met.
 - B. The applicant, the neighbor to the west, and Thurston County staff have agreed to the following:
 1. The applicant shall remove all over spilled gravel and soil from the abutting parcel to the west.
 2. The applicant shall remove the retaining wall from the neighboring property, reduce its height to four feet, and locate it on the applicant's property a minimum of one foot from the joint property line.
 3. Following accomplishment of Sections 1 and 2 above, the applicant will re-vegetate the slope with an erosion control seed mix.
 4. The applicant and the neighboring property owner or their representative may amend the above three sections if both parties agree in writing. The parties will provide the written amendment to Thurston County staff for approval. No amendment will become effective until approved in writing by Thurston County staff.

5. The applicant will notify the neighboring property owner to the west or their representative upon completion of the work. The neighboring property owner or representative will have a maximum of three weeks to review and approve or object to the remediation work. The neighbor or their representative will email their approval of the remediation work to Leah Davis at Thurston County Environmental Review Section, to Mr. Aaron Hammond, and to Mr. Erik Ainsworth.
- C. Erosion control measures shall be implemented prior to earth disturbing activities. 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 methods shall be proposed and approved through the Building Site review associated with the building permit application.
- D. 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.
- E. All development on the site shall be in substantial compliance with the approved Reasonable Use Exception application, as conditioned. Any alteration to the proposal will require approval of a new or amended Reasonable Use Exception. The Land Use and Environmental Review Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
- F. 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.
- G. 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 critical areas reasonable use exception to allow relocation of an existing retaining wall and fill and to construct a single-family residential dwelling within a landslide hazard area at a site located at 1948 Summit Lake Shores Road N.W., Olympia, is hereby granted area subject to the conditions contained in the conclusions above.

ORDERED this 5th day of April, 2018.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this day of April, 2018, to the following:

APPLICANT: Aaron Hammond
6063 Illinois Lane S.E. #B
Lacey, WA 98513

PROPERTY OWNER: Lois Strid-Roalsvig
42645 Dehli Place
Bermuda Dunes CC, CA 92203

PROPONENT: Erik Ainsworth
110 Ruby Street S.E.
Tumwater, WA 98501

OTHERS:

Candice Buehler
2745 Summerhill Court S.W.
Olympia, WA 98512

Barry Ulrich
3818-11th Avenue N.W.
Olympia, WA 98508

Aaron Hammond
7129 Inlay Street S.E.
Lacey, WA 98513

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 **\$688.00** for a Request for Reconsideration or **\$921.00** 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 ☐ \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.