



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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NOTICE OF HEARING EXAMINER DECISION

October 14, 2008

To: Interested Parties and Parties of Record

RE: Project Name: **Hubbard –SSDP/SCUP/CAV**
Applicant: **William Hubbard**
5606 Long Lake Road SE
Port Orchard, WA 98367
Application: **South Kitsap County, Commissioner District #2**
Shoreline Substantial Development
Permit/Shoreline Conditional Use Permit/Critical
Areas Variance
Case Number: **080925-072 (082302-2-018-2005) LIS#08 54081**

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. **ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON OCTOBER 28, 2008.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

The written appeal shall be made on or attached to an appeal form provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County:
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

**NOTICE OF HEARING EXAMINER DECISION – HUBBARD – SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT/SHORELINE CONDITIONAL USE
PERMIT/CRITICAL AREAS VARIANCE**

October 14, 2008

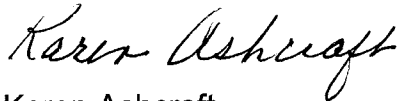
Page 2

3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

The complete case file will be available for review at the Department of Community Development, Monday through Friday, except holidays, 8:15 a.m. to 4:00 p.m.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft
Clerk of the Examiner

Enclosure

See attached transmittal

RECEIVED

OCT 10 2008

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

| | | |
|---|---|--------------------------|
| In the Matter of the Application of |) | No. 080925-072 |
| |) | |
| William Hubbard |) | Hubbard Residence |
| |) | |
| For Approval of a Shoreline Substantial |) | FINDINGS, |
| Development Permit, Conditional Use Permit, and |) | CONCLUSIONS, |
| <u>Critical Areas Variance</u> |) | AND DECISION |

SUMMARY OF DECISION

The requests for a shoreline substantial development permit, conditional use permit, and critical areas variance to construct a single-family residence on property located at 5560 Long Lake Road SE, on the east shore of Long Lake, in Port Orchard, Washington, are **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request:

William Hubbard requests a shoreline substantial development permit, conditional use permit, and critical areas variance to construct a single-family residence on property located at 5560 Long Lake Road SE, on the east shore of Long Lake, in Port Orchard, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the requests on September 25, 2008.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Steve Heacock, County Planner
William Hubbard, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Pre-Application Meeting Request

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Hubbard SSDP, CUP, and Critical Areas Variance, No. 080925-072*

2. Vicinity Map
3. Mobile/Manufactured Home Permit Application
4. Septic Design – Allied Design, dated March 19, 2004
5. WSFW Bald Eagle Management Plan, dated March 6, 2008
6. JARPA Application, dated April 16, 2008
7. Environmental (SEPA) Checklist, dated April 17, 2008
8. Hubbard Habitat Management Plan – The Wetland Corps, dated May 2008
9. Environmental Review Checklist, dated June 12, 2008
10. GIS Building Limitations Map, dated June 12, 2008
11. GIS Aerial Photo, dated June 12, 2008
12. Notice of Complete Application, dated June 25, 2008
13. GIS Zoning Map, dated August 6, 2008
14. GIS Shoreline Master Plan Environments Map, dated August 6, 2008
15. Notice of Application, dated August 6, 2008
16. Affidavit of Mailing – NOA, dated August 5, 2008
17. Notice of Public Hearing, dated September 8, 2008
18. Affidavit of Mailing – NPH, dated September 8, 2008
19. SEPA Determination of Nonsignificance, dated September 10, 2008
20. County Staff Report, dated September 18, 2008
21. Affidavit of Posting, dated September 10, 2008
22. Hubbard SCUP and Critical Area Variance PowerPoint presentation slides, dated September 25, 2008

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

1. William Hubbard (Applicant), requests approval of a shoreline substantial development permit (SSDP), conditional use permit (CUP), and critical areas variance to construct a single-family residence within wetland and stream buffers on property located at 5560 Long Lake Road SE, on the east shore of Long Lake, in Port Orchard, Washington.¹ *Exhibit 4; Exhibit 6; Exhibit 20, Staff Report, page 3.*
2. Kitsap County (County) staff determined the SSDP, CUP, and variance applications to be complete on June 25, 2008. *Exhibit 12.* On August 5, 2008, County staff mailed notice of the application to owners of property within 400 feet of the property

¹ The property subject to the shoreline substantial development permit (SSDP), conditional use permit (CUP), and variance application is identified by Assessor's Tax Account Number 082302-2-018-2005. *Exhibit 6.* A legal description of the property is provided within the County staff report. *Exhibit 20, Staff Report, page 1.*

subject to the applications.² *Exhibit 15; Exhibit 16*. County staff mailed notice of the open record hearing associated with the application to owners of property within 400 feet of the subject property on September 8, 2008, and posted notice of the hearing on the subject property on September 10, 2008. *Exhibit 18; Exhibit 21*. Steve Heacock, County Planner, testified that County staff provided notice of the application and associated hearing in accord with County ordinances. *Testimony of Mr. Heacock*.

3. The County acted as lead agency and analyzed the environmental impact of the SSDP and CUP proposals as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW.³ The County determined that with conditions, the proposal would have no probable significant adverse environmental impact and issued a Determination of Nonsignificance (DNS) on September 10, 2008. Mr. Heacock testified that no DNS appeals were filed prior to the expiration of the appeal period on September 24, 2008. *Exhibit 19; Testimony of Mr. Heacock*.
4. The subject property is designated Rural Protection by the Kitsap County Comprehensive Plan. *Kitsap County Comprehensive Plan Land Use Map, Figure 2-1*. The designation is intended to allow low-density development in keeping with rural character and to protect significant environmental features, including visual, historic, and natural features; wildlife corridors; steep slopes; wetlands; streams; and adjacent critical areas. The designation is implemented by the County's Rural Protection zoning district, which promotes low-density development consistent with rural character and protects environmental features, with a maximum development density of one dwelling unit per 10 acres. *Kitsap County Comprehensive Plan, page 3 – 4 (December 2006)*.
5. The subject property is located within the County's Rural Protection zoning district. *Exhibit 13; Exhibit 20, Staff Report, page 2*. The district is intended "to protect and maintain Kitsap County rural residential character and environment and to provide for acreage home sites." *Kitsap County Code (KCC) 17.305.010*. Construction of a single-family detached dwelling is an allowed use within the Rural Protection zoning

² The County used the optional DNS process set forth in Washington Administrative Code (WAC) 197-11-355 to give combined notice of the applications and associated environmental determination. WAC 197-11-355(1) provides that if a county with an integrated project review process as set forth in RCW 36.70B.060 is lead agency for a proposal and has a reasonable basis for determining significant adverse environmental impacts are unlikely, it may use a single integrated comment period to obtain comments on the notice of application and the likely threshold determination for the proposal. *WAC 197-11-355(1)*.

³ Variance requests based on special circumstances applicable to the subject property such as size, shape, topography, location, or surroundings, are exempt from review under the State Environmental Policy Act (SEPA) if the request does not result in any change in land use or density. *Washington Administrative Code (WAC) 197-11-800(6)(b)*.

district. *KCC 17.381.040(E)*. Development on lots within the Rural Protection zoning district must include a 50-foot wide front yard setback, and a 20-foot wide side yard setback. *KCC 17.382.100*. The County staff report states that as proposed, the residence would meet front yard and side yard setback requirements of the Rural Protection zoning district. *Exhibit 20, Staff Report, page 3*.

6. The Washington Shoreline Management Act (SMA) prohibits substantial development⁴ on shorelines of the state without first obtaining a substantial development permit (SSDP). *RCW 90.58.140(2)*. “Shorelines of the state” include “shorelines of statewide significance,” which include shorelands associated with lakes of one thousand acres or more. *RCW 90.58.030(2)(c)*; *RCW 90.58.030(2)(e)(vi)*. “Shorelands” means those lands extending landward for 200-feet in all directions as measured on a horizontal plane from the OHWM. *RCW 90.58.030(2)(f)*; *KCC 22.12.010.76*. Whether or not a development constitutes a substantial development, a development must comply with Shoreline Management Act requirements and the Kitsap County Shoreline Management Master Program (SMP). *KCC 22.08.010*. Mr. Heacock testified that the proposed development meets the definition of substantial development under the SMA. *Testimony of Mr. Heacock*.
7. The Kitsap County Comprehensive Plan includes Kitsap County SMP goals and policies to protect sensitive shorelines from the negative impacts of development. *Kitsap County Comprehensive Plan, Section 9.4, Shoreline Management Master Program (SMP), page 9-3 (December 2006)*. SMP goals and policies concern conservation and resource protection; shoreline use; water quality; economic development; public access; recreation; history and culture; aesthetics; natural systems; and transportation. SMP Goal 1 and Goal 2 call for preservation of natural shoreline resources and shoreline conservation. SMP Goal 3 encourages diverse shoreline environments, including housing. SMP Goal 4 calls for protection and enhancement of inland lake water quality while allowing for compatible growth and development. SMP Goals 10 – 14 encourage species and habitat protection. *Kitsap County Comprehensive Plan, Section 9.4, SMP, pages 9-3 – 9-8*. Mr. Heacock testified that as proposed, the development would be consistent with Comprehensive Plan goals and policies. *Testimony of Mr. Heacock*.
8. The Kitsap County SMP establishes five shoreline environment designations: natural, conservancy, rural, semi-rural, and urban. The subject property is designated a conservancy shoreline environment. *Exhibit 14; Exhibit 20, Staff Report, page 2*.

⁴ Kitsap County Code (KCC) 22.12.010.87 defines “substantial development” as any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development that materially interferes with the normal public use of the water or shorelines of the state. *KCC 22.08.010; KCC 22.12.010.87*.

9. Residential development shall be consistent with the purpose and intent of the shoreline designation. *KCC 22.28.230.4*. The purpose of the conservancy environment is to protect, conserve, and manage existing natural resources and valuable historic and cultural areas; and to protect fish habitat, wildlife habitat, and environmentally sensitive areas. The intent of the conservancy environment is to protect, conserve, and maintain the existing character of the property, ensure a continuous flow of recreational benefits to the public, and to achieve sustained resource utilization. *KCC 22.16.060.a(1); KCC 22.16.060.a(2)*. Development in conservancy areas shall be limited to proposals that demonstrate preservation of environmentally sensitive features. *KCC 22.16.060.a(3)(c)*.
10. Construction of a single-family residence within the conservancy shoreline environment is permitted with a SSDP and a CUP. *KCC 22.28.230.3(c)*. The Applicant applied to the County for a SSDP concurrent with his CUP application. *Exhibit 6; Exhibit 20, Staff Report, page 1*.
11. Development on property designated a conservancy shoreline environment must maintain a 50-foot wide buffer from the shoreline, as measured from the OHWM, with an additional 15-foot wide building setback from the buffer. *KCC 19.300.310.B.2; KCC 19.300.315.A.1; KCC 19.300.315.A.2*. Buffers and setbacks shall remain as undisturbed natural vegetation areas except where the buffer can be enhanced to improve its function. *KCC 19.300.315.A.1*. Mr. Heacock testified that the proposed development would provide for a 50-foot wide buffer from the shoreline and 15-foot wide building setback. *Testimony of Mr. Heacock*.
12. The subject property is 1.1-acres in size, and contains wetlands within the west and north portion of the property. A Category II⁵ Depressional Wetland exists within the north portion of the property, which consists of an area of dense forest and shrubs. A Category II Lake-Fringe Wetland exists in the west portion of the property along the Long Lake shoreline, which consists of wetland trees and shrubs transitioning to emergent vegetation and open water. *Exhibit 8*.
13. The Category II Depressional Wetland located on site is associated with Curley Creek, located approximately 250-feet north of the subject property boundary, and

⁵ "Wetlands" are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. *KCC 19.150.685; KCC 19.200.210.A.1*. Category II wetlands are those regulated wetlands that score between 51-69 points out of 100 on the wetlands ratings system. *KCC 19.200.210.B.2*. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some wetland functions. *Chapter 19.800 KCC, Appendix A, Section B*.

with another perennial stream that drains into the wetland through a culvert under Long Lake Road SE. The culvert is located approximately 15-feet north of the property boundary. The Washington Department of Natural Resources (WDNR) has designated the streams as fish-bearing, or Type F Streams.⁶ *Exhibit 8.*

14. Type F streams are protected by a 150-foot wide buffer and additional 15-foot wide minimum building setback from the buffer. *KCC Table 19.300.315.*⁷ The Category II Depressional Wetland is protected by a 225-foot wide buffer with an additional 15-foot wide building setback from the buffer. The Category II Lake-Fringe Wetland is protected by a 110-foot wide buffer with an additional 15-foot wide building setback from the buffer. *KCC 19.200.220; Exhibit 8; Exhibit 20, Staff Report, pages 2 and 4.*
15. The County staff report states that the shoreline setback and critical area constraints applicable to the subject property do not allow sufficient buildable area for a moderately sized single-family residence and associated development. Mr. Heacock testified that as proposed, the project would avoid development in the shoreline buffer and associated building setback, but could not avoid development in the wetland and stream buffers. *Exhibit 20, Staff Report, page 3; Testimony of Mr. Heacock.*
16. The subject property is currently undeveloped, except for some cleared vegetation. The Applicant has maintained most of the property as open lawn, surrounded by red alder, willow, Douglas fir, and western red cedar trees. The property contains an existing driveway located approximately 50-feet east of the Long Lake shoreline. The driveway provides access to the subject property from Long Lake Road SE, which is located to the east of the existing driveway. The proposed residence would

⁶ "Streams" are those areas in Kitsap County where the surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. *KCC 19.150.635.* "Type F Streams" are those surface waters, which meet the criteria of the Washington Department of Natural Resources, WAC 222-16-030(2) as now or hereafter amended, as Type F Water. Type F streams contain habitat for salmonid fish, game fish and other anadromous fish. *Chapter 19.800 KCC, Appendix B, Section B.*

⁷ The purpose of Title 19 KCC is to identify and protect critical areas as required by the Growth Management Act of 1990. It is the goal of Kitsap County that the beneficial functions and values of critical areas be preserved, and potential dangers or public costs associated with the inappropriate use of such areas be minimized by reasonable regulation of uses within, adjacent to or directly affecting such areas, for the benefit of present and future generations. The intent of Title 19 KCC is to conserve and protect environmental factors that add to quality of life; identify critical areas and their environmental functions and values; protect critical areas and their functions and values; preserve wetland habitat, water quality, and water quantity functions; guide development proposals to the most environmentally suitable and stable portion of a development site; and when mitigation is required, pursue restoration and enhancement of previously-impacted critical areas and their buffers. *KCC 19.100.105.*