



## **KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

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LARRY KEETON, DIRECTOR

# **STAFF REPORT**

## **RECOMMENDATION TO THE HEARING EXAMINER**

**Report Date:** April 4, 2007

**Appeal Submittal Date:** February 13, 2007

**Hearing Date:** April 12, 2007

**Staff Planner:** David Greetham

**Project Name:** Kasnick Stream Buffer Reduction

**Type of Action:** Appeal of Type II Administrative Decision to Reduce Stream Buffer

### **Summary of Appeal:**

Manfred Tempelmayr, as the designated project representative, has filed an appeal of a Type II decision by the Department of Community Development to approve a 50% reduction to the required 150 foot stream buffer on a .98-acre parcel owned by Patrick Kasnick. The stream, referred to as the south fork of Johnson Creek, is classified as "Type F" by the Washington Department of Natural Resources. Kitsap County DCD approved the buffer reduction pursuant to KCC 19.300.315.4

**Land Use File No.:** 07 44977

**Tax Account Number:** 222601-2-102-2002

### **Project Location:**

The subject parcel is located west of and adjacent to Viking Way, approximately 200 feet north of Brite Star Lane, Poulsbo, North Kitsap County.

### **Appellant:**

Manfred Tempelmayr, 18788 Viking Way NW, Poulsbo, WA 998370, for appellant parties Paul E. Steenberg & Janet Wold; Mary L. Harper; Julie & Bob Bergum; Molly & John Lee; and Joan Hett.

### **Parcel Owner:**

Patrick Kasnick  
P.O. Box 681  
Poulsbo, WA 98370

### **Project History:**

In October 2006, realtor Mark Larson contacted the Department of Community Development to request assistance in determining appropriate requirements for placement of a single-family residence and associated drainfield on a vacant .99-acre parcel. The parcel abuts Viking Way to the east, a Type F tributary to Johnson Creek to

the south, a private road easement to the north, and a single-family residential parcel to the west. The narrow, east-west parcel slopes gently from north to south, with a 10-15 foot high bank abutting the stream near the southerly lot line. The parcel is generally forested with mature conifer and alder, with the exception of the northwest lot corner which has been maintained as a mowed grassy area. The 150-foot Type F stream buffer encompasses the majority of the parcel. While it is not certain that the reach of stream on the subject parcel is accessible to fish, it contains the necessary habitat to support fish should man-made blockages be removed both up and downstream. After it passes under Viking Way the stream contributes directly to Johnson Creek, a recognized high value salmon stream that feeds into Liberty Bay.

During the initial field meeting it was determined that a 50% stream buffer reduction – from 150 feet down to 75 feet - would accommodate the property owner's goal of future approval of one single-family residence on the parcel, consistent with the Rural Residential zoning designation. KCC 19.300.315.4 allows for such buffer reductions as follows:

***Provision for Decreasing Buffer.*** *In lieu of going through the formal variance process, an administrative reduction to buffer widths, except for urban, conservancy and natural shorelines, may be granted subject to the requirements of this section. Where an applicant demonstrates pursuant to the variance criteria that buffer widths cannot be met, a habitat management plan (HMP) will be required that shall meet the requirements as described in Chapter 19.700 (Special Reports). The department may decrease the buffer if, after consultation with the Washington State Department of Fish and Wildlife, and review of the HMP, the department determines that conditions are sufficient to protect the affected fish and wildlife habitat conservation area. **The department may reduce the buffer width by up to fifty percent for construction of a single-family dwelling or up to twenty-five percent for all other development, but the buffer shall not be less than twenty-five feet.** (Bold Added.) Administrative buffer reductions may be allowed for rural, semi-rural shoreline environments and lakes less than 20 acres where a vacant parcel has a common property line with two or more lots which abut the ordinary high water line and which are developed with structures. In these cases, the standard buffer may be reduced to the greater of 50 feet or the average of the standard buffer and setbacks of the structures on the adjacent properties. All other reductions of greater than twenty-five percent for single-family dwellings will be a Type II decision and require notification (see Chapter 19.800, Appendix F). Granting of a reduced buffer shall be the minimum necessary for the permitted use. When applicable, the order of sequence for buffer reductions shall be as follows:*

- i. Use of buffer averaging, maintaining one hundred percent of the buffer area under the standard buffer requirement;*
- ii. Reduction of the overall buffer area by no more than twenty-five percent of the area required under the standard buffer requirement;*
- iii. Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;*
- iv. Use of alternative on-site wastewater systems in order to minimize site clearing;*
- v. Infiltration of stormwater where soils permit; and*
- vi. Retention of native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.*

Lot owner Patrick Kasnick proceeded to apply for a Type II administrative buffer reduction on October 18, 2006 (Exhibit 3), proposing to place residence in the existing cleared grassy area (see Exhibit 28 for photo of existing conditions). Mr. Kasnick had also retained a professional septic designer to begin the Building Site Application (BSA) process with the Kitsap Health District, including the draft BSA with the application. The Health District subsequently approved a revised BSA on March 23, 2007 (Exhibit 24). The approved BSA would allow for house and drainfield placement in the northwest corner of the parcel, at the greatest possible distance from the stream.

Staff determined that the proposal met the requirements specified at KCC 19.300.315.4, above. Although the buildable area is limited, the residence is proposed in the only cleared, maintained area of the parcel, which also is the area with the greatest stream setback. A Notice of Application (Exhibit 5) was circulated for a 14-day public and agency comment period, generating several comments in opposition to the proposal. Comments generally expressed concern for potential impacts to Johnson Creek and the on-site tributary stream. Following consideration of comments received, staff determined that the proposal continued to satisfy the requirements for a 50% buffer reduction as specified in the KCC. A Notice of Decision to approve the request was issued with conditions on January 30, 2007 (Exhibit 15). A timely appeal of the Notice of Decision was submitted on February 13, 2007 (Exhibit 18). The appeal generally expresses opposition to approval of development on the subject parcel, due to potential impacts to Johnson Creek and the on-site tributary.

Following receipt of the appeal and the accepted BSA from Health, staff conducted an additional site visit to confirm the proposed house and drainfield locations relative to the stream. Extensive field measurements were taken to ensure that the parcel could support construction of a single-family residence while still providing for a minimum 75-foot non-clearing buffer. It was determined that the house and drainfield could be placed outside the buffer, in compliance with the conditions of approval. Pursuant to KCC 19.300.315.9, a minor intrusion of 7.5 feet was approved for the southeast house corner into the normally required 15-foot construction setback from the buffer edge. The reduction was based on the observation that no native vegetation within the buffer would be impacted with the minor intrusion, and that the minimum 75-foot buffer could easily be maintained. Field measurements indicate that the 15-foot construction setback can easily be met or exceeded for the remainder of the house, due to the angle of the stream.

The primary aspects of the appeal are listed in the table below, followed by relevant code and the Department response.

**Issues raised by appellants, relevant County or State code, and the department's response are summarized in the following table:**

Issues raised by appellants:	Relevant Code:	Department Response:
<p>1. <i>Property Background: based on Assessor’s records, Kitsap County has assessed the property at a low value since at least 1988. The County should not approve an application to build after collecting taxes based on a “highly doubtful” building site.</i></p>	<p>NA</p>	<p>Clarification was requested from the County Assessor’s office regarding this issue. See e-mail dated 1/26/06 from Denise Anderson, Kitsap County Assessor's Office (Exhibit 14). In summary, septic technology changes over time allow for increased buildability. The land use drives the value, rather than the value driving the land use.</p>
<p>2. <i>The application does not meet the six variance criteria set forth in KCC 19.100.135.</i></p>	<p>KCC 19.100.135</p>	<p>The buffer reduction application form (Exhibit 3) lists variance criteria that do not reflect later revisions to KCC 19.100.135. Although advised by the Prosecuting Attorney that the applicant is only responsible to meet the criteria listed on the application form provided, staff determined that the application meets all variance criteria in either case. Appellants do not provide substantive evidence that the variance criteria have not been satisfied. Analysis of the more restrictive criteria set forth in KCC 19.100.135 follows:</p> <p>Variance Criteria:</p> <ol style="list-style-type: none"> <li>1. <i>Because of special circumstances applicable to the subject property, including size, shape, or topography, the strict application of this title is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this ordinance shall not be the sole basis for the granting of a variance.</i></li> </ol> <p>Due to the property size and shape, the strict application of the 150-foot stream buffer would deprive the property of rights and privileges enjoyed by surrounding residential property owners.</p>

		<p>2. <i>The special circumstances referred to in subsection (1) above are not the result of the actions of the current or previous owner.</i></p> <p>When the underlying parcel was subdivided in the 1970s, the critical areas ordinance did not exist. As such, the subject parcel was legally conforming to the regulations in effect at the time.</p> <p>3. <i>The granting of the variance will not result in substantial detrimental impacts to the critical area, public welfare or injurious to the property or improvements in the vicinity and area in which the property is situated or contrary to the goals, policies and purpose of this title.</i></p> <p>Extensive field review leads staff to the conclusion that a single-family residence would not result in substantial detrimental impacts. The building site was previously cleared and the majority of native vegetation will be retained on site, including extensive mature forest cover. Additionally, the HMP will provide for native vegetation enhancement in the vicinity of the residence.</p> <p>4. <i>The granting of the variance is the minimum necessary to accommodate the permitted use.</i></p> <p>Single-family residential development is the primary permitted use in the Rural Residential zone. The applicant has proposed a modest sized residence in the portion of the parcel that requires minimal vegetation removal and provides for the greatest possible stream setback.</p> <p>5. <i>No other practicable or reasonable alternative exists. (See Definitions, Chapter 19.150.)</i></p>
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<p>3. <i>Septic System Application (BSA) issues.</i></p>	<p>NA</p>	<p>Appellants raise concerns with the BSA regarding a) inaccurate slope mapping, b) boggy areas, and c) encroachment of the reserve drainfield into the 15 foot construction setback along the buffer edge.</p> <p>a) Slopes: slopes within the buffer average approximately 20% in grade, with the exception of a 10-15 foot high stream bank, which exceeds 60% in grade. The house and drainfield are proposed in an area of very moderate slope, indicated to be 3-5% in grade on the BSA that was accepted and approved by the Health District (Exhibit 24).</p> <p>b) Boggy Areas: the site is generally well drained, with the exception of typical seepage along the steeper portions of the stream bank some distance south of the proposed primary and reserve drainfields. The Health District has accepted the BSA, and did not indicate any concerns with regard to</p>

		<p>seepage. None was noted near on-site drainfield areas or the residence.</p> <p>c) Drainfield encroachment into the 15 foot construction setback: drainfields may be constructed adjacent to a non-clearing buffer. KCC 19.300.315.9 specifies a 15-foot <i>building or impervious surface</i> setback from the buffer edge. Drainfields do not qualify as buildings or impervious surfaces, thus can be constructed along a buffer edge. It should be noted that the primary drainfield is proposed adjacent to the access easement, providing for the greatest feasible setback from the stream.</p>
<p>4. <i>Technical Errors.</i></p>	<p>NA</p>	<p>Appellants raise concerns over technical errors on the site plan, including drainfield encroachment into the 15-foot building and impervious surface setback (see item 3, above), and whether the site plan measurements are correct.</p> <p>Kitsap County staff met the applicant and project representative on-site March 28, 2007 in order to re-reconfirm field measurements. The minimum 75-foot stream buffer was established in the field, and has been accordingly marked with signage. The house and drainfield would not encroach into the 75-foot buffer, and only the southeast house corner would require a minor intrusion into the 15-foot construction setback. All measurements were taken from the ordinary high water mark (OHM) of the stream. (See Exhibit 28 for site photos with buffer markings and house location).</p>
<p>5. <i>Inadequate Appeal Time.</i></p>	<p><i>KCC Title 21, Land Use</i></p>	<p>Appellants contend that they were denied the opportunity to prepare for the appeal</p>

	<p><i>Procedures</i></p>	<p>due to the lack of a Habitat Management Plan (HMP), errors in the BSA, and mischaracterization of the on-site stream.</p> <p>Although the conditions of approval in the Notice of Decision formed the basic HMP (Exhibit 15), the applicant has since provided a more detailed HMP based on recommendations made during the March 28, 2007 site meeting (Exhibit 27). Staff has reviewed and approved the HMP. Copies of the accepted BSA and HMP were forwarded to appellants upon their receipt by the county, approximately two weeks prior to the public hearing.</p> <p>Regarding stream characterization, the Notice of Application mistakenly referred to the on-site stream as a direct tributary to Liberty Bay, when in fact it is a tributary to Johnson Creek. This was clarified on the Notice of Decision. The stream was accurately referred to as a "Type F" on both documents.</p>
<p>6. <i>Need for public hearing.</i></p>	<p><i>KCC 19.300.315.4</i></p>	<p>Appellants content that a public hearing is required because the buffer reduction exceeds 50%. Per the analysis above, staff have determined based on field measurements that the application conforms to the minimum 75-foot buffer requirement as allowed at KCC 19.300.315.4, and does not trigger a type III decision process with a public hearing (appeal hearing excepted).</p>
<p>7. <i>Need to re-notice neighbors with corrected Notice of Application.</i></p>	<p><i>KCC Title 21, Land Use Procedures</i></p>	<p>The draft BSA was in Health District review upon project application (Exhibit 1). The final revised BSA was approved by the Health District on March 23, 2007 (Exhibit 24). Each version of the BSA has indicated compliance with the minimum 75-foot stream buffer, as allowed under KCC 19.300.315.4. While site plans are typically revised through the review process, the underlying conditions of approval in the Notice of Decision have not changed, and the applicant must comply with such conditions. Additional information has</p>

		been forwarded to a spokesperson for appellants as received by the DCD.
8. \$200 appeal fee unreasonable.	<i>KCC Title 21, Land Use Procedures</i>	Appellants contend that the \$200 appeal fee should be returned due to DCD's failure to follow proper procedures before making a decision. However, appellants fail to state the procedural errors. As required for Type II administrative decisions, public notice and a comment and appeal period have been provided.

**Recommendation:**

Based on the above analysis, the Department recommends that the appeal be **DENIED**, and that the Kasnick stream buffer reduction be approved subject to compliance with KCC 19.300.315.4. and the conditions specified in the Type II Notice of Decision dated January 30, 2007.

cc: Appellant Parties; Manfred Tempelmayr, Paul E. Steenberg & Janet Wold, Mary L. Harper, Julie & Bob Bergum, Molly & John Lee, Joan Hett.  
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