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CITY OF TUMWATER  
DEVELOPMENT SERVICES

**CITY OF TUMWATER  
OFFICE OF THE HEARING EXAMINER  
REPORT AND DECISION**

**FILE NOS:** RUE #2-07

**APPLICANT:** Chris Bonds Construction LLC

**SUMMARY OF REQUEST:**

A request for a Reasonable Use Exception (RUE) to reduce a 100-foot wide wetland buffer associated with a Category II for the purpose of constructing one single-family home.

**LOCATION:**

The property on which the proposed home would be located is on the west side of Pioneer Street SW and north of Lynnwood Avenue SW (823 Pioneer Street SW) in Tumwater, Washington.

**DECISION OF THE EXAMINER:**

The request is approved, subject to conditions.

**PUBLIC HEARING:**

After reviewing the City of Tumwater Development Services report and viewing the site, the Examiner conducted a public hearing on the application on November 14, 2007.

## **FINDINGS, CONCLUSIONS AND DECISION:**

### **FINDINGS:**

1. Chris Bonds Construction LLC (hereinafter "applicant") is seeking a Reasonable Use Exception (RUE) to reduce a 100-foot wide wetland buffer associated with a Category II Wetland to 50 feet for the purpose of constructing one single-family home. The property on which the proposed home would be situated is located on the west side of Pioneer Street SW and north of Lynnwood Avenue SW (823 Pioneer Street SW) in Tumwater, Washington.<sup>1</sup>

2. The proposed single-family home would be located on the east portion of the lot with driveway access directly from Pioneer Street SW. Approximately 3,000 square feet of wetland buffer would be disturbed in order to accommodate the proposed home and associated improvements.

3. The subject site is a legal lot platted in 1947, is rectangular in shape with almost flat topography, and encompasses 10,454 square feet. A Category II Wetland partially occupies the west portion of the lot.

4. The afore-described wetland and its required buffer precludes development of the lot without the grant of the requested RUE.

5. Properties to the east across Pioneer Street SW are developed with single-family homes and an existing single-family home abuts on the north.

6. Necessary utilities and services to support the proposed residential development are either currently available to the site or can be reasonably extended to it.

7. The City's Comprehensive Plan locates the subject site on the south slope of the Tumwater Hill Neighborhood and applies a "Single-Family Residential Low Density, 4 to 7 dwelling units per acre" land use plan designation to this portion of Tumwater Hill. To implement this land use plan designation, the City has zoned the area Single-Family Low Density (SFL). The SFL zone permits single-family dwellings at 4 to 7 dwelling units per acre. The applicant's proposed use of the property conforms to both the City's Comprehensive Plan land use designation and zoning.

8. Conditional uses such as agriculture and cemeteries are authorized in the SFL zone; however, such uses are either unsuitable for the property, given its small size, or would not have reduced impacts when compared to those from construction of the proposed single-family home.

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<sup>1</sup> This applicant is also seeking a RUE (File No. RUE #1-07) to construct a single-family home on an adjoining lot (837 Pioneer Way SW).

9. The City has also applied an Aquifer Protection (AQP) Overlay Zone to the property. The proposed single-family use is not a restricted use under AQP regulations.

10. The undisputed evidence establishes that, if reasonable use of the property is to be permitted consistent with Comprehensive Plan and zoning requirements, impacts to the wetland buffer are unavoidable; there are no viable alternatives for development of the property that would have lesser impacts; and the proposed encroachment into the wetland buffers is the minimum necessary to allow reasonable development of the property.

11. To provide some compensation for unavoidable impacts to the wetland buffer, the applicant has agreed to provide enhancement to the wetland buffer consistent with a Wetland Buffering Enhancement Plan prepared by a professional wetland biology firm in accordance with *Tumwater Municipal Code (TMC) 16.28.220*.

12. In response to concerns regarding drainage from the wetland, the applicant commissioned the preparation of a drainage report, which makes a number of recommendations for conveying water from the wetland consistent with or better than past drainage flows. Exhibit 1 at Attachment J.

13. The requested RUE has been reviewed by a number of agencies. None object to approval of the RUE; however, some conditions have been recommended. Exhibit 1 at 8 and 9 and Attachments O through Q.

14. The applicant concurs in the conditions recommended and agrees to comply with the same.

15. Appearing at hearing in writing were several neighbors who expressed objections and concerns with the development, particularly in regard to drainage and flooding associated with the adjacent wetlands, especially after some site work was done on the subject site and adjoining lot. See *RUE #1-07*.

It was not shown by those presenting concerns that the recommendations contained in the drainage report (Exhibit 1 at Attachment J) did not constitute a reasonable response to the concerns raised. The applicant represented that he has discussed drainage and flooding concerns with the neighbors and that they have mutually agreed on a plan to address such issues.

One of the neighbors expressing concerns in regard to drainage and flooding withdrew her concerns after reviewing the Development Services report, which she concluded adequately addressed her concerns.

16. The report of the Development Services Department, designated as Exhibit 1, to the extent that it sets forth the issues, general findings of fact, applicable

policies and provisions and departmental recommendations of this matter, is incorporated herein by reference as though fully set forth.

17. A Notice of Application and public hearing was issued for the project on August 21, 2007 and distributed to property owners within 300 feet of the project site with a 14-day comment period that ended on September 4, 2007. The *SEPA* threshold determination was distributed to property owners within 300 feet of the proposal on September 28, 2007 for review and comment. The 14-day comment period for the *SEPA* determination expired on October 12, 2007, with the appeal period expiring on October 18, 2007. A Notice of Public Hearing notice was posted on site and distributed to surrounding property owners within 300 feet of the project on November 2, 2007. The notice was published in *The Olympian* newspaper on November 4, 2007.

18. In accordance with the *State Environmental Policy Act (SEPA)* of 1971, as amended, and Chapter 16.04 of the *TMC*, the Development Services Department reviewed an Environmental Checklist together with other available information. The Development Services Department determined that the proposal does not have a probable significant adverse impact on the environment. Accordingly, the responsible official prepared a Determination of Non-Significance (DNS). The DNS was issued on September 28, 2007 with a 14-day comment period that ended on October 12, 2007 and a 6-day appeal period which ended on October 18, 2007.

19. Any conclusion hereinafter stated which might be deemed to be a finding herein is hereby adopted as such.

**CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction in the matter.
2. The criteria for the review and approval of RUE's are set forth below:
  1. The application of this Title would deny all reasonable use of the property;
  2. No other reasonable use consistent with existing zoning of the property has less impact on the critical area;
  3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
  4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this Title; or its predecessor;

5. The proposal does not pose an unreasonable threat to public health, safety, or welfare on or off the development proposal site; and
6. The proposal is consistent with other applicable regulations and standards,

*TMC 16.28.190.*

3. Findings entered herein based on substantial and un rebutted evidence in the hearing record support a conclusion that, if the applicant's RUE application is conditioned as set forth herein, it would satisfy the set forth at *TMC 16.28.190* for the grant of RUE's.

4. Accordingly, the requested RUE should be granted, subject to the following conditions:

- A. The applicant shall submit a final wetland Buffer Enhancement and Planting Plan to the City for review and approval. The final wetland Buffer Enhancement and Planting Plan prepared by a professional wetland biology firm shall adhere to the requirements of *TMC 16.28.230*, and clearly specify the recommended mitigation measures. The mitigation measures shall be implemented prior to issuance of the Certificate of Occupancy for the home. Exhibit 1 at Attachment K.

Any mitigation measures that require maintenance by the property owner after the issuance of the Certificate of Occupancy for the home, shall be placed as a deed restriction on the subject property. This deed shall be recorded with the Thurston County Auditor's Office. A copy of the deed shall be submitted to the City of Tumwater prior to issuance of the Building Permit for the home or prior to a sale of the subject property, whichever occurs first.

- B. Prior to issuance of the Certificate of Occupancy for the home, signage identifying the on-site wetland shall be installed in accordance with *TMC 16.28.170.H.2*. Exhibit 1 at Attachment I.
- C. Temporary construction fencing shall be maintained to protect the wetland and its associated buffer. The fencing must be field-verified by Development Services staff prior to issuance of the Building Permit for the home.

- D. The mitigation measures outlined in the Drainage Report shall be implemented prior to issuance of the Certificate of Occupancy for the home. Exhibit 1 at Attachment J.
- E. All buildings on site shall be located at least 50 feet from the Category II Wetland.

5. Any finding hereinbefore stated which might be deemed a conclusion herein is hereby adopted as such.

From these Conclusions is made the following:

**DECISION:**

The request is hereby approved, subject to the conditions set forth in Conclusion 4 herein.

DATED this 28<sup>TH</sup> day of November 2007.

  
**RODNEY M. KERSLAKE**  
**HEARING EXAMINER**

## POST-DECISION PROCEDURES

Reconsideration: A party may request reconsideration by filing a written request with the Department of Development Services within five working days of the Examiner's written decision. The request must state the grounds therefore. The Examiner has ten working days to render a final decision. TMC 2.58.135.

Appeals: The Examiner's decision will become final and conclusive in fourteen days unless appealed to the Tumwater City Council. The appeal must be in writing and contain all grounds on which error is claimed. TMC 2.58.150. TMC 2.58.150 provides in part:

In cases where the examiner's jurisdictional authority is to render a decision (following an open record pre-decision hearing), the decision of the examiner shall be final and conclusive unless within fourteen days following rendering of such decision an appeal there from is filed with the Director of Development Services by the applicant, a department of the city, county, or other agency or a party of record defined in Section 2.58.140. Person not in attendance at the hearing but who submit written information prior to the hearing that becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.

The Examiner's decision that is timely appealed comes before the City Council within thirty days after the final day upon which an appeal may be filed. TMC 2.58.160 and 2.58.180 describe the time limits for appeals.