

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

S.J.C. COMMUNITY

SEP 11 2009

DEVELOPMENT & PLANNING

Applicants: Ron and Sarah Rech
14640 – 173rd Ave. NE
Woodinville, WA 98072

Owners: Brett and Sara Nesland, Chad and Wendy Nesland
Ron and Sarah Rech

Agent: Stephanie O’Day and Francine Shaw
Law Offices of Stephanie O’Day
P.O. Box 2112
Friday Harbor, WA 98250

File No: HE32-09 (09APL002)

Request: Appeal of denial of shoreline exemption (08XMP064)

Location: Across from 3499 Fisherman Bay Road
Lopez Island

Property No: 252712008

Summary of Proposal: Rech and partners appeal a denial of an exemption for a shoreline substantial development permit (SSDP) under file no. 08XMP064.

Land Use Designation: Rural Farm Forest

Public Hearing: After reviewing the report of the Community Development and Planning Department (CDPD) a public hearing which was originally scheduled for June 3, 2009 was continued to August 19, 2009.

Applicable Policies and Regulations: SJCC 18.50 Shoreline Master Program (SMP)
WAC 173-27-042
Ordinance 30-2008, SJCC 2.22.100 – HE Jurisdiction

Decision: See written order.

Findings of Fact

1. This is an appeal from an administrative determination relating to the property belonging to Mr. and Mrs. Rech and others (Rech). The property is located on Fisherman Bay adjacent to Fisherman Bay Road on Lopez Island.
2. On November 19, 2008 Rech submitted an application for a shoreline exemption. The request was to construct a 12-foot by 100-foot gravel driveway, a 10-foot by 20-foot wooden deck and a 10-foot by 30-foot gravel RV pad on the property.
3. The purpose of the project was to provide access and an available area for recreational use of the property.
4. On February 25, 2009 the then-director of CDPD, Ron Henrickson, denied the request for exemption.
5. On March 9, 2009 a timely appeal of that decision was filed.
6. The matter was scheduled for hearing on June 3, 2009. The hearing commenced on Lopez Island on that date. During appellants' opening statement it was revealed that the exemption request had been modified to withdraw the request for construction of a deck. Because the withdrawal of the request for a deck constituted a major revision in the appeal, the matter was remanded to the director for reconsideration without the proposed deck. The hearing examiner hearing was continued to August 19, 2009.
7. On June 25, 2009 Mr. Henrickson issued an administrative determination denying the exemption. A memorandum from the appellants dated July 10, 2009 was submitted and the hearing proceeded on August 19, 2009.
8. Appellants declined the opportunity to have the matter reviewed by current CDPD director Mark Thompkins.
9. The maximum exemption allowable by state law is currently \$5,718.
10. At the hearing Mr. Ron Fowler, an excavator operator doing business on Lopez Island since 1976 reiterated his 12/28/2008 estimate of \$5,169 for the gravel to install the approach, the driveway and a 20-foot by 30-foot gravel pad including labor. An additional bid from Black Family Enterprises was also submitted for a lesser amount. No testimony was offered by the county except for a December 29, 2008 e-mail from Public Works.
11. The purpose of the Rech proposal is recreational use of a single RV structure under the requirements of SJCC. No buildings of any kind are involved in this proposal or authorized by the exemption.

12. The weight of the evidence is that the installation of a 12-foot by 100-foot gravel driveway and a 20-foot by 30-foot gravel pad would not exceed the SSDP current exemption amount.
13. The evidence of the exemption does not include any cost of installing fill necessary to raise the driveway bed to create a proper grade, if required by Public Works.
14. On November 30, 2006 Public Works issued a Waiver of Road Right of Way Setback Requirement. The waiver reduced the setback distance of 45 feet from the center line of Fisherman Bay Road to a 30 foot right of way setback.
15. The 2006 road right of way setback waiver was granted under the code provision that allows waiver when shoreline and road setbacks combine to “make it impossible to build a structure” on a particular parcel. At the time the right of way setback requirement was granted Mr. and Mrs. Rech intended to build a single family residence on the property. That single family residence proposal is not possible at this time. Public Works has not reviewed the 2006 waiver for the current proposal of recreational use and RV placement on the property. It is uncertain whether the waiver of setback applies under these facts.
16. As part of the 2006 waiver Public Works required the building of a “steel guard rail system with wood posts”. Additional requirements for the guard rail are set forth in a January 21, 2009 e-mail from John Van Lund of Public Works.
17. If any guard rail is required by Public Works as part of this recreation project, the cost would exceed the maximum allowable for a SSDP exemption.
18. The evidence is unclear whether any clearing or grading is necessary to prepare the ground for the driveway and pad gravel.
19. Any conclusion herein which may be deemed a finding is hereby adopted as such.

Conclusions of Law

1. The Hearing Examiner has jurisdiction over the persons and portions of the subject matter of this proceeding.
2. The standards and requirements for this recreational use request are covered by SJCC 18.50.320. Under the definitions contained in SJCC there is no structure involved in this proposal.
3. There is no residence involved in this proposal therefore the provisions of SJCC 18.50.330 do not apply.

4. Jurisdiction over this subject matter involves the decision of the CDPD Director. Ordinance 30-2008, SJCC 2.22.100. There is no jurisdiction for a hearing examiner to review the decisions and determinations of the Public Works Department. Therefore the decision as to whether a guard rail is required and the extent of fill and grade for the driveway is not covered by this decision and is not reviewable by a hearing examiner.
5. The decision as to whether a clearing and grading permit under SJCC 18.50.060(A) is required has not been determined and is not properly a part of this appeal.
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

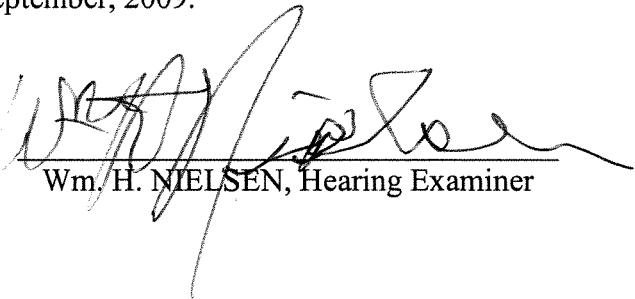
Decision

The limits of this decision are very precise and specific. Under the evidence presented the cost of installing a 12-foot by 100-foot gravel driveway and a 20-foot by 30-foot gravel RV pad is less than the maximum allowable to allow an exemption for a SSDP.

This decision does not cover the cost of any additional requirements imposed by Department of Public Works. Any additional costs associated with requirements imposed by Public Works and/or by a clearing and grading permit that exceed \$500 will disallow the SSDP exemption and require a shoreline substantial development permit.

This decision does not cover whether a clearing and grading permit is required and if it must be issued.

DATED this 11th day of September, 2009.


Wm. H. NIELSEN, Hearing Examiner

Appeal

Any appeal shall be to Superior Court pursuant to the Land Use Petition Act, Chapter 36.70 RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section 3.70.