



**HEARING EXAMINER
MEETING MINUTES – September 1, 2005**

CALL TO ORDER:

The September 1, 2005 meeting was convened by the Hearing Examiner, Ron McConnell, at 7:01 p.m. Tony Leavitt and Jeremy McMahan represented the Department of Planning and Community Development.

PUBLIC HEARING: Applicant: Charles Rosinski, Applicant for Reasonable Use Permit at the 9500 block of Slater Avenue NE, File No. ZONO4-00016.

Mr. Leavitt gave a PowerPoint presentation and reviewed the proposal in question and the process for review. He exhibited a map showing the site plan under review. The application is for approval of a reasonable use permit to allow construction of one single-family residence within a Type 1 wetland buffer, to impact approximately 3,600 square feet.

Mr. Leavitt summarized events leading to tonight's hearing and reviewed Chapter 90 of the wetlands regulations, Drainage Basin Regulations. He said the primary purpose of wetland regulations is to achieve a goal of no net loss of wetland function, among other purposes. He reviewed Goals NE-1 and NE-2 of the Comprehensive Plan which speak to protection and management of natural systems and environments. Mr. Leavitt said that Kirkland Zoning Code (KZC) 90.140 sets forth Determination Criteria and Consideration Criteria for the decision maker in these matters.

The following criterion denying reasonable use of the land was cited:

The land use and environment regulations which prevent reasonable use of the property were in effect at the time of purchase of the property by the applicant.

It was noted that the existing Chapter 90 regulations were adopted in April of 2002 and Mr. Rosinski purchased the property in July 2004 for \$22,000, according to King County records.

After review of the above criteria and facts of Mr. Rosinski's application, Staff concluded that:

- The applicant purchased the property after adoption of the current regulations.
- The applicant certified that the property was not suitable for building structures ("unbuildable") and the price he paid reflects this fact.
- Staff assumes that the conditions on the property have not changed and that the property is still unbuildable.

Staff Recommendation:

Based on the information presented, Staff concludes that the proposed reasonable use application should be denied based on the fact that the applicant knew the property was unbuildable when he purchased the property.

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Staff also recognizes that, if the Hearing Examiner adopts different findings and conclusions recommending approval of this application, Staff would recommend adoption of the conditions set forth in Attachment “3” of Advisory Report dated August 25, 2005 be adopted.

Mr. McConnell marked the Advisory Report as Exhibit “A” and the PowerPoint presentation as Exhibit “B.” Mr. Leavitt advised Mr. McConnell that no additional public comments have been received since Staff’s August 25th report was sent out.

Mr. McConnell received a five-page letter with 27 pages of attachments from Mr. Rosinski’s which Mr. McConnell marked Exhibit “C”.

Applicant, Mr. Charles Rosinski, P.O. Box 5000-139, Duvall WA 98019, and 45520 SR 2, Gold Bar, spoke the history of the real estate purchase and his dealings with the City. Mr. Rosinski said that purchase of the subject property was part of a deal involving purchase of another property from Mr. Gosney in Gold Bar, in July 2000. He knew subject property was unbuildable due to no sewer being on the property but purchased it as a storage area for his panels as the property was centrally located for his purposes. In December 2002 Mr. Rosinski states he began talking with City staff and submitted an application for a buffer modification which eventually was rejected by the City. Mr. Rosinski feels that the essential criteria for reasonable use have been met. Additionally he feels that purchase of the property was made prior to April 2002.

Applicant’s attorney Darrell Mitsunaga, 1500 114th Avenue SE, Bellevue, spoke. He submitted a letter dated September 1, 2005, entered as Exhibit “D”. Mr. Mitsunaga reviewed provisions of KZC 90 and feels that there is no issue with the subject property relating to the Code. He said what Mr. Rosinski proposes will enhance the property with additional trees, maintenance, plants, soils, etc. He said the dispute has to do with provisions of the Code that speak to what should be considered in making a determination of reasonable use. The issues are:

- whether or not the ability to derive reasonable use is a result of the applicant’s conduct, and
- whether or not these environmental land use regulations were in place at the time of purchase.

Mr. Mitsunaga feels that both of these issues must be considered together. Additionally, he feels that it is not mandated that the City or Hearing Examiner deny reasonable use, even if the applicant fails to meet these two criteria. He feels the City misunderstood the timing of the purchase of the subject property.

Mr. McConnell invited public comment.

1. **Maxine Keesling**, 15241 NE 153rd Street, Woodinville, owns lots 1, 2, and 3 in the subject area. She requests copies of all reports in this matter.

2. **Gwen Anderson**, 9252 Slater Avenue NE, Kirkland states she was surprised that Mr. Rosinski was unaware of the fact that wetland buffers existed as, when she purchased a lot in the area she was told clearly about the planting, pruning, and other restrictions on the property. She says the subject property is under water much of the year and she has offered to purchase the property from Mr. Rosinski to preserve its natural state. She opposes the Reasonable Use Permit application.
3. **Alison Showalter**, 9252 Slater Avenue NE, Kirkland was made well aware of restrictions to the property when she bought a nearby lot, that it is part of the wetlands. She states the property is under water four to five months of the year. She opposes the Reasonable Use Permit application.

Mr. Rosinski said that he has no plans to develop the wetland; what he proposes will be better for the lake. They are not in the high water area.

Mr. Leavitt clarified that the wetland buffer is measured from the wetland edge and has nothing to do with the floodplain. Wetland determinations are based on soil and water content, not the location of the floodplain.

Mr. McMahan requested of the Hearing Examiner that staff be given two weeks to look over the additional materials submitted this evening and submit a response by September 15th. The applicant was given an additional two weeks to submit a response to staff's comments. Mr. McConnell set September 29 as the response deadline for City and Applicant. The hearing will remain open until that date.

Mr. Leavitt stated that all parties of record will receive a copy of all information and correspondence.

ADJOURNMENT:

Hearing no further testimony, the Hearing Examiner declared the hearing closed at 7:50 p.m.

Jeremy McMahan, Planning Supervisor
Department of Planning and Community Development

Recording Secretary: Marlene Eisele, City of Kirkland