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**THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON**

IN RE:

HE-23-PL-014

**STEVE and HEATHER PECK, PECK
FAMILY REV TRUST, Applicant**

**FINDINGS, CONCLUSIONS, AND
DECISION**

830 Briar Road

**USE2023-0017 / Conditional Use Permit
for an Over-sized Single-Family
Residence**

**SHARON RICE
HEARING EXAMINER**

SUMMARY OF DECISION

The requested conditional use permit to construct a 6,280 square foot single-family residence at 830 Briar Road, Bellingham, Washington is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Brad Ingram, Synthesis Design, on behalf of Steve and Heather Peck, Peck Family Rev Trust (Applicant) requested a conditional use permit (CUP) to construct a 6,280 square foot single-family residence with attached two-car garage at 830 Briar Road, Bellingham, Washington.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on November 29, 2023. The record was held open two business days to allow for public comment, with additional days for responses by the parties. No post-hearing comments were submitted, and the record closed on December 1, 2023. No in-person site visit was conducted, but the Examiner viewed the property on Google Maps.

Findings, Conclusions, and Decision

Page 1 of 15

H:/DATA/HEARING EXAMINER/DECISIONS/Peck 830 Briar Road CUP Decision

**OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399**

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Testimony:

At the hearing the following individuals presented testimony under oath:

- Taylor Webb, City of Bellingham Planner II
- Brad Ingram, Synthesis Group, Applicant Representative
- Curtis Krahm, Applicant Representative
- Dean Longwell

Exhibits:

At the open record hearing, the following exhibits were admitted in the record:

Exhibit 1 Planning and Community Development Department Staff Report including the following attachments:

- A1 Application for Conditional Use Permit and Applicant Responses to CUP Criteria (USE2023-0017)
- A2 Site Plan, Floor Plans, Building Elevations
- A3 CUP Criteria Narrative and View Analysis
- B. Pre-application Neighborhood Meeting Notice (PRE2023-0077)
- C. Notice of Incomplete Application (NOIC) and Request for Information (RFI)
- D. Shoreline Exemption application and mailing list (SHR2023-0022)¹
- E. Pre-application Waiver Request (PRE2023-0103)
- F. Preliminary Stormwater Plan
- G. Email correspondence with Public Works
- H. Notice of Complete Application (NOCA)
- I. Notice of Application (NOA) and Public Hearing
- J. Certificate of Posting
- K. Zoning Table

¹ Of note, the title given to this exhibit in the staff report was “Shoreline Exemption Authorization”, but no approval was provided with the application.

1 L. Clearing Permit application and Tree Risk Assessment for previous tree
2 removal (CAP2021-0032)²

3 M. Madrona Pointe North Short Plat (AF No. 2050200731)

4 N. Covenants, Conditions, Restrictions and Easements for Madrona Pointe
5 North and Madrona Pointe Sout Short Plats (No. 2050200733)

6 O. Madrona Pointe Shoreline Permit (SHR2003-00001)

7 P. Public Comment:

8 1. Jonathan Franklin email, dated July 6, 2023

9 2. Dean Longwell email, dated November 20, 2023 and letters, dated
10 November 23, 2023 and November 28, 2023 with attached written
11 testimony and exhibits (A-H and J):

12 a. Legal Lot Determination Requirements

13 b. Summary and Washington Supreme Court case, Laurer v. Pierce
14 County, 173 Wn.2d 242 (2011)

15 c. Binding Covenant Disclosure Example

16 d. City emails related to Binding Covenant Enforcement

17 e. City Council Requires Consideration of Covenants and Deeded
18 Restrictions

19 f. Understanding Covenant Setback Benefits

20 g. Single-Family Site Plan Checklist Submittal Requirements

21 h. Lack of Tree Plan Problem & WDFW Approval

22 j. ADU Code Errors & Omissions (including BMC 20.10.036 and
23 HB 1337)

24 Exhibit 2 Applicant's Presentation Slides

25 After considering the testimony and exhibits submitted, the Hearing Examiner enters
26 the following findings and conclusions:
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29 ² Again, the approved clearing permit was not provided; the provided exhibit is the application.

FINDINGS

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1. Brad Ingram of Synthesis Design, on behalf of Steve and Heather Peck and the Peck Family Rev Trust (Applicant), requested a conditional use permit (CUP) to construct a 6,280 square foot single-family residence with a two-car garage at 830 Briar Road, Bellingham, Washington.³ The total square footage stated includes the attached garage. *Exhibits 1, 1.A1, 1.A2, and 1.A3.*
 2. The Bellingham Municipal Code (BMC) requires approval of CUP to authorize construction (or remodel) resulting in a single-family residence larger than 5,500 square feet. *BMC 20.30.030.B(15); BMC 20.16.020.M(4)(a); Exhibit 1.*
 3. The subject parcel is approximately 26,625 square feet in area and currently vacant. Surrounding properties are developed with single-family residences in a mixture of architectural styles. Abutting properties to the northeast and southwest are developed with residences exceeding 5,500 square feet in area. *Exhibits 1, 1.A1, and 1.A2.*
 4. The subject property is in Area 7 of the Edgemoor Neighborhood. It is zoned Residential, Single, requiring a 20,000 square foot minimum detached lot size, and is subject to a “view” special condition. *BMC 20.00.060; Exhibits 1 and 1.K.* The purpose and intent of the Residential, Single use type are as follows:

The residential single (RS) general use type is primarily intended to accommodate families desiring to live within neighborhoods consisting of individual dwelling units or townhouses in low density environments.

[The Residential, Single zoning] regulations have been adopted to provide flexibility in the arrangement of a main building upon a building site in order to allow efficient and capable design, assure necessary light and air, and to encourage the compatible development of neighborhoods while conserving and enhancing the value of land and the important physical characteristics within the RS areas.

BMC 20.30.020.
 5. The Comprehensive Plan designation of the subject property is Residential Single, Low Density. One of the goals of the Comprehensive Plan is to “ensure that Bellingham has a sufficient quantity and variety of housing types and densities to accommodate projected growth and promote other community

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³ The legal description of the property is: Lot 1 Madrona Pointe North Short Plat as Rec AF 2050200731 – subj to Conservation Esmt Rec AF 2050200732. *Exhibit 1.*

1 goals.” *Housing Chapter Goal H-1; Exhibit 1.* Staff submitted that the proposed
2 residence would be an additional unit available in the City’s luxury housing
3 supply. Further, the Edgemoor Neighborhood Plan contains language for Area 7
4 on maintaining the exceptional natural qualities of properties. The proposal
5 would satisfy this goal through compliance with the conservation easement and
6 tree retention requirements of the plat, described in more detail in the findings
7 that follow. *Exhibit 1.*

6 6. Planning Staff submitted that several conditional use permits authorizing single-
7 family residences exceeding 5,500 square feet have been approved in the
8 vicinity, including the following:

- 9 • 826 Briar Road / HE-05-PL-038 / CUP2005-00007
- 10 • 834 Briar Road / HE-18-PL-029 / USE2018-0019
- 11 • 745 Cross Street / HE-04-PL-031 / CUP2004-00006
- 12 • 732 Fieldston Road / HE-00-PL-019 / CUP2000-00026

13 *Exhibit 1.*

14 7. The subject property is located within the Urban Conservancy – Marine
15 shoreline designation. The Applicant requested and obtained City approval of
16 an exemption from shoreline substantial development permit requirements.
17 BMC 22.05.020.B.1.g exempts “construction on shorelands ... of a single-
18 family residence for their own use or for the use of their family, which residence
19 does not exceed a height of 35 feet above average grade level, and which meets
20 all city requirements.” *BMC 22.05.020.B.1.g.* The proposed residence would be
21 28 feet tall as measured by the height definition contained in the Shoreline
22 Master Program. *BMC 22.10.010.A(61).* The City conditionally approved the
23 shoreline exemption on November 1, 2023 (SHR2023-0022). *Exhibits 1 and*
24 *1.D; Taylor Webb Testimony.*

25 8. The subject property is Lot 1 of the Madrona Pointe North Short Plat, a
26 subdivision located above Bellingham Bay. A conservation easement dedicated
27 by the plat encumbers the southwest portion of the property. The purpose of the
28 conservation easement is to retain existing vegetation lying within 100 feet of
29 regulated marine wetlands or the top of bank, consistent with the shoreline
30 substantial development permit that was issued for the subdivision on June 24,
2003. No clearing or grading is permitted within the easement except for hazard
tree removal. The proposed residence would be set back at least 30 feet from
the easement. *Exhibits 1, 1.A2, 1.M, and 1.O.*

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9. In addition to the conservation easement, approval of the subdivision that created the subject property was conditioned on the following requirements applicable to Lot 1 relating to clearing and vegetation:

Clearing and Vegetation Removal

Clearing and vegetation removal for development of each individual lot shall only occur in connection with the development of each lot on a case by case basis after the location and orientation of the residence proposed for construction or site preparation begins ...

Permanent Leave Trees

Permanent leave trees required pursuant to the Washington Department of Fish and Wildlife’s Eagle Management Plan are shown on the map. With the written approval of WDFW, other trees of sufficient height and size may be substituted for the permanent leave trees shown on the plat map.

Exhibits 1 and 1.M. The map depicts that there are five leave trees in the developable portion of the site outside of the conservation easement. *Exhibit 1.M.*

10. Two of the designated leave trees are within the footprint of the proposed residence and are proposed for removal. Two additional leave trees are close to, but outside of, the building footprint, and the Applicant proposes to retain them if possible. Planning Staff submitted that WDFW approval is not required to substitute the trees because bald eagles are no longer a listed species, and the WDFW no longer asserts jurisdiction over leave tree substitutions. Planning Staff consulted the United State Fish and Wildlife Service (USFWS) management recommendations for bald eagles and determined that the project site is more than the recommended 660 feet from nesting sites and 1,000 feet for roosting sites. The City approved substitution of the trees as part of the shoreline exemption decision (SHR2023-0022). The conditions of shoreline exemption approval require the Applicant to substitute other trees of similar species and size and indicate the substituted trees on a tree retention plan. *Exhibits 1 and 1.A2; Taylor Webb Testimony.*

11. The proposed residence would have three levels. Utilizing building height definition number 2 established in BMC 20.08.020, the height of the proposed residence would be approximately 16.5 feet, which is under the 20-foot height limit for a single-family residence under definition No. 2. *Exhibits 1 and 1.A2; BMC 20.30.040.E.*

12. The proposed residence would meet or exceed the minimum setback requirements of BMC Table 20.30.040. The residence would be set back 50 feet

1 from the centerline of Briar Road, 155.8 feet from the rear property line, and 9.2
2 feet from the nearest side property line. The building coverage would be 3,728
3 square feet, allowing for more than 30% of the lot to be preserved as open space
consistent with BMC 20.30.040.D. *Exhibit 1.A2.*

- 4 13. As noted above, development in Area 7 of the Edgemoor Neighborhood is
5 subject to a “view” special condition. The zoning code imposes the following
6 review criteria for single-family residences equal to or larger than 5,500 square
7 feet:

8 “In neighborhood areas with a “view” special condition or other locations
9 which have views of lakes, the bay or mountains, the applicant shall
10 provide an analysis of the anticipated impacts on views from adjacent
11 properties that may be affected by construction of the proposed residence
12 or addition. The hearing examiner must find that the proposal will not
13 cause significant adverse impacts on views from other properties that are
14 due to the size or design of the building and which could be reduced by an
15 alternative design.”

16 *BMC 20.16.020.M(4).*

- 17 14. The Applicant submitted the required view analysis, which demonstrated that
18 the proposed construction would not adversely affect views from adjacent
19 properties. Due to the slope of the property, only the uppermost of the three
20 levels proposed would be visible from the street or from the residences on the
21 opposite side of the street, which are at a higher elevation. No public comment
22 was received suggesting that views would be adversely affected. *Exhibits 1,*
23 *1.A2, 1.A3, and 2; Brad Ingram Testimony.*

- 24 15. An engineered stormwater management plan is required for the project because
25 new impervious surfaces would exceed 5,000 square feet. The Applicant has
26 submitted a preliminary stormwater site plan, which has been accepted by the
27 Public Works Department. The final plan would be reviewed for consistency
28 with BMC 15.42 at the time of building permit review. *Exhibits 1, 1.F, and 1.G.*

- 29 16. Access to the subject property is from Briar Road, an improved 50-foot right-of-
30 way. The subject property, which is within a developed neighborhood, is
already served by residential public facilities and utilities. *Exhibit 1.*

17. Off-street parking would be provided in a proposed attached garage (two spaces)
and on a paved parking court. *Exhibits 1 and 1.A2.*

- 1 18. The use is not expected to have a traffic impact exceeding that typical of a
2 single-family residence. Traffic impact fees would be paid pursuant to BMC
3 Title 19. *Exhibit 1.*
- 4 19. The City Fire Marshal reviewed the application and determined that an NFPA
5 13D sprinkler system would be required if minimum fire flow requirements
6 cannot be met. The recommended conditions of approval require fire flow
7 modeling prior to building permit approval, with a sprinkler system required if
8 fire flow is not at least 2,250 gallons per minute at 20 psi. The Fire Marshal also
9 determined that the existing roadways are suitable for fire department access.
10 *Exhibit 1.*
- 11 20. To minimize neighborhood impacts from construction, Planning Staff
12 recommended conditions of approval that would limit construction hours to 7:00
13 am to 7:00 pm and require approval of a phasing and construction staging plan.
14 The phasing and construction staging plan would be made available to the public
15 on request. *Exhibit 1.*
- 16 21. The subject property contains steep slopes that are classified as geologically
17 hazardous areas pursuant to BMC 16.55. The project would avoid the steepest
18 slopes on site (75 to 100% inclination), which are located within the
19 conservation easement. Compliance with the applicable criteria for
20 development within a geologically hazardous area would be determined during
21 building permit review. Based on preliminary review, Staff has determined that
22 the project could meet the requirements. *Exhibits 1 and 1.A2.*
- 23 22. Pursuant to BMC 16.20.090.A and Washington Administrative Code (WAC)
24 197-11-800(6)(a), the project is exempt from State Environmental Policy Act
25 (SEPA) review. *Exhibit 1.*
- 26 23. A pre-application neighborhood meeting was conducted virtually for the project
27 on August 14, 2023. Although members of the public attended the meeting,
28 there were no questions or comments at that time. Pre-application written
29 comment was submitted in support of the project. *Exhibits 1, 1.B, and 1.P.*
- 30 24. The CUP application was submitted on August 23, 2023 and determined to be
complete on November 6, 2023. The City approved the Applicant's request for a
waiver from the pre-application conference requirement applicable to projects
with more than 5,000 square feet of impervious surfaces because substantial
conversations between the Applicant and Staff had already taken place, and

1 because the Applicant agreed to submit a fully engineered stormwater
2 management plan. *Exhibits 1, 1.E, and 1.H.*

3 25. Notice of the application and public hearing was issued on November 6, 2023
4 and was posted on site on November 14, 2023 in accordance with BMC
5 21.10.200. *Exhibits 1, 1.I, and 1.J.*

6 26. In public comment in the application, an argument was made that the project
7 application should be considered not to be complete without a title report,
8 because private covenants might exist that restrict development, as the
9 commenter has found to be true on his and other parcels in the neighborhood.
10 However, the commenter did not identify any specific private covenants that
11 might apply in this case. The member of the public was concerned (and asked
12 the Hearing Examiner in this decision to do something about the fact) that the
13 City has a practice of issuing land use and building permit approvals without
14 undertaking to determine whether there are any private covenants on deeds that
15 could affect the developer's rights. Based on personal experience, the
16 commenter contended that this practice puts the onus on neighbors to research
17 and defend their own restrictive covenants and necessarily requires a neighbor
18 who opposes a project to have to incur the expense of going to court to defend
19 said private deed restrictions. The commenter submitted that the duty to perform
20 this due diligence would be more appropriately borne by the City. *Exhibit 1.P.2;*
21 *Dean Longwell Testimony.* With respect to the merits of the CUP application,
22 the commenter submitted that the tree retention plan is inadequate (and the
23 application therefore incomplete) because root protection zones are not shown
24 and that, due to eagle roosting in the area, the Applicant must obtain approval
25 from WDFW to remove trees. *Exhibit 1.P.2.h.*

26 27. Planning Staff addressed all known private restrictions on the property (those
27 established in the underlying plat) in the staff report at section V(B) of the staff
28 report and addressed tree retention in sections V and VI of the staff report. No
29 other private covenants or deed restrictions are known to exist for the subject
30 property. The City continues to maintain that it lacks legal authority to enforce
private covenants. After hearing public testimony, the City maintained its
recommendation of approval subject to the conditions set forth in the Staff
Report. *Exhibit 1; Taylor Webb Testimony.* At hearing, Applicant
representatives waived objection to the recommended conditions of approval.
Testimony of Brad Ingram and Curtis Krahm.

1 **CONCLUSIONS**

2 **Jurisdiction**

3 The Hearing Examiner is granted authority to hold hearings and make decisions on
4 conditional use permit applications pursuant to BMC 20.16.010.D.

5 **Conditional Use Permit Criteria for Review**

6 Pursuant to BMC 20.16.010.B, conditional use permits for conditional uses allowed in
7 the general use type may be granted by the hearing examiner if the record demonstrates
8 the following:

- 9 1. The proposed use will promote the health, safety, and general welfare of the
10 community.
- 11 2. The proposed use will satisfy the purpose and intent of the general use type in
12 which it is located.
- 13 3. The proposed use will not be detrimental to the surrounding neighborhood.

14 Pursuant to BMC 20.16.010.C, in applying the standards set forth in subsection B
15 (above), the hearing examiner shall consider the following factors as to whether the
16 proposed use will:

- 17 1. Be harmonious with the general policies and specific objectives of the
18 comprehensive plan.
- 19 2. Enable the continued orderly and reasonable use of adjacent properties by
20 providing a means for expansion of public roads, utilities, and services.
- 21 3. Be designed so as to be compatible with the essential character of the
22 neighborhood.
- 23 4. Be adequately served by public facilities and utilities including drainage
24 provisions.
- 25 5. Not create excessive vehicular congestion on neighborhood collector or
26 residential access streets.
- 27 6. Not create a hazard to life, limb, or property resulting from the proposed use, or
28 by the structures used therefor, or by the inaccessibility of the property or
29 structures thereon.
- 30 7. Not create influences substantially detrimental to neighboring uses. "Influences"
shall include, but not necessarily be limited to: noise, odor, smoke, light,
electrical interference, and/or mechanical vibrations.

- 1 8. Not result in the destruction, loss, or damage to any natural, scenic, or historic
2 feature of major consequence.

3 **Other Applicable Regulations**

4 Pursuant to BMC 20.16.020.L.3.c, the following special requirements apply:

5 In neighborhood areas with a “view” special condition or other locations
6 which have views of lakes, the bay or mountains, the applicant shall provide
7 an analysis of the anticipated impacts on views from adjacent properties that
8 may be affected by construction of the proposed residence or addition. The
9 hearing examiner must find that the proposal will not cause significant
adverse impacts on views from other properties that are due to the size or
design of the building and which could be reduced by an alternative design.

10 **Conclusions Based on Findings**

11 1. Addressing the CUP criteria established in BMC 20.16.010.B, the following
12 conclusions are entered.

- 13 a. As conditioned, the proposed residence would promote the health, safety, and
14 general welfare of the community. It would be consistent with the development
15 pattern of the surrounding neighborhood and would be consistent with zoning
16 standards relating to height, setbacks, and lot coverage. The lot is more than a
17 third larger than the minimum required lot size for residential development.
18 Public utilities are available to the site. Scenic views would not be adversely
19 affected due to the site slopes and the proposed manner of building the residence
into the slope. The conditions of approval would ensure that fire sprinklers are
provided if fire flow does not meet minimum standards. *Findings 3, 4, 5, 6, 11,*
12, 13, 14, 15, 16, and 19.
- 20 b. The use is consistent with the purpose and intent of the Residential, Single use
21 type in that it maintains the low-density environment and the important physical
22 characteristics of the site. Applicable height, setback, and open space standards
would be satisfied. *Findings 3, 4, 7, 8, 9, 10, 11, 12, 13, and 14.*
- 23 c. As conditioned, the use would not be detrimental to the surrounding
24 neighborhood. Development of the subject property with a single-family
25 residence would result in impacts that are similar to those generated by existing
26 residences. The larger house size is consistent with development in the vicinity.
27 Scenic views would be maintained, because the house would be built into the
28 slope and would appear one story as seen from the street and the houses across
the street. Traffic mitigation would be paid. All removed leave trees would be
replaced in the final tree preservation and planting plan. The conditions of

1 approval restrict construction hours to mitigate short-term impacts. *Findings 3,*
2 *6, 14, 18, and 20.*

3 2. Addressing the CUP criteria established in BMC 20.16.010.C, the following
4 conclusions are entered.

- 5 a. Development of a single-family residential use on the residentially zoned and
6 platted lot would be consistent with the Bellingham Comprehensive Plan,
7 including Housing Chapter Goal H-1. By ensuring all development is outside of
8 the conservation easement and by conserving or substituting leave trees outside
9 of the easement, the project is consistent with the Edgemoor Neighborhood
10 Plan. *Findings 3, 4, 5, 8, 9, and 10.*
- 11 b. The proposed residence and associated infrastructure would enable the
12 continued use of adjacent properties. The subject property is within a developed
13 neighborhood that is already served by roads and utilities. An engineered
14 stormwater plan would be reviewed prior to building permit issuance and
15 stormwater runoff from all new impervious surfaces would be required to be
16 managed consistent with BMC Chapter 15.42. *Findings 3, 15, and 16.*
- 17 c. The record demonstrates that the proposal, as conditioned, would be compatible
18 with the essential character of the existing neighborhood. The character of the
19 neighborhood includes residences exceeding 5,500 square feet in area. Views
20 would not be adversely affected. *Findings 3, 6, 11, and 14.*
- 21 d. The project would be adequately served by public facilities and utilities,
22 including drainage. The final drainage plan would be reviewed at the time of
23 building permit review. *Findings 15 and 16.*
- 24 e. The project would not create excessive vehicular congestion. Impacts from the
25 project's vehicle trips would be mitigated through payment of fees. Off-street
26 parking would be provided. *Findings 17 and 18.*
- 27 f. As conditioned, the proposal would not create a hazard to life, limb, or property.
28 The conditions of approval incorporate the fire flow and sprinkler requirements
29 identified by the Fire Marshal. Compliance with the City's geological hazard
30 criteria would be confirmed during building permit review. *Findings 19 and 21.*
- g. As conditioned, the use would not create influences substantially detrimental to
neighboring uses. The proposed single-family residential use would generate
similar impacts as those created by surrounding residences. The conditions of
approval limit construction hours and require a construction staging plan.
Findings 3 and 20.
- h. As conditioned, the use would not result in the destruction, loss, or damage to
any natural, scenic, or historic feature of major consequence. No development

1 would occur within the conservation easement. The conditions of this decision
2 incorporate the conditions of the approved shoreline exemption permit. Some of
3 the leave trees would be substituted as allowed by the language of the plat
4 restriction. Although in public comment it was noted that the Applicant did not
5 provide a letter of approval from WDFW, it is no longer possible to obtain such
6 letter, and the City's decision to consider the USFWS management
7 recommendations was reasonable. *Findings 8, 9, 10, and 26.*

8 3. Addressing the view-related special requirements established at BMC
9 20.16.020.M(4)(c), the following conclusion is entered.

10 a. The record contains the required view analysis submitted by the Applicant,
11 which demonstrates that the proposal would not cause significant adverse
12 impacts on views from other properties. *Findings 11, 13, and 14.*

13 4. Addressing issues raised in public comment relating to private covenants and
14 complete application status (see Finding 26), the City Council lacks jurisdiction
15 to enforce private covenants and therefore cannot confer such authority on the
16 Examiner. The Hearing Examiner only has those powers conferred by the City
17 Council. *See Chaussee v. Snohomish County Council.* 689 P.2d 1084, 38
18 Wn.App. 630 (1984). The Bellingham Hearing Examiner has been granted
19 jurisdiction to hear and decide CUPs based on the criteria set forth in the code,
20 but does not have jurisdiction to interpret and enforce private covenants, nor to
21 make a complete application determination, nor to alter adopted code provisions
22 that establish what is required for complete application. Per BMC 21.10.190,
23 the decision to deem an application complete is an administrative decision - not
24 a Hearing Examiner decision - and in the instant case, the decision of application
25 completeness was not appealed. In addition, it should be noted that the BMC
26 specifically grants the Planning Director - not the Hearing Examiner -
27 jurisdiction to specify application requirements. *BMC 21.10.190.A.* In this case
28 the CUP application checklist (see Exhibit 1.A1) does not include a title report
29 as an application requirement. The state law cited in public comment - RCW
30 19.27.095 - relates to building permit applications; it also does not require a title
report. Per the Bellingham Municipal Code, the Hearing Examiner does not
have authority to decide building permit applications. In the instant case, the
Examiner's jurisdiction is limited to the determination of whether the record as a
whole demonstrates compliance with CUP criteria for approval. Based on the
evidence submitted, the proposal satisfies all criteria for approval as detailed in
Conclusions 1 through 3 above.

DECISION

1 Based on the preceding findings and conclusions, the requested CUP to construct a
2 6,280 square foot single family residence is **APPROVED** subject to the following
3 conditions:

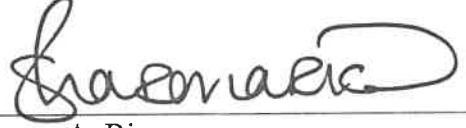
- 4 1. The project shall comply with the approval conditions of the associated
5 Shoreline Exemption Permit (SHR2023-0022).
- 6 2. Construction hours shall be limited to between 7:00 am and 7:00 pm.
7
- 8 3. A phasing and construction staging plan shall be submitted and reviewed with
9 the building permit to determine sequence of construction activities, parking of
10 construction vehicles, and construction staging locations for equipment and
11 materials. Said plan shall be available to the public upon request.
- 12 4. The total floor area of the single-family residence shall not exceed
13 approximately 6,280 square feet (sf). Staff may administratively consider and
14 approve one-time non-accumulative additions, modifications, or changes in
15 accordance with BMC 20.16.010.I.
- 16 5. Compliance with all conditions of the governing plat shall be conditions of
17 building permit issuance unless otherwise determined by City staff or individual
18 departments. On-site stormwater mitigation shall be reviewed under the
19 building permit for compliance with the plat consistent with BMC 15.42.
- 20 6. Fire flow modeling is required to meet a minimum fire flow of 2,250 gallons per
21 minutes at 20psi or a 13D sprinkler system shall be required as a condition prior
22 to building permit approval.
- 23 7. The Applicant shall obtain all necessary permits for the proposal, and final
24 inspection on these permits prior to any occupancy. The permits shall be
25 generally consistent with the information and materials submitted with the CUP
26 (as specified in Exhibit A2), except as modified by the approval, and all other
27 conditions contained in the approval.
- 28 8. The CUP approval does not excuse the Applicant from compliance with any
29 other federal, state, or local statutes, ordinances or regulations that may be
30 applicable to this project.

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9. In the event the Owner/Applicant fails to comply with the terms of the conditions herein, the permit(s) may be rescinded. All work must be completed according to these permits.

DECIDED December 18, 2023.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice