



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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Stephen K. Causseaux, Jr.

PORT ORCHARD WASHINGTON 98366-4682
(360) 337-7181 FAX (360) 337-4925
kashcraf@co.kitsap.wa.us

OFFICE OF THE HEARING EXAMINER

KITSAP COUNTY

REPORT AND DECISION

CASE NO.:

080508-033
SHERBURN & DAWSON DOCK
SHORELINE SUBSTANTIAL
DEVELOPMENT PERMIT

APPLICANTS:

Bill Sherburn
P.O. Box 258
Indianola, WA 98342

Michael Dawson
P.O. Box 1823
Lynnwood, WA 98046

**PROJECT
REPRESENTATIVE:**

William Palmer
W.M. Palmer Consultants
P.O. Box 6
Port Orchard, WA 98366

SUMMARY OF REQUEST:

The applicant has applied for a Kitsap County Shoreline Substantial Development Permit to construct a new joint-use fixed pier, ramp and float (dock) into Miller Bay, adjacent to Port Madison, Washington. The dock would serve as a joint-use moorage facility between two adjoining residences. The proposal includes installation of a 6 foot wide by 75 foot long wood pier supported on eight 10 inch diameter galvanized steel piles, a 4 foot wide by 40 foot long pivoting metal ramp and an 8 foot wide by 50 foot long concrete moorage float with a 5 foot wide by 5 foot long "T" section that would provide a landing for the ramp. The moorage float would be stabilized by four 10 inch diameter galvanized steel piles. Total length of the structure would be 100 feet. Both the moorage float and wood pier would have a 2 foot wide wood grate to allow light penetration. The length of the proposed

structure is the minimum necessary to provide for moorage and recreational access.

PROJECT LOCATION:

The project is to be located at 20767 Chief Sealth Drive, Indianola, Kitsap County, Commissioner District 1 (Section 16, Township 26N, Range 2E). The project site is situated on the Indian Bay plat, known locally as the “spit,” and is bounded to the north by Miller Bay and to the south by Port Madison Bay. The shoreline is developed with residential housing, private docks and private moorage floats. The two properties are located adjacent to the nearest intersection of Chief Sealth Drive NE and Chief Wahalchu Road.

SUMMARY OF DECISION:

Request granted, subject to conditions.

PUBLIC HEARING:

After reviewing Department of Community Development Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was conducted in the chambers of the Kitsap County Board of Commissioners on **May 8, 2008**.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
1	Pre-Application Meeting Request	No Date	3/27/07
2	Site Plan	3/8/07	3/27/07
3	JARPA Application	8/17/07	8/22/07
4	Notice of Incomplete Application	10/2/07	N/A
5	Affidavit of Publication – NOA – applicant	10/10/07	10/17/07
6	Notice of Complete Application	10/22/07	N/A
7	E-mail from David Greetham	10/22/07	10/22/07
8	Environmental (SEPA) Checklist	8/19/07	8/22/07
9	Letter from William Palmer WM Palmer Consultants	8/22/07	No Rec'd Date

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
10	Memo from Shawn Alire	12/17/07	N/A
11	LIS Report	1/9/08	1/9/08
12	GIS Aerial Photo	1/9/08	N/A
13	GIS Critical Areas Aerial Photo	1/9/08	N/A
14	GIS Building Limitations Map	1/9/08	N/A
15	GIS Zoning Map	1/9/08	N/A
16	GIS Shoreline Master Plan Environments Map	1/9/08	N/A
17	Notice of Application	1/10/08	N/A
18	Affidavit of Mailing – NOA	1/18/08	N/A
19	Mitigated Determination of Non-Significance	4/18/08	N/A
20	Notice of Public Hearing	4/21/08	N/A
21	Affidavit of Mailing – NPH	4/21/08	N/A
22	Affidavit of Posting	4/23/08	N/A
23	Staff Report	4/30/08	N/A
24	Power Point Presentation	5/8/08	5/8/08
25	Site Plan with attachments	3/8/07	5/8/08

LISA LEWIS appeared, presented the Department of Community Development Staff Report, and introduced Exhibits “1” through “24”. The applicants have reduced the length of the dock from 121 to 108 feet and the pier from 75 to 60 feet. The ramp and float will remain the same size to include the eight foot width. The site is located within the Rural Residential (RR) zone classification and the Semi-Rural Shoreline Environment. The responsible official issued a Mitigated Determination of Nonsignificance (MDNS) on April 18, 2008, and as of May 2, 2008, had received no appeals or comments. The red star on the aerial photo shows the orientation of the dock, but not the correct length. An eelgrass and macroalgae study was performed by Paul Dorn. Staff recommends approval subject to conditions.

WILLIAM PALMER appeared on behalf of the applicant and introduced Exhibit “25” which shows the proper position of the dock. Shortening of the pier reduces the intrusion to between 106 and 108 feet. The pier and float are grated to allow sunlight to pass through, which is not required by the code. However, it is a feature that Washington Department of Fish and Wildlife (WDFW) and the Corps want. They have submitted the application to both agencies for approval. They will probably utilize metal grating even though very little vegetation and algae is on the beach. All structures will have grating. The float will not ground out on the bottom as they have added stops for the float to rest on. The stops will suspend the float 2.5 feet above the beach. They will construct the float probably of wood as opposed to concrete and will utilize steel grating. The Corps may require a device to prevent the boats from resting on the beach as well. However, all other docks in the tidal

flat have boats resting on the beach. The dock will spring from a six foot high, rock bulkhead on Lot 13. The two owners will enter an agreement as to the cost, but he can ensure the County of the joint use status and a sharing of the cost. Both owners have 20 to 25 foot long boats.

MS. LEWIS reappeared and recommended a condition that the owners execute a joint use agreement prior to construction.

No one spoke further in this matter and so the Examiner took the request under advisement.

NOTE: A complete record of this hearing is available in the office of Kitsap County Department of Community Development.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. Appropriate notice was provided pursuant to the Kitsap County Code.
3. The Responsible SEPA Official issued a Mitigated Determination of Nonsignificance (MDNS) on April 18, 2008. The appeal deadline for the project proposal was May 2, 2008. No appeals were filed.
4. The applicants, Bill Sherburn and Michael Dawson, own abutting parcels of property located on the northeastern shoreline of Miller Bay in the Indianola area of unincorporated Kitsap County. The parcels are located east of the cul-de-sac intersection of Chief Sealath Drive and Chief Wahalchu Road. The Sherburn parcel to the north is improved with an exclusive, single family residential dwelling. The Dawson lot to the south is unimproved at present but proposed for improvement with a single family residential home.
5. The site plan (Exhibit "25") shows the pier, ramp, and float extending waterward from a six foot high bulkhead located on the Dawson parcel adjacent to the Sherburn parcel. The structure extends perpendicular to the shoreline, but because of the unusual shoreline configuration, will pass across virtually the entire frontage of the Dawson parcel. The parties have reduced the waterward extension of the structure to 108 feet by reducing the pier from 75 feet to 60 feet in length. The ramp will remain 40 feet in length and the float eight feet in width. The structure shows a 50 foot long "T" at the waterward end of the dock.

6. Both parcels are located within the Rural Residential (RR) designation of the Kitsap County Comprehensive Plan and the RR zone classification of the Kitsap County Code (KCC). Both the comprehensive plan and zoning code authorize single family residential homes as outright permitted uses in the RR environment. Both parcels are also located within the Semi-Rural Shoreline Environment of the Kitsap County Shoreline Management Master Program (SMMP). The SMMP is set forth in Title 22 KCC. Section 22.28.030 KCC authorizes piers and floating docks as permitted uses in the Semi-Rural Environment subject to acquisition of a shoreline substantial development permit.
7. Section 22.16.080(a) KCC provides that the purpose of the Semi-Rural Environment is to promote utilization of an area by multiple human uses on an intensity scale between that of the rural and urban environments. However, said section contemplates that certain aspects of the natural environment will remain. Miller Bay in the area of the sand spit is improved with small lot, single family residential development and numerous docks. The applicant's project fits with existing development and the Semi-Rural Environment.
8. Section 22.28.190 KCC sets forth the policies for piers and docks. The project satisfies policies set forth therein as the applicants propose a cooperative dock in the nature of a joint use facility. The 108 foot length will not reach mean lower low water, but is a common length in Miller Bay and will not extend beyond surrounding docks. The dock will provide an opportunity to access the water during significant periods of the day. The structure will not interfere with navigation or the public's use of the shoreline due to its length and adjacent docks in the area. The applicant must acquire an Hydraulics Project Approval (HPA) from the State Department of Fish and Wildlife (DFW). Such will ensure that construction of the dock will minimize possible adverse environmental impacts to include impacts on littoral drift, sand movement, water circulation, and fish and wildlife habitat. The support pilings should not impact littoral drift. The HPA will address construction materials and will impose conditions of approval regarding biodegradable materials and project design. The structure is compatible with the surrounding environment and existing land and water uses.
9. The structure satisfies the general regulations for docks set forth in KCC 22.28.190 which prefer multi-use piers and docks. The project will not create a hazard to navigation due to its length and also satisfies the eight foot maximum width requirement. DFW has not identified this area of Miller Bay as having a high environmental value for shellfish, fish life, or wildlife. The applicant submitted an Eelgrass and Macroalgae Habitat Survey performed by Dorn Salmon Enhancement Services dated June 25, 2006. The report found low tidal current velocities and no eelgrass or gracilaria at the site. The report also noted a low abundance of both fin fish and clams. The applicants propose the dock for marine recreational uses and the size and length of the facility is the minimum necessary. The dock design includes stops which will prevent the float from grounding on the tidelands at low

tide.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicants have shown that the request for a shoreline substantial development permit satisfies all criteria set forth in the SMMP and therefore should be approved subject to the following conditions:
 1. A Hydraulic Project Approval is required from WDFW prior to construction. And all conditions of the HPA shall be met.
 2. A building permit for the portion of the pier that connects to the land shall be required from Kitsap County DCD.
 3. In order to minimize visual impacts, hand-railing materials shall be painted or constructed of material in tones to blend with the background shoreline environment.
 4. Construction shall comply with all items described in the Joint Aquatic Resources Permit Application, except as amended through the final conditions of approval.
 5. Final approval of construction shall be subject to a site inspection by Kitsap County DCD shoreline permitting Staff.
 6. Upon final permit issuance, all construction must commence within two years and be complete within five years. A one time one-year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law.
 7. Prior to commencement of construction, the applicants will execute and provide to the County a joint use agreement satisfactory to DCD.
 8. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the Hearing Examiner and may require further and additional hearings.
 9. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such

laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for a shoreline substantial development permit to allow construction of a joint use pier, ramp, and floating dock consisting of a six foot wide, 60 foot long pier; four foot wide, 40 foot long, pivoting metal ramp; five foot wide, five foot long float section that provides a landing for the ramp; and an eight foot wide, 50 foot long "T" moorage float located adjacent to the property lines of at the applicants' parcels at 20767 Chief Sealh Drive NE, Indianola, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 17th day of June 2008.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this _____ day of _____, 2008, to the following:

APPLICANTS:

Bill Sherburn
P.O. Box 258
Indianola, WA 98342

Michael Dawson
P.O. Box 1823
Lynnwood, WA 98046

PROJECT REPRESENTATIVE:

William Palmer
W.M. Palmer Consultants
P.O. Box 6
Port Orchard, WA 98366

OTHERS:

Kitsap County Board of Commissioners
Kitsap County Department of Community Development
Kitsap County Department of Public Works
Kitsap County Prosecutor – Civil Division
Kitsap County Department of Parks and Recreation
Bremerton-Kitsap County Health Department
The Sun Newspaper

Pursuant to Kitsap County Code Section 21.04.120 and the Land Use Hearing Examiner Rules of Procedure, an OBJECTION to the Examiner's Decision may be filed, in this matter, in writing, with the Clerk of the Board of County Commissioners, on or before _____, 2008. Prior to the filing of an Objection, the objector shall pay the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) to the Department of Community Development.