



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
<http://www.kitsapgov.com/dcd/he/>

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

NOTICE OF HEARING EXAMINER DECISION

October 8, 2008

To: Interested Parties and Parties of Record

RE: Project Name: **Falconer Dock**
Applicant: **Norm & Connie Falconer**
15201 Central Valley Road
Poulsbo, WA 98370
Application: **North Kitsap County, Commissioner District 1**
Shoreline Substantial Development Permit
Case Number: **080911-069 (272601-1-010-2000) LIS#07 49891**

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. **ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON OCTOBER 22, 2008.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

The written appeal shall be made on or attached to an appeal form provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County:
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

**NOTICE OF HEARING EXAMINER DECISION – FALCONER DOCK – SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT**

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contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

The complete case file will be available for review at the Department of Community Development, Monday through Friday, except holidays, 8:15 a.m. to 4:00 p.m.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft
Clerk of the Examiner

Enclosure

See attached transmittal

BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY

RECEIVED

OCT - 8 2008

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

In the Matter of the Application of) No. 080911-069
)
Norm and Connie Falconer) Falconer Dock
)
)
)
For Approval of a Shoreline Substantial) FINDINGS, CONCLUSIONS,
Development Permit.) AND DECISION

Kitsap County submitted a request for clarification of the Falconer Dock SSDP Findings, Conclusions, and Decision (File No. 080911-069) on October 6, 2008. The request was to substitute "5718" for "2500" in Finding 6, page 4 of the Decision, and to substitute "Keyport" for "Keystone" in Finding 14, page 6 of the Decision. The Hearing Examiner has determined the requested substitutions are typographical in nature and would have no effect on the Findings, Conclusions, or Decision. The Hearing Examiner hereby issues revised Findings, Conclusions, and Decision in this matter, with revised Findings indicated by strikeout and insertion.

SUMMARY OF DECISION

A request for a Shoreline Substantial Development Permit to construct a single-use pier, ramp, and float structure, extending 150-foot waterward into Liberty Bay, at 16852 Scandia Lane NW, in north Kitsap County, Washington, is **APPROVED**, with conditions.

SUMMARY OF RECORD

Request:

Norm and Connie Falconer request a Shoreline Substantial Development Permit to construct a single-use pier, ramp, and float structure, extending 150-foot waterward into Liberty Bay, at 16852 Scandia Lane NW, in north Kitsap County, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on September 11, 2008.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Lisa Lewis, County Planner
Lori Snyder, Marine Surveys & Assessments, for the Applicant

Richard Shattuck, Attorney at Law, represented the Applicant at the open record hearing.

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Falconer Shoreline Substantial Development Permit (SSDP), No. 080911-069*

Exhibits:

The following exhibits were admitted into the record:

1. 2006 DOE Aerial Photograph, dated June 24, 2006
2. Proposed Pier Ramp and Float Plan, dated June 29, 2007
3. Owner/Applicant Agreement, Marine Floats, dated August 6, 2007
4. Proposed Site Plan, dated September 27, 2007
5. Pre-Application Meeting Request
6. Vicinity Map, dated September 27, 2007
7. Pre-Application Conference Confirmation Letter, dated September 28, 2007
8. GIS Shoreline Master Plan Environments, dated October 16, 2007
9. GIS Critical Areas Aerial Photograph, dated October 16, 2007
10. GIS Nearshore Aerial Photograph, dated October 16, 2007
11. GIS Critical Areas Topo Map, dated October 16, 2007
12. GIS Shoreline Map, dated October 16, 2007
13. GIS Building Limitations Map, dated October 16, 2007
14. Environmental (SEPA) Checklist, dated October 29, 2007
15. Affidavit of Publication, dated November 10, 2007
16. Joint Aquatic Resources Permit Application (JARPA) Application, dated December 12, 2007
17. Notice of Incomplete Application, dated January 25, 2008
18. Proposed Site Plan, dated February 4, 2008
19. Regional General Permit 6 Application, prepared by Marine Surveys & Assessments, dated February 8, 2008
20. Email message to Applicant's representative, sent March 24, 2008
21. Letter from J.F. Moriarty, Commander, U.S. Coast Guard and Chief, Waterways Management Branch, to Norm Falconer, dated March 25, 2008
22. Written Summary of Pre-Application Meeting, dated April 3, 2008
23. Letter from Chris M Waldbillig, Washington Department of Fish & Wildlife, to Wendell Stroud, dated April 24, 2008
24. Notice of Complete Application, dated May 12, 2008
25. Email message from Lori Snyder, Marine Floats, to Lisa Lewis, County Planner, sent May 21, 2008
26. Notice of Application, dated May 29, 2008
27. Affidavit of Mailing, Notice of Application, dated May 29, 2008
28. GIS Zoning Map, dated June 20, 2008
29. Memorandum from Shawn Alire, Development Engineering, to Lisa Lewis, County Planner, dated July 2, 2008
30. Mitigated Determination of Nonsignificance, dated August 25, 2008
31. Notice of Public Hearing, dated August 26, 2008
32. Affidavit of Mailing, Notice of Public Hearing, dated August 26, 2008
33. Email message from Lori Snyder, Marine Floats, to Lisa Lewis, County Planner, sent August 26, 2008
34. Affidavit of Posting, dated August 27, 2008

Findings, Conclusions, and Decision

Kitsap County Hearing Examiner

Falconer Shoreline Substantial Development Permit (SSDP), No. 080911-069

35. County Staff Report, dated September 4, 2008
36. Falconer Single-Use Moorage Facility Proposal PowerPoint presentation slides, dated September 11, 2008
37. Falconer's Shoreline Photograph
38. Proposed Site Plan & Adjacent Structures, dated August 27, 2008
39. Geological Report: Shoreline Erosion Hazard & Bulkhead Evaluation, prepared by GeoResources, LLC, dated May 20, 2008
40. Letter from Attorney Richard B. Shattuck to Jennie E. Eastman and to John & Sydney Whitaker, dated June 4, 2008, with attached responses (2)
41. Email message from Barbara Nightingale to Chuck McCoy, sent April 6, 2007

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

1. Norm and Connie Falconer (Applicant) request a Shoreline Substantial Development Permit (SSDP) to construct a single-use pier, ramp, and float structure, extending 150-foot waterward into Liberty Bay on Puget Sound, at 16852 Scandia Lane NW, north Kitsap County, Washington.¹ *Exhibit 16; Exhibit 35, Staff Report, page 1.*
2. Kitsap County (County) determined the SSDP application to be complete on May 12, 2008. *Exhibit 24.* On May 29, 2008, the County mailed notice of the application to owners of property within 400 feet of the property subject to the application.² *Exhibit 26; Exhibit 27.* The County mailed notice of the open record hearing associated with the application to owners of property within 400 feet of the subject property on August 26, 2008, and posted notice of the hearing on the subject property on August 27, 2008. *Exhibit 32; Exhibit 34.* Lisa Lewis, County Planner, testified that the County gave notice of the application and associated hearing in accord with County ordinances. *Testimony of Ms. Lewis.*
3. The County acted as lead agency and analyzed the environmental impact of the SSDP proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The County determined that with conditions, the proposal would have no

¹ The subject property is identified by Tax Assessor's Parcel Number 272601-1-010-2000. A legal description of the subject property is included within the Joint Aquatic Resources Permit Application (JARPA) submitted by the Applicant. *Exhibit 16.*

² The County used the optional DNS process set forth in Washington Administrative Code (WAC) 197-11-355 to give combined notice of the SSDP application and associated environmental determination. WAC 197-11-355(1) provides that if a county with an integrated project review process as set forth in RCW 36.70B.060 is lead agency for a proposal and has a reasonable basis for determining significant adverse environmental impacts are unlikely, it may use a single integrated comment period to obtain comments on the notice of application and the likely threshold determination for the proposal. *WAC 197-11-355(1).*

probable significant adverse environmental impact and issued a Mitigated Determination of Nonsignificance (MDNS) with three conditions on August 25, 2008. The three conditions to mitigate impacts require the Applicant to obtain a Hydraulic Project Approval (HPA) from the Washington Department of Fish & Wildlife (WDFW), include grating in the project to reduce overwater shading impacts, and comply with Kitsap County Code Section 22.28.190 regulations for piers and floating docks. Ms. Lewis testified that no MDNS appeals were filed prior to the expiration of the appeal period on September 8, 2008. *Exhibit 30; Testimony of Ms. Lewis.*

4. The subject property is designated Rural Residential by the Kitsap County Comprehensive Plan. *Kitsap County Comprehensive Plan Land Use Map, Figure 2-1.* The designation is intended to allow low-density residential development consistent with rural character, and primarily focuses on single-family dwellings. The designation is implemented by the County's Rural Residential zoning district, which promotes low-density residential development consistent with rural character, with a maximum development density of one dwelling unit per five acres. *Kitsap County Comprehensive Plan, page 3 – 4 (December 2006).*
5. The subject property is located within the County's Rural Residential zoning district. *Exhibit 28; Exhibit 35, Staff Report, page 2.* Any permissible use in the semi-rural environment shall harmonize, wherever possible, with pre-existing natural conditions; retain significant existing natural features; encourage active recreational facilities; and strive to maintain, preserve, or enhance natural shoreline characteristics. *Kitsap County Code (KCC) 22.16.080.c.*
6. KCC 22.12.010.87 defines "substantial development" as any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development that materially interferes with the normal public use of the water or shorelines of the state. *KCC 22.08.010; KCC 22.12.010.87.*³ Marine shorelines in Kitsap County designated as "shorelines of statewide significance" include areas of Puget Sound from the shoreline waterward from the line of extreme low tide. *KCC 22.12.010.79.* Whether or not a development constitutes a substantial development, a development must comply with Shoreline Management Act requirements and the Kitsap County Shoreline Management Master Program (SMP). *KCC 22.08.010.*

³ KCC 22.12.010.87 was last updated in 1999, and defines "substantial development" as any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development that materially interferes with the normal public use of the water or shorelines of the state. KCC 22.12.010.87. RCW 90.58.030(3)(e) defines "substantial development" as "any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state." RCW 90.58.030(3)(e) (RCW 90.58 030 last amended 2007).

7. All piers and docks must be in support of an existing or currently proposed allowable shoreline use that is in conformance with the provisions of the shoreline master program. *KCC 22.28.190.4.i*. Accessory structures such as docks, piers,⁴ and boathouses are permitted in the rear yards, shorelands, or tidelands of waterfront properties within the Rural Residential zoning district, subject to limitations set forth in *KCC 17.381.050.A.17*. *KCC 17.381.050.A.17*. *KCC 17.381.050.A.17* requires such accessory structures to meet all requirements of the Kitsap County SMP; requires the height of the deck of any dock to be no more than five feet above the ordinary high water line; requires the height of any boathouse to be limited to no more than 14 feet above the ordinary high water line; requires covered structures to abut or be placed upland of the ordinary high water line; and requires covered structures to be less than 25-feet wide or less than 25-percent of the lot width, whichever is more restrictive. *KCC 17.381.050.A.17*. The width of a fixed pier, dock or float shall not exceed eight feet. *KCC 22.28.190.4.e*.
8. *KCC 22.28.190* sets forth policies regarding the use of floating piers and docks within the County that encourage cooperative use of piers or docks, with the size and length of piers and docks limited to the minimum that provides the required service. According to *KCC 22.28.190*, piers and docks must minimize interference with navigation and public use of the shoreline, minimize conflict with established marine uses in the vicinity, minimize possible adverse environmental impact, and comply with WDFW design and materials standards. *KCC 22.28.190*. Individually owned, single-family residence piers and docks may be permitted where it can be demonstrated that a joint-use moorage facility is not feasible; multi-use and expansion of existing piers and docks is encouraged over creation of new piers and docks. *KCC 22.28.190.4.a*.
9. The Kitsap County Comprehensive Plan includes Kitsap County SMP goals and policies to protect sensitive shorelines from the negative impacts of development, including risks to ecology, property, and human health. *Kitsap County Comprehensive Plan, Section 9.4, Shoreline Management Master Program (SMP), page 9-3 (December 2006)*. SMP goals and policies concern conservation and resource protection; shoreline use; water quality; economic development; public access; recreation; history and culture; aesthetics; natural systems; and transportation. SMP Goal 1 and 2 call for preservation of natural shoreline resources and shoreline conservation. SMP Goal 3 encourages diverse shoreline environments, including housing. SMP Goal 6 provides for public shoreline access, and Goal 7 provides for a variety of water and shoreline related recreational opportunities for the public. SMP Goals 10 – 14 encourage species and habitat protection, including herring and smelt spawning areas and kelp and eelgrass beds. *Kitsap County Comprehensive Plan, Section 9.4, SMP, pages 9-3 – 9-8*.

⁴ *KCC 22.28.190* defines “pier” as a rigid structure built over water attached to the shore used as a landing place for marine transport or for recreational purposes. A floating dock is a structure floating upon the water and attached to the shore used as a landing place for marine transport or for recreational purposes. *KCC 22.28.190.1*.

10. The Kitsap County SMP also establishes five shoreline environment designations: natural, conservancy, rural, semi-rural, and urban. The subject property is designated as a Semi-Rural shoreline by the SMP. *Exhibit 8; Exhibit 35, Staff Report, page 2.* The intent of the semi-rural environment is to promote a multiple-use shoreline area in which the scale of uses fall between that of the rural and urban environments, with certain aspects of the natural environment retained in conjunction with permitted uses. *Kitsap County Comprehensive Plan, Section 9.4, SMP, pages 9-2 and 9-3; KCC 22.16.080.a.* The semi-rural environment features an environment modified by human activity with some rural character. The semi-rural environment contains primarily moderate residential uses at densities consistent with Comprehensive Plan rural and resource land designations. *KCC 22.12.010.72; KCC 22.16.080.b.*
11. The subject property slopes from Scandia Lane NW to the shoreline, containing a single-family residence, an established lawn, and coniferous trees before terminating in an existing rock bulkhead at the shoreline bluff, which contains conifers, deciduous trees and shrubs. The subject property is approximately 216-feet wide at its Puget Sound shoreline edge. Lori Snyder, Marine Surveys & Assessments, testified for the Applicant that the steep bank on the shoreline renders the beach unreachable from the existing residence. *Exhibit 35, Staff Report, page 2.*
12. The proposed single-use pier, ramp, and float structure would consist of a 96-foot long and four-foot wide fixed pier, a fully-grated aluminum ramp measuring three-feet wide by 36-feet long, and a float measuring 8-feet wide by 24-feet long. Overall, the structure would be 150-feet long, and would be constructed to extend from the shore at a point approximately 58-feet south of the subject property's northern boundary. The fixed pier would be supported by eight steel pilings. The fixed pier would be made of 30-percent functional grating. The float would be made of 51-percent functional grating. At high tide, the top of the proposed fixed pier would extend approximately six feet above the mean higher high water line (MHHWL). According to the Regional General Permit 6 application submitted by the Applicant to the U.S. Army Corps of Engineers, the elevation of the lowest end of the float would be 2.2 feet below sea level. The float would be installed perpendicular to the shoreline. The construction cost of the proposed structure would be approximately \$65,000. *Exhibit 19; Exhibit 35, Staff Report, page 1; Exhibit 38.*
13. The proposed structure would provide dock space for a 32-foot long by 10-foot wide watercraft. Ms. Snyder testified that the Applicant would use the proposed structure to access the beach within the subject property, and for marine recreation. *Exhibit 19; Testimony of Ms. Snyder.*
14. The geological report prepared for the subject property by GeoResources, LLC states that the subject property shoreline currently contains a tall, wooden dock station and remnants of an older timber and concrete bulkhead. Ms. Snyder testified that the existing facility is a remnant of an old dock and is not usable. Ms. Snyder also testified that there is no

Findings, Conclusions, and Decision

Kitsap County Hearing Examiner

Falconer Shoreline Substantial Development Permit (SSDP), No. 080911-069