

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Paul Blake  
13739 Rawlins Road  
Mount Vernon, WA 98273

**File No:** PL07-0225

**Request:** Shoreline Substantial Development and Variance Permit

**Location:** North Fork of Skagit River at 14293 Rawlins Road  
within a portion of Sec. 9, T33N, R3 E, W.M.

**Parcel No:** P15556

**Shoreline Designation:** Rural upland; Aquatic waterward of Ordinary High Water Mark

**Summary of Proposal:** To install a private single-user dock along the south bank of the river, consisting of an 8' by 200' float oriented along the course of the stream, and a 100 foot walkway and ramp providing access from the shore. The outboard edge of the float would be about 58 feet from the Ordinary High Water Mark. The float would be held in place by five steel pilings on the inboard side. An additional steel piling would be placed in the stream waterward of the upstream end of the float in order to attach a floating log there as a debris deflector.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on October 28, 2009.

**Decision:** The application is denied.

## **FINDINGS OF FACT**

1. Paul Blake seeks to install a private single-user dock on residential property on the North Fork of the Skagit River.

2. The dock would be located on the south side of the river below the North Fork bridge in an area that is tidally influenced. The dock would be placed on the water side of the dike or levee that parallels the stream. The opposite side of the river is also diked.

3. The site is Parcel No. P15556 located at 14293 Rawlins Road, within a portion of Sec. 9, T33N, R3E, W.M. The zoning designation is Agricultural-Natural Resource Lands (Ag-NRL). The shoreline designation of the stream bank is Rural. Waterward of the Ordinary High Water Mark (OHWM) the designation is Aquatic. This location is also a Shoreline of Statewide Significance.

4. The subject property is located within an A7 flood hazard zone. The base flood elevation is 13 feet MSL inside the levee and 8 feet MSL outside the levee.

5. The dock would be used to moor two large boats built by the applicant 25 to 28 years ago - the 66-foot Shanna Lea and the 58-foot Diana Jean. These boats have been moored at the Blake RV Resort since they were built, apparently without incident. The Resort is downstream from the proposed dock site.

6. Originally the boats were operated for commercial purposes, but they have not been used commercially for the last eight years. The applicant disclaims any intent to use the boats commercially after they are moored to the new dock. He is planning to sell the resort and wants to create a place on his property to put the boats. He hopes in this way to keep them for use by his children.

7. The project site is near the location of an old granary dock and some pilings from the now-derelict facility are still visible near shore in the river. The site is along a minor outside meander. There are trees on the bank below the dike at this location. The project would be built largely by barging materials up the river.

8. The proposal includes a 200' x 8' concrete float that would be oriented along the flow of the stream. The float would be held in place by five steel pilings on the inboard side. Because of its nearness to the shore, the inboard side would not be available for moorage. An additional steel piling would be installed in the stream waterward of the float at its upstream end. A floating log would be affixed to this piling and to the float to provide a debris deflector. The entire 200-foot outboard edge of the float would be approximately 58 feet waterward of the OHWM.

9. The float would be accessed by a 100-foot steel grated walkway and ramp. The ramp would rise and fall with the water level. The walkway portion would be fixed, resting on the top

of the dike at an 8' x 10' concrete landing area. The walkway and float will be elevated, held up by additional steel pilings.

10. The purpose of the dock is private moorage for the applicant and his family. There will be no fueling at the dock. There will be no live-aboards. No overhead wiring or plumbing is proposed. No provision has been made for any joint use of the installation.

11. A Fish and Wildlife Habitat Site Assessment, dated January 29, 2007, was prepared by North Cascade Consulting. The report identified a number of potential impacts resulting from the dock and recommended mitigation. The mitigation would consist of the following:

- Plant 200 shade tolerant conifers (hemlock, cedar and fir) approximately 10 feet apart in hardwood stand near project, as depicted on a planting plan.
- Plant 100 hemlock, cedar and fir approximately 8 feet apart waterward of the dike near Blake's Resort.
- Provide large woody debris (2 pieces for every tree removed) cabled in place along the blind slough downstream of the project area.
- Place a Protected Critical Area (PCA) easement on the property waterward of the dike.

A bald eagle management plan was signed in February 2007 with the Department of Fish and Wildlife.

12. A Biological Evaluation, dated April 2007, was prepared by Robert Gee. The project was determined not likely to adversely affect endangered or threatened species. The United States Army Corps of Engineers issued a Letter of Permission for the project on March 14, 2008.

13. A Hydraulic Project Approval for the project was issued by the Department of Fish and Wildlife on April 13, 2009.

14. Environmental review was performed under the State Environmental Policy Act (SEPA). As a result a Mitigated Determination of Non-Significance (MDNS) was issued on August 19, 2008. The MDNS was not appealed. It contained the following conditions:

- (1) The applicant shall comply with all applicable provisions of Title 14.24, the Skagit County Critical Areas Ordinance (CAO).
- (2) The subject proposal shall comply with the Skagit County Shoreline Management Master Program (SCC 14.26) and the Shoreline Management Act RCW 90.58.
- (3) The applicant shall strictly adhere to the project information (site diagram) submitted

for this proposal. If the applicant proposes any modification of the subject proposal, he shall request at a minimum, a permit revision from this office prior to the start of construction.

(4) The applicant shall perform all general construction measures as recommended in the Fish and Wildlife/Wetland report prepared by North Cascade Consulting and dated January 29, 2007.

(5) The applicant shall record a Protected Critical Area easement on the property waterward of the existing dike.

15. Appropriate notice of this application and of the hearing was provided as required by law. Five comment letters were received, all in opposition. Four of these were from residents of the opposite side of the river. The fifth was from Diking District No. 22 which maintains the dike on the subject property.

16. The neighbors across the river raised issues about the effects of the proposed dock on river flow, the accumulation of debris, the cumulative effect of other such docks along the river, water pollution, and aesthetics. They expressed a concern that the dock would redirect the force of river flow toward the opposite bank to the detriment of diking there. These same four testified at the hearing to the same effect. They also expressed skepticism about the asserted non-commercial nature of the dock use.

17. The Diking District Commissioners said that they are opposed to any construction of the dock until an examination of its effects on the hydrology of the North Fork of the Skagit River is undertaken.

18. The policies of the Skagit County Shoreline Master Program (SMP) for Piers and Docks provide, among other things, that use of existing facilities is encouraged, and that new docks should be community or joint use docks,

19. The proposed dock as a private, single-user facility does not served the policies designed to limit the proliferation of docks, exemplified by the preference for existing facilities and community or joint use docks.

20. There is no expert evidence in the record that resolves the question of what effect the proposed dock might have on river flows.

21. The SMP allows docks in Rural and Aquatic shoreline areas, subject to general regulations. These regulations limit private noncommercial docks to one per lot. Where, as here, there are no existing docks within 300 feet of the side property lines, the proposal must show "reasonable justification" to exceed 50 feet in length from the OHWM. Here the entire 200 foot expanse on the outboard side of the float will be beyond this 50 foot limit. Dock widths are

limited to 10 feet. If the distance between the OHWM and the waterward extent of the float is viewed as the length, then the width of the proposed dock is 200 feet.

22. The only justification for building a dock beyond the 50-foot length limit here is that the applicant would like to have a place on his own property to moor his large boats when he sells their present moorage. The applicant made no showing concerning whether other alternative moorage sites are available.

23. Because this proposal exceeds 50 feet from the OHWM, and 10 feet in width, the Staff interprets the SMP as requiring a variance in this situation. The Examiner concurs.

24. The SMP 10.03(2) sets forth the following criteria for variances for development located waterward of the OHWM:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes a reasonable use of the property not otherwise prohibited by this Master Program.

(b) That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and not, for example, from deed restrictions or the applicant's own actions.

(c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

(d) That the requested variance will not constitute a grant of special privilege not enjoyed by other properties in the area and will be the minimum necessary to afford relief.

(e) That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.

(f) That the public interest will suffer no substantial detrimental effects.

In granting all variances, considerations shall be given to the cumulative impact of additional requests for like actions in the area.

25. Since private docks are permitted at residential property in the Rural shoreline environment, the Examiner finds that the proposal is for a reasonable use of the property. The denial of the shoreline variance would preclude this use.

26. However, the plan for a dock that does not conform to the length and width limits of the SMP is not the result of any unique conditions relating to the natural features of the site. Rather the "need" for this dock is the result of the applicant's personal desires.

27. There was no evidence concerning the likelihood of cumulative impacts.

28. RCW 90.58.020 provides separate policies for developments located on Shoreline of Statewide Significance. Preference is given in the following order to projects which:

- (1) Recognize and protect the state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long-term over short-term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

The SMP defines no other elements as appropriate or necessary for Shorelines of Statewide Significance. SMP 5.03.

29. The proposed private single-user dock satisfies none of the preferences listed for Shorelines of Statewide Significance.

30. 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 the subject matter of this proceeding. SMP 9.06, 10.02.

2. The requirements of SEPA have been met.

3. In permit proceedings, the applicant has the burden of proving that his proposed development will be consistent with applicable requirements. SMP 9.02(2).

4. In the instant case, the applicant has not met his burden.

5. Under SMP 9.02(1), a Shoreline Substantial Development Permit cannot be approved unless the applicant shows that the proposed development is consistent with:

(a) Policies and regulations of the SMP

(b) Applicable policies enumerated in RCW 90.58,020 in regard to shorelines of the state and shorelines of statewide significance.

(c) Regulations adopted by the Department of Ecology pursuant to the [Shoreline Management] Act.

6. The policies of the Act call for development that will promote and enhance the public interest. The interest of all the people is paramount in managing Shoreline of Statewide Significance. RCW 90.58.020. There is nothing in the subject proposal that serves the broader public interest.

7. The Examiner concludes that the applicant failed to show "reasonable justification" for building a dock containing a float which is over 50 feet from the Ordinary High Water Mark for 200 feet.

8. Accordingly, the proposal meets neither the policies and regulations of the SMP nor the applicable policies enumerated in RCW 90.58.020. It therefore does not meet the criteria for issuance of a Shoreline Substantial Development Permit.

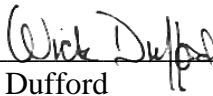
9. The Act speaks of provisions in Master Programs for varying the application of regulations "to insure that strict implementation of the program will not create unnecessary hardships." RCW 90.58.100(5). The instant proposal is based in personal convenience. There is no hardship justifying varying the standards of the SMP. Accordingly, the criteria for the issuance of a Shoreline Variance are not met. See SMP 10.03(2).

10. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### **DECISION**

The requested Shoreline Substantial Development and Variance Permit is denied.

DONE this 30th day of November, 2009.

  
\_\_\_\_\_  
Wick Dufford

## **RECONSIDERATION/APPEAL**

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services within five (5) days after the date of decision. The decision may be appealed to the Board of County Commissioners by filing a writing Notice of Appeal with Planning and Development Services within five (5) days after the date of decision or decision on reconsideration, if applicable.

## **DEPARTMENT OF ECOLOGY REVIEW**

If a Shoreline Variance is ultimately approved at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.