

**FINDINGS AND DECISION OF THE HEARING EXAMINER  
FOR THE CITY OF KIRKLAND**

In the Matter of the Appeal of

File No. APL06-00007

**BREAKWATER CONDOMINIUM  
BOARD OF DIRECTORS**

from a SEPA determination by the  
Director, Planning and Community  
Development Department

**Introduction**

The Director of the Planning and Community Development Department, as SEPA Responsible Official, issued a Mitigated Determination of Nonsignificance (MDNS) on May 9, 2006. The MDNS was appealed by the Board of Directors for the Breakwater Condominium on May 23, 2006. The subject proposal is the extension of a pier and the redevelopment of the upland portion of the Yarrow Bay Marina site, located at 5207 Lake Washington Blvd NE.

The SEPA appeal hearing was conducted by the undersigned Hearing Examiner on July 31, 2006. The appeal hearing was held immediately following the public hearing conducted by the Hearing Examiner and the Houghton Community Council on the application for zoning and shoreline substantial development permit approval of the underlying project. Represented at the appeal hearing were the appellants, the Board of Directors of Breakwater Condominiums, by J. Richard Aramburu, attorney at law; the Director, by Stacy Clauson, Project Planner; and the applicant, Marina Suites LLC/Yarrow Bay Yacht Basin & Marina LLC, by Roger Pearce, attorney at law.

For purposes of this decision, all section numbers refer to the Kirkland Municipal Code (KMC or Code) unless otherwise indicated. Having considered the evidence in the record, the Hearing Examiner enters the following findings of fact, conclusions and decision on this appeal.

**Findings of Fact**

1. The Findings set forth in the Hearing Examiner's Findings, Conclusion and Recommendation on the underlying project application for zoning and shoreline permit approval (Files SHR06-00001 and ZONO06-00001), dated August 9, 2006, are hereby adopted and incorporated by reference.

2. All evidence entered into the record as part of the Examiner's review of the zoning and shoreline permit application for the underlying project was made part of the record for this appeal.

### **Conclusions**

1. Under KMC 24.02.015, the decision of the responsible official is accorded substantial weight.

2. The appellants' appeal letter identified several issues as the basis for the appeal. Although the appellants' letter raises concerns about a number of aspects of the project, the record does not show that the MDNS was issued in error.

3. With regard to transportation, the record, including Exhibit A and the testimony of the applicant's traffic engineer, William Popp, show that the potential impacts from traffic would not have significant adverse environmental impacts, and are otherwise adequately conditioned.

4. With regard to trees, the appellants cite concern over potential damage to trees on their property, but the arborist's reports in Exhibit A show that there are unlikely to be impacts to the trees as a result of the proposed retaining wall, and no showing has been made that additional mitigation is required pursuant to SEPA.

5. With regard to parking, the appeal letter states that the appellants "strongly object to any variations from present codes," but otherwise alleges no errors with regard to the MDNS. This issue is therefore dismissed from the appeal.

6. The appellants appeal letter identifies the height of the lighting poles as a potential "huge negative factor to our residents." No adverse environmental impacts were shown to be created by light poles for the project, either because of their appearance or because of any light or glare that might be created.

7. The appellants also object to the proposed pedestrian path as being unnecessary because of existing pedestrian shoreline access, and the appellants urge removing the path to create additional space between the project and their property. However, no error is alleged as to the Director's SEPA determination, so the issue is dismissed from the appeal.

8. The appeal asks for the plantings on the southern portion of the project to be more than three feet in height, and asserts that allowing such taller plantings would have no significant impact on the view corridor. Again, the appellants do not allege errors that are cognizable in a SEPA appeal, so the issue is dismissed from the appeal.

9. The appellants objected to the marina dock expansion as causing boaters to use the water in front of the Breakwater Condominiums and to come more closely to the Breakwater dock. The appellants also allege that allowing the expansion would minimize the view of the lake and allows greater lake coverage. The evidence in this record does not show that the proposal would create significant adverse environmental impacts on account of greater boat traffic in proximity to the Breakwater property, additional lake coverage, or impairment of views. (Although not required as SEPA mitigation, the recommendation on the underlying project includes a condition concerning tie-up points and signage to manage boat traffic that might come near the Breakwater pier, which may at least partially address the appellants' concerns regarding boaters' activities.)

10. The MDNS has not been shown to be in error, and it should therefore be affirmed.

### **Decision**

The Mitigated Determination of Nonsignificance is hereby **AFFIRMED**.

Entered this 9<sup>th</sup> day of August, 2006.

---

Anne Watanabe  
Hearing Examiner

### **Concerning Further Review**

KMC 24.02.110 states that: "Judicial review of SEPA determinations are by RCW 43.21C.075 required to be heard only at the time of judicial review of the underlying action, i.e. approval or disapproval of the proposal for which SEPA review was required. For rules on perfecting and timing of the SEPA determination and judicial appeal, see RCW 43.21C.075 and WAC 197-11-680(4). The notice required by WAC 197-11-680(5) shall be appended to the permit or "notice of appeal" at the time of final city action."