

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS AND RECOMMENDATION**

APPLICANT: Marina Suites LLC and Yarrow Bay Yacht Basin & Marina LLC

FILE NO.: SHR06-00001, ZON06-00001

SITE LOCATION: 5207 Lake Washington Blvd NE

APPLICATION: The applicant proposes to extend a pier and redevelop the upland portion of the Yarrow Bay Marina site located at 5207 Lake Washington Blvd NE. The application includes construction of a new 53,200 square foot office building with parking, construction of a new 6,930 square foot marina services building, site improvements including a new driveway and parking for 214 vehicles, pedestrian walkway, installation of retaining walls and landscaping, extension of an existing pier by 66 feet to provide for six additional uncovered moorage spaces, and other improvements.

REVIEW PROCESS: Process IIB, Hearing Examiner conducts public hearing on the application for zoning and shoreline substantial development permit approval, and makes recommendation to City Council. The Houghton Community Council has approval/disapproval jurisdiction over the land use proposal.

SUMMARY OF KEY ISSUES: Compliance with the requirements of the Kirkland Zoning Code and Shoreline Master Program for construction of marinas and office uses. Transportation, landscaping and trees, parking, lighting, public pedestrian access, and the dock expansion

SUMMARY OF RECOMMENDATIONS:

Department of Planning and Community Development:	Approve with conditions
Hearing Examiner:	Approve with conditions
Houghton Community Council:	Approve with conditions

PUBLIC HEARING:

The Hearing Examiner and the Houghton Community Council held a joint public hearing on July 31, 2006, on the application for Zoning and Shoreline Substantial Development Permit. The hearing was held in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available in the City Clerk's Office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development. Immediately following the public hearing, the Hearing Examiner heard a SEPA appeal of the Determination of Nonsignificance for the project, which was brought by the Board of Directors of the Breakwater Condominium Association; a separate decision has been issued by the Hearing Examiner on that appeal.

PUBLIC COMMENT

The following persons spoke at the public hearing:

From the City:

Stacy Clauson, PCD Project Planner

From the Applicant:

Roger Pearce, Foster Pepper LLC, attorney for applicant

Paul Wilcox, property owner

James Walker, project architect

William Popp, transportation engineer

Phil Goldenman, Waterfront Construction, project permit coordinator

From the Community:

John R. Barnett

Paul Friedrich

Gary Shelton

LouAnn Freeburg

Fred Freeburg

Ronald Weinstein

J. Richard Aramburu, attorney for Breakwater Condominium Association

Correspondence

The following persons submitted written comments on this application:

Helen Rogers

Joan Schmidt

John Barnett

Fred and LouAnn Freeburg

J. Richard Aramburu

FINDINGS, CONCLUSIONS AND RECOMMENDATION

A. Findings of Fact

The Facts set forth in the Department's Advisory Report (Exhibit A) are supported by the record, and are adopted by reference herein.

B. Conclusions

1. The conclusions set forth in the Department's Advisory Report are adopted by reference herein.

2. The Breakwater Condominium Association (BCA) requested that the application not be considered because of lack of proper notice. The notice of application issued on March 9, 2006, identified the request as being for a "Process IIB Permit," rather than a shoreline substantial development permit, and did not reference the right to appeal to the Shoreline Hearings Board.

3. The notice described the project and its shoreline location, stated that the proposal would be evaluated against the Shoreline Master Program, and explained how to obtain more information about the project from the City. The notice was issued approximately one month prior to the close of the application comment period, and the Breakwater Condominium owners were given actual notice of the permit application. BCA has submitted comments and testimony on the application, and there is no evidence that the BCA was unable to fully participate in the public process because of the notice. On this record, the notice was shown to be adequate, and does not provide a basis for denying or remanding the application to the Department for additional notice.

4. The BCA has also identified other concerns with the proposal. These include potential impacts from the project with regard to fill, parking quantity, parking for boats, traffic conditions and impacts to views. Other objections relate to the expansion of the moorage use at the site, the location of parking at the site, the proposed public access and park, the need for additional buffering between the project and the Breakwater Condominiums, and the effect of the existing covered moorage on the view corridor.

5. The record shows that the application as conditioned would meet all relevant Codes, Plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27. Some of the BCA's concerns may be at least partially addressed by the recommended conditions (including those recommended by the Houghton Community Council).

6. The Houghton Community Council has concurred in the staff analysis and recommendation of approval, with certain additions and changes noted in its memorandum to the Hearing Examiner dated August 3, 2006. One of the Council's recommendations is to amend Condition 2.d(1) as noted in its Memorandum. The

Council's recommendation should be modified to clarify that the vegetation in the buffer area along the driveway is not restricted to three feet in height above finished grade. The staff report (at page 20), correctly notes that there are opportunities to permit vegetation along the driveway that would exceed three feet above finished grade, but which would not obscure views from Lake Washington Boulevard. This taller vegetation would also provide greater buffering for the property to the south. The amended language is set out below.

C. Recommendation

Based on the foregoing Findings of Fact and Conclusions, the Hearing Examiner recommends approval of the application, subject to the conditions set forth in Exhibit A, Section I.B, except that Condition 2.d(1) is amended to read as follows:

Condition 2.d(1): The applicant shall submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor, except in the buffer for the access driveway, to a height no greater than three feet above finished grade. The agreement shall require maintenance of the vegetation within the buffer for the access driveway in accordance with Condition 2.d(2).

The following conditions of approval are also recommended:

1. The applicant shall install a security gate on the waterfront trail at the southwest corner of the subject property. The applicant shall ensure that the gate is open and unlocked during the hours the trail is required to be open and closed and locked during all other hours. The exact hours during which the trail shall be open, shall be specified by the Department.
2. Tie-up points shall be provided on the end of the pier extension and made available for boats waiting for fuel. In addition, the applicant shall install signage to describe the use of the outside of the pier.
3. The vegetation provided in the five-foot wide buffer for the driveway (see Condition 2.d(2)) shall be evergreen.
4. Street trees shall only be planted in front of the office building. The street trees planted in front of the building shall be carefully selected to not block views from properties to the east when fully mature.
5. The rock retaining wall along Lake Washington Boulevard NE sidewalk shall be retained, provided it is structurally sound.
6. The applicant is encouraged to consider moving the trail to the west side of the marina service building, if it is subsequently determined

by the applicant and the Department that this can be safely accomplished in light of marina operations.

EXHIBITS

The following exhibits were offered and entered into the record:

- Exhibit A: Planning and Community Development Advisory Report and Attachments 1-30
- Exhibit B: Copies of 7/28/06 emails between Stacy Clauson, PCD, and Karen Walter, Muckleshoot Tribe and 7/25/06 email from Sharon Shelton to Stacy Clauson
- Exhibit C: Copy of applicant's PowerPoint presentation, "Yarrow Bay Marina Suites"
- Exhibit D: Drawings (3 pages) showing proposed marina fueling and operations and existing fueling plan
- Exhibit E: Letter from J. Richard Aramburu, attorney for the Breakwater Condominium Association, dated July 31, 2006
- Exhibit F: Letter from LouAnn Freeburg, dated July 31, 2006
- Exhibit G: Outline of Comments on Project Notice, submitted by Roger Pearce, attorney for applicant
- Exhibit H: Declaration of Phil Goldenman Regarding Project Notice
- Exhibit I: Resume of Favero Greenforest, arborist
- Exhibit J: Resume of Dan Nickel, environmental engineer
- Exhibit K: Resume of William Popp, Jr., transportation engineer
- Exhibit L: Resume of James Walker, project architect
- Exhibit M: Recommendation of Houghton Community Council to Hearing Examiner, dated August 3, 2006

PARTIES OF RECORD

Applicant, Phil Goldenman, Waterfront Construction, 205 NE Northlake Way, Suite 230, Seattle, WA 98105

Fred and LouAnn Freeburg, 4823 Lake Washington Blvd NE #6, Kirkland, WA 98033

John Barnett, 4823 Lake Washington Blvd NE #5, Kirkland, WA 98033

Joan Schmidt, 4823 Lake Washington Blvd NE #7, Kirkland, WA 98033

Helen Rogers, 4823 Lake Washington Blvd NE #8, Kirkland WA 98033

Board of Directors, Breakwater Condominium Association, 4823 Lake Washington Blvd NE, Kirkland, WA 98033

Muckleshoot Indian Tribe Fisheries Division, 39015 172nd Ave SE, Auburn, WA 98092, attn: Karen Walter

J. Richard Aramburu, Suite 209, College Club Building, 505 Madison Street, Seattle, WA 98104 (on behalf of Breakwater Condominium Association)

Hearing Examiner Recommendation/Decision

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Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

Entered this 9th day of August, 2006, per authority granted by KZC 152.70. A final decision on this application will be made by the City Council.

Anne Watanabe
Hearing Examiner

CHALLENGES AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for challenges. Any person wishing to file or respond to a challenge should contact the Planning Department for further procedural information.

CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

APPEAL TO SHORELINE HEARINGS BOARD

Pursuant to RCW 90.58.180 and WAC 173-27-220, any person aggrieved by the City's final decision on the Shoreline Substantial Development Permit may seek appeal to the State Shorelines Hearing Board. All petitions for review shall be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date the Department of Ecology receives the City's decision. Within seven (7) calendar days of filing any petition for review with the Shoreline Hearings Board, the petitioner shall serve copies of the petition for review on the Department of Ecology, the State Attorney General and the City of Kirkland. The petition for review must contain items required by WAC 461-08-055.

JUDICIAL REVIEW

Section 152.110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

LAPSE OF APPROVAL

Under Section 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 152.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.

Pursuant to RCW 90.58.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Substantial Development Permit has been granted pursuant to the Shoreline Management Act must be undertaken within two (2) years after the date of approval. The project must be completed within five (5) years and a one(1) year extension may be considered. "Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.