



COUNTY COMMISSIONERS

Cathy Wolfe
 District One
 Sandra Romero
 District Two
 Karen Valenzuela
 District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE THURSTON COUNTY
 HEARING EXAMINER**

In the Matter of the Application of)	Project No. 2013104971
)	Sequence Nos. 13-112997 XC
)	13-112999 XM
John and Cindy Wilson)	
)	
)	
For Approval of a Shoreline Variance and)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS,
_____)	AND DECISION

SUMMARY OF DECISION

The requests for shoreline substantial development permit and shoreline variance to allow construction of a 100-foot dock on residential property in the Rural Shoreline Environment of Lawrence Lake are **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

John and Cindy Wilson (Applicants) requested approval of a shoreline substantial development permit and a shoreline variance to allow construction of a 100-foot dock on residential property in the Rural Shoreline Environment of Lawrence Lake, which exceeds the maximum allowed dock length beyond the ordinary high water line.

Hearing Date:

The Thurston County Hearing Examiner conducted an open record hearing on the request on March 17, 2014.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Robert Smith, Senior Planner, Thurston County Resource Stewardship Department
- John Wilson, Applicant
- Kim Pawlawski, Applicant Representative

Exhibits:

At the hearing the following exhibits were admitted in the record:

Exhibit 1 Resource Stewardship Department Report including the following attachments:

- Attachment a Notice of Public Hearing
- Attachment b Zoning/Site Map
- Attachment c Master Application, received October 28, 2013
- Attachment d JARPA Application, received October 28, 2013
- Attachment e Letter and attachments from Kim Pawlawski, dated October 28, 2013
- Attachment f Cost estimate, Northwest Dock Systems, dated October 22, 2013
- Attachment g Site Plan, received October 28, 2013
- Attachment h Dock Plans, received October 28, 2013
- Attachment i Landscape Plan, dated May 14, 2005
- Attachment j Complete Application Letter (Project 2011104547), dated May 2, 2012
- Attachment k Notice of Application (Project 2011104547), dated May 3, 2012
- Attachment l Mitigated Determination of Non-Significance (Folder 13 112998 XA), issued on January 28, 2014
- Attachment m Comment Memorandum from Brad Sangston, Thurston County Public Health & Social Services Department, dated December 17, 2013
- Attachment n Comment Memorandum from Kevin Chambers, Thurston County Public Works Department, dated December 11, 2013
- Attachment o Comment Letter (Project 2011104547) from Denise Wilhelm, Washington State Department of Natural Resources, dated January, 24, 2012
- Attachment p Comment Letter from the Washington State Department of Ecology, dated February 11, 2014

- Exhibit 2 Pacific Willow Consulting report, dated received December 22, 2011
- Exhibit 3 Color copy of photograph of posted notice
- Exhibit 4 Thurston County Hearing Examiner Decision, Stensager Shoreline Variance (Project 2012100044), issued July 8, 2013
- Exhibit 5 Thurston County Hearing Examiner Decision, Hudik Shoreline Variance (Project No 2011102843), issued September 28, 2012

Based on the record developed at hearing, the following findings and conclusions are entered:

FINDINGS

1. The Applicants requested approval of a shoreline substantial development permit and a shoreline variance to allow construction of a 100-foot dock on residential property in the Rural Shoreline Environment of Lawrence Lake. The subject property is addressed as 16332 Pleasant Beach Drive SE, Yelm, WA.¹ *Exhibit 1, page 1; Exhibit 1, Attachments c and d, Applications.*
2. The 0.69-acre subject property is comprised of portions of Lots 4 and 5 of Division 1 of Edwards Lake Lawrence Subdivision, recorded with the Thurston County Auditor on October 1, 1962. Property boundaries were subsequently adjusted by boundary line adjustment BLA04114045TC, recorded on November 4, 2004. The site is 30,056 square feet in area and approximately 106 feet wide at the shoreline setback line. A single-family residence was built on-site in 2006. *Exhibit 1, page 2; See Exhibit 1, Attachment G.*
3. Surrounding land uses include single-family residences on lots of the Division 1 Edwards Lake Lawrence subdivision to the north, west, and south, and Lawrence Lake to the east. *Exhibit 1, page 2.*
4. The shorelands within 200 feet of the ordinary high water mark (OHWM) of Lawrence Lake are designated as Rural Shoreline Environment by the Shoreline Master Program for the Thurston Region (SMPTR), subject to the provisions of the Shoreline Management Act as implemented through the SMPTR. *Exhibit 1, page 1.* In the SMPTR effective as of May 15, 1990, docks are covered in the “Boating Facilities” chapter (Section Three, Chapter IV) and are allowed in the Rural Shoreline Environment subject to standards. In fresh water, docks may be a maximum of 50 feet in length from the OHWM or the average of existing docks within 100 feet of the property lines. They are

¹ The legal description of the property is Tract B of Boundary Line Adjustment BLA04114045TC; known as tax parcel number 45850000400. *Exhibit 1, page 1.*

restricted to a maximum of eight feet in width and must be set back at least 10 feet from side property lines, must have a minimum eight-foot span between pilings, and may have a maximum 200 square foot “float” at the end. *Section Three, Chapter IV, Part C, Numbers 19, 20, 21, 22, and 23.*

5. One dock within 100 feet to the north of the subject property is approximately 60 feet long (Shorno). South of the site there are two docks within 100 feet (Reichel and Carpenter), approximately 41 feet and 81 feet in length respectively. The average length of the three existing docks is 60.7 feet. *Exhibit 1, page 3.* Other docks in the vicinity include an 80-foot long dock three lots to the north (Hudik, project number 2011102843), approved via shoreline variance on September 28, 2012 and an 87-foot long dock two lots to the north (Stensager, project number 2013100044), approved via shoreline variance on July 8, 2013. *Exhibit 1, page 3; Exhibits 4 and 5; see also, Exhibit 2, 2009 Aerial Photo.*
6. The SMPTR requires a buffer of existing groundcover to be maintained between the ordinary high water mark and 20 feet from the structure, and for a residence set back 50 feet from the OHWM, a thirty foot buffer is required. *SMPTR, Section Three, Chapter XVI, Part D, Number 3.d.*
7. Due to widely fluctuating water levels in Lawrence Lake, the Applicants proposed a private recreational dock measuring 100 feet long from the OHWM. It would be comprised of a six-foot by 78-foot fixed pier attached to galvanized steel pilings, a six-foot by 12-foot ramp, and a 20-foot wide by 10-foot long float attached to galvanized steel piles at the end.² The proposed span between the pilings is eight feet. The dock would be set back approximately 30 feet from the north property line and approximately 70 feet from the south side property line. *Exhibit 1, pages 2, 5; Exhibits 1, Attachments d and h.*
8. At 100 feet in length, the proposal would exceed the 50-foot standard and the average of existing docks within 100 feet, 60.7 feet in length. Therefore, a shoreline variance is required. Based on submitted project costs of \$28,140.00, a shoreline substantial development permit is required. *Exhibit 1, page 2; Exhibit 1, Attachment f; WAC 173-27-040(2)(h)(ii).*

² The Applicants originally submitted an application for a Shoreline Exemption for construction of the dock on December 22, 2011. That application, assigned project number 2011104547, was determined to be complete on January 19, 2012, and Notice of Application was mailed per code on May 3, 2012. *Exhibit 1, Attachment k.* The application completeness letter was mailed on May 2, 2012. *Exhibit 1, Attachment j.* The complete application letter asked for additional information including a cost estimate for dock construction and a Shoreline Variance application. The Applicants submitted a contractor’s bid for \$28,140.00 to complete the dock. *Exhibit 1, Attachment f.* Based on this value, the project is not eligible for a Shoreline Exemption. On October 28, 2013 the Applicants submitted a revised application for a Shoreline Substantial Development Permit and Shoreline Variance. A new project number, 2013104971, with the new application; however, the applications are a continuation of the project first submitted as case number 2011104547 and the first number and application completeness date were retained by Resource Stewardship Staff. *Exhibit 1, page 2; Smith Testimony.*

9. The application materials included data showing that the water level of Lawrence Lake changes dramatically over the course of the year, following rainfall. In addition, lake depth in front of the Applicants' parcel is shallow, in part as a result of large boulders and because the Applicants have not dredged or otherwise manipulated the lake bed as have their neighbors. As measured on August 10, 2013, lake depths were as follows: at 65 feet from the OHWM, 16 inches; at 80 feet, 36 inches; at 90 feet 40 inches; and at 100 feet, 45 inches (three and three-quarter feet). The dock allowed by the SMPTR's averaging method would be less than 61 feet in length, at which distance the Applicants asserted the lake's depth would be insufficient to safely maneuver a boat or to jump off the dock for swimming. By way of comparison, the Applicants measured lake depth on the parcel immediately north at the distance of 60 feet from the OHWM to be 48 inches deep. *Exhibit 1, Attachment E, see photographs; Pawlawski Testimony.*
10. The Applicants submitted a professionally prepared wetland determination report with recommended mitigation, dated December 6, 2011. This report identified a small fringe wetland along the shoreline at and below the ordinary high water mark of the lake. Its size was determined to be 6,300 square feet, approximately 0.14 acres. A wetland this small is not regulated by the Thurston County critical areas ordinance. However, Lawrence Lake requires a 50-foot setback from the OHWM. Construction of the proposed dock would involve clearing a swath of wetland vegetation up to the OHWM, which would require approval of a hydraulic permit (HPA) from the Washington Department of Fish and Wildlife. The HPA form requires wetland rating information. The wetland study rates the delineated feature as a Category III wetland with a total score of 40 points. The pier portion of the dock would remove and or cover 220 square feet of wetland area. The wetland report proposes mitigation at a 4:1 ratio with enhancement plantings in another area of the wetland. The proposal would plant 880 square feet of Oregon ash, pacific ninebark, and black twinberry along the southern side of the wetland where it would improve privacy and diversify wetland species, enhancing habitat and water quality functions. *Exhibit 1, page 3; Exhibit 2, see Mitigation Plan.*
11. Resource Stewardship Staff noted that natural shoreline vegetation on the subject property has diminished over the last 10 years based on review of available aerial photography. Staff noted that no approvals have been granted for removal of natural vegetation in the 30-foot shoreline buffer. The Applicants submitted a landscape plan, apparently prepared as a requirement of the residence building permit, but the plantings were not installed. The Applicants propose to install the vegetation now, which would restore the 30-foot shoreline buffer. *Exhibit 1, page 4; Exhibit 1, Attachment i.*
12. The proposed dock would not interfere with navigation or public access to the lake. It extends from their private property. The opposite shore of Lawrence Lake is approximately 1,800 feet away. The shoreline in the vicinity is not notable for its aesthetic, scenic, historic, or ecological qualities. *Exhibit 1, pages 5, 11.*
13. The site is zoned Residential LAMIRD Two Dwelling Units Per Acre (RL 2/1), which requires a minimum lot size of 12,500 square feet, a minimum lot width of 75 feet, and a maximum density of two dwellings per acre. *Exhibit 1, page 2; Thurston County Code*

(TCC) 20.13.A.030. The subject property has a Residential LAMIRD Two Dwelling Units Per Acre (RL 2/1) Comprehensive Plan designation. The parcel contains a single-family residence, which is an allowed use in the RL 2/1 designation. The proposed dock would be an accessory recreational amenity for the residence. Comprehensive Plan Chapter 9 (Natural Environment) contains policies promoting preservation of water quality and natural shoreline features. *Comprehensive Plan, Chapter 9, Surface Water Goal, Objective 1, Policies 1, 2, 3, and 8*. The project includes wetland mitigation and shoreline buffer landscaping, which would enhance water quality and promote a more natural shoreline environment than currently exists. Resource Stewardship Staff submitted the position that as proposed and conditioned, approval would be consistent with the Thurston County Comprehensive Plan. *Exhibit 1, pages 11-12*.

14. Pursuant to the State Environmental Policy Act, Thurston County acted as lead agency for review of potential environmental impacts of the proposed 100-foot dock. Review included the following documents: an environmental checklist; the joint aquatic resources permit application, or JARPA; the Applicants' narrative; a dock plan and site plans; an October 2013 cost estimate; a wetland delineation study; landscape plans; and comments from Thurston County Public Works, Thurston County Environmental Health, Washington State Department of Ecology, and Washington Department of Natural Resources. The SEPA Responsible Official issued a mitigated determination of non-significance (MDNS) on January 28, 2014, which was not appealed and became final on February 11, 2014. Required mitigation measures included observing for contamination during construction, erosion control, removal of construction debris to an approved site, the use of non-treated wood and other non-polluting materials, and compliance with Thurston County Road Standards and Drainage Design and Erosion Control standards. *Exhibit 1, page 3; Exhibit 1, Attachment l, MDNS*.
15. Resource Stewardship Staff submitted the position that requiring the Applicants to adhere to the maximum dock length allowed by the SMPTR would limit the Applicant's recreational opportunities by significantly limiting access to the waters of Lawrence Lake. Staff asserted that denial of the variance would tend to thwart policy of the Shoreline Management Act as implemented by the SMPTR. *Exhibit 1, pages 4, 7; Smith Testimony*.
16. Thurston County Public Health and Social Services Department submitted comments recommending approval with a condition that any work performed for the project be kept away from existing septic system components. No public health issues were identified. *Exhibit 1, page 11; Exhibit 1, Attachment m*.
17. Thurston County Public Works Department submitted comments noting that a Department of Ecology Construction Stormwater Permit may be required. With a condition requiring the Applicant to determine if so, Public Works recommended approval. *Exhibit 1, page 11; Exhibit 1, Attachment n*.

18. After receiving notice of application, the Washington State Department of Natural Resources submitted a comment noting that the project may require an aquatic lease. Resource Stewardship Staff indicated that it is the Applicants' responsibility to determine whether a lease is required. If yes, the Applicants must obtain the lease prior to construction. *Exhibit 1, page 11; Exhibit 1, Attachment o.*
19. The Washington State Department of Ecology submitted a comment letter indicating that the project must comply with the variance criteria found in WAC 173-27-170, that development should consider floodplain management requirements, and that the Applicants should be mindful of potential toxic contamination during construction. *Exhibit 1, page 11; Exhibit 1, Attachment p.*
20. Written notice of the public hearing was mailed to property owners within 500 feet of the site, published in The Olympian, and posted on-site on March 7, 2014, at least ten days prior to the hearing. *Exhibit 1, page 3; Exhibit 3; Exhibit 1, Attachment A.*
21. The County received one public comment letter supporting approval the application. *Exhibit 1, page 12; Exhibit 1, Attachment Q.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permit and shoreline variance pursuant to RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Shoreline Master Program for the Thurston Region.

Shoreline Substantial Development Permit Criteria for Review

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

Washington Administrative Code (WAC) 173-27-150.

(a) Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

(b) Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

(c) Shoreline Master Program for the Thurston Region

The following are applicable provisions of the SMPTR:

Section Two -- General Goals and Policies

...

C. Rural Environment (page 30)

Purpose. The primary purposes of the Rural Environment are to protect areas from urban expansion, restrict intensive developments along undeveloped shore-lines, function as a buffer between urban areas, and maintain open spaces for recreational purposes compatible with rural uses. New developments in a Rural Environment are to reflect the character of the surrounding area.

Definition. The "Rural Environment" designates shoreline areas in which land will be protected from high-density urban expansion and may function as a buffer between urban areas and the shorelines proper. This environment is characterized by low intensity land use and moderate to intensive water use. Residential development does not exceed two dwellings per acre. Visual impact is variable with a moderate portion of the environment dominated by structures of impermeable surfaces. Intensive cultivation and development of the renewable soils, aquatic and forest resources, as well as limited utilization of nonrenewable mineral resources is permitted. Recreational activities and public access to the shoreline are encouraged to the extent compatible with other rural uses and activities designated for this environment.

Goal Statements: (pages 30-31)

1. **Economic Development.** Available resources should be utilized consistent with the definition and purpose of the Rural Environment.
2. **Public Access.** The primary goal of this element is to provide adequate public access areas to ensure maximum enjoyment of recreational and scenic opportunities with minimum conflict with other rural uses. It is the intent of this goal to:
 - a. Recognize and protect private property rights consistent with the public interest;
 - b. Prevent the destruction of the more fragile recreation areas through excessive use; and
 - c. Exercise due regard for the safety of the public.
3. **Circulation.** The goal of the Circulation Element in the Rural Environment is to provide facilities that are necessary only for local usage. Trail systems for safe nonmotorized traffic are to be encouraged where compatible with rural uses. Major planned circulation systems shall be located away from shoreline areas whenever possible.
4. **Recreation.** The recreation goal is to assure diverse, convenient and adequate water-related recreational opportunities along the shorelines of the County located in such a way as to minimize conflicts with other rural activities.
5. **Shoreline Use.** Areas for intensive public use should be distributed in such a manner as to avoid concentration of user pressure, to discourage intrusions endangering life or property, and to avoid uses having adverse effects on fragile natural systems.
6. **Conservation.** This goal shall be to have sound management in the conservation of all natural resources within the Rural Environment.
7. **Historical and Cultural Values.** The goal of this element shall be to promote, protect and preserve historical, cultural scientific or educational values on shorelines where these values are acknowledged.
8. **Restoration.** This goal is to restore to a useful or original condition those areas (including waters) which are blighted by present uses, discontinued uses and dilapidated or abandoned structures.

Section Three -- Policies and Regulations For Use Activities (pages 47-54)

IV. Boating Facilities

A. Scope and Definition: Boating facilities include marinas, boat ramps, piers, docks, boathouses, mooring buoys, recreational floats and marine railways. "... "Piers and docks" are structures generally built from the shore extending out over the water to provide moorage for commercial and/or private recreation water craft or float planes or for water recreational use. "Marine railways" are a pair of sloping tracks used to launch watercraft. ... "Boathouses" are a type of covered moorage which have walls and are usually for the storage of one (1) boat.

B. Policies

...

Piers and Docks:

12. Pier and docks should be designed and located to minimize obstructions to scenic views, and conflicts with recreational boaters and fishermen.
13. Cooperative uses of piers, docks and floats are favored especially in new subdivisions.
14. Moorage buoys are preferred over piers and docks especially in tidal waters.

...

C. General Regulations

...

Piers and Docks:

13. Prior to final project approval of a residential development, a usable area shall be set aside for pier or dock unless there is no suitable area. Only one dock or pier is permitted in a new residential development.
 14. All pier and dock development shall be painted, marked with reflectors or otherwise identified so as to prevent unnecessarily hazardous conditions for water surface users during day or night.
 15. Docks and piers are prohibited on lakes or marine water bodies where the distance to the opposite shore is one hundred fifty (150) feet or less. This is to insure the maintenance of navigation.
- ...
18. There is no maximum length and width for commercial piers or docks; however, the proponent must show the size proposed is the minimum necessary to allow the use proposed.
 19. The width of recreational docks or piers shall not exceed eight (8) feet.
 20. In fresh water areas, new docks shall not exceed the average length of the existing docks within one hundred (100) feet of the property lines. If there exists a dock on one side of a new proposed one but not on the other, the average to be used for the side without a dock shall be fifty (50) feet. If there are no docks with one hundred (100) feet, the length shall not exceed fifty (50) feet as measured from the ordinary high water mark.
 21. At the terminus of a dock or pier, a float is normally attached for purposes of a landing and for moorage of watercraft. These floats may either be parallel to the dock or pier, or form a tee. The float cannot exceed four hundred (400) gross square feet for a piling dock/pier in tidal waters, two hundred fifty (250) gross square feet for a floating dock/pier on tidal water, and two hundred (200) gross square feet for docks/piers on fresh water. The total length of the dock/pier with an attached float cannot exceed the total length allowed under General Regulations #17 and #20.
 22. Docks and piers shall be set back ten (10) feet on fresh and twenty (20) feet on tidal water from the side property line. These setbacks may be waived if two single-family property owners wish to construct a joint pier on the common property line under the following conditions:
 - a. Both property owners must record a non-exclusive easement granting each other the right to use the pier.
 - b. The easement must acknowledge that each property owner is giving up the right to construct a separate single-family pier.

23. Span between pilings for piers or docks on pilings shall be eight (8) feet or greater.

...

D. Environmental Designations and Regulations

...

2. *Suburban and Rural Environments*. Marinas, boat ramps, piers, docks, boathouses, mooring buoys, recreational floats and marine railways are permitted subject to the Policies and General Regulations.

...

Shoreline Variance Criteria for Review

Pursuant to Washington Administrative Code (WAC) 173-27-170, in order for a shoreline variance to be approved, all of the following applicable criteria must be satisfied.

- (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- (2) ... (not applicable)
- (3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
 - (b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and
 - (c) That the public rights of navigation and use of the shorelines will not be adversely affected.
- (4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

Applicable Provisions of the Shoreline Master Program for the Thurston Region

SMPTR Section Two, Chapter V: Regional Criteria

All development within the jurisdiction of this Master Program shall demonstrate compliance with the following criteria:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall ...
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

Conclusions Based on Findings

Shoreline Substantial Development Permit

1. As conditioned, the proposal would be consistent with the policies and procedures of the Shoreline Management Act. The proposed dock and float are allowed in the SMPTR in the Rural Shoreline Environment and are a “reasonable and appropriate use” of the on-site shorelands. Conditions would ensure that minimal disruption to the shorelands would occur and that unavoidable impacts would be mitigated at a 4:1 ratio with plantings that would enhance the shoreline environment over its current condition. The project was reviewed by the County’s Health Department and no public health impacts were identified. The project would not impact public shoreline access. *Findings 4, 7, 8, 9, 10, 14, 15, and 16.*

2. As conditioned, the proposed dock and float comply with applicable regulations in the Washington Administrative Code. There would be no significant impact to views of the upland residences because the improvements would be substantially similar to existing amenities in the vicinity. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Findings 5, 7, and 8.*
3. The proposal is consistent with the applicable SMPTR policies and regulations. The subject property is an existing lot; no subdivision is proposed. Conditions would ensure that reflectors or other design elements are incorporated to ensure the dock is visible to nighttime lake users. The project would not interfere with navigation. No bulkhead is proposed. The proposal satisfies the maximum width, property line setback, and piling spacing standards applicable in the Rural Shoreline Environment. The Applicants requested a shoreline variance to exceed the maximum 60.7-foot dock length. At 200 square feet, the proposed float complies with the maximum area allowed and is incorporated into the overall 100-foot long dock. There is no public shoreline access in the vicinity and the project would not impact public access. *Findings 7, 8, 9, 10, and 12.*

Shoreline Variance Permit

4. Denial of the variance from maximum dock length would tend to thwart policy of RCW 90.58.020 by limiting the Applicants' recreational opportunities in the waters of Lawrence Lake. According to information provided by the Applicant, the end of a 50-foot standard or 60-foot average length dock could be lying on a dry lake bed or in extremely shallow water for extensive portions of the year, specifically during warm weather when people like to pursue water recreation. During periods of low lake levels, a standard length dock would not provide reasonable recreational access to Lawrence Lake, where a 100-foot dock would provide 45 inches in water depth. The difficulties with water depth in the near shore area of Lawrence Lake are related to the natural conditions of the lake and are not the result of activities by the Applicants. The proposal would comply with the SMPTR's dock width, piling spacing, and setback standards. The proposed dock length would locate recreational activities farther from the shoreline, reducing negative impacts to the shoreline environment. Other lakefront properties in the general vicinity have private recreational docks of a comparable length and in the recent past, two nearby property owners have recently been granted shoreline variances to exceed the standard and averaged dock lengths. Granting the instant variance would not confer a special privilege on the Applicants. The proposed dock would not interfere with navigation due to the lake's width and depth. The dock would extend from a private parcel and would not adversely affect public access to the lake. *Findings 7, 9, 10, 12, 14, 15, and 16.*
5. Increasing recreational opportunities for the public in the shoreline area is an express preference of the Shoreline Management Act. Approval of the instant variance would allow the Applicants increased recreational opportunities on Lawrence Lake consistent with those enjoyed by neighboring properties. If similar variances were granted to other properties with similar hardships, the cumulative effect would remain consistent with the policies of RCW 90.58.020. *Findings 5, 7, and 15.*

6. No public access exists or is proposed. Conditions of approval would ensure that erosion controls are implemented during construction and that no pressure treated or other toxic materials are placed in the shoreline environment. The Applicants would be required to obtain and abide by conditions of a Hydraulic Project Approval from the Washington State Department of Fish and Wildlife. No residential development or industrial uses are proposed, and the Applicants are not a governmental unit. The record contains no evidence that would tend to show any harm to the public interest or public health that would result from approval. A condition of approval requiring safety features such as reflectors would improve the dock's visibility to boaters. The project was reviewed for compliance with the requirements of SEPA and an MDNS was issued. *Findings 7, 9, 10, and 14.*

DECISION

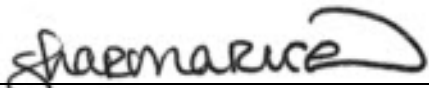
Based upon the preceding findings and conclusions, the requests for shoreline substantial development permit and a shoreline variance to allow construction of a 100-foot dock on residential property in the Rural Shoreline Environment of Lawrence Lake are **GRANTED** subject to the following conditions:

1. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, The Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).
2. Erosion control measures must be in place prior to any clearing, grading, or construction. These control Measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into the lake. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.
3. The Applicant shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area.
4. To minimize impacts to shallow water and beach habitat, construction of the proposed dock shall conform to the following requirements:
 - a. Construction shall be done with non-treated wood and/or materials that will not release toxic substances into the water.
5. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.
6. The dock shall maintain a 10-foot setback from the property lines.
7. All proposed mitigation from the Wetland Determination Summary with Recommended

Mitigation report, prepared by Pacific Willow Consulting, Inc. (dated December 6, 2011) shall be installed at the earliest opportunity after dock construction.

8. The Applicant shall install all plantings proposed in the landscape plan submitted as part of this application. The plantings shall be installed at the earliest opportunity after dock construction.
9. If access to the beach for construction of the dock will be over the upland portion of this property it will need to be done so as to prevent any vehicle or equipment travel or parking of any portion of the septic system or system components. Staging of equipment and materials for this project also should not be done on any portion of the septic system or system components.
10. The dock shall be painted, marked with reflectors or otherwise identified so as to prevent unnecessarily hazardous conditions for water surface users during day or night.
11. A Hydraulic Project Approval is required from the Washington State Department of Fish and Wildlife. It is the applicant's responsibility to obtain this permit prior to construction.
12. The Applicant shall obtain an Aquatic lands lease from the Washington State Department of Natural Resources, if necessary.

Decided March 31, 2014.



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$638.00** for a Request for Reconsideration or **\$846.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____ Appeal Sequence No.: _____

Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
 on this _____ day of _____, 20___, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20___, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

 APPELLANT NAME PRINTED

 SIGNATURE OF APPELLANT

Address _____

 Phone _____

Please do not write below - for Staff Use Only:

Fee of \$638.00 for Reconsideration or \$846.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Resource Stewardship Department this _____ day of _____, 20___.