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COMMUNITY PLANNING AND ECONOMIC DEVELOPMENT

Creating Solutions for Our Future

Joshua Cumming, Director

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2018102711
)	
Michael Cruz)	
)	Cruz Boathouse
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
)	
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to construct a 16- by 30-foot boathouse with galvanized tracks leading from the boathouse to below the ordinary high water mark of Long Lake within a designated Rural shoreline environment is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Michael Cruz (Applicant) requested a shoreline substantial development permit to construct a 16- by 30-foot boathouse on an existing single-family lot with galvanized tracks leading from the boathouse to below the ordinary high water mark of Long Lake. The property is located at 4022 Long Lake Drive SE, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on November 27, 2018.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Tony Kantas, Senior Planner, Community Planning & Economic Development Department
- Dawn Peebles, Thurston County Environmental Health
- Jack Lizee, Applicant Representative (and neighboring property owner)
- Michael Cruz, Applicant

Exhibits:

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

EXHIBIT 1 Community Planning & Economic Department report, including the following attachments:

- Attachment a Notice of Public Hearing, dated November 16, 2018
- Attachment b Master Application, submitted May 16, 2018
- Attachment c JARPA Permit Application, submitted May 16, 2018
- Attachment d Vicinity map – 2015 aerial
- Attachment e Site Plan (2 pages)
- Attachment f Notice of Application, dated October 4, 2018
- Attachment g Determination of Non-Significance, issued November 1, 2018
- Attachment h Comment Memorandum from Thurston County Health Department, dated September 26, 2018
- Attachment i Applicant’s justification for boathouse to exceed 100 square feet

EXHIBIT 2 Photograph of proposed project location

EXHIBIT 3 Comments from Washington State Department of Ecology, dated October 22, 2018

Based upon the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested a shoreline substantial development permit (SSDP) to construct a 16-foot by 30-foot boathouse on an existing single-family lot with galvanized tracks leading from the boathouse to below the ordinary high water mark of Long Lake. The subject property is located at 4022 Long Lake Drive SE, Olympia, Washington.¹ *Exhibits 1 and 1.C.*
2. The 0.37-acre subject parcel is developed with an existing single-family residence, setback approximately 104 feet from the ordinary high water mark (OHWM) of Long Lake, and an approximately 10- by 10-foot storage shed. The residence is served by an

¹ The legal description of the subject property is a portion of Section 35, Township 18 N, Range 1 W; also known as Tax Parcel No. 59500000400. *Exhibit 1.*

on-site sewage system and City of Lacey public water. Surrounding land uses consist primarily of single-family residential uses on shoreline lots. *Exhibits 1 and 1.C.*

3. The Shoreline Master Program for the Thurston Region (SMPTR) designates the subject shoreline as Rural shoreline environment. *Exhibit 1.* Boating facilities specifically including boathouses and marine railways are allowed in the Rural shoreline environment subject to applicable policies and regulations. *Exhibit 1; SMPTR, Section 3, Part D (page 54).* The project requires an SSDP because the value exceeds the permit threshold of \$7,047.00. *Exhibit 1.*
4. The subject property is zoned low density residential (LD 0-4) and is within the Lacey Urban Growth area. Accessory buildings or structures clearly incidental to the residential use of a lot, such as storage of personal property, is a permitted use in the LD 0-4 zoning district. *Thurston County Code (TCC) 21.12.020(B)(1).* The Thurston County Comprehensive Plan makes no reference to residential boathouses. *Exhibit 1.*
5. In the current site conditions, the boat is stored over the waters of Long Lake year round. When not in use, or when being serviced or maintained, the boat is raised above the lake surface on a lift that is attached to the existing dock along the Applicant's waterfront. The lift has greased joints that operate in and over the water. The proposed boathouse would allow the boat to be stored, fueled, and maintained upland of the lake, reducing the opportunity for fuel and other liquids associated with boat maintenance to be accidentally spilled into the lake. The proposed galvanized marine railway, built essentially on the existing substrate and shoreline, would follow the existing grade without significant grading; it would serve as access between the lake and the boathouse. If the project is approved, the lift would be removed from the Applicant's dock, which the Applicant asserted would open up the view of the lake for nearby properties. *Exhibits 1, 1.C, and 1.I; Michael Cruz Testimony.*
6. The Applicant's existing boat is approximately 23 feet, 10 inches long and nine feet wide. In order to effectively store and service the boat, maneuvering area of about 2.5 feet width is required around the boat inside the structure. The proposed boathouse is 480 square feet in area and not more than ten feet in height. The interior dimensions would be approximately 15 by 29 feet, which would provide the needed space around the boat to allow fueling, service, and maintenance. Design would include a wood frame structure over a concrete foundation proposed to be placed adjacent to the high water mark in an area currently maintained as mowed lawn. No part of the boathouse would be over the water. *Exhibits 1, 1.C, 1.I, and 2; Jack Lizee Testimony.*
7. The County Planning Department is not aware of any species or habitat in Long Lake that are listed by state or federal agencies as threatened, endangered, or protected/priority. No biological evaluation of potential impacts to protected species or habitats was required. Because the marine railway would be developed partially in the lake, hydraulic project approval (HPA) from the Washington Department of Fish and Wildlife would be required. The state agency would review the proposal for potential impacts to aquatic species and habitat. *Tony Kantas Testimony.*

8. The application was reviewed by the both the Thurston County Public Health and Social Services and Thurston County Public Works Departments. No issues of public health concern were identified and the County Health Department recommended approval of the project. *Exhibit 1.H; Dawn Peebles Testimony*. The project is exempt from the requirements contained in the Thurston County Road Standards and the Drainage Design and Erosion Control Manual because the proposed improvements would be less than 2,000 square feet in area. *Exhibit 1*.
9. Consistent with the State Environmental Policy Act (SEPA), Thurston County assumed lead agency status for review of the proposal's environmental impacts through an optional DNS process. A final determination of non-significance (DNS) was issued on November 1, 2018. *Exhibits 1 and 1.G*.
10. Notice of the application was mailed to all property owners within 300 feet of the site on October 4, 2018. *Exhibits 1 and 1.F*. Notice of the public hearing was mailed to all owners of property within 300 feet of the site, posted on-site, and published in The Olympian on November 16, 2018. *Exhibits 1 and 1.A*. There was no public comment on the application. *Exhibit 1; Tony Kantas Testimony*.
11. Planning Staff determined that the proposal could be conditioned to comply with all applicable regulations and shoreline policies, and recommended approval subject to conditions. *Exhibit 1; Tony Kantas Testimony*.

CONCLUSIONS

Jurisdiction

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

Criteria for Review

Shoreline Substantial Development Permit (WAC 173-27-150)

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.

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

SMPTR Section Two, Chapter V, Regional Criteria

The Shoreline Master Program for the Thurston Region contains regional criteria that apply to the proposal. 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 be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- 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.

Section Three -- Policies And Regulations For Use Activities

Chapter IV. Boating Facilities

A. *Scope and Definition*

Boating facilities include marinas, boat ramps, piers, docks, boathouses, mooring buoys, recreational floats and marine railways. ... "Marine railways" are a pair of sloping tracks used to launch watercraft. "Covered moorage" is a roofed structure for the wet or dry storage of one or more boats. "Boathouses" are a type of covered moorage which have walls and are usually for the storage of one (1) boat.

B. *Policies*

...

Marine Railways:

17. Marine railways should not obstruct shoreline access.

Covered Moorage:

18. The size of the covered moorage should be the minimum necessary for the use proposed.
19. Covered moorage over the water should be discouraged in tidal waters and prohibited in fresh water.
20. Covered moorage should be designed and located to maintain view corridors and blend with the surrounding development.

...

C. General Regulations

...

Marine Railways:

29. Marine railways shall be located on the existing grade where feasible.

Covered Moorage:

30. A boathouse for residential property is permitted landward of the ordinary high-water mark. It shall not exceed one hundred (100) square feet unless the size of the applicant's boat demands a larger structure. The structure shall not exceed ten (10) feet in height.
31. Covered moorage is prohibited over fresh water.

SMPTR Section Three, Part 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. (emphasis added)

...

Conclusions Based on Findings

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. Boating facilities associated with a single-family residence, including boathouses and marine railways, are permitted uses in the Rural shoreline environment. Removal of the existing boat lift and relocating all fueling and maintenance activities to an upland location, where they have been conducted over water, would be consistent with the intent of the SMA. The project would be required to obtain and abide by any conditions imposed in a hydraulic project approval (HPA) issued by WDFW. The proposal was reviewed for compliance with SEPA and a DNS was issued. *Findings 1, 3, 5, 6, 7, and 9.*
2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. The record supports a conclusion that the proposed boathouse placed at the water's edge would not have a significant adverse impact on upland views. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Finding 6.*

3. As conditioned, the proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region. The project would replace existing boating facilities - comprised of an over water lift attached to the Applicant's dock - with off-lake storage and maintenance area for the Applicant's boat. Both the marine railway and the boathouse to serve the existing single-family residential use are allowed in the Rural shoreline environment. The marine railway would not interfere with shoreline access for any property or persons in the vicinity. The boathouse would be built upland of the high water mark and would not exceed ten feet in height. The record supports the Applicant's request for a structure greater than 100 square feet in area to house his existing boat. There is no evidence suggesting the subject shoreline is notable for their aesthetic, scenic, historic or ecological qualities. The marine railway would be built at grade without excessive grading. The Applicant would be required to obtain an HPA, which together with the instant conditions, would protect Long Lake's water quality consistent with the SMPTR. The proposal was reviewed by the County Public Health and Social Services Department and no issues of public health concern were raised. *Findings 1, 3, 4, 5, 6, 7, 8, 9, 10, and 11.*

DECISION

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to construct a 16- by 30-foot boathouse with galvanized tracks leading from the boathouse to below the ordinary high water mark of Long Lake is **GRANTED** subject to the following conditions:

1. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
2. The Applicant shall receive building permit approval prior to construction.
3. The height of the boathouse shall not exceed ten feet.
4. Construction is not authorized until 21 days from the date of filing of the Hearing Examiner decision with the Department of Ecology as required in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filings have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).
5. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.
6. 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.

7. Prior to construction of the boathouse, the Applicant shall receive and submit to Community Planning and Economic Development staff a hydraulic project approval permit from the Washington State Department of Fish and Wildlife.
8. Throughout construction, the Applicant shall use erosion control measures to prevent siltation of Long Lake. Prior to construction, the Applicant shall call the Community Planning and Economic Development Department for an erosion control inspection.
9. All stormwater discharges must be constructed in a manner that will not cause scouring on the beach.
10. 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).
11. In the event that archaeological deposits or skeletal material or features of a burial/interment situation are encountered, all work in the vicinity of the discovery area must stop immediately and contact made with the Washington State Historic Preservation Officer.
12. All areas that are disturbed by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.
13. The boathouse shall be setback above the ordinary high water mark of Long Lake and not less than five-feet from the side property line.

Decided December 13, 2018.



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 Community Planning & Economic Development 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 **\$688.00** for a Request for Reconsideration or **\$921.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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 \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____ 20__.