

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Kathleen Dickinson and Ron McDowell
PO Box 139
Eastsound, WA 98245

File No.: PSJREV-10-0001

Request: Shoreline Permit Revision

Parcel No: 472723001

Location: Stuart Island

Summary of Proposal: 12.5 foot extension of dock

Shoreline Designation: Rural Residential

Hearing Date: February 3, 2011

Application Policies and Regulations: SJCC 18.80.110(M); WAC 173-27-100

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

FEB 18 2011

DEVELOPMENT & PLANNING

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: Kathleen Dickenson and Ron McDowell	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
5 Shoreline Permit Revision 6 (PSJREV-10-0001)	S.J.C. COMMUNITY

7 FEB 18 2011

8 **INTRODUCTION**

DEVELOPMENT & PLANNING

9 The Applicants have applied for a revision to an approved shoreline substantial
10 development permit to construct a dock. The revision will extend the length of the
11 dock 12.5 feet in order to increase separation from kelp, as required by the United
12 States Department of Fish and Wildlife. The Examiner approves the permit subject to
13 conditions. The proposal may exceed applicable limitations on project area. The
14 conditions of approval will require the Applicant to either provide information to staff
15 establishing compliance or to reduce the size of the dock.

16 **TESTIMONY**

17 Lee McEnery confirmed that the expansion is less than 10% of the area of the
18 currently approved pier/ramp/float. There was no other testimony.

19 **EXHIBITS**

20 See Attachments list on page 5 of the staff report dated 1/10/11, all of which are
21 admitted into the record.

22 **FINDINGS OF FACT**

23 **Procedural:**

- 24 1. Applicant. The applicants are Kathleen Dickinson and Ron McDowell.
25 2. Hearing. The Hearing Examiner conducted a hearing on the subject
application on February 3, 2011.

Substantive:

3. Site and Proposal Description. The Applicant request a revision to a
shoreline substantial development permit approved on April 20, 2010 for the
construction of a dock for the use of two proposed undeveloped parcels in their
ownership. The requested revision would extend the length of the dock by 12.5 feet

1 as required by the United States Department of Fish and Wildlife in order to protect
2 kelp beds. The resulting dock would extend 78.5 feet from the ordinary high water
3 mark and would add 100 square feet to the pier/ramp/float, which is less than 10% of
4 the total area of the structure.

5 The property is 42 acres on Stuart Island, and lies between Stuart Island State Park on
6 the west and Stuart Island Airway Park on the east. The approved dock consists of an
7 8' x 8' pier, a 5'6" x 48' ramp landing on a 6' x 8' flared float and an 8' x 41'6"
8 moorage float. Without the ramp landing overlap, the approved structure is
9 approximately 700 square feet. The approved dock extends 56' feet from the
10 ordinary high water mark, making it consistent with the size requirements for a single
11 user dock; even though it was proposed as a 2-user dock. In 2010 the property was
12 planned to be subdivided into a 7-acre parcel and a 35-acre parcel, with construction
13 of a single-family residence on one of the lots. Reid Harbor was chosen as the dock
14 site due to deeper water and no habitat concerns, as well as because the bank is an
15 accessible height.

16 4. Characteristics of the Area. The property is located on an outer island and
17 is not accessible by ferry. There is an airstrip to the east, state park to the west, and
18 water on the other sides.

19 5. Adverse Impacts of Proposed Use. The record does not contain much
20 information on the kelp impacts, other than elevations showing that the float portion
21 of the pier/ramp/float would be adjacent to kelp beds as presently configured. The
22 ramp, which would still extend over the kelp beds, will be fully grated and will be
23 several feet above the water level during low tides. The US Fish and Wildlife
24 Department has determined that the proposed revision will adequately protect the
25 kelp beds and there is no evidence to the contrary. There are no other adverse
impacts discernable from the record or that would be reasonably anticipated from the
proposal. The Examiner finds that, overall, the proposal does not create any
significant adverse impacts and in fact reduces adverse impacts to kelp.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. Shoreline substantial development permit
revisions are subject to approval by the Hearing Examiner after conducting a public
hearing. SJCC 18.80.110(M).

Substantive:

2. Shoreline Designation. The subject property is designated as Rural Residential.

3. Comprehensive Plan and Zoning Designations. The subject property is
designated as Rural Residential, and the existing land use is Residential.

1
2 4. Permit Review Criteria. SJCC 18.80.110(M)(2), quoted in italics below, governs
3 the criteria for approval of revisions to shoreline permits.

4 **SJCC 18.80.110(M)(2):** *If the hearing examiner determines that the proposed*
5 *changes are within the scope and intent of the original permit, as defined by WAC*
6 *173-27-100(2), the revision shall be granted.*

7 **WAC 173-27-100(2):** *'Within the scope and intent of the original permit' means all*
8 *of the following:*

9 (a) *No additional over water construction is involved except that pier, dock, or float*
10 *construction may be increased by five hundred square feet or ten percent from the*
11 *provisions of the original permit, whichever is less;*

12 (b) *Ground area coverage and height may be increased a maximum of ten percent*
13 *from the provisions of the original permit;*

14 (c) *The revised permit does not authorize development to exceed height, lot coverage,*
15 *setback, or any other requirements of the applicable master program except as*
16 *authorized under a variance granted as the original permit or a part thereof;*

17 (d) *Additional or revised landscaping is consistent with any conditions attached to the*
18 *original permit and with the applicable master program;*

19 (e) *The use authorized pursuant to the original permit is not changed; and*

20 (f) *No adverse environmental impact will be caused by the project revision.*

21 5. The proposed revision will increase the overwater area by 100 square feet, which
22 is less than 10% of the overwater construction area. Ground area coverage and height
23 will not be increased. The 78.5 foot length of the dock will comply with both single
24 user (115 from OHWM, SJCC 18.50.190(G)(2)(a)) and joint user dock (200 ft. from
25 OHWM, SJCC 18.50.190(G)(2)(b)) maximum length requirements.

Unfortunately, the additional area proposed in the revision does not comply with the
dimensional requirements for single-user docks. SJCC 18.50.190(G)(2)(a) limits the
area of single-user docks to 700 square feet. The proposed revision would result in a
dock with an area of 800 square feet. The proposal would be consistent with area
requirements if it qualified as a joint use dock, because SJCC 18.50.190(G)(2)(b)
allows up to 1,400 square feet in area for docks serving two residences.

A key issue to determining compliance with dimensional requirements, therefore, is
whether the dock qualifies as a joint use dock. The decision approving the original
(pre-revision) design of this case did refer to the proposal as joint use. However,

1 there was no formal determination in that case whether the dock actually did qualify
2 as joint use for purposes of applicable regulations. The original design conformed to
3 both single-use and joint use dock requirements so no such inquiry was necessary at
4 the time. The Applicants apparently take the position that their proposal is a joint use
5 dock because they plan to subdivide the property served by the dock into two lots and
6 the dock will serve both lots. In the 2010 original application, the lot subject to
7 subdivision was undeveloped and the applicants only had immediate plans to build a
8 home on one of the two lots. There is no evidence in the record on the status of the
9 subdivision, building permits or any plans to develop the second proposed lot.

10 SJCC 18.50.190(G)(2)(b) allows 1400 square feet for a joint-use dock “associated
11 with two single-family residences”. The language does not provide any guidance as
12 to whether the homes need to have been already constructed at the time of
13 application. This timing issue was addressed in *TG Dynamics Group II, LLC, v. San*
14 *Juan County*, SHB No. 08-030 (2009). In that case the applicant submitted an
15 application for a joint use dock concurrently with an application for preliminary plat
16 approval. Only one home was constructed on the proposed subdivision site at the
17 time of application. The Shoreline Hearings Board considered an administrative
18 policy adopted by San Juan County that provided that for the dock to qualify as a
19 joint use facility for two users the subdivision must have at least two single-family
20 residences constructed on the property or an approved building permit for a second
21 single-family residence before it can approve the shoreline substantial development
22 permit. The Board concluded that it owed no substantial deference to the policy
23 because it was not the result of a long standing and consistent interpretation. The
24 policy was relatively new and had not been applied to previous subdivision projects.
25 The Board ultimately concluded, however, that since the applicant had accepted a
condition requiring the submission of a building permit for the second home prior to
construction of the dock that the dock proposal satisfied both the intent and specific
requirements of the County’s joint use dock policy.

The Board in *TG Dynamics* unnecessarily went out of its way to withhold deference
from the County’s administrative policy regarding SJCC 18.50.190(G)(2)(b),
ultimately to conclude that the policy was met as well as the requirements of SJCC
18.50.190(G)(2)(b). Given the County’s shoreline policies discouraging the
proliferation of docks, *see* San Juan County Comprehensive Plan Policy 3.5.C, the
County’s administrative policy is well-justified. The minimum requirement for a
building permit application to provide assurance that two residences will be served
protects against self-serving speculation of a future home that will never materialize.
In this case in particular, the record provides no assurance that a second home will
ever be built. If the mere subdivision of property by itself were sufficient to establish
joint use, persons with the means could circumvent the dimensional requirements for
single-user docks by subdividing their property.

Although the record does not provide sufficient assurance that the dock will indeed
serve two residences within the reasonably foreseeable future, it must also be
acknowledged that the Applicants did not have the opportunity to address this issue. It

1 was not raised in the staff report or by the Examiner during the hearing. Further, the
2 cause for the excess in size was largely attributable to factors beyond the control of
3 the Applicants. The excess area is also fairly modest. For these reasons, some
4 flexibility is warranted in implementation of the two residence requirement of
5 18.50.190(G)(2)(b) in this case. The conditions of approval will provide the
6 Applicants with an additional opportunity to demonstrate to staff that the second
7 home will be built within the foreseeable future. In the alternative, the Applicants
8 will be able to reduce the size of their proposal without seeking an additional
9 revision.

6 Overall, the adverse environmental impacts of the proposal will be reduced because
7 the revision is designed to reduce impacts to help and there is nothing in the record to
8 suggest that any other environmental impacts will be exacerbated as a result of the
9 revision.

9 As conditioned, the project is consistent with the criteria applicable to shoreline
10 permit revisions.

11 **DECISION**

12 The proposed is approved, subject to the conditions of the original project approved
13 in PSJ000-09-0004. The following conditions shall also apply:

- 14 1. The Applicants shall demonstrate to staff that the proposed dock will be serving
15 two single-family homes within the next ten years. In the alternative, the
16 Applicants shall reduce the overall area of the proposal to meet the maximum area
17 requirements for single-user docks as required by SJCC 18.50.190(G)(2)(a).
- 18 2. The Applicants shall schedule a site inspection with staff upon completion of the
19 project to verify compliance with this decision and applicable regulations.

18 Dated this 17th day of February 2011.



19 Phil Olbrechts
20 San Juan County Hearing Examiner

21 **Effective Date, Appeal Right, and Valuation Notices**

22 Hearing examiner decisions become effective when mailed or such later date in
23 accordance with the laws and ordinance requirements governing the matter under
24 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
25 subject to review and approval by the Washington Department of Ecology pursuant to
RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

1 This land use decision is final and in accordance with Section 3.70 of the San Juan
2 County Charter. Such decisions are not subject to administrative appeal to the San
3 Juan County Council. See also, SJCC 2.22.100.

4 Depending on the subject matter, this decision may be appealable to the San Juan
5 County Superior Court or to the Washington State Shorelines Hearings Board. State
6 law provides short deadlines and strict procedures for appeals, and failure to timely
7 comply with filing and service requirement may result in dismissal of the appeal. See
8 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to
9 promptly review appeal deadlines and procedural requirements and consult with a
10 private attorney.

11 Affected property owners may request a change in valuation for property tax purposes
12 notwithstanding any program of revaluation.
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