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Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SHORELINE MODIFICATION SL 03 231 and
SPECIALA USE SU 03 0230

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: DOUGLAS BARNET

ASSESSOR PARCEL NO: P61982

LEGAL DESCRIPTION: The subject site is located at 17863 West Big Lake Boulevard,
Mount Vernon, WA; a portion of Section 36, Township 34 North, Range 4 East, W.M.,
Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Douglas Barnet
19395 Conway Hill Road
Mount Vernon, WA 98274

File Nos: PL03-0231 (Shorelines)
PL03-0230 (Special Use)

Request: Shoreline Substantial Development Permit
Modification of Special Use Permit SP 86-025

Location: Big Lake Resort on western shore of Big Lake at 17863 Big
Lake Boulevard, within a portion of Sec. 36, T34N, R4E, W.M.

Land Use Designations: Shoreline -- Rural Residential
Comprehensive Plan -- Rural Village Residential

Summary of Proposal: To renovate the Big Lake Resort, by: (1) replacing existing sites and creating a facility that consists of 30 RV sites with no tent or rental sites; (2) constructing an approximately 1,000 square foot office/restroom/laundry building; (3) replacing and expanding electrical, water and sewer systems consistent with capacity needs. The Carousel Apartments are not a part of this project. A Boundary Line Adjustment will be proposed to put the Carousel Apartments on a separate parcel from the resort.

Public Hearing: After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on October 15, 2003.

Decision: The application is approved, subject to conditions.



FINDINGS OF FACT

1. Douglas Barnet (applicant) seeks to renovate the Big Lake Resort. His is applying for a modification of existing Special Use Permit SP 86-025 and for a Shoreline Substantial Development Permit.

2. The Resort is located on the west side of the lake at 17863 West Big Lake Boulevard, within a portion of Sec. 36, T34N, R4E, W.M. The shoreline designation for the property is Rural Residential. The Comprehensive Plan Designation is Rural Village Residential.

3. Prior approvals for the facility reviewed the resort as a recreational facility. The surrounding shoreline use is generally devoted to residential developments.

4. The existing Special Use Permit mandates a mixture of 10 tent campsites, 15 recreational vehicle (RV) sites and 7 rental sites. The applicant proposes to convert this development to a facility consisting of RV sites with no tent or rental sites. The facility will be reconfigured to accommodate 30 RV sites, each approximately 16 feet x 50 feet.

5. The infrastructure for the existing resort is in a severely deteriorated state. In support of the new configuration, the applicant proposes to replace and expand outdated and failing electrical, water and sanitary sewer systems, making them consistent with the capacity needs of the proposed configuration. All utilities installed as part of the improvements will be located underground. The sewer line from the site feeds into the Big Lake Sewer District line. Water is provided by PUD #1.

6. To support the renovated resort, the applicant proposes to build an approximately 1,000 square foot office/restroom/laundry building. All of the new facilities in the reconfigured resort will be at or upland of a 50-foot setback from the Ordinary High Water Mark (OHWM) of the lake. The new building will have set back of 100 feet from the water. The side yard setback for all new facilities will be 20 feet.

7. Other site improvements will include fencing, landscaping, grading for sites and interior road construction to accommodate the new configuration. Each camp site will have a gravel pad, frost-free water faucets, sanitary sewer hookup and cable TV. New picnic tables, fire pits with grates and individual grass lawns will be provided.

8. The Carousel Apartments which extend over the water in the southeast portion of the site are not a part of this application. The applicant intends to complete a Boundary Line Adjustment (BLA) that will result these apartments being on a separate parcel from the resort. After the BLA, the resort will contain 87,155 Square feet.

9. There are a number of features of the pre-existing resort that will continue within the 50-foot setback. These include a boat launch, docks, rockeries, beach and a small building that has provided an office, store, restrooms, and laundry. The uses of the building will not change.



Nevertheless, the percentage of impervious surface on the property will be reduced to around 46%.

10. The principal change this renovation project will make in the pattern of use authorized at the resort has to do with spaces presently identified as "rental sites." In the past the Permit Center insisted that these must be occupied by fixed permanent structures. RV's were not allowed in such sites. The proposal will eliminate this restriction and convert all spaces to RV spaces.

11. The activities that now occur at the site will continue; namely camping, fishing, boating, boat launching, and swimming. The facility is the only private campground on the lake. It has been in existence for almost 40 years.

12. Parking will remain the same. Each RV space will have at least one parking space. Boat trailer parking will remain adjacent to the boat launch.

13. Because no additional units will be added, the renovation should not add any new traffic to and from the site. Moreover, no additional demands on other infrastructure, such as water, sewer, or fire protection will be made. An on site manger will oversee the sight 24 hours a day.

14. A Fish and Wildlife Habitat Assessment and Mitigation Report was prepared pursuant to the Critical Areas Ordinance. The Assessment, produced by ATSI, was issued on July 1, 2003. The Assessment notes that the site is presently built out and finds that the proposed improvements will not result in a net loss of riparian habitat functional values. Mitigation will be accomplished by the proposed physical improvements. These will increase the aesthetic appeal, reduce the impervious surface area, and increase the number of trees on the site.

15. The Planning and Permit Center Staff performed critical areas and general environmental review and concluded that the project, with the recommended conditions, will comply with Critical Areas Ordinance requirements. In addition, a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued for this project on August 14, 2003. The conditions imposed were standard requirements. No comments were received. The MDNS was not appealed.

16. The local Shoreline Master Program (SMP) allows recreational uses in Rural Residential shorelines, subject to its general and tabular regulations. SMP 7.12(2)(A)(2). The proposed 50-foot setback is double the standard for this environment and, in general, insures that shoreline protection values will not be adversely affected by the reconfiguration. The tabular requirements (dimensional criteria) will all be met. Site coverage will be reduced from 61% to 46% bringing a non-conforming situation into conformity. As in the past, the facility will serve the policy aim of providing access for substantial numbers of people to the shorelines.

17. The criteria for Special Uses are set forth and SCC 14.16.900(2)(b)(v), as follows:



- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety and general welfare.
- (f) For special uses within . . . Natural Resource Lands, . . . the impact on long-term natural resource management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.
- (h) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

18. The Staff Report analyzes the application in light of the requirements of the SMP and of the Special Use criteria and finds that, as conditioned, the project will comply with the relevant standards. The Hearing Examiner concurs with these analyses and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

19. One letter of concern from a citizen was received. The letter questioned density, setback, noise and air pollution impacts. The letter argued that the proposed use does not fall within the "recreational use" category. The Staff Report adequately responds to all of these matters. None appears to present a significant problem. Review by the Assistant Director of the Planning Department confirmed that the existing and proposed use meets the SMP criteria for a recreational facility.

20. The chief issue raised at the hearing related to the Staff's proposed Condition #12 for the Special Use Permit Modification. As proposed, this condition would state:

"The Planning Department recommends that the Special Use Permit include a condition which limits camper duration at the Big Lake Resort to a time period not to exceed nine months to allow for seasonal recreational users."



21. This condition does not appear in the existing Special Use Permit. The Staff derives this new restriction from the definition of "Campground" in the Unified Development Code. That definition is, as follows (SCC 14.04.020):

"Campground: an area of land developed for recreational use in temporary occupancy, such as tents and recreational vehicles."

The proposed condition is intended to insure that occupancies are in fact "temporary."

22. The applicant strongly opposes this condition. He points out that the Code does not have a definition of "temporary," and believes the time limit proposed is arbitrary.

23. The existing Special Use Permit for Big Lake Resort does not contain such a restriction. Nor do any of the other similar recreation parks in the County that serve RV's have a similar restriction. The applicant says that the while most RV campers stay less than nine months at a facility, not all do. He believes that applying the limitation to Big Lake Resort alone would place him at an unfair competitive disadvantage.

24. One member of the public, now living at Big Lake Resort, testified at the hearing. He favored the elimination of proposed Condition #12.

25. The applicant also would prefer the elimination of proposed Condition #12, but said that if a time restriction is imposed, he would find it less offensive if the Staff Report were changed to read as follows:

"The Planning Department recommends that the Special Use Permit include a condition which limits visitors at the Big Lake Resort to a time period not to exceed 270 consecutive days (nine months)."

This would at least eliminate any confusion about whether the word "camper" refers to the individual camper or the RV.

26. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.050(b)(ii), SMP 9.06.

2. The requirements of SEPA have been met.

3. The proposal, as conditioned, is consistent with the policies of the Shoreline Management Act as set forth in RCW 90.58.020. The shoreline protection aims of the Act are not violated. The public access policies are served.



4. The proposal is likewise consistent with the SMP, and in particular with the provisions relating to Recreation. SMP 7.12. No conflict with any state regulations adopted for shorelines was identified.

5. Accordingly, the criteria for issuance of the Shoreline Substantial Development Permit are met. SMP 9.02, RCW 90.58.140(2).

6. The Unified Development Code contains no separate process for modifications to existing Special Use Permits. Therefore, applications for modifications are measured against the basic Special Use criteria in the same way as original applications.

7. The proposal, as conditioned, meets the criteria for Special Use Permit approval. SCC 14.16.900(2)(b)(v).

8. On reflection, the Examiner agrees with the applicant that proposed Condition #12 for the Special Use Permit Modification should not be imposed. In fairness, the question of what "temporary" means for the purposes of the definition of "campground" should be resolved either legislatively or through a generally-applicable code interpretation. Then all new recreational development involving campgrounds could be made subject to a uniform standard and the problem of singling out a single facility would be eliminated.

9. In the instant case, the following conditions should be imposed;

(1) The project shall be developed as described in the application, except as the project may be modified these conditions.

(2) The recommended mitigations included in the Fish and Wildlife Assessment Report by ATSI, dated July 1, 2003, shall be fully implemented.

(3) The applicant shall submit a landscaping plan conforming with SCC 14.16.830(4)(c) for review and approval prior to the issuance of any building permit. The landscaping plan shall be implemented within one year of permit approval

(4) The Health Department shall be satisfied that the sewer connection is located slightly above ground and can be closed or secured when not in use, and that the waterline hose bib is 18" horizontally above the sewer connection and not aimed toward any electrical connection boxes or wires.

(5) The application of fertilizer, pesticides, and herbicides shall be prohibited within 50 feet of the OHWM of Big Lake

(6) The project shall be commenced within two years of permit approval and completed within three years of building permit approval.



(7) Best Management Practices shall be used during construction. Temporary erosion and sedimentation control measures shall be employed in accordance with Chapter 14.32 SCC Drainage.

(8) The applicant shall comply with surface and ground water quality requirements as set forth in Chapters 173-201A WAC and 173-200 WAC. Best Management Practices shall be used to prevent water quality degradation.

(9) The applicant shall comply with all regulations and requirements of the Northwest Air Pollution Authority.

(10) The applicant shall comply with all relevant provisions of the Unified Development Code, including Chapter 14.24 Critical Areas and Chapter 14.16 Zoning.

(11) RV's and RV parking spaces shall have a minimum separation of 10 feet.

(12) Failure to comply with all permit conditions may result in permit revocation.

10. Any conclusion herein which may be deemed a finding is hereby adopted as such.

DECISION

The requested Shoreline Substantial Development Permit and Special Use Permit Modification are approved, subject to the conditions set forth in Conclusion 8 above. These conditions supersede those contained in Special Use Permit #SP 86-025



Wick Dufford, Hearing Examiner

Date of Action: November 20, 2003

Date Transmitted to Applicant: November 20, 2003



RECONSIDERATION/APPEAL--SPECIAL USE

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.

RECONSIDERATION/APPEAL--SHORELINES

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within five (5) days after the date of decision, or decision on reconsideration, if applicable.