

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant/Agent: Community of Christ
Samish Island Campground Association
c/o Glen Fishel, Board President
12163 Bayhill Drive
Burlington, WA 98233

Agent: Ravnik & Associates, Inc.
John Ravnik
P. O. Box 361
Burlington, WA 98233

Request/File No: Shoreline Variance Permit, PL10-0277

Location: Community of Christ Campground, Samish Island, at 11795 Scott Road, within NW1/4NE1/4 Sec. 36, T36N, R2E, W.M.

Summary of Proposal: To build a 56' x 90' concrete sports court partially within the shoreline associated with Samish Bay and Freestad Lake as an additional amenity to an existing developed camp.

Shoreline Designation: Conservancy

SEPA Compliance: Exempt

Public Hearing: April 20, 2011. Public input favorable. Planning and Development Services recommended denial

Decision: Approval, with conditions

Reconsideration: A Request for Reconsideration may be filed with PDS within five days of this decision. The decision may be appealed to the Board of County Commissioners by filing an Appeal with PDS within five days of the date of the decision or decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. The Community of Christ, Samish Island Campground Association, seeks a Shoreline Variance to build a sports court on its established campsite. The court would be partially within shoreline jurisdiction.

2. The site is at 11795 Scott Road on Samish Island within shorelines associated with Freestad Lake and Samish Bay. The location is within NW1/4NE1/4 Sec. 36, T36N, R2E, W.M. The shoreline designation for the Freestad Lake/ Samish Bay shore is Conservancy.

3. The Camp covers an area of approximately 90 acres, comprising most of the south-eastern tip of Samish Island. The property is on an upland bench bordered by Freestad Lake and Samish Bay to the north and east and by Scott Road on the south. South of the road are a number of residential lots bordering Alice Bay.

4. The campground has been in existence since 1950 and was developed with permanent structures long before shoreline management regulations came into being. The central portion of the property contains a number of buildings and facilities that are wholly or partially within the 200 foot shoreland strip adjacent to the waterfront.

5. The sports court as presently proposed would be in this area and would measure 56' by 90'. The site is currently in lawn, just north of the existing ball field and septic drainfield area, and landward of the existing east restroom and the existing gazebo. No seating is proposed.

6. The northern edge of the court, as proposed, would be 175 feet from the Ordinary High Water Mark of Freestad Lake/Samish Bay. The local Shoreline Master Program (SMP) establishes a 200 foot shore setback from the OHWM for auxiliary recreational uses in a Conservancy designation. (The shore setback for "campsite, picnic facilities and their essential structures" is 70 feet from the OHWM.)

6. The Camp has been attempting to construct a hard-surface sports court for a number of years. The facility would be an additional amenity making activities such as basketball, pickleball, and volleyball available as part of the camp experience.

7. In 2005, a sports court at a more easterly location 152 feet from the OHWM was proposed in connection with a Master Plan for improvements at the camp. Although the Staff recommended denial of a variance for a court at this site, the Examiner approved it in January 2006 (PL05-0254). However, on review, the Department of Ecology disagreed and denied the variance. Interestingly, at the same time a variance was approved for the renovated east restroom located even closer to the OHWM.

8. The present proposal moves the sports court toward the central portion of the camp site where various athletic and play areas are already established. The Staff again recommends denial. In their view the court could readily be moved another 23 feet inland.

9. The applicant objects to this on the grounds that moving the court further inland would encroach on the existing baseball field and would also place the court across the main pathway for pedestrians from the residential part of the camp to the meeting center.

10. The Camp's engineering consultant made a detailed presentation showing a number of different possible locations and describing discussions with the County and the Department of Ecology over various configurations. The proposal ultimately selected by the applicant cuts the originally proposed court in half and moves it significantly inland from other iterations. About 40% of the present proposal is within the shore setback.

11. The Board President for the Camp argued that the central site selected is the only reasonable place to put the court. He said that a re-evaluation of more easterly locales made it clear that a court there would interfere with uses involving meditation and quiet. He said it is important to operation of the Camp that noise generating activities associated with active recreational uses be segregated from areas requiring quiet enjoyment.

12. He also argued that moving the court landward in the central portion of the Camp would unduly interfere with other established activities and patterns of use at the Camp. The location selected was agreed upon by the Camp's board whose members strongly objected to the idea of encroaching on the path and the ball field.

13. The grassy open area of athletic fields and play space where the court would be located is separated from the shore areas to the north by a bank covered with vegetation. The bank is at a higher elevation than the grassy area. The result is that drainage from the court's site goes in the opposite direction -- south to Alice Bay. In connection with the sports court, new drainage facilities are proposed that would ensure the southerly routing of runoff. No runoff from the development would impact the shoreline that the setback seeks to protect.

14. A Fish and Wildlife Habitat Assessment, dated October 31, 2010, was prepared for this proposal by Graham-Bunting Associates. The Assessment notes that under the Critical Areas Ordinance, the standard marine shoreline buffer for a Conservancy Shoreline Area is 150 feet. Samish Bay and Freestad Lake are hydraulically connected and both constitute marine shorelines. Buffers for such shorelines are supposed to be kept free of development and protected by inclusion in Protected Critical Areas (PCAs). The subject proposal would not impinge upon the critical area buffer, nor interfere with its protection.

15. Indeed, there is no evidence in the record that construction of the sports court at the location proposed would have any physical impact whatsoever on the shorelines sought to be protected. No shoreline resources would be affected or put at risk. Ironically, the Camp is cooperating in efforts to restore Freestad Lake as a saltwater estuary, an effort that should in time pay significant environmental dividends.

16. There was considerable discussion at the hearing about whether the Camp, as a privately owned facility, does or does not promote public access to shorelines. The evidence is overwhelming that the Camp welcomes the public and makes its grounds, including the children's play areas, and the surrounding trails available to all. Neighbors of the facility praised

the Camp for its accommodating treatment of visitors. Only during those occasions when Camp sessions are in progress is there any effort to exclude the general public. And the Camp sessions themselves frequently include from 50 to 150 individuals all of whom are also members of the public.

17. So there appears to be little question that the Camp operates as a facility that promotes public access to shorelines. It is not known exactly what use the public might be able make of the proposed sports court, but it is clear that the facility will not in any way interfere with established patterns of public shoreline use.

18. Under SMP 6.04(4), the objective of the Conservancy shoreline area includes the following:

Activities in this shoreline area should be conducted in a manner to ensure recreational benefits to the public and/or achieve sustained resource utilization without significant adverse impacts.

Within the context of existing development, the proposal here is consistent with the Conservancy shoreline purposes. The public is encouraged to use these shores. Though the natural condition of the shoreland is long gone, the effect of this development will not impact natural resources and processes at the water's edge at all.

19. The request is for a Shoreline Variance from the 200 foot setback requirement. At 175 feet from OHWM, the north side of the court would intrude into this setback, by converting what is now lawn into hard impervious surface. Under SMP 10.03(1), the criteria for granting a variance for developments located landward of the OHWM require:

- a. That the strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and not, for example, from deed restrictions or the applicant's own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
- d. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration must be given to the cumulative impact of like actions in the area.

20. Significant interference with a reasonable property use. The construction of a sports court at a camp much used by young people is a reasonable use of the property. The strict application of the 200 foot setback here would significantly interfere with this Camp's ability to provide this use without, for no good reason, altering existing facilities and patterns of operation.

21. Hardship is the result of unique conditions not of the applicant's making. The self-induced hardships referred to in this criterion are those an applicant creates in the face of existing requirements. The development of the site that took place before shoreline regulations became effective, in context, must be considered the innocent creation of conditions. The unique conditions here are site-specific patterns of development and operation that make putting this court in another location a hardship.

22. Compatibility with other activities. There is no hint of any conflict between the use proposed and other uses in the neighborhood. The neighbors endorse this proposal. No adverse effects to other properties or to the shoreline environment designation were shown to be likely.

23. No grant of special privilege. There has been a real effort here to shrink the court's intrusion into the setback to the extent possible consistent with the camp's operations and the unencumbered space available. The request appears to be the minimum that the applicant can reasonably make. To allow the requested encroachment on the setback in this open space setting where the existing site is a lawn does not violate the principal against granting special favors. There is nothing in the record to indicate that other properties in the area present the same set of circumstances. If such circumstances exist, allowing a similar request would not constitute a special privilege.

24. Public interest. Where, as here, no adverse impacts on the shorelines are anticipated and the development promotes the public's participation in an enterprise devoted to spiritual development, no detriment to the public interest is apparent.

25. Cumulative impacts. Staff suggests that maybe the Campfire Girls camp at the west end of Samish Island might want to do this too. There is nothing in the record to suggest that this might happen. Or that if it did, the circumstances would be similar.

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 subject matter of this proceeding. SMP 10.02(3).

2. Under the facts as found, the proposal is consistent with the applicable criteria for granting a Shoreline Variance. SMP 10.03(1).

3. The concept of hardship in the area of variances is a difficult one. The physical setting that is to be considered, however, is the one that exists, not the natural condition. Therefore, the pre-existing lawful development of a site is relevant to the consideration. The peculiar nature of the use or user is also a factor. What is reasonable must be determined by evaluating the particular activities that are conducted on site and how they fit with the lawful operational objectives of the applicant. Finally, some kind of balancing needs to be done between the reasonableness of the use requested and the shoreline impacts that are anticipated.

4. The purpose of variances is to allow a limited alternative to the rote application of dimensional requirements. 200 feet is a number that bears no necessary connection to the protection of shoreline values. After all, the same Master Program table that establishes the 200 foot setback for auxiliary recreational uses (SMP 7.12, Table R) establishes a Conservancy setback of only 70 feet for "campsites, picnic facilities and their essential structures."

5. The proposed development is clearly in aid of the important shoreline objective of promoting public access. Under RCW 90.58.020, priority in shoreline alteration is given to recreational uses and other improvements "facilitating public access to shorelines of the state" and development that will provide "an opportunity for substantial numbers of people to enjoy shorelines of the state." The development that is being proposed is of this type. The opportunity for flexibility that the provisions for variance provide should, therefore, be evaluated in light of the quoted statutory policy.

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

CONDITIONS

1. The project shall be constructed and operated in accordance with the application materials, except as the same may be altered by these conditions.

2. The applicant shall obtain all other needed permits and abide by the conditions of same. The grading permit shall be obtained prior to beginning installation of the sports court.

3. The applicant shall comply with all applicable requirements of State and County regulations, including but not limited to, Chapters 173-201A and 172-200 WAC (surface and ground water quality); Chapter 173-60 WAC (noise); Chapter 14.32 SCC (drainage); Chapter 14.24 SCC (critical areas); Chapter 14.16 SCC (zoning).

4. Temporary erosion/sedimentation control measures shall be used as required by applicable drainage regulations.

5. The area designated for overflow parking shall not encroach onto existing drainfield or reserve areas.

6. Aesthetic impacts shall be minimized. If overhead lighting is placed onsite, it shall be directed away from the shore.

7. Prior to grading permit approval, the abandoned well northeast of the CFC building shall be decommissioned in accordance with the requirements of the Washington Department of Ecology.

8. A copy of this decision shall be submitted with the application for a grading permit.

9. The project shall be commenced within four years of final permit approval and completed within eight years thereof.

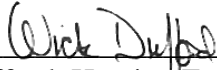
10. These conditions do not remove any previous conditions of approval for activities at this site. All conditions of approval for PL05-0253 and PL05-0254 are still in effect.

11. Failure to comply with any conditions may result in permit revocation.

DECISION

The subject application for a Shoreline Variance (PL10-0277) is approved, subject to the conditions set forth above.

DONE this 5th day of May 2011.



Wick Dufford, Hearing Examiner

Transmitted to Applicant on May 5, 2011

See Notice of Decision, page 1, for Reconsideration and Appeal information.