

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Dan and Beth Folkers
12824 Padilla Bay Lane
Mount Vernon, WA 98273

File No: PL02-0728

Request: Special Use Permit

Location: 12824 Padilla Bay Lane, Lot 3 Short Plat #45-89,
within a portion of Sec. 30, T35N, R3E, W.M.

Land Use Designation: Rural Intermediate (RI)

Summary of Proposal: To construct an impoundment to serve as an irrigation and trout pond. The project includes reconstruction of a drainage ditch and the addition of riprap lining. Excavated material not used in the dike is spread over the property.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on July 27, 2005.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Daniel and Beth Folkers (applicants) seek to maintain an impoundment to be used as an irrigation and trout pond on their property located along the southwest corner of the intersection of Padilla Bay Lane and Seaview Lane. They are asking for an after-the-fact Special Use Permit.

2. The parcel is approximately 6.43 acres in size and identified as Lot 3 of Short Plat #45-89. The parcel number is P35055. The address is 12824 Padilla Bay Lane. The property is within a portion of Sec. 30, T35N, R3E, W.M.

3. The impoundment is located in the southwest corner of the property. To the north and east is an existing single family residence. The rest of the parcel is an open grass area. The site is accessed via a residential driveway off of Padilla Bay Lane

4. The zoning in the area is Rural Intermediate (RI). The surrounding land uses are rural and residential in nature.

5. The impoundment is composed of an excavated area with a dike or embankment on the downhill sides. The pond is about 125 feet north to south and about 75 feet east to west. The average depth is about five feet. The approximate volume held is 472,866 gallons. This amount exceeds one acre-foot.

6. The project involved excavation of approximately 1,750 cubic yards of material. This material has been either used in the dike or spread out over the property. During dike construction an 8-ton vibratory compactor was used to compact the dike material in lifts of one foot or less. The dike was finished with a layer of top soil on the outside which was seeded. The interior of the pond is lined with crushed rock and clean gravel.

7. There is a pre-existing drainage ditch flowing from north to south along the west side of the property. The pond impounds and releases flowing water from this ditch. On the east side of the finished pond is an 8-foot-wide and 2-foot deep overflow structure that acts as the primary outlet. The outlet discharges water into a rock lined ditch which carries the water around the southeast corner of the pond to the original ditch as it exits the applicants' property. There is a secondary overflow at the southwest corner of the pond.

8. In asking for a Special Use Permit, the applicants stated:

Our project started in winter of 97 with the erosion of the drainage ditch on W side of our property, the ditch was steep with no rock riprap and hard to maintain. The winter of 97-98 we realigned the ditch, reduced slope of bank to 3/1 and added rock riprap. Sounded like a good plan at

the time but this was also hard to maintain and needed improvement. Work continued slowly and in fall of 2000 we extended the rock riprap west and added landscaping at the NW corner (Padilla Bay Lane). In fall 2001 we constructed a pond and added rock riprap to remaining portion of the drainage ditch outflow. In spring of 2001 we added 1 & 2 man rock around the edges of the pond and stocked the pond with trout. We are continuing to add landscaping and the final goal of creating an earthen pond providing adequate habitat, complete with a spawning channel for the trout. We see this project as a positive improvement, a steep sided earthen drainage ditch is lined with rock stopping erosion, the pond and stream create habitat for wildlife and aquatic plants.

8. The project is the subject of Grading Permit BP02-1507, applied for on December 2, 2002. In connection with the application for that permit, Public Works requested a geotechnical evaluation of the pond construction. A report by a professional engineer was received on November 4, 2003. He expressed the opinion that “the dike forming the east, west and south side of the pond was adequately compacted and will hold the impounded water.” Public Works requested additional information to be supplied as an attachment to the Geotechnical report as well as a Drainage Study and Construction Plans. On June 3, 2005, Public Works confirmed that all Grading Permit issues had been resolved and the permit was being signed off.

9. Two public comment letters were received. One was concerned about a pre-existing problem with excessive run-off downstream and the other opposed the post-hoc nature of the permit. The second letter contended that water seeps through the southwest corner of the pond onto the neighboring field to the west.

10. From the outset Public Works’ concerns seem to have been principally about the possibility of leakage from the down slope perimeter of the pond and the potential of failure of the dike during a large storm event. The Folkers maintain that there is no seepage. They say their project has not changed drainage in the surrounding area. Moreover, they have taken the position that their engineer’s opinion about the adequacy of the dike should be sufficient. Ultimately, there is nothing in the record indicating that Public Works takes issue with any of these points.

11. The Folkers further contend that their project adds to the quality of the discharged water. They point out that some water evaporates from the pond and some silt settles out. They note that they have created a bioswale at discharge that is approximately 130 feet in length. The Department of Ecology has performed water quality monitoring on the pond, including analysis for fecal bacteria contamination. The results indicated an “an extremely high water quality with a total absence of fecal contamination.”

12. On August 28, 2003, the County issued a Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) on the subject impoundment. The DNS was not appealed.

13. There was no public testimony at the hearing.

14. The criteria for Special Use Permit approval are set forth at 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 in ... Natural Resource Lands ..., the impacts 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 and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

15. The Staff Report analyzes the application against these criteria and concludes that, as conditioned, the project is consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The preponderance of evidence is that the structure is safe and is causing no harm. The Staff Report is by this reference incorporated herein as though fully set forth.

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

CONCLUSIONS OF LAW

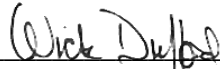
1. The Hearing Examiner has jurisdiction over the subject matter and the persons of this proceeding.
2. The requirements of SEPA have been met.
3. SCC 14.16.020 defines impoundment as “a natural topographic depression, man-made excavation, or diked area, which is designed for livestock watering, irrigation, recreation, wildlife habitat, fish rearing, or property enhancement. Impoundments do not include stormwater management ponds.” The project at hand meets the definition of “impoundment.”
4. In Rural Intermediate zones, impoundments greater than one acre-foot in size are allowed as a Hearing Examiner Special Use. SCC 14.16.300(4)(o).
5. The facts support a conclusion that the project, as conditioned, meets the criteria for Special Use Permit approval. SCC 14.16.900(2)(b)(v).
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The impoundment shall be maintained essentially as described and depicted in the application materials.
2. No significant change in the structure shall be made without the prior approval of Planning and Development Services.
3. The permittee shall monitor the performance of the dike. Any indication of leakage or other loss of integrity shall be addressed immediately via an engineered solution approved by Public Works.
4. The applicant shall comply with all relevant provisions of the Skagit County Code and with the relevant State Water Quality Standards.
5. The applicants shall obtain all other necessary approvals, if any.
6. Failure to comply with any condition may be ground for permit revocation.

DECISION

The requested Special Use Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: September 2, 2005

Date Transmitted to Applicant: September 2, 2005

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services 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 Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.