BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF CREEK DEVELOPMENT, INC., Appellant, v. KING COUNTY, Respondent.	PCHB No. 85-251 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the appeal of a Flood Control Zone permit denied by King County to Creek Development, Inc., came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk, Chairman, (presiding) and Wick Dufford, Member, convened at Seattle, Washington, on August 26, 1986. King County elected a formal hearing pursuant to RCW 43.21B.230.

Appellant was represented by attorney J. Richard Aramburu. Respondent King County was represented by James Brewer, Deputy Prosecuting Attorney. Lisa Flechtner of Gene Barker and Associates recorded the procedures.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I

This matter arises on land adjacent to the Tolt River within Snoqualmie Flood Control Zone #5, a state flood control zone established pursuant to chapter 86.16 RCW.

II

The Tolt River is a tributary of the Snoqualmie River and is located in King County. The Tolt River flows westward from its mountain origins and emerges from the foothills near the town of Carnation onto a valley floor.

III

Both the Snoqualmie and the Tolt have flooded on many different occasions in the past. In modern times, dikes were constructed along the Tolt's banks, providing some measure of protection.

IV

In April 1985, appellant Creek Development, Inc., applied for a septic tank permit for a single family residence in Carnation adjacent to the Tolt River at a point one-third to one-half mile from its confluence with the Snoqualmie River. On May 7, 1986 the septic tank permit was approved by King County.

V

On June 3, 1985, appellant Creek Development, Inc., applied for a

building permit for the proposed residence. On June 29, 1985, the building permit was approved by King County. Creek Development then proceeded with construction pursuant to the septic system and building permits.

VI

Thereafter, in connection with obtaining financing for the project, Creek Development was obliged to investigate the availability of flood insurance. Inquiries on this subject led them back to King County where they were advised that a flood control permit was necessary to build on the site.

VII

On October 18, 1985 appellant Creek Development, Inc., applied to King County for a flood control zone permit for the residence. On November 7, 1986, King County denied this permit. By then, the house was substantially complete.

The denial in pertinent part stated;

> We have reviewed your application and are submitting the following comments:
>
> 1. Your property is located entirely within the 100-year frequency floodway channel for the Tolt River as established by the Tolt River Flood Hazard Analysis, U.S. Department of Agriculture, Soil Conservation Service.
>
> 2. The Washington State Administrative Code (WAC) 508-60-040 states:
>
> a) Structures or works located within the floodway channel must not be designed for or used for either (a) human habitation of a permanent nature or (b) uses associated with high flood damage potential.

b) Structures or works shall be firmly anchored or affixed to the realty in order to prevent dislocation by flood water and damage to life, health and property.

c) The structures or works shall not adversely influence the regimen of any body of water by restricting altering, hindering, or increasing flow of the flood water in the floodway channel.

3. Construction of a permanent dwelling on this site would also violate the rules and regulations of the National Flood Insurance Program and our King County Flood Hazard Overzone requirements.

Therefore, because the proposed construction would violate the requirements of the State Flood Control Zone Regulations WAC 508-60-040, we must deny your application for a State Flood Control Zone Permit.

Feeling aggrieved by this action, appellant filed an appeal with this Board on December 6, 1985.

VIII

After the appeal was filed, King County conducted an additional investigation of the matter and decided that it had been in error in concluding that the site is within the 100-year floodway. On this re-evaluation, the County placed the property within the floodway fringe area, where residential construction is permitted subject to flood proofing requirements. We concur in this later analysis and find that the property is, in fact, within the floodway fringe.

IX

Based on surveyed elevations, all of the living spaces of this existing residence with the exception of the family room and laundry room are above the 100-year flood level which is calculated to be

83.41 feet above mean sea level. These two rooms are 82.69 feet above mean sea level. King County now concedes that its denial of the flood control permit was incorrect but urges this Board to require that the permit, when issued, be conditioned on raising all floors, electrical outlets and mechanical connections to the 100-year flood level. Thus the sole question before this Board is whether the floors, wires and pipes for two rooms should be ordered to be raised about 8 1/2 inches.

X

The dikes along the property at the site are high enough to contain the 100-year flood, but not with any significant freeboard. Flood risk analysis, therefore, assumes that the diking system might not totally contain such a flood and that the property in question might get wet. However, the force and velocity associated with the floodway would not be present. Accordingly, the existence of structures in this fringe area, including the house at issue, should not adversely affect the regimen of the flooding stream.

XI

The photographic and testimonial evidence shows the residence to be firmly anchored. We find that, in its floodway fringe location, the house is adequately affixed to the realty to prevent dislocation by flood water.

XII

The historical record does not contain a 100-year flood for the Tolt. The figure 83.41 feet above mean sea level is a prediction of the elevation of the 100-year flood at the site. The number is the

result of mathematical calculations, applying available information from such historical discharge data as exists to available topographic information.

These sources are incomplete and imperfect. More history and more topographic detail would alter the calculations. The predictive techniques used simply give us the best information computers can provide within limitations of the basic data.

XIII

The County now seeks for two rooms an adjustment in elevation of a magnitude approximately the same as the length of the piece of paper on which this decision is written. The proposed alterations would cost in excess of $4,400.

We find that the 8 1/2 inches involved is within the margin of error for the 100-year flood level and are persuaded that imposing a condition requiring the raising of flooring, electrical and mechanical structures by that amount would not result in any appreciable reduction in flood damage risk.

XIV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

We review the existing residence for consistency with the State Flood Control Zone Act, chapter 86.16 RCW and rules implementing it

promulgated by the Department of Ecology at chapter 508-60 WAC.

II

Because the residence is located within the floodway fringe of the Tolt River, it is subject to WAC 508-60-050 which requires:

> (1) The structures or works are designed so as not to be appreciably damaged by flood waters;
>
> (2) The structures or works shall be firmly anchored or affixed to prevent dislocation by flood water and subsequent damage to life, health, and property; and
>
> (3) The structures, works, or improvements will not adversely influence the regimen of any body of water by restricting, altering, hindering or increasing the flow of flood waters in the floodway or flood channel expected during a flood up to a magnitude of one hundred year frequency so as to unduly reduce the flood storage capacity of the floodway fringe.

We conclude that the existing residence is consistent with these criteria without further alteration.

III

The existing residence is also subject to WAC 508-60-060 which provides.

> The department <u>may</u> as a permit condition require the <u>flood proofing</u> of any structure or works constructed, reconstructed or modified upon the <u>floodway fringe</u> or floodway in order to minimize damage to life, health or property against damage by flood water up to the volume of flood water that could be expected during a flood up to a magnitude of a one hundred year frequency using the final determining factor. (<u>Emphasis added</u>).

We do not believe that the floodproofing proposal put forward by King County is necessitated by this WAC provision. Consistent with

our findings, we hold that such a minor adjustment in elevation would not appreciably advance the objective of minimizing damages.

IV

Notwithstanding the imprecision of predictive techniques, we recognize the need for a standard to guide the administration of a regulatory program seeking to reduce flood damages. We do not question the appropriateness of using the 100-year flood as the basis for regulation.

However, under all the facts and circumstances of this particular case, we conclude that the reglatory standard is for all practical purposes met by the existing residential structure.

V

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters this

ORDER

The denial of the flood control zone permit (Application No. SFCZA #5-785) by King County to Creek Development, Inc., is hereby reversed.

DONE at Lacey, Washington this 22d day of September, 1986.

POLLUTION CONTROL HEARINGS BOARD

9/22/86

LAWRENCE J. FAULK, Chairman

WICK DUFFORD, Lawyer Member