SHORELINES HEARINGS
BOARD

Final Findings of
Fact

SHB No. ~~1 to 64~~
3 to 63

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY and SLADE GORTON, ATTORNEY GENERAL, Appellants, vs. CITY OF KIRKLAND, Respondent, BITTMAN, SANDERS, HASSON CORPORATION, Intervenor.	SHB No. 3 PROPOSED FINDINGS OF FACT, CONCLUSIONS AND ORDER

This matter came before the Shorelines Hearings Board sitting en banc on March 31, 1972 at a formal hearing in the County Administration Building, Seattle.

Appellants were represented by Charles W. Lean, Assistant Attorney General; respondent by Ralph I. Thomas, and intervenor by Stephen P.

Ryder. The proceedings were recorded by Richard Reinertsen, an Olympia court reporter.

The issue in this matter is whether Substantial Development Permit No. 3 issued by the City of Kirkland to the Bittman, Sanders, Hasson Corporation is consistent with the terms and conditions of the Shoreline Management Act of 1971 (RCW 90.58) and particularly of Section 2 thereof (RCW 90.58.020).

Witnesses were sworn and testified. Exhibits were admitted.

After review of the transcript and consideration of exhibits, the Shorelines Hearings Board makes these

PROPOSED FINDINGS OF FACT

I.

On August 31, 1971, the City of Kirkland received an application from the Bittman, Sanders, Hasson Corporation to construct an all-weather moorage facility with space for approximately sixty-five small craft. The proposed facility was to be located on Lake Washington in that portion of the City of Kirkland which was formerly the community of Houghton. The application was approved by the City of Kirkland and a Substantial Development Permit issued on November 1, 1971. Copies of the application and related documents were filed with the Department of Ecology on November 9, 1971.

II.

Although the Houghton Community Council at its regular meeting of October 5, 1971 voted to recommend approval of the moorage facility, it did indicate some concern that the breakwater was a little further out than it had wished.

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III.

The Bittman, Sanders, Hasson Corporation plans to convert two existing apartment buildings having a frontage of approximately 400 feet on Lake Washington into condominiums. The uplands together with some filled shorelands on which the apartments are located and the adjacent shorelands between the upland and the inner harbor line are all in the same ownership, and the corporation has the assurance of a long term lease on the area between the inner and outer harbor lines which will be acceptable to mortgage companies when financing is sought.

IV.

The Bittman, Sanders, Hasson Corporation plans, if the Permit is approved, to establish a moorage facility for sixty-one boats, with a new boathouse, toilet facilities, a pool, an accessory building and breakwater within the 400 feet by 280 feet of water area and the shore area which would be available.

V.

It is the intention of Bittman, Sanders, Hasson Corporation to make the proposed moorage facilities available as part of the condominium package. Those not taken by condominium owners could be leased to others, and the corporation has acquired an additional land area for parking, which would be required for those using only the moorage facility.

VI.

The Substantial Development Permit issued by the City of Kirkland authorizes construction of the moorage facilities along over 400 feet of the shore of Lake Washington and extending into the lake approximately

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280 feet from the shore, whereas the present development, dock and moorages, extends 237 feet from the shore.

VII.

There is an existing dock on the site, and an existing breakwater on the northern edge of the site. The new moorage facility, however, will include docks where none presently exist, and would result in a substantial increase in the surface area of Lake Washington covered by structures as compared to the existing situation.

VIII.

The City of Kirkland has prepared a waterfront plan which includes the area in question. The plan was adopted on August 23, 1971, but most of the preparation was done prior to the effective date of the Shoreline Management Act of 1971, and prior to passage of that Act by the Legislature. Construction similar to that involved in this case is not prohibited in that area designated as "Waterfront District I" in the waterfront plan, an area comprising nearly two miles of Lake Washington lake shore and which includes subject property.

IX.

There is a high demand for small boat moorage facilities in King County. The Kirkland waterfront plan has associated a certain percentage of that demand with the City of Kirkland by mathematical computations using population figures. The waterfront plan does not contain any presently viable proposals for meeting this demand; nor does it contain any analysis based upon a regional approach which would indicate that any portion of the demand need be met by the Kirkland waterfront.

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X.

There is a tremendous pressure on the shorelines of all of Lake Washington for continued waterfront and over-water development. If no limitation or coordination is imposed on such development by planning, the character of Lake Washington will be radically altered by substantial new over-water development.

XI.

At the time of the hearing on this case, the Department of Ecology had not adopted guidelines pursuant to RCW 90.58.060, nor had the City of Kirkland adopted a master program covering the area in question, pursuant to RCW 90.58.080 - .100.

XII.

The Bittman, Sanders, Hasson Corporation has an option to purchase the property which is the subject of the Substantial Development Permit No. 3 issued to them by the City of Kirkland. If permission to proceed with the project is finally obtained, a further market study will be required before final decision is made to start building.

XIII.

Moreover, there is no necessary financial interdependence between the conversion of the apartments into condominiums and the construction of the proposed moorage facility.

On the basis of these Proposed Findings, the Shorelines Hearings Board comes to these

PROPOSED CONCLUSIONS

I.

The Shoreline Management Act says that the public's opportunity to

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enjoy the physical and aesthetic qualities of natural shorelines shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the public generally. It further provides "Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water." (Emphasis added.)

II.

The Bittman, Sanders, Hasson Corporation's plan to convert the two present structures to condominiums does not, by their admission, require the presence of a marina. It would be desirable for the creation of fine living facilities for private ownership, but not necessary to assure the financial success of the project.

III.

The Shoreline Management Act says (RCW 90.58.020) alterations of natural conditions of the shorelines in those limited conditions when authorized, shall be given priority for: and then follows a list of specific uses, none of which seem to fit the particular development authorized by the City of Kirkland, and concludes with "other development that will provide opportunity for substantial numbers of people to enjoy the shorelines of the state." which is clearly not the purpose of the development for which the permit was issued.

IV.

There was evidence that moorage space is at a premium, and it is evident that boats moored in the proposed facility would not have to be moored at some public facility. From this the City of Kirkland's

conclusion seems to be that the proposed moorage will be a public benefit.

This is a non-sequitur. Obviously, 61 boat moorages every 400 feet around Lake Washington would not be a public benefit but a public disaster. Such moorage would, of course, be of great benefit to the owners of the condominiums who have purchased a moorage.

Certainly, there is a growing need for boat storage in the Puget Sound region. There is, however, no evidence that all this demand must be met by wet moorages, and all concerned should be aware of the fact that dry land storage of fiberglas boats in multi-story facilities is a practicality.

V.

The critical conclusions in this case therefore, are:

(a) There is no evidence of a pressing need for the taking at this time of 400 feet of shoreline of state-wide significance for 61 private wet moorages for condominium owners.

(b) However, if the City of Kirkland is convinced that such a development should proceed at this time, it would be agreed that we are not concerned with the preservation of a natural shoreline in the present case, man-made fills and intrusions of various kinds are quite apparent. Bittman, Sanders, Hasson Corporation on a basis of present use and occupancy should be permitted to replace and improve their present facilities. It is the extension of these facilities 53 feet further into the lake, and into waters now available for public use, that we question. This would, in our view, violate the purposes out-

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lined in Section 2 of the Shoreline Management Act of 1971, the existence of the present harbor lines notwithstanding.

(c) The Legislature in passing the Shoreline Management Act must have had some doubts and/or reservations about the use of water in the area between inner and outer harbor lines when it included Section 33 which requires a broad study of the use and status of harbor lines to be submitted to the Legislature not later than December 1, 1972.

Based on these Proposed Findings of Fact and Conclusions, the Shorelines Hearings Board issues this

PROPOSED ORDER

The Request for Review of the Department of Ecology is sustained in part; i.e., Substantial Development Permit No. 3 granted to the Bittman Sanders, Hasson Corporation on November 1, 1971 is remanded to the City of Kirkland with instructions to limit the water line of the development to 237 feet from shore, rather than the 280 feet allowed by the Substantial Development Permit No. 3 issued November 1, 1971.

DONE at Olympia, Washington this 8th day of August, 1972.

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SHORELINES HEARINGS BOARD

MATTHEW W. HILL, Chairman

BERT L. COLE, Member

ROBERT F. HINTZ, Member

TRACY J. OWEN, Member

JAMES T. SHEEHY, Member

WALT WOODWARD, Member

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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF SUBSTANTIAL DEVELOPMENT PERMIT NO. 3 ISSUED BY THE CITY OF KIRKLAND TO BITTMAN, SANDERS, HASSON CORPORATION	SHB No. 3
STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, AND SLADE GORTON, ATTORNEY GENERAL, Appellants, v. THE CITY OF KIRKLAND, Respondent, BITTMAN, SANDERS, HASSON CORPORATION, Intervenor Respondent.	PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter having come on for hearing before the Shorelines Hearings Board of the State of Washington on March 31, 1972, Charles W. Lean, Assistant Attorney General appearing for appellants, Ralph I. Thomas appearing for respondent, and Stephen P. Ryder appearing

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for intervenor respondent, and the Board having heard and considered the evidence and argument of counsel, and being fully advised in the premises, hereby enters its Proposed Findings of Fact, Conclusions of Law, and Final Order:

PROPOSED FINDINGS OF FACT

I

On August 31, 1971, the City of Kirkland received an application from the Bittman, Sanders, Hasson Corporation to construct an all-weather moorage facility with space for approximately sixty-five small craft. The proposed facility was to be located on Lake Washington in that portion of the City of Kirkland which was formerly the community of Houghton. The application was approved by the City of Kirkland and a substantial development permit issued on November 1, 1971. Copies of the application and related documents were filed with the Department of Ecology on November 9, 1971.

II

This moorage facility was to be constructed adjacent to two existing apartment buildings owned in part by the applicant, Bittman, Sanders, Hasson Corporation. The applicant plans to convert these two buildings into condominiums.

III

The substantial development permit application and subsequent approval by the City of Kirkland was properly processed as provided by the Shoreline Management Act.

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IV

The proposed substantial development is on a shoreline of statewide significiance where the interest of all the people is paramount.

V

It is the intention of Bittman, Sanders, Hasson Corporation to make the proposed moorage facilities available to purchasers of the condominium units. The proposal for which Substantial Development Permit No. 3 was granted provides for construction of approximately 61 uncovered boat moorages (an increase of 40 over the existing 21 moorages) which would be first available to occupants of the Shorelands East Apartment complex, and then available for public use provided adequate parking is furnished. All of the proposed development is over shorelands owned in part by the developer or on a portion of the State-owned harbor area.

VI

A harbor area has been established by the State Harbor Line Commission fronting the City of Kirkland as provided by the State Constitution and the proposed development does not extend beyond the outer harbor line. There is an existing dock on the site, and an existing breakwater on the northern edge of the site. The new moorage facility, however, will include docks where none presently exist, and would result in an increase in the surface area of Lake Washington covered by structures as compared to the existing situation. Addition of the breakwater is the only proposed construction waterward from the existing structures.

VII

The proposed use of the harbor area involves the installation of a floating breakwater as protection for boat moorage which use is an aid to navigation and commerce and is consistent with the purpose for which harbor areas are reserved under terms of the State Constitution.

VIII

The City of Kirkland has developed and after public hearings, legally adopted a comprehensive shoreline plan and program of development within and beyond the city limits pursuant to optional municipal code chapter 35A.63 RCW.

IX

At the time of the hearing on this case, the Department of Ecology had not adopted guidelines pursuant to RCW 90.58.060, nor had the City of Kirkland adopted a master program covering the area in question, pursuant to RCW 90.58.080 to .100, however, the City of Kirkland has developed and after public hearings, has legally adopted a comprehensive shoreline plan and program of development within and beyond the city limits, pursuant to optional municipal code chapter 35A.63 RCW.

X

The shoreline abutting and adjacent to the proposed development is not a natural shoreline, but a relatively highly developed one.

XI

The proposed facility would not extend further into the lake from

the shore than other developments in the Kirkland harbor area.

XII

There is a high demand for small boat moorage facilities in King County. The Kirkland waterfront plan has associated a certain percentage of that demand with the City of Kirkland by mathematical computations using population distribution and projection data.

XIII

The proposed construction would provide privately financed moorage to satisfy part of the demand for moorage for privately owned watercraft thereby reducing the burden on similar public facilities.

PROPOSED CONCLUSIONS OF LAW

I

It is the stated purpose of the 1971 Shorelines Management Act to prevent the inherent harm caused by unrestricted and unplanned piecemeal development on the shorelines of the State. Specific provision is made for approval of appropriate development prior to adoption of master programs as provided. The proposed development is consistent with the comprehensive plan and zoning ordinance of local government and is well within the constitutional outer harbor line which area is reserved by both constitutional and legislative directive for such uses.

II

The Shorelines Management Act provides a priority schedule of

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uses to be considered when developing master programs on shorelines of statewide significance.

Priority 1. Recognize and protect statewide interest over local interest. We find that the comprehensive plan of the city recognizes the statewide interest over local interest through placing limitations on development and providing for balanced uses as prioritized in Section 2. No substantial evidence was introduced to the contrary.

Priority 2. Preserve the natural character of the shoreline. We find that the existing shoreline at this location is of a highly developed urban nature and its character will not be changed by the proposed development.

Priority 3. Result in long-term over short-term benefit. We find that all projections indicate a continuing and increasing demand for moorage facilities throughout the foreseeable future. Postponing development of moorage is not in the public interest.

Priority 4. Protect the resources and ecology of the shoreline. We find no other uses proposed which compete with the authorized development to protect the resources and ecology of the shoreline. No evidence was presented that the proposed development would be damaging to the resources and ecology of the shoreline.

Priority 5 and 6. Increase public access to publicly owned areas of the shoreline and increase public recreational opportunities in the shoreline.

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We find the reduced burden on the taxpayer by this privately financed additional moorage for 44 boats to be a public service and the relief thereby provided for public facilities to increase the public opportunity for enjoyment of the shorelines of the State.

III

The Shorelines Management Act provides that priority consideration shall be given to commercial developments which are particularly dependent on the use of the shoreline. We find the proposed development to be such a use.

IV

The Shorelines Management Act provides that developments should be so designed as to minimize the impact to the land, vegetation, aquatic life and protect against adverse effect to the public health. We find the proposed development through inclusions of such features as the floating breakwater to be in accordance with the latest environmental design standards and concepts for such facilities and in compliance with the above provisions and not to adversely impact any natural shoreline.

V

The Shorelines Management Act provides that developments shall be designed so as to minimize interference with the public's use of the water and that only limited reductions in public rights should be allowed. We find that the proposed development is primarily on private land and does not extend beyond adjacent developments, is well

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within the prescribed outer harbor line and no evidence has been presented that there is any interference with the statewide public use of navigable waters.

VI

The Department of Ecology has not satisfied the burden of proof showing the permit is not in compliance with Section 2 of the act which burden is fixed by Section 14 of the act.

VII

We find nothing in the act indicating that substantial development permits should be withheld pending completion of guidelines or master programs by the Department of Ecology.

VIII

The Department of Ecology has not designated this as an area requiring regional planning as provided by Section 11 of Shorelines Management Act.

We find the proposed development to be consistent with the legally adopted comprehensive plan of the City of Kirkland and not inconsistent with Section 2 of the Shorelines Management Act.

FINAL ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED That the decision of the City of Kirkland granting a substantial development permit to Bittman, Sanders, Hasson Corporation is upheld.

DATED this 8th day of August, 1972.

SHORELINES HEARINGS BOARD

S F No 9928-A

Matthew W. Hill, Chairman

James T. Sheehy

Walt Woodward

Bert Cole

Robert F. Hintz

Tracy Owen

S F Leo 5928-A

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY and SLADE GORTON, ATTORNEY GENERAL, Appellants, vs. CITY OF KIRKLAND, Respondent, BITTMAN, SANDERS, HASSON CORPORATION, Intervenor.	SHB No. 3 STATEMENT ON BEHALF OF THE SHORELINES HEARINGS BOARD

Attached hereto are a Proposed Findings, Conclusions and Order signed by three members of the Shorelines Hearings Board, and a Proposed Findings, Conclusions and Order signed by the other three members of the Shorelines Hearings Board.

While the members of the Board are generally in accord as to the

facts, they do not attach equal relevance and importance to the same facts, and they differ as to the conclusions to be drawn therefrom, and as to the order that should be entered. To fully understand the positions taken, the differing Proposed Findings and Conclusions must be read.

Since the statute creating the Shorelines Hearings Board requires that all orders entered by it must be agreed to by at least four members, the Board is unable to render any decision or to enter any order on this Request for Review.

SIGNED at Olympia, Washington this 15th day of August, 1972.

Matthew Hill

MATTHEW W. HILL, Chairman
SHORELINES HEARINGS BOARD

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