BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL DEVELOPMENT PERMIT ISSUED TO PAUL McCONKEY, d.b.a. PARK PLACE APARTMENTS, BY THE CITY OF BREMERTON EDNA EASTWOOD, DEPARTMENT OF ECOLOGY and ATTORNEY GENERAL Appellants, v. CITY OF BREMERTON and PAUL McCONKEY, d.b.a. PARK PLACE APARTMENTS, Respondents.	SHB Nos. 77-31 and 77-32 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the request for review of a substantial development permit issued to Park Place Apartments and Paul McConkey by the City of Bremerton, came before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Robert F. Hintz, and Robert E. Beaty, at a hearing on May 10, 1978 in Lacey.

Appellants Department of Ecology and Attorney General were

represented by Robert E. Mack, Assistant Attorney General; respondent City of Bremerton appeared through Karen Conoley, Assistant City Attorney; respondent permittee appeared pro se. Appellant Edna Eastwood, having reach an agreement with respondent herein, did not appear.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

The proposed substantial development is the construction of a 56-unit apartment complex and an adjoining boat moorage for forty boats, and includes 113 parking stalls, five of which are for general public use. The project covers approximately two acres of upland and one acre of shoreland on a site located along the shoreline between Elizabeth and Park Avenues in Bremerton. A ninety-foot strip of land along the shoreline lies within the inner and outer harbor lines and which apparently will be leased to the permittee by the State Department of Natural Resources.

II

The existing upland area, formerly a concrete plant, is generally flat and spotted with concrete rubble. A pile pier fronts the eastern two-thirds of the shoreline. The remaining one-third of the shoreline is covered by a concrete and rubble bank. On the Elizabeth Avenue side of the property, the shoreline curves inland then seaward, and rises abruptly about thirty feet. There is no

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present feasible access from the end of Elizabeth Avenue to the permittee's property along the shoreline. Any useful access must be constructed. The public now gains access to the shoreline by way of Park Avenue.

The site falls partially within residential-two (R-2) and commercial zones. The city's comprehensive plan designates the site for high density residential use, green belt and park land. The neighborhood plan indicates the site as a green belt area backed by high density residential use. The proposed development conforms with the applicable plans and zoning designation.

III

The City of Bremerton's Draft Shoreline Master Program was ascertainable at the time of permit issuance and it is embodied in Exhibit A-12.

The draft shoreline master program places the entire project site in an "urban residential" designation. The proposed substantial development is consistent with the permitted uses in an urban residential designation. The moorage facility is located within shorelines of state-wide significance.

IV

The instant development would enhance an otherwise ravaged area. The improvement, which will cost about one million dollars, would improve the surrounding neighborhood, which is residential in character, and provide needed moorages for boats.

V

In the design of the proposed development, permittee sought

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input from many federal, state and local agencies. The density of the project was kept lower than other comparable developments; view blockage was minimized; open space and public access to the shoreline was provided.

VI

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

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The only issue submitted to the Board deals with the provision for public access to the shoreline. The permit provision dealing with such matter is not specific:

> . . .
> 5. Some method of ensuring public access to the leased publicly owned harbor area should be accomplished. A covenant or easement are suggested as a condition of approval.
> . . . .

The permittee testified that he would allow public access over the leased property along the shoreline to the moorage area and upon a boardwalk which runs along two-thirds of the linear shoreline. Appellants contend that permittee should be presently required to give full linear public access along the shoreline between Elizabeth and Park Avenues as a condition of his permit even though there are no plans for improvement of such access by the permittee or city. For liability and/or security reasons, the permittee does not want to grant, and the city does not want to receive, access

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over the undeveloped area. Respondent permittee states that he is willing to provide full linear access along the shoreline when the city could actually use it, i.e., when some access from the end of Elizabeth Avenue to the instant property was constructed. Thus, the only issue separating the parties, and the issue submitted to this Board, is when the permittee should provide public access over the remaining one-third of the linear shoreline.

II

We believe that the condition for access proposed by the permittee is reasonable. However, such access should be predicated upon a request for it from the city. Access over the final one-third of the shoreline to Elizabeth Avenue would be difficult, and perhaps dangerous, without further construction. Public access to the shoreline would be provided in the proposed project and there appears to be no compelling circumstances to require more access over an inaccessible area prior to the construction of the proposed development. Further, the permittee should be allowed to maintain reasonable control over the boardwalk fronting the apartment area for purposes of security.

Accordingly, we remand this matter to the city to develop a condition satisfactory to all parties, or which is not inconsistent with this decision, and to substitute such condition for condition number five of the permit.

III

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

From these Conclusions the Board enters this

ORDER

The matter is remanded to the City of Bremerton to formulate a permit condition in accordance with Conclusion of Law II and to file the language of such condition with this Board for informational purposes within twenty days after its receipt of this Order.

DONE this 24th day of May, 1978.

SHORELINES HEARINGS BOARD

DAVE J. MOONEY, Chairman

CHRIS SMITH, Member

ROBERT F. HINTZ, Member

ROBERT E. BEATY, Member