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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

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| IN THE MATTER OF THE ISSUANCE OF A SUBSTANTIAL DEVELOPMENT PERMIT BY THE CITY OF ANACORTES TO SKYLINE MARINA, INC.,<br><br>CHARLES L. WELCHKO, ROBERT A. WARFIELD, E.L. KNOWLES, SAVE FLOUNDER BAY, AND LLOYD J. SELENE,<br><br>Appellants,<br><br>V.<br><br>CITY OF ANACORTES AND SKYLINE MARINA, INC.,<br><br>Respondents. | SHB Nos. 79-45, 79-47, 79-49 and 79-51<br><br>FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER |

This matter, the request for review of a substantial development permit issued by Anacortes to Skyline Marina, Inc., was brought before the Shorelines Hearings Board, Nat W. Washington, Chairman, Chris Smith, Robert S. Derrick, and A. M. O'Meara, Members, on February 14, 1980 in Anacortes, Washington. Hearing Examiner William A. Harrison presided.

Appellants appeared by their attorney, J. Richard Aramburu;

Respondents Skyline Marina, Inc. appeared by their attorneys Richard U. Chapin and John T. Rassier; Respondent City of Anacortes appeared by Stephen E. Mansfield, City Attorney.

Witnesses were sworn and testified; exhibits were examined. Having heard the testimony, having read and heard the arguments of counsel (including the oral argument of February 15, 1980 before Washington, Derrick and O'Meara, taped and heard by Smith), and being fully advised, the Shorelines Hearings Board makes these

## FINDINGS OF FACT

### I

On August 16, 1979, Respondent Skyline Marina, Inc. (Skyline) filed with the City of Anacortes an application for a substantial development permit under the Shoreline Management Act of 1971. The proposed development consisted of 129 moorages to be located within Flounder Bay. Access to the proposed development would be via an existing structure which straddles the shore and to which the proposed development would be connected.

### II

The Anacortes Planning Commission is empowered to approve or deny substantial development permits. Anacortes Shoreline Master Program (Master Program), Section 11(d), p. 7. The Planning Commission convened a public hearing on the proposed development on October 10, 1979, while the Planning Commission consisted of six members, of which four were present. This public hearing was then continued to October 17, 1979, when Mr. Robert Hogg was introduced as a newly appointed member of the Planning Commission.



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Mr. Hogg had earlier testified before the Anacortes City Council in favor of rezoning the site in question from residential to commercial marine. His testimony was reported in the Anacortes American of Wednesday, September 13, 1978, as follows:

> "Keeping that area low-density residential makes no sense", he told Council. "It was obviously a mistake made when the plans were drawn up. It should be zoned commercial marine".

Mr. Hogg leases storage for his boat from Skyline under an agreement which Skyline may terminate on 30 days written notice. Such a lease is valuable and difficult to obtain.

Appellant Knowles knew of Mr. Hogg's Skyline lease at the time of the Planning Commission hearings,but appellants Warfield and Selene did not.

At the conclusion of the public hearing on October 17, 1979, the Planning Commission approved Skyline's application for a substantial development by a vote of 4-3 with Mr. Hogg voting approval.

III

The minutes of the Planning Commission meeting of October 10, 1979 recored advice from City staff to the Planning Commission that:

> ...the proposal...is consistent with the Shoreline Master Plan, Urban 2 zone which encourages development of water activities."

No other legal standard was advanced for acting upon Skyline's application for a substantial development permit prior to the Planning Commission's approval.

However, the Master Program which sets forth the Urban 2 and other environmental designations declares:

"This Master Program applies to those shoreline areas extending



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> landward 200 feet from the ordinary high water mark of all marine waters and associated wetlands and Cranberry Lake." Introduction, fourth unnumbered page.

This declaration is buttressed by the Master Program's Shoreline Area Designations Map (appearing after page 14) which sets forth the environmental designations and states: "Jurisdiction is 200 feet landward from shore."

The Master Program therefore provides no environmental designation for Flounder Bay, the site of the proposed development.

IV

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

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Shoreline master programs must meet the guidelines adopted by the State Department of Ecology. RCW 90.58.060 and .090. These guidelines provide:

> Environments. In order to plan and effectively manage shoreline resources, a system of categorizing shoreline areas is <u>required</u> for use by local governments in the proparation of master programs. The system is designed to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. To accomplish this, the environmental designation to be given any specific area is to be based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development and the goals and aspirations of local citizenry.
>
> The recommended system classifies shorelines into four distinct environments (natural, conservancy, rural and urban) which provide the framework for implementing shoreline policies and regulatory measures. (Emphasis added) WAC 173-16-040(4).

"Shoreline" is defined within the Shoreline Management Act to include



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all of the water areas of the state, together with lands underlying them. RCW 90.58.030. Because it provides no environmental designation, the Master Program before us does not encompass Flounder Bay's water area, the site of the proposed development.

This matter should therefore be remanded to the City of Anacortes for reconsideration of the proposed development under either:

a. the policy of RCW 90.58.020 and the Guidelines and regulations of the Department of Ecology; or

b. an amended Master Program which encompasses Flounder Bay.

II

This matter consists of separate appeals which were consolidated for hearing. Appellants Warfield and Selene did not waive their opportunity to advance the appearance of fairness issue before this Board.

The test to be met where the appearance of fairness is at issue was set forth as follows:

> Would a disinterested person, having been apprised of the totality of a board member's personal interest in a matter being acted upon, be reasonably justified in thinking partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided. Swift v. Island County, 87 Wn. 2d 348, 361; 552 P. 2d 175, 183 (1976).

We conclude that Mr. Hogg's prior public position on the suitability of the site for commercial marine use added to the potential for influence provided by Skyline's ability to continue or terminate Mr. Hogg's moorage would leave a disinterested person reasonably justified in thinking partiality may exist. Although there is no evidence that Skyline did influence Mr. Hogg, or acted improperly in any way, this is sufficient to constitute a violation of the



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appearance of fairness doctrine.

On remand, Mr. Hogg should therefore not participate in the reconsideration of the proposed development.

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 substantial development permit issued by the City of Anacortes to Skyline Marina, Inc. (Application No. 89) is hereby reversed and remanded to the City of Anacortes for further proceedings consistent with the above findings and conclusions.

DONE this 7th day of March, 1980.

SHORELINES HEARINGS BOARD

NAT W. WASHINGTON, Chairman

CHRIS SMITH, Member

ROBERT S. DERRICK, Member

A. M. O'MEARA, Member



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