BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

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| IN THE MATTER OF<br>HELEN J WRIGHT and<br>MASON COUNTY,<br><br>Appellants,<br><br>STATE OF WASHINGTON,<br>DEPARTMENT OF ECOLOGY,<br><br>Respondent | SHB NO 83-52<br><br>FINAL FINDINGS OF FACT,<br>CONCLUSIONS OF LAW<br>AND ORDER |

This matter, the appeal of a shoreline variance permit granted by Mason County for bulkhead construction came on for formal hearing on May 25, 1984, in Lacey, before the Shorelines Hearings Board, Nancy R Burnett, A M (Bud) O'Meara, Rodney M Kerslake, Lawrence J Faulk, and Gayle Rothrock (presiding) On June 27, 1984 the Board made a visit to the site The proceedings were officially reported by Lisa Flechtner of Barker and Associates

Appellant Helen Wright appeared and was represented by Edward Lane, attorney-at-law Respondent agency appeared and was represented by Jay Manning, assistant attorney general No one appeared to represent Mason County

Witnesses were sworn and testified Exhibits were admitted and examined Argument was

filed From the testimony, evidence argument, and benefit of the site visit the Board makes these

FINDINGS OF FACT

I

This matter arises in Mason County hear Union on the Hood Canal, a shoreline of statewide significance The property is located on an Urban Residential designated shoreline The piece of property and protective bulkhead at issue is on a protrusion of land between the state highway 106 and appellant's privately-owned tidelands one-half mile south of Union The property was a millsite before it was turned into residential use some 40 years ago It has a home, a garage and apartment and 5 outbuildings From the testimony received it appears the property at issue was always bulkheaded and rip-rapped from at least the time it was a millsite The bulkheading and rip-rap became integral with the natural bank

II

Winter storms, spring high tides, and the clash of currents in front of the property have battered the bulkheads and rip-rap frequently over the years In 1959 a rip-rap bulkhead was constructed on the southerly portion of the property. A storm in the winter of 1981-82 severely damaged the previously existing bulkheads causing severe wash-out of portions of the property, leaving part of the garage hanging and other wave gouging still in evidence Part of the oyster population in the tideland was destroyed

III

In April 1982 appellant's agent applied for a shoreline permit to build a bulkhead from Mason County The agent testified he asked when an inspector would come check their work and was advised by the county that wouldn't be necessary A week later the county issued an exemption document for a bulkhead "rip-rap for erosion control" whose fill was to be a maximum of ten feet wide (from the existing rip-rap bulkhead presumably)

Appellant investigated state-of-the-art riprapping and decided a stacked or tiered gabion stair stepped rock bulkhead would provide the best protection for the property and, with a good

deal of hard work, allow appellant and her friend to construct the stepped gabion rip-rap bulkhead independently

Work commenced later in 1982 Due to the severe washout on the north and south side of the subject property it was not possible to move material in with a vehicle until the sloping riprap was pushed back landward and a pathway for a utility vehicle created Thereafter building a stepped gabion structure in levels and filling in with rock and concrete-filled tires began at the north end of the property This process continued in a southerly direction----using fill dirt above the first level----out at no more than ten feet, following the line of the existing bulkhead as best that could be determined Each stair-stepped setback was twelve to fourteen inches off the gabion underneath until three 3-foot deep levels were achieved along most of the property's 437 foot length

IV

The process was two-thirds to three-quarters completed when state and county officials stopped at the site in mid-June and, deciding the bulkhead had been constructed incorrectly, the county issued a stop-work order on June 23, 1983 Appellant was advised she needed a variance since she was building a protective structure farther seaward than was allowed under the county's exemption Appellant placed an additional 30 feet of gabion bulkhead and fill after the stop work order was issued Application was then made for a shoreline variance permit

The county staff, in its report on the variance application, also objected to the bulkhead being raised up to a fourth level (twelve feet high), objected to extending such a structure the full 437 feet or more, and objected to a lack of foundation footings and site preparation under the gabions Formerly just over 300 feet of the property had been riprap bulkheaded A 100' by 5' concrete wall bulkheads the balance of the property There is no other bulkhead within 350' in either direction of this subject portion of the Wright property

Further the county staff pointed out that the gabion bulkhead did not meet the requirements for vertical bulkhead placement at the 8 8 foot tide line, since the actual bulkhead built had its

outermost face at the -5 foot tide line Another measurement of the tidal foot line by an engineering consultant to appellant showed the outer gabion placed at the 5 25 or 5.3 foot tidal elevation (6 3 feet below MHHT)

The bulkhead is not to be raised up to twelve feet in height to accomplish protection for the property, by appellant's own account She desires only a portion of the protruding property be raised another two feet of elevation to secure full protection from the storm tides Most of the remaining 65 feet of gabion protection is intended to be only six feet high and will taper to meet the existing concrete bulkhead The extreme north end of the structure may also be tapered, if the drainage and unstable rock at the highway culvert doesn't continue contributing to property erosion

The gabion protective structure is neither a true vertical nor a true sloping bulkhead, but rather a stepped bulkhead with a unique slope

VI

Mason County granted a variance to appellant Helen Wright on September 12, 1983 to "retain 372' x 9' gabion bulkhead and extend it an additional 65', to total 472' in length Retain 19' to 22' wide fill and extend fill the length of gabion wall" It contained a proviso that the remaining portion be constructed not more than ten feet from the existing bulkhead

On October 18, 1984 the Department of Ecology issued a letter stating that agency's disaproval of the variance because of its apparent inconsistency with the county master program and its inability to meet variance criteria found at WAC 173-14-150 The agency also stated it intended to appeal issuance of the shoreline substantial development permit [1]

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1 No such permit was ever issued An exemption document was issued at the outset

1 Appellant Helen Wright received this notification sometime after October 21st Through her
2 counsel an appeal of the Department of Ecology's denial of the variance was filed with the Board
3 on November 21, 1983 There ensued a period of negotiation between the parties before the matter
4 finally came on for hearing

5 VII

6 Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such
7 From these Findings the Board comes to these

8 CONCLUSIONS OF LAW

9 I

10 The Board has jurisdiction over these persons and these matters RCW 90 58 180

11 II

12 Efforts to provide shore protection to a single family residence and its associated beach are
13 contemplated in the goals and policies of the Shorelines Management Act RCW 90 58 020
14 Protecting private property rights in a manner consistent with the public interest, protecting the
15 resources and ecology of the shoreline, enjoying the physical and aesthetic qualities of shorelines,
16 and minimizing damage to shorelines whenever alterations of the natural shoreline has occurred are
17 goals met by appellant s gabion rip-rap bulkheading project and restoration of damaged oyster beds
18 on the private tidelands This work was not proposed for and did not effectively create significant
19 residential land or interfere with productive tidelands use such as met the facts of the case in
20 DOE and Attorney General v Kitsap County and Black, SHB No 90, DOE and the Attorney General
21 v Mason County and Frint, SHB No 128, Isaak, et al v Snohomish County, DOE and the Attorney
22 General, SHB No 19, and DOE and Attorney General v Mason County and Bloom, et al, SHB 153
23 The work is sound and attractive and offers both property and beach protection

24 III

25 Replacement of a large storm-battered sloping rip-rap bulkhead fronting a piece of residential
26 property on Hood Canal (provided the replacement bulkhead is ten feet or less from the toe of the

remnants of the previous bulkhead) is allowable under the Mason County Shoreline Master Program (MCSMP) in an Urban Residential environment designation

Paragraph 11 under General Regulations on page 36 of the MCSMP states

> In all instances, bulkheads may be constructed to prevent erosion In such cases, they may be built seaward of existing natural banks a reasonable working distance A reasonable working distance shall not exceed 10 feet, measured horizontally except where there is a gross irregularity of the existing natural bank, as determined by the Administrator, by the Board of Commissioners, or the Shoreline Advisory Board

Paragraph 12 says

> Bulkheads within the Urban residential Environment may be constructed the full width of the property ownership

At MCSMP 70 08 240C an urban residential designation has as its purpose "to ensure optimum utilization of shorelines for residential development " The Wright residential property is protected and its structures secured by the bulkhead development being put in place there

When permission was granted allowing appellant Wright to fill an area not to exceed ten feet from the existing bank that action was in compliance the MCSMP It is also clear that the bulkhead was made symmetrical in design, as opposed to jagged, so as to avoid following the "gross irregularities" of the washed-out bulkhead and bank. These specifications give latitude to the property owner to construct a bulkhead to protect property and to stay within the appropriate parameters determined by Administrator, the Board of Commissioners or the Shoreline Advisory Board

IV

The gabion rip-rap protector has a unique slope---seen in stepped fashion---and is not a vertical bulkhead

Having uniquely effective energy dissipation features and very adequate stability, these characteristics tend to function in the fashion of a historic typical sloping bulkhead

The Wright construction occurred in accordance with the specifications of the MCSMP at Section 7 16 110 B (5) A reading of the language in that subsection, admittedly a somewhat creative way to express requirements, indicates that (a) and (b) are alternative methods of design of sloping bulkheads, since a vertical bulkhead needs no description It is impractical, if not impossible, to construct a bulkhead using the specifications of both (a) and (b) The bulkhead meets the requirements of MCSMP 7 16 110 B 5(b), which reads

> 5 Any and all construction between the maximum seaward tidal elevation permitted for bulkheads of vertical construction and those of sloping construction, must utilize either of the following methods of construction
>
> b All face construction must be of a stair-stepped design utilizing concrete or other permanent structural materials Each step shall not be less than one foot in width

V

The county incorrectly concluded in June of 1983 that the bulkhead was not being built within tolerances established by regulations in the MCSMP MCSMP 7 16 110 B 4(a), i and ii The MCSMP requires that a sloping bulkhead's toe be located out no further than 5 feet below mean higher high tide (MHHT) In southern Hood Canal MHHT is accepted to be +11 8 feet The most accurate measure of the toe point of the bulkhead was accomplished by appellant's engineer and measured at 6 25 feet Using normal rules of mathematical rounding----necessary when applying to the measurement standard set forth in the MCSMP----the 6 25 is rounded up to 6 3 feet The bulkhead construction also meets this standard in compliance with the MCSMP, and an application for a variance was unnecessary

VI

Appellant Wright has complied with the policies and purposes of the SMA and the MCSMP in her construction to date and will be able to maintain that compliance in completing the bulkhead if

1 the gabion rip-rap is sloped back to meet the 100' by 5' concrete vertical bulkhead at the south end
2 of the property, a distance of no greater than 65 feet The bulkhead should be stepped back to a
3 six-foot height before it meets the existing vertical bulkhead, as represented in statements to
4 Mason County and this Board The width of new bulkhead and fill should not exceed the MCSMP
5 and WAC standard of 10 feet from the toe of the pre-existing rip-rap bulkhead and maintain a
6 sound hydraulic shape Such construction actually constitutes a substantial development under RCW
7 90 58 030(3)(e) because of the expense involved and the volume of fill placed in addition to the
8 protective bulkhead and is therefore not the normal protective bulkhead common to a single family
9 residence described at Chapter 90 58 030(3)(e)(ii) RCW Appellant, Mrs Wright, should apply for a
10 shoreline substantial development permit for this construction and it should be granted by Mason
11 County

12 The exemption document isssued by Mason County allowed a rip-rap bulkhead for erosion
13 control and that permission is adequately met by a gabion bulkhead of nine feet in height The 10
14 feet of fill between the new and old bulkheads and the visible residue of the old bulkhead is a
15 shock absorber which catches any of the debris from extreme winter storms before it could damage
16 the buildings or decking Additional height is not genuinely in keeping with the replacement of a
17 protective bulkhead, it would be in addition thereto

18 VII

19 The permission given by Mason County to Helen Wright to build a bulkhead on April 7, 1982,
20 was appropriate It should, however, have been in the form of a substantial development permit

21 The later issuance of a variance was unnecessary since the terms of the MCSMP were
22 complied with The variance and the DOE denial of it should be vacated and appellant should be
23 allowed to complete her bulkhead following the guidelines of the MCSMP and these Conclusions of
24 Law

25 VIII

26 Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such
27 From these Conclusions the Board enters this

ORDER

The variance permit issued by Mason County and its disapproval by the Department of Ecology are each vacated.

DATED this 31st day of July, 1984.

SHORELINES HEARINGS BOARD

GAYLE ROTHROCK, Chairman

LAWRENCE J. FAULK, Vice Chairman

A. M. O'MEARA, Member

RODNEY M. KERSLAKE, Member

NANCY R. BURNETT, Member