BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE SUBSTANTIAL DEVELOPMENT AND VARIANCE PERMIT GRANTED BY KING COUNTY TO R.G. HOSTETLER, J. HOWARD AND BARBARA G. PLIMPTON, ROBERT FERGUSON, and MR. and MRS. PHILIP BLAKE, Appellants, v. KING COUNTY, R.G. HOSTETLER, and STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondents.	SHB Nos. 84-23, 84-24 & 84-25 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the request for review of a decision to issue a shoreline substantial development permit and shoreline variance, came on for hearing before the Shorelines Hearings Board, Gayle Rothrock, Chairman, Lawrence J. Faulk, Rodney M. Kerslake, Richard A. O'Neal, Nancy R. Burnett, and Wick Dufford, on October 15, 1984, in Seattle, Washington. Mr. Dufford presided.

Appellants Plimpton, Ferguson and Blake all appeared pro se. Respondent King County did not appear. Respondent Hostetler was represented by Alan L. Froelich, attorney at law. Respondent Department of Ecology was represented by Jay J. Manning, Assistant Attorney General.

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

FINDINGS OF FACT

I

This matter arises in King County, along the shores of Lake Washington near Kirkland in a shoreline environment designated "urban" under the King County Shoreline Master Program (KCSMP). Lake Washington, because of its size, is a shoreline of statewide significance as defined in the Shoreline Management Act.

II

The respondent-permittee, Hostetler, is the owner of residential waterfront property and adjoining shorelands. The appellants are owners of neighboring properties in a tier ranging inland from Hostetler's. Both Hostetler's property and the properties of appellants were at an earlier time part of a tract in single ownership. When this tract was broken up, the purchasers all acquired an interest in a narrow non-residential parcel running along one side of each lot, terminating in a slim section of beach with adjoining shorelands. This parcel is called the community beach lot and all who share an interest in it have rights of access to the beach and the

lake. The community beach lot is immediately adjacent to Hostetler's property along the waterfront to the north.

III

Prior to 1969, a community dock was built into the lake from the community beach lot. This structure is now some 130 feet long. At one time it was "L" shaped with the foot of the "L" extending south and resting on four pilings. The decking for this portion of the dock no longer exists, but the four pilings are still in place. The appellants are users of the community dock.

IV

There is a dispute between the appellants and Hostetler as to whether the four pilings lie on Hostetler's property or on the shorelands which form part of the community beach lot. Hostetler says the pilings are on his property. Appellants say they are on the community beach lot. In a 1976 decision, the King County Superior Court (Civil No. 796711) entered Findings of Fact, Conclusions of Law and a Judgment establishing the lateral shoreland boundary between these two lots in descriptive terms. Hostetler and the appellants now read this decision in different ways, each interpreting it to support his own view of where the pilings are located.

V

In February of 1984, Hostetler applied to King County for the permits required under the Shoreline Management Act (SMA) to build a new dock extending waterward from his own lot. The proposal called for an "L" shaped single family residential dock 110 feet long with

600 sqaure feet of surface area, plus two mooring pilings located sixteen feet off the end of the dock. The dock, as proposed, would be located 15 feet from Hostetler's south property line and approximately 33 feet from the closest point on what the application shows to be the north property line--the boundary with the community beach lot shorelands. The application shows the four old pilings in question as being on Hostetler's property and requests permission to remove these pilings as a part of the new dock project.

VI

The water depth at the end of the proposed new dock measures approximately seven feet. The water depth 80 feet out from shore measures approximately four feet, a water depth insufficient to moor sailboats and larger powered pleasure craft. Such boats are the type and size commonly moored in the neighborhood. Moorage of such pleasure craft in front of single family residences is a permitted use in the "urban" shoreline environment under the KCSMP. The three docks in the immediate vicinity measure 125 feet, 130 feet and 128 feet long.

VII

The two mooring pilings requested at the end of the new dock are to allow a four-point mooring to secure a boat against wind and waves and to keep it from chafing against the dock.

VIII

The plans for Hostetler's proposed dock call for it to be angled towards the community dock with the foot of its "L" shape pointing towards the community dock. The result will be constricted water

space near the ends of the two docks unless the four old pilings are removed.

IX

Hostetler's proposed dock is no closer to his south property line because of the side line set-back for docks established under the KCSMP. He has chosen the angle of the new dock from the shore in order for the dock to run parallel to his south property line. Given the configuration of his lot, his proposal puts the proposed dock as far from the community dock on the north as is possible without intruding into the property of his neighbor on the south.

X

In connection with the processing of Hostetler's application, the shoreline planner for King County assigned to the matter reviewed relevant documents, including the Findings and Conclusions from King County No. 796711, and visited and examined the site of the proposal. The record and his field observations caused him to conclude that Hostetler's belief that the four old pilings are on Hostetler's property is reasonable. He recommended that the permit, as applied for, be granted.

XI

On May 23, 1984, King County issued a decision approving Hostetler's application. The approved project included the removal of the four old pilings. Indeed the removal of these pilings formed the basis of the approval insofar as non-interference with navigation is concerned.

XII

On June 14, 1984, the Department of Ecology approved the shoreline variance relating to the length of the proposed dock.

XIII

The appellant neighbors sought review before this Board on June 22, 1984, raising three issues:

1. Whether the King County Master Program requires ownership of property as a prerequisite for a shoreline permit to develop that property?

2. Whether the removal of the four old pilings allowed by the shoreline permit is consistent with the King County Shoreline Master Program or the Shoreline Management Act?

3. Whether the proposed dock is consistent with the King County Shoreline Master Program and the Shoreline Management Act?

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

Docks (piers) are permitted in the urban shoreline environment under the KCSMP, Section 25.16.140. That section limits length as follows:

> The maximum waterward intrusion of any portion of any pier shall be eighty feet, or the point where the water depth is thirteen feet below the ordinary high water mark, whichever is reached first.

Accordingly, the County properly required a variance for the dock proposed by Hostetler to extend 110 feet with mooring pilings 126 feet off shore.

II

Neither the SMA, chapter 90.58 RCW, nor the rules of the DOE implementing the point system for developments on shorelines of the state, chapter 173-14 WAC, require an interest in the property before a permit to develop can be granted. Casey v. City of Tacoma, SHB No. 79-19 (1979). Likewise, the KCSMP does not require ownership of property as a prerequisite for a shoreline permit to develop that property. It does require that the identity of the owner be disclosed, but the County does not attempt to look behind the assertions of ownership made in applications for such permits.

III

Removal of the four old pilings allowed by the permit at issue is not inconsistent with any provision of the KCSMP or the SMA. Such removal would eliminate a hazard to navigation, a result manifestly in keeping with shoreline management policies.

IV

The proposed dock is consistent with the KCSMP and the SMA, if the four old pilings are removed. The use is a permitted use under the master program and a preferred use under policies of the Act. The extra length of the dock is justified under the relevant variance criteria set forth in WAC 173-14-150(3).

V

The strict application of the 80-foot length limitation would preclude a reasonable permitted use: the mooring of boats of moderate draft, a practice commonly carried on elsewhere in the neighborhood. The master program suggests that a 13-foot water depth is considered appropriate for such moorage, almost twice the depth that will be made available here even with the increased dock length. The hardship requiring the variance is related to naturally occurring shallow water and does not result from deed restrictions or the applicant's own actions. Moreover, the variance will not constitute a grant of special privilege not enjoyed by other properties in the area. The proposed dock will protrude a shorter distance offshore than any docks on surrounding properties. It is the minimum necessary relief to allow the mooring of pleasure craft of modest draft.

VI

Given the constraints imposed by law (15-foot side property line set back, KCSMP Section 25.16.120C.), and the size and configuration on Hostetler's property, the project provides the most room possible for other like activities in the area. It is in location and design compatible with such uses and will not cause adverse effects to adjacent properties or the shoreline environment designation. However, this will not be the case unless the four old pilings, which are the focus of the controversy, are removed. Similarly public rights of navigation, public rights to use the shorelines and the public interest generally will not be adversely affected if the fou.

old pilings are taken out. If they are not removed, though, the adjacent properties and navigational values will be negatively affected.

VII

Under RCW 90.58.180(1) this Board is empowered to review the granting, denying or rescinding of permits on shorelines of the state issued pursuant to RCW 90.58.140. It is not empowered to quiet title to real property. Neither is King County so empowered when it rules on shorelines permits. The most the County can do is to make tentative judgments about property boundaries as an aid in deciding whether a particular development as proposed is reasonable and appropriate. The most the Board can do is to review the permit as conditioned and measure it against the statutory criteria set forth in RCW 90.58.140. The property line dispute which the parties raise cannot be resolved in this forum.

VIII

The limitations on this Board's jurisdiction also mean, of course, that it cannot repeal the law of trespass. Though the permit may allow the removal of the four old pilings, it authorizes this only as a matter of shorelines law. It does not give anyone access to another's property.

For this reason it is essential that the question of where the pilings lie be definitively resolved before construction commences under this permit. To build the dock and then discover that the old pilings cannot be removed would present a problem of interference wit

navigation which would be contrary both to the law and to the intent of the permit decision of King County in this case.

We construe the County's affirmative ruling on Hostetler's application to require the removal of the four old pilings as a condition precedent to the construction of the dock.

Absent resolution of the boundary issue, therefore, Hostetler can proceed to commence the project by removing the pilings only at his own peril.

IX

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 shoreline substantial development permit and the shoreline variance granted by King County to R.G. Hostetler under Application Nos. 010-84-SH, 009-84-SV, as construed above, are affirmed.

DATED this 14th day of January, 1985.

SHORELINES HEARINGS BOARD

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GAYLE ROTHROCK, Chairman

1/3/85

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