

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

SUMMARY

Applicant: Patrick Coonan
6001 Rose Loop
Bainbridge Island, WA 98110

Agent: Leann Ebe McDonald
Shoreline Solutions
9784 Lafayette Ave.
Bainbridge Island, WA 98110

File No: SCUP18669

Request: Shoreline Substantial Development/Conditional Use Permit (SDP/SCUP) for residential dock; and for stairway from top of bluff to inshore end of dock.

Location: South shore of Eagle Harbor at 6001 Rose Loop.
Tax Parcel: 352502-2-058-2001

Shoreline Environment: Semi-rural and Aquatic (1996 Shoreline Master Program)

SEPA Compliance: Mitigated Determination of Non-Significance (MDNS) issued August 28, 2015. No Appeals.

Summary of Proposal

(1) Construction of a new single-use residential pier, boatlift, ramp, and float. Structure is to be supported by 20 galvanized steel pilings. Aluminum pier to be 4' x 68' with additional 8' x 20' section adjacent to boat lift. Ramp leading to float to be 3' x 40'; landing float to be 6' x 10'; mooring float to be 8' x 35'. Overall overwater length: 138'.

(2) Construction of stairway of 295 square feet with a 25 square-foot boathouse at the base of bluff. Also 32 square foot retractable stairway to beach.

Public Hearing: November 5, 2015

Decision: The Shoreline Conditional Use Permit is approved, subject to conditions.

FINDINGS OF FACT

1. Patrick Coonan proposes to construct and maintain a dock and an access stairway down the bluff at his residential property at 6001 Rose Loop.

2. The location is on the south shore of Eagle Harbor on the opposite side of the bay from the Winslow commercial area. The property is Tax Parcel # 352502-2-058-2001, a portion of Gov't Lot 1, Sec 35, T25N, R2E, W.M. There is a public road end at the water on the western boundary of the property.

3. The property is approximately 1.6 acre in size. The surrounding uses are single-family residential. The upland is zoned residential (R-2). The local Shoreline Master Program environment is semi-rural.

4. Eagle Harbor Bay has many stairways and docks spread along the shoreline frontage with only a few lots remaining without a dock. The proposal is for a single-user dock.

5. The applicant owns tidelands that extend seaward about 140 feet in the location of the proposed dock. The present intention is that the dock not extend beyond his property. By design the floating portion will ground at low tide. The docks adjacent to the applicant's site are longer than the dock he proposes.

6. The proposal is to build a pier, ramp and float configuration extending into the bay about 138 feet from mean higher high water. The initial section of the pier will be 4 feet wide and 68 feet long. Added to this will be an 8 foot by 20 foot pier section with the boatlift alongside. The boatlift will have a 20,000 pound capacity. The pier and boatlift features will be supported by galvanized steel pilings. From the end of the pier, a three-foot wide grated ramp will extend forty feet to a 6 foot by 10 foot landing ramp. An 8 foot by 35 foot mooring float will be attached at right angles to the landing ramp. The proposed dock is intended for moorage of both power boats and sailboats.

7. The substrate on the tidelands is silt and rocks. No eelgrass was found. Grating has been incorporated into the dock structure to minimize any impacts on aquatic life. Float stop collars will prevent the float from grounding at low tides. Construction timing will be coordinated with fish closure windows.

8. At the landward end of the pier, the applicant proposes a small storage shed about 25 square feet in footprint. Adjacent to this shed will be a 32 foot retractable stairway to the beach. The elevated pier is intended to provide room for beach walkers to go under it at lower tides.

9. The inshore end of the pier is at a shore-side bluff, considered a geologically hazardous area. The bluff top is roughly 40 feet above the beach. The proposal includes a stairway encompassing approximately 295 square feet extending from the residential area at the

top down to the pier. The stairway will be held away from the bluff surface, supported by a limited number of piles. The stair treads will be grated to avoid creating additional impervious area. No trees will be removed on the slope. Geotechnical review indicates that the proposed stairway will not adversely impact the stability of the slope.

10. The construction of the stairway will be performed by hand with minimal excavation for piles and footings. The stairway is designed to blend into the existing vegetation on the property and will be stained or painted with neutral colors.

11. An Environmental Checklist was submitted and the project was reviewed under the State Environmental Policy Act (SEPA). A Mitigated Determination of Non-Significance (MDNS) was issued on August 28, 2015. Sixteen conditions were included. These are reflected as conditions of approval herein. There was no appeal of the MDNS.

12. Notice of the application was circulated and publicized as required by law. Two public comments were received. One requested the use of vibratory pile driving equipment to minimize noise during installation. A condition requiring this technique has been included. The other expressed concern over the effect on public views from the nearest public road end and asked that the dock be constructed a minimum of 50 feet from the road end right-of-way. The proposed dock site is, in fact over 140 feet from the Rose Loop road end.

13. No adverse comments from City Departments or other governmental bodies were received. The City Staff in recommending approval, added 18 additional project conditions to those set forth in the MDNS. These, among other things, insure that appropriate reviews and approvals are obtained by other agencies with jurisdiction.

14. For reasons set forth in the Staff Report, the City determined that vesting of the application herein occurred under the 1996 Shoreline Master Program (SMP). The relevant criteria for approval of a Shoreline Conditional Use Permit under BIMC 16.12.380 are as follows:

- (1) The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the Shoreline Master Program.
- (2) The proposed use will not interfere with the normal public use of the public shorelines.
- (3) The proposed use of the site and design of the project will be compatible with other permitted uses with the area.
- (4) The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which is it located.
- (5) The public interest suffers no substantial detrimental effect.
- (6) The proposed use is consistent with the provisions of the Zone Ordinance (BIMC Title 18) and the Comprehensive Plan (Ordinance 94-21).

15. On review, the Staff concluded that the project, as conditioned, complies with the SMP. The Hearing Examiner concurs with the Staff analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

16. The proposal reviewed here is for a structure which does not extend beyond the private tidelands owned by the applicant. At hearing it was made known that ownership of the public tidelands further seaward has changed and that this might mean a change in the applicant's ability to build a longer dock. Should the applicant wish to extend the dock over public tidelands, he will have to make application and go through a process to modify the permission given in these proceedings.

17. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding.
2. The requirements of SEPA have been met. The conditions of the MDNS are set forth below under the heading "SEPA Conditions."
3. The proposal is consistent with the policies of the Shoreline Management Act, Chapter 173-27 WAC, and the applicable local Shoreline Master Program (SMP).
4. The findings support a conclusion that the requested Shoreline Conditional Use Permit is consistent with the Conditional Use criteria of the SMP. BIMC 16.12.380(a)
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

SEPA Conditions

1. To protect juvenile Chinook salmon residing in nearshore areas, work waterward of the ordinary high water line shall not be permitted from March 1 through July 14.

2. All overwater/in-water construction shall comply with the following fish work windows:

<u>Species</u>	<u>Work can begin</u>	<u>Work must end</u>
Salmon	June 15	March 14
Bull Trout	July 16	February 15
Sand Lance	March 2	October 14
Pacific Herring	May 1	January 14
Surf smelt*	April 1	August 31

*Eagle Harbor has a work window restriction of "year round." The Corps will establish work window that will restrict work from occurring during surf smelt spawning time.

3. Extreme care shall be taken to prevent petroleum products, chemicals or other toxic or deleterious materials from entering the water and degrading water quality. If a spill does occur,

or if oil sheen or any distressed or dying fish are observed in the project vicinity, work shall cease immediately and Washington Department of Ecology shall be notified of such conditions. Contact: Northwest Regional Spill Response Section at (206) 649-7000.

4. To avoid degradation of existing water quality, no over-water application of paint, preservative treatment, or other chemical compounds shall be permitted at any time.

5. Piles shall not be treated or coated with biocides such as paint or pentachlorophenol.

6. Floatation for the structure shall be fully enclosed and contained to prevent the breakup or loss of the floatation material into the water.

7. The float stop collars shall be installed to keep the floats a minimum of one foot above the tidelands.

8. All treated wood lumber to be used for the project shall meet or exceed the standards established in "Best Management Practices for the Use of Treated Wood in Aquatic Environments" developed by the Western Wood Preservers Institute, revised July 1996. All ACZA (e.g. Chemonite) treated wood pilings and lumber shall be treated by the manufacturer per the Post Treatment Procedures outlined in "BMP Amendment #1 – Amendment to Best Management Practices for the Use of Treated Wood in Aquatic Environments: USA Version- Revised July 1996", by the Western Wood Preservers Institute or current revision.

9. Prior to construction, the applicant shall provide the City with evidence that all the treated wood lumber to be used in the dock construction was properly treated in accordance with condition #8 above.

10. In mitigation for adverse environmental impact to existing fish and wildlife habitat and water quality from the construction of the dock, all foreign material, including any old creosote piles, concrete debris, or other foreign material shall be removed from the subject shoreline and tidelands. All foreign material removed from the site shall be permanently disposed of in an upland location so as not to be re-introduced in waters of the state.

11. The location of the dock and shoreline access stairway shall be west of the significant Alder tree that provides significant near shore shading and habitat. The location shall be far enough away to ensure the tree will not be deemed a hazard to the constructed dock or stairway.

12. No trees or large native shrubbery removal shall be allowed for the installation of the stairway or dock. While minor trimming and limbing may occur, the pruning must not reduce the habitat value of the trees or reduce any of the shading of the near shore habitat.

13. All existing vegetation on the bank must be maintained except minor pruning and removal may occur for the construction of the footings/piles to support the stairway.

14. All decking and treads on the stairway shall be constructed of grated material that allows light and water penetration, except for the location of the boat equipment storage shed.

15. The staircase feature and all attendant features shall not be colored or painted other than with neutral flat greens, browns or tans, so as to blend into the native bluff soils and vegetation and be non-reflective. The intent is to obscure the features from surrounding view.

16. Work shall immediately stop and the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation shall be immediately notified if any historical or archaeological artifacts are uncovered during excavation or construction. Construction shall only continue thereafter in compliance with the applicable provisions of law.

Project Conditions

17. If the applicant continues to want a dock solely on his own property, he shall, prior to construction, submit to the City a survey of the property tidelands. The survey shall show the location of the dock in relationship to the applicant's property line and public tideland ownership. However, if the applicant desires to extend the dock over public tidelands, he must apply for a permit modification to allow this. If permission to extend the dock is granted, the requirement for a survey will be eliminated.

18. Lighting shall be limited to the minimum necessary for safety or as required by the Coast Guard.

19. No overhead wiring or plumbing shall be allowed on the pier.

20. Only non-reflective materials shall be used in construction of the pier.

21. The pier is to be constructed a minimum of one foot above extreme high water.

22. As proposed in the application, the vibratory method of pile installation shall be used for all dock piles, unless proven infeasible. If deemed infeasible, documentation proving the infeasibility shall be submitted. In that case, an alternative method shall be identified and approved by the City prior to pile installation.

23. The boat equipment storage shall not exceed a height 12 feet from average grade.

24. A building permit shall be obtained from the Department of Planning and Community Development prior to commencing construction.

25. An indemnification/hold-harmless agreement for the staircase on the shoreline bluff shall be duly executed in a form approved by the City Attorney, pursuant to BIMC 16.20.09(C)(2)(g).

26. Flootation for the structure shall be fully enclosed within hard shell float tubs to prevent the breakup or loss of the floatation material into the water.

27. Work shall be completed in substantial conformance with the site plan, stair, and dock detail received July 23, 2015, except as modified by these conditions or by subsequent permit modification proceedings.

28. Activities to be undertaken as part of this permit may require approvals or permits from the Washington Department of Fish and Wildlife, the U.S Army Corps of Engineers, and the Washington Department of Natural Resources. If the dock is to extend over public tidelands, the permission of the public owner shall be demonstrated. Evidence of all required approvals or permission shall be submitted to the City prior to the commencement of any construction activities.

29. All Hydraulic Project Approval conditions and any Army Corp of Engineers Permit conditions shall become conditions of approval.

30. A copy of all public agency approvals and approved drawings shall be given to all contractors performing work at the site prior to beginning any construction work.

31. The applicant shall notify the City in writing that work is to begin at least 48 hours before the work commences. The notification shall advise of the duration of the work period.

32. In accordance with WAC 332-30-144, "Recreational Docks," the applicant is authorized to have and maintain a recreational dock in front of his upland property subject to the following conditions:

- a. Applicant is the abutting residential owner of a family dwelling.
- b. The dock is for moorage of up to four pleasure craft only.
- c. No commercial uses are authorized.
- d. No residential use (live-aboards) is allowed on boats moored at the dock.
- e. No covered moorage and/or houseboats are allowed.

33. Construction pursuant to this permit shall not begin and is not authorized until 21 days from the date of filing with the Department of Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filing have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).

34. The authorization granted by this SSDP/SCUP to construct the proposed stairway and dock shall expire within two years unless substantial progress towards completion is accomplished. Authorization for the proposed structures shall terminate five years after the date the of final permit approval, unless an extension is granted in accordance with BIMC 16.12.370(D)(2)(d).

DECISION

The requested SSDP/SCUP for a dock under File No: SCUP18669 is granted, subject to the conditions set forth above.

SO ORDERED, this 19th day of November, 2015.

/s/ Wick Dufford

Wick Dufford, Hearing Examiner Pro Tempore

APPEAL

The Hearing Examiner's decision may be appealed to the Washington State Shoreline Hearings Board, in accordance with the provisions of BIMC 16.32.380(C)(7).

(Please note: the Washington State Department of Ecology has final decision authority for a Shoreline Conditional Use application. Within eight days of the City's (Hearing Examiner's) decision on the application, the application packet is forward to the Department of Ecology. The Department of Ecology shall approve, approve with conditions or deny the application within 30 days.)