

RESOLUTION NO. 2210

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING ISSUANCE OF A CONDITIONAL USE PERMIT AND SUBSTANTIAL DEVELOPMENT PERMIT AS APPLIED FOR IN DEPARTMENT OF COMMUNITY DEVELOPMENT FILE NO. SDP-CUP-73-33(P) BY ALLEN SCHWARTZ FOR CONSTRUCTION OF A PROTECTIVE BULKHEAD AND FILL WITHIN THE SHORELINE AND ASSOCIATED WETLANDS OF LAKE WASHINGTON, WITHIN WATERFRONT DISTRICT II.

WHEREAS, the Kirkland Department of Community Development has received an application for Conditional Use Permit and Substantial Development Permit filed by Allen Schwartz, owner of the property described in said application and located within Waterfront District II, for the construction of a protective bulkhead and fill, located at 409 5th Ave. West, and

WHEREAS, the application has been assigned for identification File No. SDP-CUP-73-33(P) and submitted to the Kirkland Planning Commission, who held public hearing thereon on September 13, 1973, and

WHEREAS, pursuant to city of Kirkland Resolution No. 2181 dealing with environmental policy and the State Environmental Policy Act, an environmental assessment has been submitted to the city, reviewed by the responsible official of the city of Kirkland, and a negative declaration reached, and

WHEREAS, the Kirkland Planning Commission, after public hearing and consideration of the recommendations of the Department of Community Development, and having available to it the environmental assessment and negative declaration, did adopt certain findings, conclusions, conditions and recommendations approving issuance of the Conditional Use Permit,

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The Conditional Use Permit and Substantial Development Permit applied for by the above named applicant, being Conditional Use Permit and Substantial Development Permit No. SDP-CUP-73-33(P), shall issue, subject to the conditions set forth in the findings, conclusions and recommendations of the Kirkland Planning Commission as signed by the chairman thereof and filed in said file, which findings, conclusions, recommendations and conditions are by this reference adopted by the Kirkland City Council as though fully set forth herein.

Section 2. A certified copy of this resolution, together with the findings, conclusions, recommendations and conditions herein adopted, shall attach to and become a part of the Conditional Use Permit and Substantial Development Permit, or evidence thereof delivered to the permittee.

Section 3. Failure on the part of the holder of the Conditional Use Permit and Substantial Development Permit to initially meet or maintain strict compliance with said standards and conditions shall be grounds for revocation in accordance with Section 23.56.110 of Ordinance No. 2183, the Kirkland Zoning Code.

Section 4. Nothing in this Resolution and Permit shall be construed as excusing the applicant from compliance with any federal, state or local statutes, ordinances or regulations applicable to this project, other than as expressly set forth herein, or other than the permit requirements of the Shoreline Management Act of 1971. This permit may be rescinded pursuant to Section 14.(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any condition hereof.

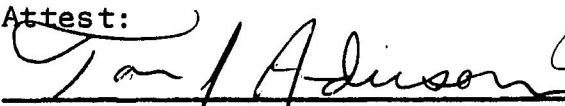
Section 5. Construction pursuant to this permit shall not begin or be authorized within 45 days of the date of its final approval by the local government, or until all review proceedings initiated within said 45 days from the date of final approval by local government have been terminated.

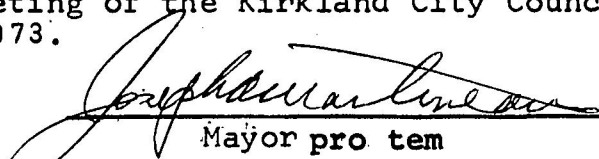
Section 6. Pursuant to the Shoreline Management Act of 1971 and Section 8 of Ordinance 2165 of the City of Kirkland, certified or conformed copies of this resolution shall be delivered to the following:

- (a) Applicant
- (b) The Department of Community Development
- (c) The Kirkland Building Official
- (d) The Department of Public Services for the City of Kirkland
- (e) The Department of Fire Services for the City of Kirkland
- (f) The Police Department of the City of Kirkland
- (g) The Department of Ecology for the State of Washington
- (h) The Office of Attorney General for the State of Washington

ADOPTED in regular meeting of the Kirkland City Council on the 1st day of October, 1973.

Attest:

  
\_\_\_\_\_  
Director of Administration and Finance  
(ex officio city clerk)

  
\_\_\_\_\_  
Mayor pro tem

d. That any unique natural areas or aquatic life or vegetation will not be destroyed.

e. That a public use area will be designed on the high water line setback area except for single family homes.

4. Landfill and excavation are not permitted beyond the existing high water line or within the high water line setback area, except for the following:

a. Emergency construction necessary to protect property from damage by the elements.

b. Public waterfront parks or other uses for the benefit of the general public.

c. Approved alteration of the existing shoreline by a Conditional Use Permit for a single family home.

5. The Department of Ecology's Final Guidelines of the Shoreline Management Act of 1971 has the following guidelines:

a. The construction of bulkheads should be permitted only where they provide protection to upland areas or facilities, not for the indirect purpose of creating land by filling behind the bulkheads. (Page 14)

b. Bulkheads should be located and constructed in such a manner which will not result in adverse effects on nearby beaches and will minimize alterations of the natural shoreline. (Page 14)

c. Priority should be given to landfills for water dependent uses and for public uses. In evaluating fill projects and in designing areas appropriate for fill, such factors as total water surface reduction, navigation restriction, impediment to waterflow and circulation, reduction of water quality and destruction of habitat, should be considered. (Page 15)

6. At the present time, the Department of Interior, Bureau of Sport Fisheries and Wildlife, has indicated they will be opposed to any fills beyond the high water line, unless there are unique circumstances which warrant otherwise. They are not opposed to bulkheads that would be used to prevent erosion.

7. The Washington State Department of Ecology has authorized the Lake Washington Regional Citizens Advisory Committee and Technical Committee the authority to study Lake Washington as a region and make recommendations to the State and local agencies for development of policies for the shoreline areas. At the present time, the policies have not been adopted by the Committee, however, the present direction on fills and bulkheads are as follows:

a. Landfill should not be permitted unless it is necessary for the development and maintenance of public shoreline parks, to improve water and land quality where no other possible alternatives are available, or to replenish sand on public and private community beaches.

b. Construction or repair of bulkheads should not extend into the lake beyond the existing high water line, except in cases of approved landfill. They suggest in cases where bulkheading is permitted, that the preferred material is rip rap.

8. Under similar conditions and the same legislation that is in existence today, the City of Kirkland granted a bulkhead and fill permit far in excess of the one proposed under this application. This was not appealed by the Department of Ecology.

#### CONCLUSIONS:

1. The applicant has filed for a Conditional Use Permit by which the Planning Commission and City Council could authorize a bulkhead and landfill as contained within the Waterfront Zoning Ordinance #2206.

2. The applicant is proposing to place the bulkhead along the line of an existing row of pilings which is approximately six feet from the high water line. The water area landward of the pilings is approximately 420 square feet and at the present time there is no navigational access to it.

3. A bulkhead does appear to be necessary to protect the property from damage by the elements. The necessity for the fill material does not appear to be necessary, however, it would allow the applicant to even up his shoreline with his neighbors.

4. The landfill is not necessary for emergency construction to protect the property from damage by the elements nor is this a public waterfront park or other use for the benefit of the general public. Section 23.12.058 of Waterfront Districts, however, does indicate that the applicant can apply for alteration of the shoreline under a Conditional Use Permit. The applicant has applied for the Conditional Use Permit application for this purpose.

5. The bulkhead, as proposed, will create land by filling behind it. This is discouraged by the Department of Ecology's Final Guidelines for the implementation of the Shoreline Management Act. They also state that priority should be given to landfills for water dependent uses and for public uses. This landfill does not appear to qualify for either of these.

6. Although the Bureau of Sport Fisheries and Wildlife has indicated they are opposed to all landfills, this mainly affects the issuance of the Department of Army Corps of Engineers permits, since they are a federal agency.

7. The policies established to date by the Lake Washington Regional Citizens Advisory Committee and Technical Committee state that landfill should not be allowed and they encourage all bulkheads be constructed of rip rap. It should be pointed out that the policies that are being established by the Group has no legal standing since they are in the preliminary stages.

Mailing Address: [REDACTED] Ave. W. [REDACTED], Ma. 98033

AMENDED 9/14/73  
ADMINISTRATIVE REPORT:  
Allen A. Schwartz

DATE PREPARED: September 10, 1973 FILE NO.: SDP-CUP-73-33 (P)  
NAME: Allen A. Schwartz HEARING BODY: Planning Commission  
PROPERTY LOCATION: 409 5th Ave. W. HEARING DATE: September 13, 1973  
SUBJECT: SUBSTANTIAL DEVELOPMENT PERMIT AND CONDITIONAL USE PERMIT APPLICATIONS

BACKGROUND ANALYSIS:

The applicant is applying for a Substantial Development Permit and Conditional Use Permit for the purpose of constructing a protective bulkhead and landfill extending approximately 6 feet into the lake from the existing shoreline.

This application is somewhat similar to one granted earlier in the Yarrow Bay area. Upon giving this approval, the Planning Commission indicated that they assume the intent of Waterfront Districts was to allow minor fills to maintain a smooth flowing shoreline and allow a modified fill to meet this objective.

The fill proposed under this application represents approximately ten to fifteen percent of the magnitude of the Yarrow Bay fill and bulkhead already granted.

The fill in the Yarrow Bay area was not appealed by the Department of Ecology. The Department of Interior, Bureau of Sport Fisheries, however, has objected to the Army Corps of Engineers for the issuance of their permit for the fill. A delay in the issuance of the Army Corps of Engineers permit has also been requested by the Department of Ecology. No action has been taken by the Corps of Engineers to date.

FINDINGS:

1. The subject property lies within Waterfront District II. Under that zoning, alteration of the shoreline is not permitted under a Conditional Use Permit application, except for single family dwelling units. (23-12.058-23.13.055A.3)
2. The applicant is proposing to extend his property approximately seven feet into Lake Washington and place approximately 35 cubic yards of fill.
3. Landfills are not allowed within Waterfront Districts except for single family homes upon application of a Conditional Use Permit and then only under the following conditions:
  - a. Emergency construction to protect property from damage by the elements.
  - b. The water surface area as defined by the high water line is not substantially reduced.
  - c. That a plan for fill material is approved by the City.

Mailing Address: Allen A. Schwartz  
409 5th Ave. W.  
Kirkland, Ma. 98033

TRANSMITTAL REPORT:

DATE PREPARED: September 26, 1973 FILE NO.: SDP-CUP-73-33 (P)  
NAME: Allen A. Schwartz HEARING BODY: City Council  
PROPERTY LOCATION: 409 5th Ave. W. HEARING DATE: Oct. 1, 1973  
SUBJECT: Substantial Development Permit and Conditional Use Permit Applications

BACKGROUND ANALYSIS:

During their regular meeting of September 13, 1973, the Kirkland Planning Commission recommended favorable approval of this Substantial Development Permit application and Conditional Use Permit application for the location of a bulkhead and fill subject to the Findings, Conclusions, and Recommendations of the attached Amended Administrative Report dated 9/14/73, and the drawings and site plans as submitted.

Enclosed with this packet you will also find an environmental assessment as submitted by the applicant and a negative declaration made by Jerry Link, the responsible official.

At the hearing, there was no one present to speak against the application. It was further the consensus of the Commissioners that this was a reasonable request since Mr. Schwartz was only trying to protect his property and not create land.

In a recent letter from Ralph Thomas, City Attorney, he states: "In regard to approval of environmental assessments, resolutions do not provide for approval, since environmental assessments and impact statements are not approved. They are not subject to approval, they are evidentiary in form and are matters which must be taken into consideration by all reviewing bodies as they reach their decision." Based on this, the Department of Community Development would recommend that the City Council grant approval of the above mentioned applications subject to the Findings, Conclusions and Recommendations of the amended Administrative Report with the exception of Recommendation No. 2. (It is our feeling that the Planning Commission would concur with this Recommendation upon legal advice as given by our City Attorney.)

Report prepared by:

DEPARTMENT OF COMMUNITY DEVELOPMENT

*Kjell Stoknes*  
Kjell Stoknes, Associate Planner

KS:bk

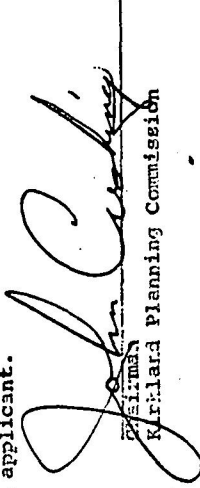
Attachments

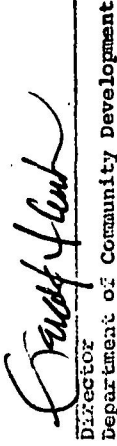
A precedence has been established in the Charles Prescott file allowing minor fills and bulkheads for the purpose of providing a smooth continuous flowing shoreline.

RECOMMENDATIONS:

Based on the aforementioned Findings and Conclusions, we hereby recommend that this Conditional Use Permit and Substantial Development Permit for a bulkhead and fill be granted as applied for with the following conditions:

1. That the bulkhead be placed according to the applicant's drawings and that it meet the requirements of the Kirkland Building Department.
2. That the City Council adopt by reference not only the report as submitted by the Planning Commission, but also the environmental assessment and exhibits submitted by the applicant.

  
William  
Kirkland  
Kirkland Planning Commission

  
Director  
Department of Community Development

KS:bt

- Attachments:
- (1) Vicinity Map
  - (2) Overall elevation and plan view
  - (3) Detailed plan views
  - (4) Detailed elevation views
  - (5) Environmental Assessment