

RESOLUTION NO. R-2800

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE ISSUANCE OF A SUBSTANTIAL DEVELOPMENT PERMIT AS APPLIED FOR IN DEPARTMENT OF COMMUNITY DEVELOPMENT FILE NO. SD-80-82 BY RICHARD SEABORN TO CONSTRUCT A SINGLE FAMILY PIER, BEING WITHIN A WATERFRONT DISTRICT I ZONE, AND SETTING FORTH CONDITIONS TO WHICH SUCH SUBSTANTIAL DEVELOPMENT PERMIT SHALL BE SUBJECT.

WHEREAS, the Department of Community Development has received an application for a Substantial Development Permit filed by Richard Seaborn, the owner of said property described in said application and located within a Waterfront District I zone.

WHEREAS, the application has been submitted to the Kirkland Planning Commission who held public hearings thereon at their regular meetings of February 5, 1981 and June 4, 1981, and

WHEREAS, pursuant to City of Kirkland Ordinance No. 0-2473 concerning environmental policy and the State Environmental Policy Act, an environmental checklist has been submitted to the City of Kirkland, reviewed by the responsible official of the City of Kirkland and a negative declaration reached, and

WHEREAS, said environmental checklist and declaration have been available and accompanied the application through the entire review process, and

WHEREAS, the Kirkland Planning Commission after their public hearings and consideration of the recommendations of the Department of Community Development and having available to them the environmental checklist and negative declaration did adopt certain Findings, Conclusions and Recommendations and did recommend approval of the Substantial Development Permit subject to the specific conditions set forth in said recommendations, and

WHEREAS, the City Council, in regular meeting, did consider the environmental documents received from the responsible official, together with the recommendation of the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED by the City council of the City of Kirkland as follows:

Section 1. The Findings, Conclusions and Recommendations of the Kirkland Planning Commission as signed by the Chairperson thereof and filed in the Department of Community Development File No. SD-80-82 are adopted by the Kirkland City Council as though fully set forth herein, except for Recommendation I.B.2 which is not adopted.

Section 2. The Substantial Development Permit shall be issued to the applicant subject to the conditions set forth in the Recommendations hereinabove adopted by the City Council, and further conditioned that the property owner shall, prior to the issuance of the Building Permit, record a present Grant of Easement, to take effect in the future, for Public Access according to Exhibit "I" of the Planning Commission Advisory Report. The wording of said Easement shall be as follows:

"PRESENT DEDICATION AND CONVEYANCE OF FUTURE PUBLIC
SHORELINE ACCESS AREA LOCATED ON PRIVATELY
OWNED SHORELINE.

_____ hereinafter referred to as "Dedicator" does hereby make a present grant and conveys to the City of Kirkland for the benefit of the general public, a public shoreline access easement to become effective at such time in the future as a shoreline substantial development or land-use development permit is approved by the City of Kirkland for new development or redevelopment (excluding only normal repair and maintenance of the existing structure) situated on the hereinafter described real property (Section 5 below) landward of the high waterline. The easement grant and dedication is subject to the following terms and conditions:

1. AREA TO BE DEDICATED

The area to be dedicated is described in Exhibit "A" attached hereto and made a part hereof as though fully set forth herein.

2. PURPOSE OF DEDICATION

To allow pedestrian access and entry onto the dedicated area by the general public and all members thereof for their peaceful enjoyment of the dedicated area and the waters of Lake Washington adjoining.

3. LIMITATION OF DEDICATION

(a) Access to the dedicated area by land vehicle or watercraft, is specifically excluded from this dedication and access by land vehicle or watercraft shall be upon specific invitation of the dedicator, its heirs, successors or assigns only.

(b) The entire dedicated area may be closed to public access by the Dedicator, its heirs, successors or assigns between dusk and 10:00 a.m. each day.

(c) All areas may be temporarily closed to public from time to time for the purpose of repairs and maintenance.

DEDICATOR

STATE OF WASHINGTON)
COUNTY OF _____)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that _____ signed the same as _____ free and voluntary act and deed for the purposes therein mentioned.

Given under my hand and official seal this ____ day of _____, 19__.

Notary Public in and for the State of Washington residing at _____.

Dedication accepted this ____ day of _____, 19__ on behalf of the General Public by the City of Kirkland by _____ Capacity.

"

Section 3. A certified copy of this Resolution, together with the Findings, Conclusions and Recommendations therein adopted shall be attached to and become a part of the Substantial Development Permit or evidence thereof delivered to the permittee.

Section 4. Nothing in this resolution 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 expressly set forth herein, or other than the permit requirements of the Shoreline Management Act of 1971. Construction pursuant to the Substantial Development Permit shall not begin or be authorized within 30 days of the date of its final approval by the local government or until all review proceedings initiated within said 30 days from the date of final approval by local government have been terminated.

Section 5. Failure on the part of the holder of the Substantial Development Permit to initially meet or maintain strict compliance with the standards and conditions to which the permit is subject shall be grounds for revocation in accordance with RCW 90.58.140(8). The local procedure for revocation shall substantially follow the procedure set forth in Section 23.56.110 of Ordinance 2183.

(d) Neither the Dedicator, its heirs, successors or assigns nor the City of Kirkland nor the State of Washington, nor the officers, agents, employees of said City and State, shall be responsible or held liable for injury or damage occurring to members of the general public availing themselves of the dedicated area, unless the injury or damage results from an immediate, direct, and negligent act of the party sought to be held, and in no event shall the Dedicator, its heirs, successors, or assigns be responsible for any act or omission of a third party or be responsible for the failure to provide security, supervision, guards for members of the general public, or to provide protection for the general public for acts or omissions of other members of the general public.

(e) The Dedicator, its heirs, successors or assigns shall have the sole and separate responsibility of maintaining any portion of the dedicated area to which the general public shall have access and shall defend and save harmless the City of Kirkland from any claims, real or imaginary, asserted by any person for injury or damages resulting from improper maintenance of said dedicated area. The standards of maintenance shall be equal to the standards of maintenance practiced by the City of Kirkland in regard to its adjacent waterfront parks. This covenant of maintenance and to defend and save harmless the City of Kirkland shall run with the land. Copies of all conveyances by dedicator or its subsequent grantees conveying individual apartment units to apartment owners, and/or interests therein to the association of condominium owners shall be recorded with the King County Department of Records and Elections and shall be filed with the City of Kirkland.

(f) Nothing in this dedication shall operate or be held to relieve dedicator, its heirs, successors, or assigns from the continuing requirements and conditions imposed by the permits issued to the dedicator under City of Kirkland file No.'s SD-80-82 and CZ-80-83.

(g) The word apartment as used herein includes the word "condominium".

4. RECORDING. This dedication document shall be recorded in the Department of Elections and Records for King County and shall further be included by inclusion or reference in any condominium documents that may hereafter be required to be recorded.

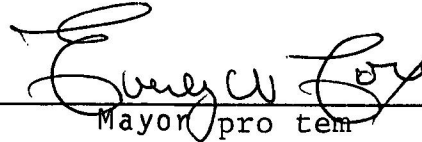
5. LEGAL DESCRIPTION. This dedication document applies to the real property situated in the County of King, State of Washington described as follows: Tax Lot 220, NW 1/4, Section 08, Township 25, Range 05.

Section 7. Certified or conformed copies of this Resolution shall be delivered to the following:

- (a) Applicant
- (b) Department of Community Development of the City of Kirkland
- (c) Fire and Building Department of the City of Kirkland
- (d) Project and Construction Management Department of the City of Kirkland
- (e) Public Service Department of the City of Kirkland
- (f) The Office of the Director of Administration and Finance (ex officio City Clerk) for the City of Kirkland
- (g) The Department of Ecology for the State of Washington
- (h) The Office of the Attorney General for the State of Washington.

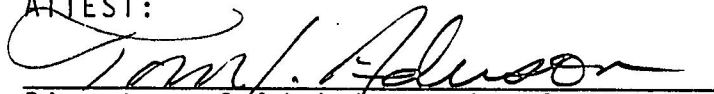
ADOPTED in regular meeting of the City Council on the 6th day of July, 1981.

SIGNED IN AUTHENTICATION THEREOF on the 6th day of July, 1981.



Mayor pro tem

ATTEST:



Director of Administration & Finance
(ex officio City Clerk)

0455A





DEPARTMENT OF COMMUNITY DEVELOPMENT

ADVISORY REPORT
FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

___ PREPARED BY _____ DATE _____

XX RECOMMENDED BY _____ DATE June 4, 1981

___ ADOPTED BY _____ DATE _____

___ STAFF _____

___ BOARD OF ADJUSTMENT _____

___ HOUGHTON COMMUNITY COUNCIL _____

XX PLANNING COMMISSION _____
Carol Goddard
Carol Goddard, Chairperson

___ CITY COUNCIL AS INCORPORATED IN _____

___ RESOLUTION _____ ORDINANCE

NUMBER _____

DATE _____

FILE NUMBER SD-80-82

APPLICANT Seaborn and Lyshol

PROPERTY LOCATION 407 Lake Street South

SUBJECT Substantial Development Permit for Construction of a Pier

HEARING/MEETING DATE June 15, 1981

BEFORE Kirkland City Council

EXHIBITS ATTACHED Exhibits listed on reverse

- "A" Application
- "B" Vicinity Map
- "C" Moorage Facility
- "D" Letters From Einar Peterson
- "E" Letter from Lloyd Pugh (Sands Condominium)
- "F" Environmental Information
- "G" Easement Document
- "H" Slides to be shown at hearing
- "I" Location of Pedestrian Easement Trail
- "J" Approx. location of docks and mooring buoys
- "K" Location of Existing Pedestrian Trails
- "L" Letter to City Council 2/12/81
- "M" Letter from Lyshol and Wallace
- "N" Memo to Planning Commission from staff dated 5/22/81
- "O" City Council Transcript of 2/17/81
- "P" Minutes from Previous Planning Commission Hearing (2/5/81)
- "Q" Slides of Existing Waterfront Trails (on file with DCD)
- "R" Transcript from Planning Commission meeting of 6/4/81 Deliberation

I. SUMMARY

- A. This is an application for a Substantial Development Permit to construct a pier extending 100 feet into Lake Washington with a 6 foot water depth at the westerly end. The pier is located in Waterfront District I at 407 Lake Street South and serves a 3-unit multi-residential land use. The proposal provides moorage for 3 boats.

Major issues include the State Environmental Policies Act, pedestrian trail easement and the Shoreline Master Program policies.

B. RECOMMENDATIONS

Based on the facts, conclusions and exhibits in this report, we hereby recommend approval subject to the following conditions:

1. The applicant shall obtain permits from the Army Corps of Engineers and approval from the Department of Ecology.
2. Prior to issuance of a Building Permit: Submit for City approval and record with King County Office of Records a 15 foot wide public access easement in the high water line setback according to Exhibits "G" and "I". The trail will not be improved nor opened until a connection to the north and the south is available. Prior to the trail improvements and opening, the City and the applicant shall explore a trail design which protects the privacy of the site. This may result in expanding the existing bulkhead and placing the trail waterward of the high waterline, requiring a shift in the easement location. Landscaping, earth contouring, and other design methods shall also be explored.
3. The address of the subject property shall be placed at the end of the pier, visible from the water and lighted at night.
4. The pier shall not be treated with creosote nor any substance which has a significant adverse impact upon the environment.
5. The boats shall not become residential living quarters.

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6. All utility lines shall be underground or below the deck of the dock.
7. The number of mooring berths cannot exceed the number of dwelling units on the site.

II. MAJOR ISSUES

A. SEPA

1. Statement of Fact

An Environmental Checklist was thoroughly reviewed, and the Responsible Official issued Proposed and Final Declarations of Non-Significance on November 19, 1980 and December 5, 1980, respectively.

2. Conclusions

The requirements of the State Environmental Policies Act have been met. The project will not have an adverse impact on the environment.

B. PEDESTRIAN TRAIL EASEMENT

1. Statements of Fact

- a. The multi-residential structure is roughly 55 feet east of a cement bulkhead, the edge of Lake Washington. The north and south property lines are fenced. At present there is no trail connection available to the north or south. The Sands Condominium intervenes between the site and 5th Ave. So. right-of-way, and the Peterson multi-residential development intervenes between the site and the Rosin trail easement to the north. If easements across these intervening properties are obtained in the future, an approximately 513 foot water front trail can be created.

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- b. The Shoreline Master Program states that "the physical public access requirements of this section are applicable to all uses and activities, except for single family" (emphasis added). Private boat moorage is a private recreation shoreline use and activity. Private recreational uses must provide public access consistent with private property rights as described on page 14.
- c. The Shoreline Master Program identifies the goal to "increase public access to and along the shoreline areas, provided public safety and unique or fragile areas are not adversely affected.". Policy Statements toward achieving this goal are: "The public access policies apply to all shoreline uses and activities unless noted otherwise. In addition, the introduction states that "The physical public access requirements of this section are applicable to all uses and activities, except for single family.".

GOAL: Increase public access to and along the shoreline areas, provided public safety and unique or fragile areas are not adversely affected.

Policy 1 - Public access, to and along the water's edge, should be consistent with the public safety, private property rights, and the conservation of unique or fragile areas.

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Policy 3 - Where shoreline areas are available for public pedestrian and bicycle pathways, these should be developed as close to the water's edge as reasonable....

Policy 4 - Provisions should be made for public access to and along the water's edge in new substantial shoreline developments.

Policy 7 - Public access should be designed with provisions for handicapped and disabled persons where feasible.

GOAL: A BALANCED TRANSPORTATION SYSTEM FOR MOVING PEOPLE AND GOODS IS TO BE ENCOURAGED WITHIN EXISTING CORRIDORS OR MINIMIZE VEHICULAR TRAFFIC IN SHORELINE AREAS.

POLICY 3 - Pedestrian and bicycle pathways, including provisions for maintenance, operation and security should be developed along the Lake, consistent with private property rights.

POLICY 3a - Access points to and along the shoreline should be lined by pedestrian pathways developed as close to the edge as reasonable. (Policy 3a Explanation: Pedestrian pathways should be designed and constructed of such materials that would allow proper drainage and a minimal amount of impervious cover along the water's edge).

Circulation Element, Introduction

"Previous recreation and waterfront planning included provisions related to pedestrian and bicycle trails. The short-range system plans for utilization of existing road rights-of-way. The long range plan calls for a water-edge trail. Immediate programs can be initiated to develop an interim bicycle and pedestrian trail using public

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rights-of-way (Lake Washington Blvd. and Waverly Way) and waterfront parks and connecting to upland traip systems. This interim trail could satisfy present needs until a long range water edge trail can be developed.

Pedestrian and bicycle trails can be a structuring element for the entire waterfront, as well as connecting to other parts of the Planning area. The shoreline survey results indicted that this is a highly desirable goal. A waterfront trail can achieve the following objectives:

- An alternative means of movement between shoreline locations.
- Provide additional access to the shoreline from upland areas.
- Provide a recreational amenity for the Planning area.

The water-edge trail could utilize building setback areas and meander through recreational areas and should on be implemented:

- After consent of the property owner, or
- A use easement is obtained, and
- There is adequate water frontage available, and
- Access will be limited in unique and fragile areas." (Page 33).

c. Location of the Public Access Trail

CIRCULATION, POLICY 3--Where shoreline areas are available for public, pedestrian and bicycle pathways, these should be developed as close to the water's edge as reasonable. (Policy 3 Explanation: Close to the water's edge as reasonable would be defined in terms

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of the frontage road right-of-way or through areas designated and available for access. The trail should be located away from the water's edge if there is a conflict with swimming or other such water dependent activities. Pedestrian or bicycle pathways could be separate facilities or combined. When the facilities are separated, the pedestrian way should be close to the water's edge. The bicycle way should be primarily in or near road rights-of-ways."

POLICY 7 - Public access should be designed with provisions for handicapped and disabled persons, where feasible. The applicant is proposing a driveway grade of 15%. The State Building Code, Section 75.02 which is titled the State Handicapped Code, defines the maximum grade allowed for handicapped use. The proposed driveway grade far exceeds the maximum allowed in the State Handicapped Code.

- d. Public Access easement width and description.

Public Access easements are generally 15 feet in width to allow ample room for a hard surface walkway, landscaping and occasional benches for passive use. The easement document used is shown in Exhibit "G".

2. Conclusions

A public access easement should be incorporated in the development of the Lyshol moorage facility. Public access is required by the use regulations of the Shoreline Master Program as it currently reads. The easement should follow the shoreline running north-south (Exhibit "I") and be 15 feet wide which is the standard waterfront easement width. The easement format should follow that shown in Exhibit "G" and be approved by the City of Kirkland. The easement should be granted before release of the building permit.

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Improvements to the trail are not required because a north-south connection does not exist. When the north-south easement has a connection, the trail may then be improved and opened for public use by the City of Kirkland.

Prior to the trail improvement and opening, the City and the applicant shall explore a trail design which protects the privacy of the site. This may result in expanding the existing bulkhead and placing the trail waterward of the high waterline, requiring a shift in the easement location. Landscaping, exact contouring and other design methods shall also be explored.

C. COMPLIANCE WITH SUBSTANTIAL DEVELOPMENT PERMIT AND SHORELINE MASTER PROGRAM CRITERIA

1. URBAN ENVIRONMENT.

a. Statements of Fact.

The site is designated an Urban Environment, with no potential for Sockeye Salmon spawning at the water's edge.

Goal. The urban environment is to provide for optimal utilization of the shorelines within extensively developed areas by planning and managing for public use and private development in a manner to further shoreline goals and policies.

Policy 2. Reasonable and appropriate uses and activities should be planned for the urban environment.

Policy 2a. Preference should be given to those uses or activities which depend on a shoreline location or provide public access to the shoreline while minimally disrupting the natural amenities of the lake.

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Policy 2b. Planning, zoning, capital improvements and other policy and regulatory standards should not increase the density or intensity of shoreline uses and activities except on a demonstrated need considering the entire lake shoreline.

b. Conclusions.

- i. The dock, as proposed with 3 moorage berths, represents a water-dependent shoreline use.
- ii. The pedestrian path is a compatible use with the pier and the apartment. The path should not be improved and available for public passive recreation until a connection is available.

2. RECREATION

a. Statements of Fact.

- i. The Shoreline Master Program states that "Approximately 70 percent of the responses (to a mail-out survey) wanted to see a pedestrian walkway linking the shoreline parks. The most important recreational activities are, in the following order of preference; walking along the shoreline, swimming, picnicking, fishing, boating and bicycling."
- ii. Goals. Water-dependent recreational activities available to the public are to be encouraged and increased on the shoreline where appropriate and consistent with public interest.

Policy 4. Private and semi-public water-dependent recreational facilities should be recognized as providing limited access to the water since they relieve some pressures in public areas.

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b. Conclusions.

The multi-residential use of boat moorage is identified as a private recreation use. Installation of the public access trail serves the public interest.

3. PIERS AND MOORAGE

a. Statements of Fact.

Policy 1. - Construction of new or expanded piers may be permitted under the following criteria:

- (1) Piers should be allowed only for moorage of pleasurecraft, for water-dependent recreation, marinas, boat clubs or for required public health and safety vessels.
- (2) Temporary moorage may be permitted for vessels used in the construction of shoreline facilities.
- (3) Adjoining waterfront property owners should be encouraged to share a common pier.
- (4) The size and extent of a pier should not exceed that which is required for the water-dependent purposes for which it was constructed.
- (5) In multi-family or condominium developments the ratio of moorage berths to residential units should be some fraction less than one.

Policy 2. The use of buoys for moorages should be considered as an alternative to the construction of piers for residences for this purpose. Such buoys shall be placed as close to shore as possible in order to minimize hazards to navigation.

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b. Conclusions.

The number of moorage berths serving a residential development cannot exceed the number of dwelling units on the site. Only privately used pleasure craft for the tenants and their guests is allowed. The pier extends 100 feet to a depth of six feet, a size which does not exceed the minimum required for boat moorage.

4. SIGNS

a. Statements of Fact.

Policy 1. Signing on the shoreline shall be kept to a minimum.

The following are sign use regulations:

- 1) Off-premise and non-appurtenant signs are prohibited in the shoreline area.
- 2) Free-standing signs or any signs extending above rooflines should be prohibited on the shoreline.
- 3) Advertising signs, when permitted, should be limited to areas of high intensity land use, and should be stationary, non-blinking, and of a size commensurate with the structure to which it is fixed.
- 4) Exterior high intensity artificial lighting should be directed away from adjacent property and the water wherever offensive.
- 5) Required navigational signs may be permitted.

b. Conclusions.

An address sign should be located at the end of the dock and be highly visible from the water.

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5. COMPONENTS

a. Statements of Fact

- i. Components are structures or modifications which are either required by or are accessory to a shoreline use or activity. More specifically, components include buildings, bulkheads, dredging, sowing, piers and moorages, utilities, boat launching facilities, parking and signs.

Policy 1 Components in or near the water should not be constructed from materials which have significant adverse physical or chemical affects on water quality, vegetation, fish and/or wildlife.

Policy 3 Permitted components should be designed to permit normal circulation of water, sediments, fish and other aquatic life in or along the water.

b. Conclusions

The pier shall not be treated with creosote nor any other substance which has a significant adverse impact upon the environment.

6. UTILITIES

a. Statements of Fact

Policy 2 When technically and economically feasible, overhead facilities shall be placed underground.

Policy 3 After completion of installation or maintenance of these facilities, the shoreline area should be restored to its pre-project condition, or improved to promote fish or wildlife habitat. If the previous condition is identified as being undesirable, then landscaping or other improvements should be undertaken.

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Policy 4 In all the new developments, the developer should install means to control the entry of contaminants into the Lake within acceptable water quality standards.

Policy 4b - Whenever possible contaminants should be removed from the surface runoff at the source of contamination. Methods of removing contaminants include oil skimmers, sediments traps, and street sweeping.

b. Conclusions

- i. If electrical outlets are proposed for the dock, all wires shall be underground or run under the dock.
- ii. The dock shall not be used for residential purposes. Prohibiting residential use of the dock lessens the likelihood that contaminants will enter the Lake.

IV. CITIZEN INPUT

Written comments are attached in Exhibits "D" and "E".

V. DEVELOPMENT STANDARDS

1. The pier structure shall not be treated with creosote.
2. An address sign shall be located at the end of the dock, and the lettering should be highly visible.
3. Dock shall not serve a residential use.
4. Electrical wires and utilities shall be placed underground or under the dock.

VI. APPENDIX

Exhibits "A" through "R" are included as a part of this report.

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