

# Douglas County Hearing Examiner

Andrew L. Kottkamp, Hearing Examiner

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<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
PA-09-02	)	<b>DECISION AND</b>
Aspen Shores Plat Amendment	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on February 18, 2010, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

## I. FINDINGS OF FACT

1. The applicants are Pamela Talbot – Lot 1, Steven Woods – Lot 2, Greg DeCamp – Lot 3, Martin Ritter – Lot 4, Kevin Sullivan Lot 5, and the Aspen Shores Homeowners Association – Tract 4. Aspen Shores Phase 1.
2. General Description: A plat amendment application for Aspen Shores Phase 1. The application proposes to remove the dock size limitation notes from the face of the Plat for Aspen Shores Phase 1 and to place new notes detailing how joint use docks are to be arranged and constructed for the lots.
3. Location: The subject property is Aspen Shores Phase 1 and is further located in Section 20, township 22 N., Range 21 E.W.M., Douglas County, WA. The Douglas County Assessors Parcel Numbers are 44200100100, 44200100200, 44200100300, 44200100400, 44200100500, and 44200000004.
4. Site Characteristics: The subject properties are located within a residential subdivision.
5. The Comprehensive Plan Designation is Rural Resource 2 acres.
6. The subject property is located in the RR-2 zoning district which allows for subdivisions as permitted uses.

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7. Aspen Shores Phase 1 was recorded on March 13, 2001. A correction survey to Aspen Shores Phase 1 was recorded on April 16, 2001. A second correction survey to Aspen Shores Phase 1 was recorded on December 5, 2001.
8. Note #9 of Aspen Shores Phase 1 states “Proposed docks not to exceed 450 square feet.”
9. The US Army Corps of Engineers submitted comment that they are only supportive of one community dock for the subdivision and not joint use docks. The Corps states that National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (USFWS) believe that small community docks have less impact than joint use docks.
10. WA Dept. of Fish and Wildlife commented that the agency is only supportive of the one community dock for the subdivision and not joint use docks.
11. The Yakama Nation commented that the agency is only supportive of the one community dock for the subdivision and not joint use docks.
12. Regulation 3 of SECTION 5.10 of the Douglas County Regional Shoreline Master Program states that if moorage is to be provided as part of a new residential development of two or more dwelling units, moorage facilities shall be joint use or community docks.
13. The review and decision as to whether a joint use or community dock can be permitted is more appropriately performed during the shoreline substantial development permit review where the design/location of the dock can be specifically analyzed.
14. Douglas County issued a Determination of Nonsignificance on January 26, 2010 pursuant to WAC 197-11-355 (Optional DNS).
15. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
16. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
17. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
18. The entire Planning Staff file was admitted into the record at the public hearing.

19. The Douglas County Department of Land Services recommended approval of this plat amendment, subject to the recommended conditions of approval.
20. Public hearing after due legal notice was held on February 18, 2010. Appearing and testifying on behalf of the applicant was Larry Lehman of Grette & Associates. Mr. Lehman testified that he was an agent authorized to appear and speak on behalf of the applicant. Mr. Lehman testified that all of the conditions of approval were acceptable to the applicant. Mr. Lehman reminded the Hearing Examiner that what was being approved were not actual permits for docks, but just a provision within the plat to allow joint use docks as well as community docks.
21. Testifying from the public in favor of the project was Martin Ritter. Mr. Ritter reiterated that the application was simply asking for a plat note change in order to meet federal government requirements for later dock installation.
22. Testifying in opposition to the project was Eric Pentico of Washington State Department of Fish & Wildlife. Mr. Pentico stated that the Washington Department of Fish & Wildlife was opposed to two-party docks at this location of the river. He indicated that Washington Department of Fish & Wildlife had previously agreed that a community dock could be located as had been discussed between the developer and the Department of Fish & Wildlife. Mr. Pentico testified regarding concerns of cumulative affects of joint use docks not only on this project but in other projects on the Columbia River. He indicated the joint use docks require more paths through the riparian habitat than do community docks.
23. Also testifying from the public was Jeff Kinzel of Dryden, Washington. Mr. Kinzel testified that he is not aware of any documents from Washington State Department of Fish & Wildlife in the form of professional studies that joint use docks are detrimental to fish.
24. Testifying in opposition to the project was Pat Boynton. Mrs. Boynton is a co-author of Exhibit 1 which was admitted into the record. Exhibit 1 is a February 17, 2010, letter from Mr. Jim Boyntan and Mrs. Pat Boyntan with attachments. Mrs. Boyntan testified that she was not opposed to joint use docks on Lots 1 through 5 but did have an objection as more specifically stated within Exhibit 1, as to the inclusion of Tract 4 of Phase 1 of the Aspen Shores Development into this application.
25. Also testifying from the public was Carlton Olson. Mr. Olson is on the board of the homeowners association but was only speaking in his individual capacity. Mr. Olson believed that all the requirements of the homeowners association bylaws had been met regarding providing authority for the president to submit this application.

26. Also testifying from the public was Diana Wlodarczyk of East Wenatchee. Ms. Wlodarczyk testified that the application was only to change the plat notations so that they would allow joint use docks.
27. Also admitted into the record was Exhibit 2 which was submitted by Martin Ritter, that being Homeowners Association Minutes from April 4, 2009.
28. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
29. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
30. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
31. Any conclusion of law that is more correctly a finding of fact is hereby incorporated as such by this reference.

## **II. CONCLUSIONS OF LAW**

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
3. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Countywide Comprehensive Plan.
4. Public use and interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 18 "Zoning", Title 17 "Subdivision", and Title 19 "Environment", of the Douglas County Code.
6. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
7. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
8. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.

9. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Douglas County Code or the Comprehensive Plan.
10. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
11. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

### **III. DECISION**

Based on the above Findings of Fact and Conclusions of Law, Application PA-09-02, Aspen Shores Plat Amendment, is hereby **APPROVED** subject to the following Conditions of Approval.

### **IV. CONDITIONS OF APPROVAL**

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials of file dated October 16, 2009 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. A plat certificate showing parties of interest from a title company must be submitted with the blue-line drawings.
5. The final plat map shall be submitted by a land surveyor licensed in the State of Washington, and shall comply with the standards set forth in Title 17 of the Douglas County Code.
6. All parties having an ownership interest in the subject property shall acknowledge the plat.
7. It is the responsibility of the applicant to contact the Douglas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.

8. The final plat shall eliminate the following text Note 9 “ Proposed docks not to exceed 450 sq. ft.”
9. The final plat shall include a new note that states “ Consistent with the Douglas County Regional Shoreline Master Program, dock facilities for this development shall be limited to joint use or community dock facilities. If joint use dock facilities are permitted, lots 2 and 3 shall share a joint use dock and lots 4 and 5 shall share a joint use dock.”
10. Preliminary approval shall expire 5 years from the date of Notice of Action by the Douglas County Hearing Examiner. Final plat approval after the expiration will require the submittal of a new preliminary application and approval based on applicable documents and codes in effect at the time of re-application.

Dated this 22<sup>nd</sup> day of February, 2010.

DOUGLAS COUNTY HEARING EXAMINER



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**Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner’s decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.**

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.**