

STAFF REPORT
KELLY CLARK – APPEAL OF NOTICE OF CODE VIOLATION AND ORDER

TO: Douglas County Hearing Examiner
FROM: Douglas County Land Services Staff
RE: APP-09-01
DATE: July 9, 2009

I. GENERAL INFORMATION

Requested Action: Mr. Don Dimmitt on behalf of Kelly and Marnie Clark has filed an appeal of an April 9, 2009 Notice of Code Violations and Order.

Location: Lot 2, Plat of Columbia Point, Assessors Parcel Number 97500000200.

Background: On April 6, 2009 the Code Enforcement Officer observed construction activity for retaining walls on the subject property. On April 7, 2009, the Code Enforcement Officer issued a stop work order for the retaining wall. On April 9, 2009, the Code Enforcement Officer issued a Notice of Code Violations and Order. The notice identified that construction activity had started without obtaining a valid building permit and that the activity had disturbed the riparian area of the Columbia River Shoreline without obtaining a permit.

Mr. Dimmitt filed a notice of appeal of the notice of violation for the riparian area disturbance per, Chapter 14.12.010 on May 11, 2009 on behalf of Mr. and Mrs. Clark.

II. ENVIRONMENTAL REVIEW

Conducting open record appeal proceedings of an administrative decision is categorically exempt from a threshold determination per WAC 197-11-800(11)(b).

III. PROJECT ANALYSIS

RCW 58.17.170 requires that a subdivision shall be governed by the terms of approval of the final plat and the regulations in effect at the time of final plat approval for a period of 5 years. The Plat of Columbia Point was recorded on April 25, 2000. The vesting under the old conditions of approval and development regulations expired on April 24, 2005. Mr. Clark applied for a building permit for a residence on March 10, 1995. The building permit application was determined complete on April 8, 2005 which vested that building permit under the standards in place at final plat approval. The building permit was issued on June 10, 2005 and final occupancy was granted, completing the building permit, on March 25, 2008.

The retaining wall and deck construction activity that is the subject of the code enforcement action on the subject property shall be reviewed under the regulations currently in place.

Current unpermitted activity

The Columbia River shoreline is designated as a wetland by Douglas County Code 19.18B.030. A wetland delineation and rating was not submitted to Douglas County

prior to commencing activity nor at the writing of this staff report as required by DCC 19.18B.020(E) for activity adjacent to or within an unrated wetland area.

The unpermitted activity that has occurred is closer than 50 feet from the Ordinary High Water Mark which is the smallest buffer in county code. A wetland management and mitigation plan was not submitted for approval prior to commencing activity nor at the writing of this staff report as required by DCC 19.18B.035.

The Columbia River is classified as a Water of the State and therefore a fish and wildlife habitat conservation area by DCC 19.18C.020(B)(4). Documentation regarding the habitat boundary survey and associated buffer required by DCC 19.18C.035(A) and (C) was not submitted for approval prior to commencing activity nor at the time of the writing of this staff report.

The code also requires that buffers be retained in their natural condition unless appropriate mitigation can be provided as established by a wetland management and mitigation plan and approved by the County. A critical area permit has not been submitted or approved by the County. The buffer area was previously disturbed due to fill activity during the development of the subdivision and through construction activity of the residence, both of which were vested at the time. However the disturbed nature of the buffer does not grant permission of the property owner to continue to encroach further into the buffer with new construction activity.

Letter from Don Dimmit, July 7, 2009

Mr. Dimmit submitted a letter to the County dated July 7, 2009 which presents case law argument supporting his position that the setbacks and native vegetation easements are still vested for the subject property.

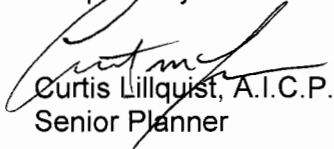
DCTLS staff has three responses. First SEPA is a procedural statute which includes the process to determine if impacts are present and the process to determine what, if any, mitigation is necessary. SEPA does not have any specific development standards to apply to a project. SEPA is not a stand alone process it is always tied to a permit process. Therefore, any standards for mitigation that may be envisioned as a result of the SEPA process must be applied to a project via the actual permit approval. In this case, the subdivision conditions of approval. Second, Mr. Dimmit has provided documentation in his letter that a neighbor has constructed a wall the same distance from the river as his client's activity. The Douglas County Code Enforcement Officer is currently investigating the adjacent property to determine if a code violation exists on that property. Third, while the applicant's representative has the right to enter any testimony into the record he determines necessary, it is staff's position that the discussion of case law is not properly before the hearing examiner.

IV. SUGGESTED FINDINGS OF FACT

1. The appellants are Kelly and Marnie Clark, 23197 Columbia Point Lane, Orondo WA.
2. On April 9, 2009, the Code Enforcement Officer issued a notice of code violations and order.
3. On May 11, 2009, Don Dimmitt filed a notice of appeal of the notice of violation for the riparian area disturbance per Chapter 14.12.010, on behalf of Mr. and Mrs. Clark.

4. Chapter 2.13.070, DCC, authorizes the Douglas County Hearing Examiner to hear appeals alleging an error in a decision of the director of land services in the interpretation or the enforcement of violations of the zoning code or any other development regulations.
5. Chapter 14.12, DCC, establishes procedures for appealing notices of violation.
6. The Plat of Columbia Point was recorded on April 25, 2000.
7. Vesting under the old conditions of approval and development regulations expired on April 24, 2005.
8. The Columbia River shoreline is designated as a wetland by Douglas County Code 19.18B.030.
9. A wetland delineation and rating was not submitted to Douglas County prior to commencing activity nor at the writing of this staff report as required by DCC 19.18B.020(E) for activity adjacent to or within an unrated wetland area.
10. The unpermitted activity that has occurred is closer than 50 feet from the Ordinary High Water Mark which is the smallest wetland buffer in county code.
11. A wetland management and mitigation plan was not submitted prior to commencing activity as required by DCC 19.18B.035.
12. The Columbia River is classified as a Water of the State and therefore a fish and wildlife habitat conservation area by DCC 19.18C.020(B)(4).
13. Documentation regarding the habitat boundary survey and associated buffer required by DCC 19.18C.035(A) and (C) was not submitted prior to commencing activity.
14. DCC 19.18B.050 required that wetlands and their buffers be left undisturbed and in their natural condition.
15. DCC 19.18.035 requires the approval of a wetland management and mitigation plan when impacts to a wetland are unavoidable during project development.
16. No wetland delineation and rating or wetland management and mitigation plan was submitted to Douglas County for review and approval prior to commencing development activity.

Respectfully Submitted,


Curtis Lillquist, A.I.C.P.
Senior Planner