

**STAFF REPORT
ASPEN SHORES PHASE 1 PLAT AMENDMENT**

TO: Douglas County Hearing Examiner
FROM: Douglas County Land Services Staff
RE: Plat Amendment – Aspen Shores Phase 1, PA-09-02
DATE: February 8, 2010

I. GENERAL INFORMATION

Requested Action: 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.

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.

Background: Phase 1 of Aspen Shores was recorded with a note limiting the size of docks to a maximum of 450 square feet. At the time of project approval the issue of threatened/endangered species protection and critical areas protection was in its very early stages. The best available science at the time was to limit the total size of over water structures. Today that best available science has changed. Under the federal regulations and WDFW guidance for docks a dock cannot be permitted as small as 450 square feet. Removal of the note is necessary to allow dock applications to be processed.

II. SITE INFORMATION

Site Characteristics: The subject properties are located within a residential subdivision.

Access: The subdivision accesses SR 28.

Zoning and Development Standards: The subject property is located within the Rural Resource 2 acres (RR-2) Zoning District, which allows for subdivisions.

Major Subdivisions:

The requirements of Title 17, "Subdivisions", Douglas County Code, apply to plat amendments.

III. COMPREHENSIVE PLAN:

The Douglas County Countywide Comprehensive Plan designates this property as Rural Resource 2 acres. The following goals and policies set forth in the comprehensive plan are relevant to this development:

RURAL

POLICY RD-4: Development and recreational opportunities in rural shoreline and other rural areas shall minimize potential adverse impacts to water quality, slope stability, vegetation, wildlife and aquatic life.

POLICY RD-7: Rural developments should consider and comply with the spirit, intent and requirements of all the chapters and section of this comprehensive plan, including but not limited to, the Resource Lands Element and resource and Critical Areas Conservation Element.

IV. SHORELINE MASTER PROGRAM

SECTION 5.10 Moorage: Docks, piers, watercraft lifts, mooring buoys, floats

POLICY 1: Where other community or public moorage facilities are available, individual moorage associated with a single family residence will be discouraged.

POLICY 5: Moorage should be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. The length, width and height of piers and docks should be no greater than necessary for safety and functional use.

POLICY 9: Multiple agencies have permitting standards, requirements or limitations for the use and development of moorage facilities. Many of these agencies have specific ownership or easement rights. The county and cities should coordinate with federal, tribal, state and local agencies during the review of shoreline permits. The granting of a shoreline permit does not relieve a project from compliance with the standards of other agencies.

Regulation 3: 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. New residential developments shall contain a restriction on the face of the plat and restrictive covenant prohibiting individual docks and requiring joint use or community dock facilities. Community dock facilities should be encouraged. A site for shared moorage should be owned in undivided interest by property owners or managed by the homeowner's association as a common easement within the residential development. Community dock facilities should be available to property owners in the residential development for community access. If shared moorage is provided, the applicant/proponent shall file at the time of building permit submittal for the dock a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:

- a. Provisions for maintenance and operation;
- b. Easements or tracts for community access; and
- c. Provisions for joint or community use for all benefiting parties.

Regulation 8: When a public utility district, PUD owns land between a residential development and the ordinary high water mark of the shoreline, the following requirements shall apply:

- c. Language on the face of the plat and restrictive covenants shall prohibit individual docks and require joint use or community dock facilities, when such facilities are permitted by all applicable agencies, including the PUD.

Plat covenants and restrictions do not guarantee a PUD permit or approval will be issued. Plat covenants and restrictions will not vest a property right to the intervening PUD lands. All permits or approvals issued by a PUD are personal and conditional in nature and may be cancelled at any time and for any reason.

Regulation 20: A list of dock, boat lift, and mooring buoy design parameter recommendation should be developed through coordination among the cities, the county, U.S. Army Corps of Engineers, Washington State Department of Fish and Wildlife, Ecology and Natural Resources, U.S. Fish and Wildlife Service, NOAA Fisheries, and local public utility districts.

V. ENVIRONMENTAL REVIEW

Douglas County issued a Determination of Non-significance on January 26, 2010 in accordance with WAC 197-11-355 (Optional DNS).

VI. AGENCY AND PUBLIC COMMENTS:

Applicable agencies have been given the opportunity to review this proposal. Agency comments have been included as Attachment A.

Carlton & Mary Olson, 2800 Akamai Way

Mr. And Mrs. Olson submitted comment supporting the application in order to move advance the ability for the subdivision to obtain docks.

Deborah Knaub, US Army Corps of Engineers

The Corps is 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. The Corps also state that NMFS has recently indicated that they believe that a community dock is the least damaging alternative for this development. Finally the Corps comments that community docks should be used in the future because the number of Regional General Permit (RGP) permits will likely be very limited in the future.

Eric Pentico, WA Dept of Fish and Wildlife

WDFW commented that the agency is only supportive of the one community dock for the subdivision and not joint use docks. The Department states that the resource agencies/ County and the original developer negotiated an agreement to construct one community dock. This negotiation was undertaken due to the habitat issues. Mr. Pentico explains in his comments the impacts to habitat that the docks would create.

Phil Rigdon, Confederated Tribes and Bands of the Yakama Nation

The Yakama Nation commented that the agency is only supportive of the one community dock for the subdivision and not joint use docks. The Department states that the resource agencies/ County and the original developer negotiated an agreement to construct one community dock in order to minimize impacts to habitat and critical species.

VII. PROJECT ANALYSIS

In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, shoreline master program, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Comprehensive plan consistency:

The proposal is consistent with the goals and policies of the Douglas County Countywide Comprehensive Plan.

Consistency with the provisions of Title 17, "Subdivision", D.C.C.:

A note was placed on the final plat limiting the size of any dock to 450 square feet. This note was required as a result of the environmental review of the project at the time. Best available science has changed since then making an application for a dock able to meet the current state and federal dock standards and the plat note.

The elimination or modification of plat notes must be approved via a plat amendment process. As conditioned, the proposed plat alteration is consistent with the provision of this title.

Consistency with the provisions of the RR-2 Zoning District, Chapter 18.28, DCC:

The proposal is consistent with the provisions of this chapter. Docks are accessory to the residential use permitted by the district.

Consistency with the provisions of the Douglas County Regional Shoreline Master Program:

The shoreline master program requires that Aspen Shores have joint use or community moorage. As conditioned, the proposed plat alteration will limit proposed docks to joint use or community docks.

Agency comments:

The US Army Corps of Engineers, WA Dept of Fish and Wildlife, Confederated Tribes and Bands of the Yakama Nation are all not in support of allowing multiple joint use docks on the shoreline for this subdivision. Each agency has submitted comment providing support for their position which is attached to this staff report. It is the County's position that the shoreline master program allows for joint use or community docks. This authorizes the property owners to apply for a shoreline substantial development permit. Whether or not a SDP permit application would be successful is dependant on the site specific analysis for the specific location and design. There is not enough data to support a decision on individual docks at this point.

Based on the comments received and staff analysis, the County cannot support the language proposed in the application. The County proposed alternative language to Larry Lehman, the applicant's agent, in a January 14th email. See Attachment B. The applicant's agent has responded that the language proposed by the County is acceptable.

VIII. RECOMMENDATION

As conditioned below, this application does not appear to be detrimental to the general public health, safety or welfare and meets the basic intent and criteria associated with Title 17, 18, and 19 of the Douglas County Code, the Douglas County Shoreline Master Program and the Douglas County Countywide Comprehensive Plan. Staff recommends approval of PA#09-02 subject to the findings of fact and conditions in this staff report.

Suggested 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.
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. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

Suggested Conclusions:

1. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Countywide Comprehensive Plan.
2. Public use and interests will be served by approval of this proposal.
3. As conditioned, the proposal is consistent with Title 18 "Zoning", Title 17 "Subdivision", and Title 19 "Environment", of the Douglas County Code.

Suggested Conditions of Approval

1. 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.
2. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
3. A plat certificate showing parties of interest from a title company must be submitted with the blue-line drawings.
4. 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.
5. All parties having an ownership interest in the subject property shall acknowledge the plat.
6. 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.
7. The final plat shall eliminate the following text Note 9 " Proposed docks not to exceed 450 sq. ft."
8. 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."
9. 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.

Respectfully Submitted,

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

Attachments