

ISLAND COUNTY HEARING EXAMINER

RE: Appeal of SHE 373/07)	File No. APP 029/10
Appellant: John Snow)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
)	AND DECISION
)	

SUMMARY OF APPEAL AND DECISION

APPEAL: The appellants sought a shoreline exemption to allow construction of approximately 320’ of vertical log piling bulkhead and an additional 50’ of open pile bulkhead on a shoreline parcel on the west side of Camano Island. Island County Planning issued an Administrative Decision approving 170’ of bulkhead to replace a prior bulkhead of that length, which has failed. The appellants appeal the determination by Island County Planning and Community Development not to include the entire proposed bulkhead in the shoreline exemption approval.

DECISION: Decision of Island County Planning and Community Development is upheld.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on May 6, 2010.

I.

PRELIMINARY INFORMATION

Appellant: John Snow

Property Location: The site address is 1314 Seth Drive on Camano Island, being a portion of the NW ¼ of Section 15, Township 30 North, Range 3 East W.M., on Camano Island, Washington.

Publication: April 21, 2010 in the Whidbey New Times & South Whidbey Record and April 20, 2010 in the Stanwood Camano News.

Mailing of Notice to Appellant: May 2, 2010

Mailing of Staff Report: April 27, 2010

Date of Appeal: February 8, 2010

Date of Comprehensive Statement: February 22, 2010

Hearing Date: May 6, 2010

Exhibit Log:

1. Appeal Response
2. Staff Report
 - a. SEPA Determination of Non-Significance, dated 1/27/2010
 - b. Picture of approved log pile bulkhead,
3. Notice of Appeal, dated 2/8/10
4. Comprehensive Appeal Statement, dated 2/13/09, see legal size blue folder for all documentation, received 2/22/10.
 - a. Letter from Jesse Allen to Michael Bobbink RE: APP029/10 appeal of SHE 373/07; received 2/22/10
 - b. 5 pages of chronological timeline from Jesse Allen Construction (**Partial part of Exhibit 27**)
 - c. Letter with copy of ICC 16.19.190 from Michael Bobbink to Jesse Allen Construction RE: APP 029/10, appeal of SHE 373/07, dated 2/11/10 (**Same as Exhibit 35**)
 - d. Letter from Jesse Allen Construction to Bobak Talebi RE: Appeal, SHE 373/07, received 2/8/10 (**Same as Exhibit 3**)
 - e. Geotechnical Engineering Evaluation of Slope for Jesse Allen Excavating and Construction, 8 pages, no date
 - f. Administrative Decision Shoreline Exemption 3 pages, dated 1/26/10 (**Same as Exhibit 2**)
 - g. SEPA Determination of Non-Significance, dated 1/27/10 (**Same as Exhibit 2a**)
 - h. Color photocopy of 170' approved log pile bulkhead & not approved, no date (**Same as Exhibit 2b**)
 - i. Letter with Hollingsworth letter, photos & outline, Snow Bulkhead from Jesse Allen to Bobak Talebi RE: Snow Bulkhead, SHE 373/07, dated 1/21/10 (**Same as Exhibit 27**)
 - j. Fax from Vince Muscolo to Bobak Talebi, RE: Snow Bulkhead, Open Pile design (southend) SHE 373/07; dated 12/16/09 (**Same as Exhibit 18 & 19 & 1 pg color photos from Exhibit 27**)
 - k. Email from Vince Muscolo to Bobak Talebi, RE: SHE 373/070, John S. Snow, bulkhead; dated 9/29/09
 - l. Letter with Highlands on Camano Bluff Assessment from Vince Muscolo to Matt Kukuk, RE: SHE 373/07, John S. Snow Jr.; dated 8/5/09 (**Same as Exhibit 15**)
 - m. Letter from Clinton Hollingsworth to Jesse Allen, RE:Tindall property; dated 1/14/08 (**Same as Exhibit 26**)
 - n. Letter from John Snow Jr. to Matt Kukuk, RE: Bill Tindall Bulkhead permit; dated 4/3/08 (**Same as Exhibit 38**)

- o. Letter from Mattia Boscolo to Vince Muscolo, RE: Review letter-SHE 373/07; dated 9/16/08 (**Same as Exhibit 31**)
 - p. Affidavit of Posting the Public Notice Sign, received 9/6/07 (**Same as Exhibit 34**)
 - q. Letter from Cindy White for Matt Kukuk, RE: Notice of Complete Application; dated 8/31/07 (**Same as Exhibit 29**)
 - r. Land Development Permit Application, date submitted 8/24/07 (**Same as Exhibit 5 & 6**)
 - s. Geological Site Analysis, date submitted 8/24/07 (**Same as Exhibit 12**)
5. Land Development Permit Application, dated 8/24/07
 6. Application for Shoreline Exemption, received 8/24/07
 7. Permit to construct a sewage disposal system, received 8/24/07
 8. 8.5x14 B&W plot plan of parcel S7125-00-00001-4, received 8/24/07
 9. 8.5x11 bulkhead design plan, received 8/24/07
 10. Letter from Jesse Allen to Island County re: Sequence of bulkhead design construction, dated 8/1/07; received 8/24/07
 11. 5 sheets of color photos depicting bulkhead and aerial view of site, received 8/24/07
 12. Geological Site Analysis, received 8/24/07
 13. Building Permit Application, received 4/4/08
 14. Environmental Checklist, received 8/24/07
 15. New information submitted 8/5/09: Letter from Vince Muscolo to Matt Kukuk, dated 8/5/09
 16. New information submitted 8/5/09: Review response of SHE 373/07; Highlands on Camano, Bluff (Erosion) Assessment, 9 pages
 17. New information submitted 12/4/09: Color photos of bluff, 9 pages
 18. New information submitted 12/18/09; Letter from Clinton Hollingsworth to Jesse Allen, dated 12/11/09
 19. New information submitted 12/18/09; Plan depicting the Open Pile Design, 2 pages, received 12/18/09
 20. New information received 1/15/08; 11x17 color photo of the Snow property
 21. New information received 1/15/08; 8.5x11 color photo of the Tindall property, received 8/24/07
 22. New information received 1/15/08; 11x17 color of Intertidal profiles and beach profile data sheet for the Tindall property, received 8/24/07
 23. New information received 1/15/08; Biological Site Assessment of Tindall property, received 8/24/07
 24. New information received 1/15/08; 11x17 color Plot Plan of the Tindal parcel, received 8/24/07
 25. New information received 1/15/08; Bibliography and Supplemental Reading list, received 8/24/07
 26. New information received 1/15/08; Letter from Clinton Hollingsworth to Jesse Allen, dated 1/14/07
 27. New information received 1/26/10; Letter with 3 attachments from Jesse Allen to Bobak Talebi, dated 1/21/10. The 3 attachments are the letter from Clinton Hollingsworth to Jesse Allen dated 1/7/10, Color photos of the Snow site dated 1/4/10 and a Chronological outline concerning the Snow Bulkhead dated 1/21/10

28. Island County Site Data: request for Comment, Account summary, permit summary, ¼ section map, color Arc Explorer map, parcel zoning & critical areas summary; dated 8/31/07
29. Letter of Notice of Complete Application from Cindy White to Vince Muscolo, dated 8/31/07
30. Letter of Fees required for Geo Tech Review & Biological Site Assessment from Cindy White to Vince Muscolo, dated 8/31/07
31. Review Letter from Mattia Boscolo to Vince Muscolo, dated 8/16/08
32. Public Comment Email from Barbara Brock to Matt Kukuk, dated 9/21/07
33. Notice Of Application with SEPA, date of notice 9/11/07
34. Affidavit of Posting the Public Notice Sign, date of notice 9/6/07
35. Letter from Michael Bobbink to Jesse Allen Construction, dated 2/11/10
36. Letter from Paula Bradshaw to Jesse Allen Construction, dated 3/2/10
37. Affidavit of Mailing, dated 3/2/10
38. Letter from John Snow to Matt Kukuk, dated 4/3/08; received 4/15/08
39. Email correspondence from David Pater, Hugh Shipman, Bobak Talebi & Matthew Kukuk re: Snow/Tindall Bulkhead proposal, Camano Island; dated 1/24/10
40. Letter of fees paid with copy of receipt from Jesse Allen to Bobak Talebi, dated 1/26/10; received 1/26/10
41. Affidavit of Publication of Hearing Examiner hearing, dated 4/20/10
42. Letter accompanying the Appeal Response from Paula Bradshaw, Office of the Island County Hearing Examiner to Jesse Allen, dated 4/27/10.
43. Affidavit of mailing Appeal Response, dated 4/27/10.
44. Email from Paula Bradshaw to Jesse Allen, dated 4/27/10 with a copy of the Staff Response to Appeal.
45. Email from Paula Bradshaw to Jesse Allen with attached exhibit list, dated 4/27/10.
46. Letter dated 4/28/10, from Paula Bradshaw to John Snow with courtesy copies of the Staff Response to Appeal and exhibit list.
47. Affidavit of Publication in the WNT, dated April 27, 2010.
48. Email from Jesse Allen to Paula Bradshaw, dated 5/4/10 with attached exhibit #49.
49. Response to staff report from consulting Geologist Clinton Hollingsworth, dated 5/3/10, rcv'd 5/4/10.
50. Color photos (9) submitted by Clinton Hollingsworth at the 5/4/10 hearing.
51. Color photos (4) – four different sights, submitted by Jesse Allen at the 5/4/10 hearing.

HEARING TESTIMONY

Vince Muscolo
1225 East Sunnyside Dr.
Camano Island, WA 98282

Clinton Hollingsworth
Geologist
1026 Falcon Rd.
Camano Island, WA 98282

Ralph Michael Isaacs
Geologist
824 Utsalady Rd.
Camano Island, WA 98282

Jesse Allen
POB 333
Sylvana, WA 98287

Robert H. Pederson
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Island County Planning & Community Development
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Coupeville, WA 98239

David Pater
State Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008

Hugh Shipman
Department of Ecologist
Geologist
3190 160th Avenue SE
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II.

The appellant is the current owner of a waterfront parcel located along Saratoga Passage on the West Side of Camano Island and addressed as 1314 Seth Dr., Camano Island Washington. The property is a medium height bluff property containing a single family residence and the appurtenances, located approximately 60' from the top of the bluff. The assessed value of the property in 2007 was approximately \$941,000.00, somewhere around 50% of this assessed value is for the improvements.

The width of the property at the toe of the bluff is somewhere between 370' and 430' plus or minus.

There are the remains of an existing log pile bulkhead constructed around 1975. This pre-existing bulkhead is approximately 170' in length and failed roughly 5 years ago. The Administrative Decision issued by the Director of Planning Department approved replacement of the failed bulkhead but denied the request to extend the bulkhead along the toe of the bluff to encompass the entire water edge of the property.

III.

The appellant's submitted a Geotechnical Report dated June 20, 2007, prepared by a Licensed Geologist, Clinton Hollingsworth, exhibit # 4(s) in the Hearing Examiner file with an addendum which is attached to exhibit # 4(I).

The report asserts that if the appellants are not allowed to bulkhead the entire shoreline of their property that the structural improvements on the property are subject to eminent loss or damage from erosion at the toe of the bluff.

The Geotechnical Report by Mr. Hollingsworth suggests that the home 60' from the top of the bluff could be subject to catastrophic and virtually immediate loss at any time resulting from a major rotational bluff failure and that bulk heading the entire shoreline of the site is necessary to adequately protect the single family home on the site.

IV.

On January 27, 2010 the Director of Island County Planning and Community Development issued the Administrative Decision allowing the construction of the original bulkhead but denying its extension further southward. The Director concluded that the Geotechnical Report submitted by the appellants and authored by Mr. Hollingsworth did not provide sufficient evidence to establish that it was necessary to have a hard armored bulkhead structure for the entirety of the site in order to protect single family residence on the site.

Based on Planning Department staff concerns the department contacted the Washington State Department of Ecology and requested technical assistance in helping the department determine that length of bulkhead that should be approved at this time to protect the residence from loss or damage due to erosion.

Hugh Shipman, a Licensed Geologist working for the Department of Ecology met onsite with Planning Department staff. Based at least partially on his observation and opinion Planning concluded that only replacement of the existing bulkhead could be justified at this time in order to protect the single family residence.

In response to the Administrative Decision and Mr. Shipman's evaluation the appellants had the situation reviewed by a third licensed geologist. This geologist also recommended that the entire toe of the bluff on the applicant's property be bulk headed in order to protect the residence onsite. This report was short with no additional factual material and was presented as an expert opinion supporting Mr. Hollingsworth's conclusions.

V.

The Hearing Examiner has carefully reviewed all the written documents in the file and the testimony of the three licensed geologists regarding the need to fully bulkhead the appellants' property, at this time, in order to protect the residence from the threat of loss or damage due to

the ongoing erosion. There has been significant erosion taking place on this site since the bulkhead protecting the northern portion of the parcel failed approximately five years ago, both in the area of the failed bulkhead and on the portions of the property beyond the southern end of the failed bulkhead. There is little evidence of rapid and significant erosion on the very southern end of the property.

The Hearing Examiner is unconvinced by Mr. Hollingsworth's argument that a single massive rotational failure would probably lead to significant damage or loss of the house in a single event in the near future if the entire property is not bulk headed as requested. The Hearing Examiner is concerned about what appear to be logical inconsistencies in the position taken by the Licensed Geologist hired by the Appellant. The suggested rates of erosion without the requested bulkhead are quite high. On the other hand the impact of the requested bulk heading on the amount of material lost to longshore or littoral drift is seen as being very small and as having no real impact on the amount of material entering the drift cells from this feeder bluff. The loss of materials to littoral drift processes is estimated to be 22 cubic yards per year with a full length bulkhead of the entire beach based on an erosion rate of ½ inch per year. On the other hand the Hollingsworth report on erosion (exhibit# 4(1) page 3) states protection of the toe of the bluff is ".....needed to stop the rapid deflation of the basal sentiments of the bluff...." and ".....the bluff was and is losing large amounts of material.....". In fact the Appellant suggests that erosion at the toe of the bluff is happening at a rate measured in feet per year when talking about the need to protect the residence with the proposed bulkhead but only ½ inch per year when talking about the materials entering the littoral drift cell that would be lost through the proposed bulkhead protection.

The record does not contain enough information to determine the average rate of erosion on the site over a long period time. Over the past few years there has been a retreat of many feet in some areas at the toe of the bluff. However the appellant's experts have not established on a more likely than not basis that this rate of retreat, which could endanger the house in the next ten to fifteen years, will continue.

VI.

There are two bluff shoreline designations that apply to the appellant's property. The portion of the property that was protected by the log bulkhead was mapped as a feeder bluff/modified. The portions of the appellant's property that had not been modified were mapped as feeder bluff/exceptional.

Bluffs of this sort usually retreat or erode no more than a few inches a year over a long period of time. This suggestion by the geologists representing the appellant, that there will be ongoing erosion of this bluff in an amount measuring a number of feet per year, with a potential to reach the house in the next ten to twelve years has not been shown to be probable.

The record indicates that when a bulkhead fails the rate of erosion increases dramatically for a short period of time until it reaches the state it would have been in without a bulkhead, and that after that time significantly slower rates of erosions are likely to reestablish.

The Hearing Examiner finds that the appellant has not meet the burden of showing the residential structure onsite is likely to be damaged or destroyed by a single catastrophic bluff failure, or that there is an eminent threat of loss or damage to the residence requiring bulk heading the portion of the property that was not bulk headed historically. If erosion does continue to cause the top of the bluff to retreat at the fast rate suggested by the applicant's geologist the applicant can reapply for a shoreline exemption which would allow further extension of the proposed log bulkhead on his property.

VII.

The bluff on the appellant's property is properly designated as a feeder bluff and does contribute a substantial amount of material to the latorial drift cells along this area of Camano Island shoreline. The proposed bulkhead along the entire shoreline of the appellants property would significantly interfere with natural shoreline processes along this shoreline.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

Normal protected bulkheads may be approved through a shoreline exemption for the purpose of protecting an existing single family residence and appurtenant structures from loss or damage by wave caused erosion pursuant to WAC 173-27-040(2).

If the proposed bulkhead is necessary to protect the existing single family residence onsite from loss or damage due to wave induced erosion it can be approved through a shoreline exemption and does not require a shoreline substantial development permit.

II.

WAC 173-27-040(1)(a) reads as follows:

Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from a substantial development permit process.

WAC 173-27-040(1)(c) in relevant part reads as follows:

The burden of proof that a development or use is exempt from the permit process is on the applicant.

The appellant in this case has not shown on a more likely that not basis that the single family residence and appurtenances onsite are in immanent danger of damage or loss due to wave

induced erosion if the appellant is denied an extension of the existing bulkhead to the southeastern property line of the site.

While the rate of erosion has been quite high over the last few years the record does not support using this rate of erosion as a long term rate. There is time to continue to observe erosion patterns on this site and to allow additional bulk heading should the need be clearly established in the future based on ongoing erosion rates. While the scenario suggested by the appellant could happen, the record does not support a finding that this catastrophic prediction is more likely than not to occur.

III.

The Island County Master Shoreline Program sets forth the use requirements for shore defense works, including protecting bulkheads, on the shorelines of Island County. The part relevant to this decision reads as follows:

B. Use Requirements

- 1. Shore defense works shall not be considered an outright permitted use and shall be permitted only when it has been demonstrated that shoreline protection is necessary for the protection of legally established structures and/or public improvements.**
- 2. Shore defense works shall not adversely impact the property of others.**
- 4. Shore defense works shall comply with the following requirements:**
 - a) Shore defense works shall be designed and constructed in a manner that causes an absolute minimum of interruption to naturally occurring shoreline processes.**
 - e) Shore defense works shall not be permitted on marine feeder bluffs, except when it can be demonstrated by a professional engineer or geologist that construction will not seriously disrupt the upland feeding action or the littoral drift.**

Shore defense works along feeder bluffs are strongly discouraged. While they may be approved as a shoreline exemption to protect an existing residence they must be minimized to the greatest degree possible in order to protect naturally occurring shoreline processes. In this case the appellants have not met the burden of showing that their request to place shore defense works along the entire shorefront of the appellants' property is the absolute minimum necessary to protect the residence onsite. Nor has the appellant met the burden of establishing that the proposed bulk heading of the entire site will not seriously disrupt the upland feeding action or the littoral drift associated with this marine feeder bluff.

IV.

The decision of the Director of Island County Planning and Community Development should be upheld with the understanding that the appellant may reapply for additional protection along his shoreline in the future should continuing erosion along the site establish that the residential structure and appurtenances are threatened with damage or loss without additional shore defense works.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The decision of the Director of Island County Planning and Community Development restricting the bulk heading approved pursuant to application SHE 373/07 should be limited to replacement of the 170' of failed bulkhead on this site.

Entered this 17th day of May, 2010, pursuant to authority granted under the laws of the State of Washington and Island County.

MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

APP (Administrative Decision)

Appeal Process: This land use decision is a final determination which may be appealed by filing a land use petition in Island County Superior Court within twenty-one (21) days of its issuance. Specific requirements for the petitions contents, time and service of process, and payment of the cost of the transcription of the record of the hearing may be found in Chapter 70C of Title 36 RCW