



Houghton Community Council
CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

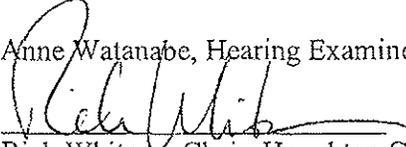
RECEIVED

AUG -7 2006

AM
PLANNING DEPARTMENT PM

BY

MEMORANDUM

To: Anne Watanabe, Hearing Examiner
From: 
Rick Whitney, Chair, Houghton Community Council
Date: August 3, 2006
Subject: YARROW BAY MARINA – MARINA SUITES, FILE NO. SHR06-00001 AND ZON06-00001
RECOMMENDATION OF HOUGHTON COMMUNITY COUNCIL

Recommendation to the Hearing Examiner:

After consideration of the testimony and record presented at the public hearing on File SHR06-00001 and ZON06-00001 held on July 31, 2006, the Houghton Community Council (HCC) concurs with the staff analysis and recommendation of approval, with the following additional or amended conditions of approval:

1. The applicant shall install a security gate on the waterfront trail at the southwest corner of the subject property. The applicant shall ensure that the gate is open and unlocked during the hours the trail is required to be open and closed and locked during all other hours.
2. Tie up points shall be provided on the end of the pier extension and made available for boats waiting for fuel. In addition, the applicant shall install signage to describe the use of the outside of the pier.
3. Condition 2.d(2) shall be revised as follows: ~~Within the view corridor, except along the buffering for the access driveway, the plans shall either be revised to include only those shrubs that would not exceed 3 feet above finished grade or~~ The applicant shall submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor to a height no greater than three feet above finished grade.
4. The vegetation provided in the 5-foot wide landscape buffer for the driveway required under KZC 95.40.7.b shall be evergreen.
5. Street trees shall only be planted in front of the office building. The street trees planted in front of the building shall be carefully selected to not block views from properties to the east when fully mature.
6. The rock retaining wall along the Lake Washington Blvd. NE sidewalk shall be retained provided it is structurally sound.

In addition, the HCC recommends that the applicant consider moving the trail to the west side of the marina service building if possible given the marina operation.

ATTACHMENT 2

SHR06-00001 & ZON06-00001

Summary of HCC Deliberation:

The HCC identified the following issues for discussion:

Waterfront access trail location

The Community Council discussed the location of the trail at length and expressed concern about precedent if the trail runs behind the Marina Service building. However, they also discussed concern over safety issues due to the industrial nature of the project if the trail runs in front of the bay doors. The consensus is to request the applicant to carefully review the possibility of moving the trail to the west side of the building.

Motion: The HCC approves the trail system as proposed by applicant and recommends that the applicant consider moving the trail to the west side of the marina service building if possible given the marina operation.

Access Gate

The Community Council discussed gating the public trail and determined that it would be advisable only where it connects to the adjoining residential building. The purpose of the gate is to provide some added security for the residents to the south.

The Community Council recommends adding one gate on the waterfront trail at the southwest corner of the subject property. The applicant shall ensure that the gate is open during the hours the trail is required to be open.

Pier Extension

The Community Council discussed where boats will queue for fuel. The HCC recommends that tie up points located on the end of the pier extension be available for boats waiting for fuel. In addition, the applicant should consider installing a sign to describe the use of the outside of the pier. The purpose of the tie ups is to help address the concerns of the neighbors to the south about boats waiting at their pier.

Landscaping along the south property line

Motion: The HCC recommends that a Perpetual Maintenance Agreement be required to be recorded with King County to maintain the height of the landscaping in the view corridor to 3 feet (see condition 2.d.1).

The HCC concurs with the staff recommendation with the addition that the vegetation shall be evergreen in the portion of the buffer next to the drive (see condition 2.d.2).

Street Trees

The HCC discussed that street trees might block the views from the Boulevard and properties to the east. The HCC recommends that street trees only be planted in front of the office building. The street trees planted in front of the building shall be carefully selected to not block views from properties to the east. The HCC recommends that the rock retaining wall along the sidewalk be retained provided it is structurally sound. The wall is desirable because it is of historical significance, continues from Carillon Point, and is aesthetically pleasing.

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS AND RECOMMENDATION**

APPLICANT: Marina Suites LLC and Yarrow Bay Yacht Basin & Marina LLC

FILE NO.: SHR06-00001, ZON06-00001

SITE LOCATION: 5207 Lake Washington Blvd NE

APPLICATION: The applicant proposes to extend a pier and redevelop the upland portion of the Yarrow Bay Marina site located at 5207 Lake Washington Blvd NE. The application includes construction of a new 53,200 square foot office building with parking, construction of a new 6,930 square foot marina services building, site improvements including a new driveway and parking for 214 vehicles, pedestrian walkway, installation of retaining walls and landscaping, extension of an existing pier by 66 feet to provide for six additional uncovered moorage spaces, and other improvements.

REVIEW PROCESS: Process IIB, Hearing Examiner conducts public hearing on the application for zoning and shoreline substantial development permit approval, and makes recommendation to City Council. The Houghton Community Council has approval/disapproval jurisdiction over the land use proposal.

SUMMARY OF KEY ISSUES: Compliance with the requirements of the Kirkland Zoning Code and Shoreline Master Program for construction of marinas and office uses. Transportation, landscaping and trees, parking, lighting, public pedestrian access, and the dock expansion

SUMMARY OF RECOMMENDATIONS:

| | |
|---|-------------------------|
| Department of Planning and Community Development: | Approve with conditions |
| Hearing Examiner: | Approve with conditions |
| Houghton Community Council: | Approve with conditions |

ATTACHMENT 3

SHR06-00001 & ZON06-00001

PUBLIC HEARING:

The Hearing Examiner and the Houghton Community Council held a joint public hearing on July 31, 2006, on the application for Zoning and Shoreline Substantial Development Permit. The hearing was held in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available in the City Clerk's Office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development. Immediately following the public hearing, the Hearing Examiner heard a SEPA appeal of the Determination of Nonsignificance for the project, which was brought by the Board of Directors of the Breakwater Condominium Association; a separate decision has been issued by the Hearing Examiner on that appeal.

PUBLIC COMMENT

The following persons spoke at the public hearing:

From the City:

Stacy Clauson, PCD Project Planner

From the Applicant:

Roger Pearce, Foster Pepper LLC, attorney for applicant

Paul Wilcox, property owner

James Walker, project architect

William Popp, transportation engineer

Phil Goldenman, Waterfront Construction, project permit coordinator

From the Community:

John R. Barnett

Paul Friedrich

Gary Shelton

LouAnn Freeburg

Fred Freeburg

Ronald Weinstein

J. Richard Aramburu, attorney for Breakwater Condominium Association

Correspondence

The following persons submitted written comments on this application:

Helen Rogers

Joan Schmidt

John Barnett

Fred and LouAnn Freeburg

J. Richard Aramburu

FINDINGS, CONCLUSIONS AND RECOMMENDATION

A. Findings of Fact

The Facts set forth in the Department's Advisory Report (Exhibit A) are supported by the record, and are adopted by reference herein.

B. Conclusions

1. The conclusions set forth in the Department's Advisory Report are adopted by reference herein.
2. The Breakwater Condominium Association (BCA) requested that the application not be considered because of lack of proper notice. The notice of application issued on March 9, 2006, identified the request as being for a "Process IIB Permit," rather than a shoreline substantial development permit, and did not reference the right to appeal to the Shoreline Hearings Board.
3. The notice described the project and its shoreline location, stated that the proposal would be evaluated against the Shoreline Master Program, and explained how to obtain more information about the project from the City. The notice was issued approximately one month prior to the close of the application comment period, and the Breakwater Condominium owners were given actual notice of the permit application. BCA has submitted comments and testimony on the application, and there is no evidence that the BCA was unable to fully participate in the public process because of the notice. On this record, the notice was shown to be adequate, and does not provide a basis for denying or remanding the application to the Department for additional notice.
4. The BCA has also identified other concerns with the proposal. These include potential impacts from the project with regard to fill, parking quantity, parking for boats, traffic conditions and impacts to views. Other objections relate to the expansion of the moorage use at the site, the location of parking at the site, the proposed public access and park, the need for additional buffering between the project and the Breakwater Condominiums, and the effect of the existing covered moorage on the view corridor.
5. The record shows that the application as conditioned would meet all relevant Codes, Plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27. Some of the BCA's concerns may be at least partially addressed by the recommended conditions (including those recommended by the Houghton Community Council).
6. The Houghton Community Council has concurred in the staff analysis and recommendation of approval, with certain additions and changes noted in its memorandum to the Hearing Examiner dated August 3, 2006. One of the Council's recommendations is to amend Condition 2.d(1) as noted in its Memorandum. The

Council's recommendation should be modified to clarify that the vegetation in the buffer area along the driveway is not restricted to three feet in height above finished grade. The staff report (at page 20), correctly notes that there are opportunities to permit vegetation along the driveway that would exceed three feet above finished grade, but which would not obscure views from Lake Washington Boulevard. This taller vegetation would also provide greater buffering for the property to the south. The amended language is set out below.

C. Recommendation

Based on the foregoing Findings of Fact and Conclusions, the Hearing Examiner recommends approval of the application, subject to the conditions set forth in Exhibit A, Section I.B, except that Condition 2.d(1) is amended to read as follows:

Condition 2.d(1): The applicant shall submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor, except in the buffer for the access driveway, to a height no greater than three feet above finished grade. The agreement shall require maintenance of the vegetation within the buffer for the access driveway in accordance with Condition 2.d(2).

The following conditions of approval are also recommended:

1. The applicant shall install a security gate on the waterfront trail at the southwest corner of the subject property. The applicant shall ensure that the gate is open and unlocked during the hours the trail is required to be open and closed and locked during all other hours. The exact hours during which the trail shall be open, shall be specified by the Department.
2. Tie-up points shall be provided on the end of the pier extension and made available for boats waiting for fuel. In addition, the applicant shall install signage to describe the use of the outside of the pier.
3. The vegetation provided in the five-foot wide buffer for the driveway (see Condition 2.d(2)) shall be evergreen.
4. Street trees shall only be planted in front of the office building. The street trees planted in front of the building shall be carefully selected to not block views from properties to the east when fully mature.
5. The rock retaining wall along Lake Washington Boulevard NE sidewalk shall be retained, provided it is structurally sound.
6. The applicant is encouraged to consider moving the trail to the west side of the marina service building, if it is subsequently determined

by the applicant and the Department that this can be safely accomplished in light of marina operations.

EXHIBITS

The following exhibits were offered and entered into the record:

- Exhibit A: Planning and Community Development Advisory Report and Attachments 1-30
- Exhibit B: Copies of 7/28/06 emails between Stacy Clauson, PCD, and Karen Walter, Muckleshoot Tribe and 7/25/06 email from Sharon Shelton to Stacy Clauson
- Exhibit C: Copy of applicant's PowerPoint presentation, "Yarrow Bay Marina Suites"
- Exhibit D: Drawings (3 pages) showing proposed marina fueling and operations and existing fueling plan
- Exhibit E: Letter from J. Richard Aramburu, attorney for the Breakwater Condominium Association, dated July 31, 2006
- Exhibit F: Letter from LouAnn Freeburg, dated July 31, 2006
- Exhibit G: Outline of Comments on Project Notice, submitted by Roger Pearce, attorney for applicant
- Exhibit H: Declaration of Phil Goldenman Regarding Project Notice
- Exhibit I: Resume of Favero Greenforest, arborist
- Exhibit J: Resume of Dan Nickel, environmental engineer
- Exhibit K: Resume of William Popp, Jr., transportation engineer
- Exhibit L: Resume of James Walker, project architect
- Exhibit M: Recommendation of Houghton Community Council to Hearing Examiner, dated August 3, 2006

PARTIES OF RECORD

Applicant, Phil Goldenman, Waterfront Construction, 205 NE Northlake Way, Suite 230, Seattle, WA 98105

Fred and LouAnn Freeburg, 4823 Lake Washington Blvd NE #6, Kirkland, WA 98033

John Barnett, 4823 Lake Washington Blvd NE #5, Kirkland, WA 98033

Joan Schmidt, 4823 Lake Washington Blvd NE #7, Kirkland, WA 98033

Helen Rogers, 4823 Lake Washington Blvd NE #8, Kirkland, WA 98033

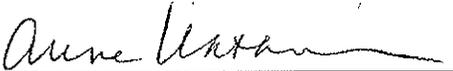
Board of Directors, Breakwater Condominium Association, 4823 Lake Washington Blvd NE, Kirkland, WA 98033

Muckleshoot Indian Tribe Fisheries Division, 39015 172nd Ave SE, Auburn, WA 98092, attn: Karen Walter

J. Richard Aramburu, Suite 209, College Club Building, 505 Madison Street, Seattle, WA 98104 (on behalf of Breakwater Condominium Association)

Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

Entered this 9th day of August, 2006, per authority granted by KZC 152.70. A final decision on this application will be made by the City Council.



Anne Watanabe
Hearing Examiner

CHALLENGES AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for challenges. Any person wishing to file or respond to a challenge should contact the Planning Department for further procedural information.

CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., 8-21-06, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

APPEAL TO SHORELINE HEARINGS BOARD

Pursuant to RCW 90.58.180 and WAC 173-27-220, any person aggrieved by the City's final decision on the Shoreline Substantial Development Permit may seek appeal to the State Shorelines Hearing Board. All petitions for review shall be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date the Department of Ecology receives the City's decision. Within seven (7) calendar days of filing any petition for review with the Shoreline Hearings Board, the petitioner shall serve copies of the petition for review on the Department of Ecology, the State Attorney General and the City of Kirkland. The petition for review must contain items required by WAC 461-08-055.

JUDICIAL REVIEW

Section 152.110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

LAPSE OF APPROVAL

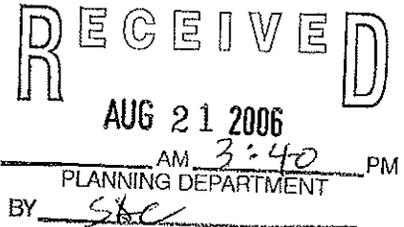
Under Section 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 152.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.

Pursuant to RCW 90.58.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Substantial Development Permit has been granted pursuant to the Shoreline Management Act must be undertaken within two (2) years after the date of approval. The project must be completed within five (5) years and a one(1) year extension may be considered. "Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.

**J. RICHARD ARAMBURU
JEFFREY M. EUSTIS**

Attorneys at Law
505 Madison Street, Suite 209
Seattle, Washington 98104
(206) 625-9515 Fax: (206) 682-1376

August 21, 2006



City Council
City of Kirkland
123 Fifth Avenue
Kirkland WA 98033

Re: Challenge to Hearing Examiner Recommendation File Numbers SHR06-00001,
ZON06-00001 Property Located at 5207 Lake Washington Boulevard NE:
Applicant Marina Suites LLC and Yarrow Bay Yacht Basin and Marina LLC

Dear Councilmembers:

This office represents the Breakwater Condominium Association ("BCA"), an eight unit residential condominium located at 4823 Lake Washington Boulevard NE in Kirkland. BCA participated through its members and counsel in proceedings regarding the above-referenced application. In particular, a letter dated July 31, 2006 from the undersigned was addressed to the Hearing Examiner, City Council and Kirkland's Houghton Community Council addressing concerns and legal deficiencies in the applicant's proposal.

Notwithstanding these objections, on August 9, 2006 the City's Hearing Examiner entered findings and conclusions and a recommendation approving the application subject to several conditions. Pursuant to 152.85 of the Kirkland Zoning Code, this letter constitutes a challenge to the decision of the Hearing Examiner. In particular, BCA challenges the recommendation of approval of Section A, Findings of Fact, and Section B, Conclusions.

The comprehensive objections and concerns were raised by the BCA in its attached (without attachments) July 31, 2006 letter. The Hearing Examiner, while acknowledging concerns expressed by the BCA, did not discuss these concerns, nor provide legal or factual analysis of them, and only entered summary conclusions that the proposal was consistent with the City's codes, plans, policies and the Shoreline Master Program. See Conclusion 5. Accordingly, as there is no analysis of BCA's concerns by the Hearing Examiner, the council is requested to review BCA's letter of July 31.

ATTACHMENT 4
SHR06-00001; ZON06-00001

August 21, 2006
Page 2

In addition, the Hearing Examiner refused to order a re-notice of the application because of notice deficiencies raised in BCA's July 14, 2006 letter to Stacy Clauson (written by the undersigned). That letter is incorporated by reference herein. As noted in that letter, serious deficiencies exist with respect to notice and the City Council should require a re-notice of the project to correct the identified deficiencies.

Council should also deny, revise and modify as appropriate, the subject proposal based upon those matters raised in the BCA's letter of July 31, 2006. These include, as listed in the letter, excessive fill, inadequate parking, parking located between the office building and shoreline, deficiencies in boat parking, improper moorage extension, addition of public access trail, additional buffering between commercial and residential use, creation of a public park area, dangerous roadway conditions and an illegal view corridor.

Thank you for this opportunity to make this challenge.

Sincerely yours,



J. Richard Aramburu

JRA/km
Encl. Check \$150 to Challenge
Affidavit of Service
cc: Clients

"Any response to this letter (City File No. SHR06-00001 and ZON06-00001) must be delivered to the Planning Department within seven (7) calendar days after the day the challenge letter was filed with the Planning Department, or by August 28, 2006.

Within the same time period, any person making the response must mail or personally deliver a copy of the response letter to the applicant and all other people who submitted written or oral testimony on the matter. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the response to the challenge letter filed with the Planning Department.

If you wish to submit a response letter, further information about procedural requirement is available from the Kirkland Planning Department at City Hall. The staff Planner assigned to the application is Stacy Clauson at (425) 587-3248."

J. RICHARD ARAMBURU

ATTORNEY AT LAW

SUITE 209, COLLEGE CLUB BUILDING
505 MADISON STREET
SEATTLE, WASHINGTON 98104
(206) 625-9515 · FAX (206) 682-1376

J. RICHARD ARAMBURU
JEFFREY M. EUSTIS

July 31, 2006

Anne Watanabe
Hearing Examiner Pro Tem
City of Kirkland
123 - 5th Avenue
Kirkland WA 98033

Houghton City Council
123 - 5th Avenue
Kirkland WA 98033

Houghton Community Council
City of Kirkland Hearing Examiner
123 - 5th Avenue
Kirkland WA 98033

RE: Yarrow Bay Marina, Marina Suites proposal SHR06-0001

Dear Houghton Community Council and Hearing Examiner :

This office represents the Breakwater Condominium Association (BCA), owners and residents of the property immediately south of the subject proposal. Breakwater has asked me to provide you with comments and concerns relative to the Yarrow Bay Marina (YBM) proposal, consisting of a new 55,000 square foot office building, 7,000 square foot relocated marina building, a public access trail, dock extension and a waterside pocket park.

The subject property has been historically used as a marina, with upland boat and trailer parking as a part of the YBM use. The current marina is nonconforming as a substantial number of moorage slips are covered contrary to the terms of the Kirkland Zoning Code and Shoreline Master Program.

Breakwater believes that the subject proposal cannot be approved in its present form for the following reasons. Breakwater asks that the proposal be modified or denied outright.

1. EXCESSIVE FILL.

The proposal involves significant fill to be placed on the mid to western side of the project, causing an increase in grade of between five and nine feet. As a result, a retaining wall will be placed immediately adjacent to the Breakwater property along the south side of the YBM project. This will elevate the property adjacent to the Breakwater Condominium, causing aesthetic, light and noise impacts.

Under the Kirkland Shoreline Master Program, land surface modification or fill activity is permitted only if it is "necessary for the approved development" under Kirkland municipal code (KMC) section 24.05.140(c). The BCA believes there is no reason for the landfill to be put on the western portion of the site and that the project can proceed without it. Accordingly, the project should be re-designed to eliminate such fill.

2. PARKING QUANTITY.

The subject proposal consists of several different uses, including a 55,000 square foot office building, a 7,000 square foot marina services building, various existing and expanded moorage facilities and public trail and park facilities. Parking calculations presented on the most recent site plan and staff report (page 22) show parking spaces calculated only for the office building (1/300 s.f.) and the moorage (1 stall/2 slips). However, no vehicular parking is provided for the marina services building which will be relocated to the north side of the lot. The current marina building contains various uses including boat repair, boat sales, boat rentals and other retail type uses which have employees and retail trade, all of which generate additional parking requirements and are unrelated to the recreational moorage slips. Parking is a critical issue here because there is essentially no street parking in the vicinity of the project (no parking is available along Lake Washington Boulevard.)

The parking requirements for the proposal should be redrawn and recalculated and parking sufficient to meet the demand should be located on site.

3. PARKING LOCATION.

The most recent site plan proposal includes multiple (43 or more) surface parking areas located between the office building and Lake Washington. A large number of parking spaces are located immediately adjacent to the shoreline.

The Kirkland Shoreline Master Program specifies that parking should not be located between the buildings on the property and Lake Washington. KMC

July 31, 2006

Page 3

24.05.130. ("Wherever possible, parking should be located out of the shoreline area and should not be located between the building or buildings on the subject property and Lake Washington"). The unsightly surface parking areas proposed here should be eliminated pursuant to the Shoreline Master Program. Parking for all facilities may be easily accommodated in a third level of underground parking in the office building. As indicated previously, parking for the marina building must be included in any calculations.

4. YARROW BAY BOAT PARKING.

Yarrow Bay Marina maintains an active boat repair and overhaul facility which results in a significant number of boats being stored on site. The shoreline permit application does not indicate where such boat storage facilities will be located on the site, but it is expected that such uses will remain. If boat parking area is to be relocated at the site of the demolished current marina building, serious issues of aesthetics and other such impacts need to be explored. It is noted that there is a large open area shown on the plans immediately adjacent to the water, but there is indication of the uses proposed for this area.

The plans should be revised to accommodate both boat parking and storage, as well as defining on the site plan the location for such use.

5. MOORAGE EXTENSION.

The proposal requests the extension of the "D" dock moorage further to the south towards the Breakwater Condominium. Breakwater is the owner of second class tidelands in this area which extend to the inner harbour line.

No expansion of moorages should be permitted at this location. The Yarrow Bay Marina has a number of covered moorages which are not permitted under the current Shoreline Master Program and PLA15A rules (Special Regulation 15), but YBM does not propose to eliminate that non-conformity. The staff report at page 35-36 states that this nonconformity may remain because the cost of on site work does not exceed 50 percent of the replacement cost of the improvement. However, the applicant is demolishing and rebuilding the marina services building and constructing a new office building which is clearly more than 50 percent of the replacement cost of the covered moorage. Accordingly, if the proposal proceeds, the applicant should be required to bring the marina facility into conformance with the code by removing the structures that cover the moorages, though the moorage themselves may remain.

The moorage extension proposed would also narrow the passage on the south side of the Yarrow Bay Marina site between it and the Breakwater property. Because there is no access to the marina from the north side of the YBM property, this is the only area available for passage of boats to the majority of the marina slips. More importantly, this is the only area for passage to the refueling docks at YBM as well as the boat repair facility. In the past, there have been numerous instances of trespassing onto the property of the Breakwater Condominiums, including boats near the Breakwater dock or actually tying to it while waiting for space at the YBM fuel dock. Photos 1 and 2 attached hereto show boats waiting for fueling - even one moored at the Breakwater dock while waiting. On occasion, there have been 10 or more boats waiting to be refueled at YBM, which is one of the few refueling facilities that exist on Lake Washington. See Photo 1 attached. In fact, the drawings provided show that numerous boats will transit the Breakwater property for these commercial uses which will interfere with uses on my clients' property including boating, swimming and other water dependent uses. Such contemplated useage is inconsistent with PLA15A Special Regulation 7(d) which provides that "the moorage structures will not adversely affect nearby uses . . ."

The moorage extension should be denied because it will decrease the available maneuvering area between the Breakwater property and the moorages and create interference with the Breakwater property.

6. PUBLIC ACCESS TRAIL.

The applicant proposes a public access trail located on the south side of its property adjacent to the Breakwater Condominiums. This will allow access from sidewalks along Lake Washington Boulevard to the lake. Under the code, Breakwater believes this trail should be deleted from the plan for several reasons.

a. First, adequate public access to the waterfront in this location is available within the immediate vicinity of the project. There is a public access trail just to the north of the Yarrow Bay property, developed in connection with the Carillon Point project. It accesses significant public walkway and other public facilities at the Carillon Point project. There is another public access pathway just to the south of the Breakwater Condominium which also accesses the water and a lineal trail running along the lake in this location. In fact, the shoreline trail that traverses the Breakwater property ends just to the south of the property, meaning there is limited available use of the trail in this location. It makes no sense whatsoever to have three public access trails within the space of a little over 500 feet on Lake Washington Boulevard.

b. While public access is a preferred use within the Shoreline Master Program, under KMC 24.05.135(1)(a), "access to the waterfront may be waived by the city if public access along the waterfront of the subject property can be reached from adjacent property." As demonstrated above, there is plentiful access to the water in these locations and adding a third access is not appropriate.

c. There is very little use of the public access facilities in this area. There is no parking nearby to allow persons to access these facilities, and users are limited to those walking along the sidewalk on Lake Washington Boulevard.

d. Further, the visual access to the water in this location is limited by the existing covered moorages and open moorage adjacent to the trail area. Photos 3,4 and 5 show the limited views available on the YBM pry at its southwest corner. Use of canoes or other small craft, as well as swimming, is problematic in this area due to the presence of the moorage and boat traffic using the fuel dock. See Photo3 attached. Far more attractive public access area is available at the commercial Carillon Point property without the need of further impacting residential properties in the area.

7. BUFFER AREA BETWEEN COMMERCIAL AND RESIDENTIAL USE.

The subject proposal is a commercial use that proposes significant fill and a parking lot next to the residential use at the Breakwater. The proposal includes only a minimal buffer to separate the uses (5-6 feet). If the proposal proceeds, the size and nature of this buffer area should be substantially increased.

First, the applicant proposes to remove a large maple tree as a part of the construction. This is a substantial and attractive tree providing buffering, shade and separation between these uses. In addition, this tree is on, or very near the property line and thus cannot be removed without the permission of BCA.

Second, the buffer area should be widened to 15 feet and include substantial vegetation to increase the buffer between the new use and the Breakwater property. The YBM proposal includes a 4-9 foot high retaining wall and an elevated parking area which would cause lights from vehicles to be directed at the residential units on the northside of the Breakwater building. Indeed the staff report (page 26) indicates that: "The parking layout is designed so that vehicles exiting the garage would face the Breakwater building." In addition, though BCA recommends its deletion, there is a public access pathway along the south side of the YBM property that suggests the need for a substantial buffering element. These impacts clearly call for additional separation between the new parking and office use and the Breakwater. The revised area can be easily provided by a minor reconfiguration of access and parking

July 31, 2006

Page 6

facilities if they are permitted despite the provisions of the shoreline master program. See section 3 hereof.

Third, it may be asserted that the additional landscaping is contrary to view corridor requirements. However, the view corridor requirements on this property are a result of the applicant wishing to exceed the maximum height requirement. See Staff Report, page 18. As such, Breakwater should not suffer less than appropriate buffering and separation simply because the applicant's proposal exceeds 35 feet requiring a larger view corridor.

Additional landscaping and buffering as described above should be required adjacent to the Breakwater property.

8. PUBLIC PARK AREA.

Apparently the City now proposes to create a pocket park on the Yarrow Bay Marina site to enhance further public access. However, as indicated above, significant public access already exists at Carillon Point and there is no demonstration that even these public access facilities are overused or that there is a need for such additional facilities. Again, there is no public parking in the area and most users would be from the already developed residential uses in the vicinity.

Further, the park area is visually cut off from the water by moored boats close to shore, covered moorage to the west and boating traffic using the fueling facilities. See Photos 3,4 and 5. In short, no new or additional public park area should be required in this location beyond the provision for a trail across the YBM property.

In short, the public park area should be deleted from the plans and access in the area should be limited to maintenance of a lineal trail parallel to the shoreline.

8. DANGEROUS AND CONGESTED ROADWAY CONDITIONS.

The Marina Suites project will greatly increase turning movements on and off Lake Washington Boulevard in the location of this proposal. As the city is aware, Lake Washington Boulevard is already a highly congested two lane street with very few breaks in traffic.

The new proposal will create additional demand for a left turn lane, creating the strong potential for queuing back for northbound left turns into the Marina Suites site, which may block the access to the Breakwater Condominium site and disrupt turning movements to NE 52nd Street.

July 31, 2006
Page 7

No solutions to these impacts are proposed and this proposal should be remanded to the city for the development of traffic and transportation solutions that resolve these impacts.

9. VIEW CORRIDOR.

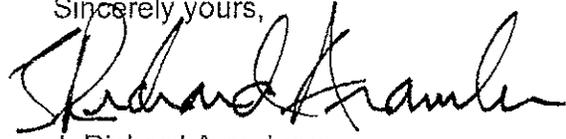
As noted above, the applicant must provide a 70 percent view corridor because the proposal exceeded 35 feet in height. However, a substantial amount of the view corridor is taken up with covered moorage, an illegal use under the Kirkland zoning code. Under the Kirkland Zoning Code a view corridor is defined as follows:

5.10.974 View Corridor – An open area that provides an unobstructed view across the subject property to and beyond Lake Washington from the adjacent right-of-way.

(Emphasis supplied.) A significant part of the view corridor is obstructed by the covered moorage structures presently on the site. As such, the applicant's proposal is inconsistent with view corridor requirements and cannot be permitted.

As may be seen from the foregoing, the present proposal is inconsistent with a variety of city codes, goals, plans and programs. As such it cannot be approved in its present form and must be modified to conform with those standards specified herein.

Sincerely yours,



J. Richard Aramburu

JRA:py
cc: Breakwater Condominium Association



FOSTER PEPPER PLLC

Direct Phone (206) 447-4676
Direct Facsimile (206) 749-1997
E-Mail PearR@foster.com

August 28, 2006

VIA HAND DELIVERY

BY
PLANNING DEPARTMENT
AM
PM

City Council
c/o Kirkland Planning Department
123 Fifth Avenue
Kirkland WA 98033
ATTN: Ms. Stacy Clausen

RECEIVED
AUG 28 2006

Re: Response to Challenge
Hearing Examiner Recommendation under City of Kirkland File Nos.
SHR06-00001 and ZON06-000001

Councilmembers:

This response is submitted on behalf of permit applicants Marina Suites LLC and Yarrow Bay Yacht Basin and Marina LLC (collectively, "Yarrow Bay"). This response relies on the facts in the administrative record created before the City's Hearing Examiner and does not discuss any additional facts or evidence not already in the City's record.

A. Background.

The proposed project includes three related projects on the site of the Yarrow Bay Marina, which is one of the few water-dependent uses remaining along the Kirkland shoreline. The three projects that have been recommended by both the City's Planning Staff, the Hearing Examiner and the Houghton Community Council are: (1) construction of a new office building on the uplands portion of the site that would be approximately 53,000 SF in size; (2) updating the existing marina operations, which includes replacing the old marina repair building with a new services building outside the view corridor and replacing the two (2) existing underground gas tanks with a modern, double-walled tank – without increasing the capacity of the existing boat fueling operation; and (3) adding six new moorage slips to Pier D (the shortest pier at the existing marina). The new moorage slips are approximately 185 feet further out into the lake and 67' north of the end of the dock at the neighboring Breakwater Condominium. As part of this project, floats that currently shade near-shore habitat will be removed, native planting areas will be added at the shoreline, and invasive weed species will be removed from the near-shore habitat area.

The project is consistent with the 2001-02 comprehensive plan amendment, which was enacted specifically to allow an office use (and enhanced view corridor) on this site. The

ATTACHMENT 5
SHR06-00001 & ZON06-00001

uplands portion of the project has been underdeveloped for years, and used as outdoor storage for boats and trailers. That part of the site will be developed with the office use and this storage use discontinued. Office development of the uplands was selected because it is compatible with the marina use -- in particular, the traffic and parking peaks for office development (business hours during weekdays) occur at different times than the marina traffic and parking peaks (weekends and holidays). The marina use has been in this location for over 30 years, and the compatible office development is necessary in order to keep the marina operating and to upgrade its operations.

B. Specific Responses.

As an initial matter, the Breakwater Condominium Association (BCA) challenge fails to comply with the City's rules relating to challenges. Under KMC 152.85(2), a challenge letter must specify which findings and conclusions of the Hearing Examiner that are being challenged. Rather than comply with that requirement, the BCA simply challenges the entire Examiner recommendation and attaches the conclusory statements from its earlier letter that was submitted at the hearing before the City's Hearing Examiner. As discussed in more detail below, BCA's complaints have no merit and are distinguished by their lack of citation to any evidence in the City's administrative record. The City Staff Report and the Hearing Examiner recommendations amply support the proposed II-B Process and Shoreline and SEPA permit applications. Yarrow Bay respectfully requests the City Council to adopt the Examiner's recommendations and promptly forward her approval to the Houghton Community Council, which has also recommended approval of these applications.

1. The City's Notice of Application Was Lawful and BCA Had Actual Notice of the Examiner's Proceeding.

The BCA have complained about the sufficiency of the City's notices of application for the Type IIB process hearing, which includes the City's review of the shoreline substantial development permit for the Yarrow Bay projects. This claim is disingenuous because, as discussed at the hearing, Yarrow Bay had at least two meetings with the BCA homeowners to discuss the shoreline permit issues--one prior to formal application in January and one in May prior to the hearing. Yarrow Bay changed its proposal to respond to BCA concerns; BCA homeowners sent written comments to the City regarding the shoreline permit application (listing the shoreline permit on their comments). A public notice sign was posted at the site's boulevard sidewalk adjacent to their property for them to read as they drive by each day; and BCA homeowners attended the hearing with their land use attorney to comment to the Examiner.

An Outline Of Comments On Project Notice was submitted to the Hearing Examiner and is part of the public record. That document, and the supporting declaration and testimony from Mr. Philip Goldenman, Project Permit Coordinator, show (a) that the City's notices explicitly called out that the City's review included compliance with its Shoreline Master Program and were therefore legally sufficient, and (b) that the BCA had *actual* notice of the shoreline permit application and adequate time to prepare for the hearing. Under Washington law, BCA's

complaints regarding the form of notice have no merit. The City's attorney and staff agree that the City's notices were adequate.

3. The Change in Site Grades Are Required to Accommodate Public Access.

Under the City's Shoreline Master Program (SMP), land surface modification is allowed outright if it is necessary for either (a) public pedestrian access or (b) an approved use of the property. KMC 24.05.140(b)(3); KMC 24.05.140(c). The record shows that the grades on the property will be changed little from its existing configuration. See Staff Report Att.5/Encl.2 (Conceptual Grading Plan) and Staff Report Att.16 (Topographic Survey). The property currently has a slope along its southern edge – the boundary with the Breakwater Condominiums property. Some fill will be required in that area in order to install the public pedestrian pathway required by the City's SMP. The City has required the fill in order to raise the pedestrian path to the same general level as the project roadway, for pedestrian visibility and safety. Two to four feet of fill will be required along most of the length of this 5-foot wide pedestrian path. See Staff Report Att.2A (Site Plan). The path will be supported on its south side by a retaining wall that will be screened by additional evergreen vegetation and enhanced by an embossed wall design.

BCA's characterization of this as "excessive" fill is not correct. The fill for the required public pedestrian pathway is specifically allowed under KMC 24.05.140(b)(3). The other grade modifications on the site are primarily excavations for the office building underground parking garage and for the basement of the new marina repair/service building, which are approved uses of the property. Accordingly, that modification is allowed under KMC 24.05.140(c).

4. The City Correctly Calculated the Projects' Overall Code Parking Requirement.

BCA complains that the City did not calculate a separate parking requirement for the marina services building. That claim has no merit for two independent reasons.

First, the marina services building is part of the overall existing as well as future marina use, and the marina use requires one parking space for every two slips. There is no separate use category in the Zoning Code for marina services and marina boat slips (or for marina walkways, or for marina accessory offices, etc.). All the marina-related activities are part of the marina use, and the Zoning Code parking requirement has a single way to calculate required parking for a marina use. In fact, the City took the conservative position of requiring the marina to meet existing parking standards (1 space for every 2 slips for a total of 55 required parking stalls), when the marina is an existing nonconforming use with 37 spaces. Per City Code, the existing nonconformity of parking could simply remain, but the project is upgrading the situation to provide full Code-required parking for the marina.

Second, the marina uses can share parking with the proposed office use pursuant to KMC 105.45. This is how the City Staff analyzed the parking requirement in its Staff Report, which was supported by the Examiner and Houghton Community Council. Here, the office building and all marina uses are sharing a portion of the parking in the building. The expert transportation

impact analysis for the project confirmed that this will accommodate both projects' peak parking demand, which occur at different times as discussed above.

Yarrow Bay requests clarification from the City Council on the overall parking requirement during the winter months. At the hearing and in the Staff Report, the peak parking demand for the marina uses was based on the summer peak boating season, when the marina is at its busiest, and the parking stalls have been allocated on the site accordingly. The Staff Report contains a condition of approval that no "designated" parking stalls may be used for boat storage. However, the testimony at the hearing showed that the parking demand for the marina is far lower in the winter months, which are approximately November through April. During those off-peak times, there are occasions after winter storm wave activity when boats are damaged and brought to the marina for service. This creates an unusual amount of boat repairs and service activity. During those times, it is necessary to store some boats next to the existing marina building that are awaiting repair (they cannot be stored in the water because they would sink). The applicant requests the Council to clarify that City Staff has the discretion to modify the shared parking requirement during the winter months for the parking stalls proposed next to "A" dock for this short-term staging of storm-generated boating service. The marina owner will show that the marina has lower parking peaks during those months. This would allow the marina operation some flexibility in parking stall use during those off-peak boating months. Yarrow Bay believes this is consistent with the existing conditions of approval and with the shared parking regulations -- it just means that fewer designated parking spaces will be required by the marina during the winter months when the parking demand peaks are far lower than during the peak summer boating season.

5. The Projects' Parking Location Meets the Requirements of the Shoreline Master Program.

The general regulations of the City's SMP state that "Whenever possible, parking should ... not be located between the building or buildings on the subject property and Lake Washington." KMC 24.05.130. The project meets this requirement for two, independent reasons.

First, the only parking waterward of the new marina building is a small surface parking area between the new marina building and the covered moorage of Dock A. See Staff Report Att. 2A (Site Plan). Parking to the south of Dock A along the shoreline is being relocated in order to open up views of the Lake, so relocating the parking next to the covered moorage is not feasible in this instance. See Staff Report Att. 15 (Aerial Photographs).

Second, and most important, the parking area waterward of the new marina building is already in existence, and is not being enlarged -- in fact that parking area is becoming smaller. Compare Staff Report Att. 2A with Att. 15. Even if the Dock A covered moorage were not considered a building, then the existing surface parking is a legally nonconforming condition that is permitted to remain under the City's SMP. SMC 24.05.210(2) (nonconforming development may be continued provided that it is not enlarged or altered in a way that increases the nonconformity).

In either case, the City Staff and Hearing Examiner appropriately recommended approval of the parking location on the projects' site design.

6. The Existing Dry Dock Boat Storage Use Is Being Discontinued.

BCA complains that there is no indication of where the existing boat storage facilities are being relocated on the site. That is because the existing dry dock storage will not continue on the site. The boat repair and overhaul uses will remain, and will have more indoor shop area for boat servicing. There is an area currently used for short-term storage for boats awaiting repair, or after completed repair, but the current dry dock storage use for boats and trailers will not be continued. As pointed out at the hearing, this will greatly improve the appearance and use of the overall site.

7. Moorage Extension.

BCA complains that the moorage extension would increase the nonconformity of the marina. This complaint has no merit. A small moorage extension is proposed for the marina's shortest dock (Dock D) will not add any covered moorage. The City's nonconforming use regulations clearly allow the covered moorage to remain because it is not being expanded in any way. The 50% value rule cited by BCA only applies if the applicant is making a change to the nonconforming structure itself, or if the nonconforming structure "supports" the new changes. Here, in sharp distinction, the new moorage is not covered moorage and the covered moorage does not "support" or otherwise enable any of the new permitted uses of the site.

BCA also complains that Dock D will narrow the access for the public to the marina fueling facility – thus inconveniencing BCA by having the public drive boats across the part of the lake the BCA supposedly "owns." (NOTE that there is no evidence of BCA ownership anywhere in the administrative record.) This objection also has no merit. The extension of D Dock is approximately 185 feet further out into Lake Washington than the Breakwater Condominium dock, and will comply with the 20 foot setback from Yarrow Bay's property line. Moreover, D Dock extension (for only six additional moorage slips) will not increase the marina's fueling facility or fueling capacity, and that existing use is anticipated to remain in place at its current level. There is no evidence in the record showing that this dock extension will increase public use of the fueling facility or increase public use of the waters in front of the Breakwater Condominium.

Moreover, the public has an absolute right under the Washington Public Trust Doctrine to use the surface waters in front of the Breakwater Condominium for navigation purposes. This was first confirmed by the Washington Supreme Court in the *Wilbour v. Gallagher* case in 1969, and was reaffirmed in the 1987 cases of *Caminiti v. Boyle* and *Orion Corp. v. State*. This does not mean that the public gets to tie up to the Breakwater dock or use Breakwater dock facilities. Therefore, as part of the project, Yarrow Bay is willing to place signage on its property, and on the BCA dock, to direct the public away from the BCA dock. Opening up the view corridor area, by moving the marina services building, will make it easier for Yarrow Bay Marina staff to

see and control boat access to the marina. In sum, the BCA is complaining about an existing condition that this project will change for the better.

8. The Public Access Trail.

There are actually two public pedestrian access ways through the site, which have been required by the City. One trail would cross the site near the water and would connect the Carillon Point pedestrian path to the north with the pedestrian path in front of the Breakwater Condominiums to the south. A small required pedestrian shoreline seating area is included along this pathway with views of the water (this in on the south half of the site and pedestrian views would not be impaired by the existing covered moorage). The other pedestrian path would run near the south edge of the site and connect the Lake Washington Boulevard with the pedestrian path along the water. See Staff Report Att. 2A (Landscape Plan) and Att.5 Enc.1 (Landscape Plan).

City staff believes it is important to connect the Carillon Point pedestrian path across the site to the Breakwater pedestrian path. It is less important to have another pedestrian path down from Lake Washington to the water. However, City Staff has required both of these trail connections because it aligns with this City dedicated view of Lake Washington. Yarrow Bay is pleased to provide that pedestrian pathway, but would not object if the Council found that the other existing pedestrian paths to Lake Washington (to the north on the Carillon Point property and to the south on the Breakwater property) were deemed sufficient.

9. BCA's Request for an Additional Buffer Area Has No Basis.

BCA's request for an additional setback from the condominium is not based on any evidence in the record, is not supported by the Zoning Code or the SMP, and should be rejected. The Breakwater Condominium is already set back over 40 feet from the property line, and is screened by its large, mostly evergreen, trees. The Yarrow Bay project will enhance that landscape buffer by plantings along the south edge of the Yarrow Bay property that will include more evergreen trees to provide additional screening. Moreover, the project has been required to provide a large view corridor along the south half of its property (and 70% along the shoreline), which places the office building far from the BCA property. Furthermore, it actually moves the marina services building away from the south property line (adjacent to the Breakwater Condominium site) to the north (adjacent to Carillon Point's commercial development).

10. The Pedestrian Plaza Area Is Designed Appropriately.

BCA first complains that the City is providing a small public "park" viewpoint on the shoreline at all, then complains that this small pedestrian plaza area cannot see the water. BCA is wrong on both counts. The pedestrian plaza area is an important design feature to give the public an opportunity to view the water and the shoreline activities at the marina. See Staff Report Att. 2A (Landscape Plan & Plaza Plan). The plaza area is at the southwest corner of the site, adjacent to the shoreline, and is not blocked by any of the existing covered moorage. As

explained at the hearing, the plaza and associated pedestrian path are pulled back slightly from the ongoing industrial uses of the marina repair yard for public safety reasons.

11. The Transportation Impacts of the Projects Have Been Thoroughly Studied and There Are No Significant Adverse Impacts.

BCA's allegations of "dangerous and congested" roadway conditions are not supported by any evidence in the record. The transportation expert hired by Yarrow Bay produced a fully-documented Transportation Impact Analysis. This report concluded that the project, as designed with a pedestrian refuge island in the new driveway entrance design, would have no significant impact on either transportation or on traffic/pedestrian safety. Staff Report Att. 5, Enc. 5.

Prior to the hearing, both Yarrow Bay's transportation expert and the City's expert traffic engineer responded to BCA's concerns about traffic, pedestrian, and bicycle safety. Staff Report Att. 12 and Att. 13. Both of these experts concluded that there would not be any significant impact to transportation, parking or traffic safety.

12. The Project Meets the City's View Corridor Criteria

Finally, BCA broadly claims that the project design does not meet the City's view corridor criteria because of the existing covered moorage. This claim is incorrect for three reasons.

First, the specific view corridor requirements for projects along Lake Washington Boulevard control this project – not the general definition of a view corridor in KMC 5.10.974. For properties waterward of Lake Washington Boulevard, the view corridor must be supplied across the upland property – not across open water. Zoning Code Plate 27C.

Second, the view corridor provided for this project does meet the view corridor definition. The view studies of the project clearly show that unimpeded views to Lake Washington will be available from the Lake Washington Blvd right-of-way. In fact, the project will significantly improve those views by removing trees that obstruct the view and by moving the marina services building out of the view corridor (which was not required by the 2002 Comprehensive Plan Amendment but is being done because of the generosity of the Wilcox Family, owners of the marina). Staff Report Att. 5, Encl. 11.

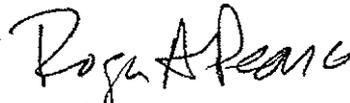
Third, the BCA again is complaining about the covered moorage here. As discussed above, the covered moorage is an existing, legally nonconforming structure. Under both the City Zoning Code and SMP, that nonconforming structure can remain.

In sum, Yarrow Bay respectfully requests the Council to approve the Hearing Examiner recommendation for these combined projects, with the clarification requested in Section 3 above. The replacement of the dry dock storage with the office building will allow this important marina

use to continue as part of the City's waterfront, and the project will open up and provide both visual and physical access for the public to the shoreline areas.

Very truly yours,

FOSTER PEPPER PLLC



Roger A. Pearce
Attorneys for Yarrow Bay Yacht Basin and Marina
LLC and Marina Suites LLC