

September 24, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **A09F0004**

MARTIN HOCHFELD
Fee Appeal

Location: 6409 Ripley Lane North, Newcastle

Appellant: **Martin Hochfeld**
20907 Northeast 156th Street
Woodinville, Washington 98077
Telephone: (206) 795-1145

King County: Department of Development and Environmental Services (DDES)
represented by **Steve Bottheim** and Mark Mitchell
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7144 and (206) 296-7119
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Deny appeal
Deny appeal
Deny appeal

EXAMINER PROCEEDINGS:

Hearing opened:
Hearing closed:

September 10, 2009
September 10, 2009

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. In the 1990s, Appellant Martin Hochfeld constructed a residence on the east shore of Lake Washington, opposite Mercer Island at 6409 Ripley Lane North. The property is in a narrow unincorporated area between the lake and I-405, bordered by the cities of Bellevue to the north, Newcastle to the east, and Renton to the south. In addition to a building permit, the waterfront development required approval of a shoreline substantial development permit (SSDP) and a shoreline variance.¹ Environmental review under the State Environmental Protection Act (SEPA) was conducted by the county in the permit review. One development condition, imposed under SEPA authority, was a habitat enhancement mitigation measure requiring that two fallen snag trees on the shoreline be chained and anchored so as to be preserved in place.
2. Over time, Lake Washington wave action caused the snags to become loose and in the words of Mr. Hochfeld, they became “floaters.” County code enforcement action was brought, requiring the snags to be resecured in their required location on the shoreline.
3. Although Mr. Hochfeld had contemplated the contemporaneous construction of a dock along with his residential structure, and had secured certain outside agency permits for a dock,² county permits for dock construction were not obtained until much later. It wasn’t until 2006 that Mr. Hochfeld applied for a county permit (L06SH008) to construct a dock in his desired location, which was on what he considers a convenient alignment with the “back” door of the residence (*i.e.*, the door opening onto the waterfront).
4. After application, DDES staff conducted permit review of the proposed dock construction. The review ultimately resulted in a denial of the application as proposed and a requirement that the dock be relocated 14 feet northward so as to avoid the aforementioned fixed snags. DDES testified at hearing that the 2006 dock permit review had confirmed that the original snag features were required to be protected under applicable regulation and previously imposed SEPA mitigation measures. DDES’s review also noted previous permit documents from 1998 calling out the location of the snags and a clear admonition that a dock was to be avoided in such area.
5. DDES’s denial of the initially proposed dock location required a redesign of the project to achieve the northward relocation, and precipitated attendant requirements of additional DDES staff review time, outside agency review time, and additional design and construction costs. Mr. Hochfeld asserts that there were also regulatory code changes in that time period, but they are not specifically cited or assigned any specific burden.
6. After the second round of project review by DDES and outside agencies, the relocated dock proposal was granted SSDP and building permits.
7. County staff time expended in permit review is a chargeable expense to the permittee under county code. [Title 27 KCC]

¹ Under the regulatory auspices of the Shoreline Management Act (Chapter 90.58 RCW) and counterpart King County Shoreline Management Master Program and shoreline regulations.

² Permits from other agencies for the shoreline construction were required, including the U.S. Army of Corps of Engineers (COE), National Marine Fisheries Services (NMFS), Muckleshoot Indian Tribe and Washington State Department of Fish and Wildlife (WDFW).

8. DDES billed Mr. Hochfeld for expended staff time in review of the initial dock proposal, which did not gain approval, and also for the second round of review necessary after submittal of the required redesign with the relocated dock position.
9. Mr. Hochfeld filed the instant appeal of the review fees charged in this case. He makes no specific claim of error in any particular time charge element, such as any particular review component or particular days or hours worked, except to cite the overall review time expended by one DDES staffer in one of the two rounds, but instead makes a general appeal that it is “not fair to charge for review after denial” (the denial requiring the change of location of the dock). He contends that only one of the two rounds of DDES review should be charged to him.
10. At hearing, Mr. Hochfeld presented several side complaints having to do with his disputation of facts and environmental values gained from the original shoreline permit process and mitigation requirements (specifically, disputation of the habitat importance of the snags and their need to be secured in their currently-required location); and his contention that county permit requirements are preempted by federal and state permit requirements.
11. Mr. Hochfeld also presented another side complaint, the inappropriateness of the County in effect requiring his dock to be misaligned with his back door, although he acknowledged that in retrospect perhaps that issue could have been precluded by contemporaneous applications and resultant better coordination of the project design.
12. None of the side complaints is under the Examiner’s jurisdiction in this case. Their disputation may have been able to be raised in some other forum, for example the appeal avenues appropriate to the particular permit(s). Those avenues of redress are not available within the auspices of a fee appeal under Title 27 KCC.
13. The only actionable claim in this proceeding is Mr. Hochfeld’s general assertion that it is unfair to charge for more than one round of review time.

CONCLUSIONS:

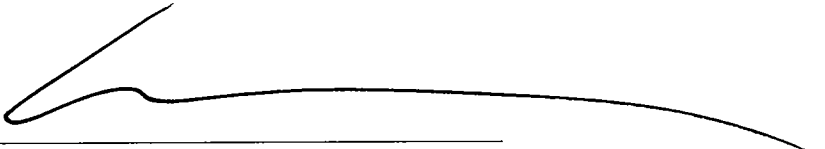
1. As Mr. Hochfeld has readily acknowledged, perhaps the misalignment of his dock and back door and the more extensive (and more expensive) staff review time necessitated in the permit review could have been avoided or minimized with better project coordination and/or simultaneous application. In addition, even with a later application for the dock permit as was the case here, since the snag impediments were well-documented by then, a pre-application conference could have been utilized to sound out the DDES staff review perspectives and preclude seemingly “duplicative” time necessitated by the unapprovability of the initial dock permit application and the need for revision, resubmittal and another round of review.
2. Regardless of those possibilities, which are not in any way dispositive of the central issue in this case, the hazards of project review and lack of guarantee of project approval as submitted are simple and inescapable facts of life. The thrust of Mr. Hochfeld’s complaints about the billed staff time have more to do with the qualitative aspects of the review and the negative result that eventuated than with any particular disputation of the amount of staff time expended. While certainly sympathetic to his understandable frustration with spending money on DDES review time only to receive bad news and an adverse outcome, at least at first, the Examiner must note that the permit review fee structure established by county code is outcome-neutral: there is no guarantee of success, and there is no fee waiver in cases of adverse outcome.

3. In the final analysis, no evidence has been presented that show DDES's billed review fees to be unreasonable charges or inconsistent with Title 27 KCC. The appeal must therefore be denied.

DECISION:

The fee appeal is DENIED.

ORDERED September 24, 2009.



Peter T. Donahue
King County Hearing Examiner

NOTICE

County code provides that the Hearing Examiner decision on fee appeals under Chapter 27.50 KCC is the final decision for the County.

MINUTES OF THE SEPTEMBER 9, 2009, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. A09F0004

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Steve Botthheim, representing the Department, and Martin Hochfeld, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Fee appeal received by DDES on March 26, 2009
Exhibit No. 2	Notice and Statement of Appeal Form and letter from Martin Hochfeld dated March 31, 2009
Exhibit No. 3	Department of Development and Environmental Services report
Exhibit No. 4	Notice of Application filed with plans dated May 8, 2000
Exhibit No. 5	Proposed plot plan
Exhibit No. 6	Work estimate
Exhibit No. 7	Blueprint of shoreline

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