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BEFORE THE HEARING EXAMINER  
FOR PIERCE COUNTY

TAPPS MARINE MANAGEMENT, LLC  
and  
WEST TAPPS MAINTENANCE  
COMPANY

Environmental Appeal No. 956765  
Administrative Appeal No. 946861  
Permit Application Nos. 910575, 910577-78

**RESPONSE BY WEST TAPPS  
MAINTENANCE COMPANY TO  
APPLICANT’S REQUEST FOR  
RECONSIDERATION**

**I. INTRODUCTION**

On September 7, 2021, Seattle Boat Company requested reconsideration of the Hearing Examiner’s Report and Decision in the above-captioned matter. *See* Request for Reconsideration of Hearing Examiner Decision Issued on August 26, 2021 (Sept. 7, 2021) (herein, “Mot.”). Pursuant to Section 1.22.130 of the Pierce County Code (“PCC”) and Rule 1.20.D.1 of the Examiner’s Rules of Procedure for Hearings, West Tapps Maintenance Company (“WTMC”) requests that the Hearing Examiner consider the following response.

As discussed below, Seattle Boat Company has not carried its burden to demonstrate grounds for reconsideration. Nor has it shown that any of the conditions imposed by the Examiner’s Report and Decision should be eliminated or changed. The request for reconsideration should be denied.

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## II. ARGUMENT

Any assessment of Seattle Boat Company’s motion for reconsideration must begin from the premise that the proposed marina is not automatically entitled to a Conditional Use Permit (“CUP”). Instead, the plain language of the code makes clear that it is the applicant—not the County, and not the public—who bears the burden of demonstrating compliance with applicable approval criteria. *See* PCC 18A.75.030.B.2. These criteria include, *inter alia*, that the marina will not be detrimental to public health, safety, and general welfare; that it will not adversely affect the established character of the surrounding vicinity; and that it will not be injurious to other uses and property in the area. *Id.* at B.1.a(1)–(3). The logical consequence of this burden is that if Seattle Boat Company desires to eliminate or change any of the conditions placed on the marina by the Examiner, then it must prove that the marina will still comply with these same criteria.

Attempting to make that showing, Seattle Boat Company relies almost entirely on an excerpt from the Examiner’s Finding 8(a)(1), in which the Examiner summarizes Seattle Boat Company’s assertion that the marina will not be detrimental to public health, safety, and welfare. *See* Mot. at 2:23–3:3. Seattle Boat Company presents this excerpt as if it represents the Examiner’s own factual finding, despite that it is merely a recitation of what, in the Examiner’s words, “[t]he Applicant states.” *See* Report and Decision at 39 (Finding 8(a)(1)). Seattle Boat Company also ignores that the quoted excerpt follows immediately after the Examiner’s similar summary of the primary concern raised by the County and area residents—namely, that “additional boat traffic generated by the Applicant will introduce conditions into the Cove . . . that will exacerbate current boat congestion and create life-and-safety issues that will impact the Fire rescue launch and create unsafe travel through the channel.” *Id.* The Examiner later described these concerns as “credible” and stated that they “need to be addressed.” *Id.* at 40.

1           The remainder of the Examiner’s findings follow the same pattern, first summarizing the  
2 concerns raised by the County and residents, and then summarizing the position expressed by Seattle  
3 Boat Company.<sup>1</sup> Following these findings, the Examiner states his ultimate conclusion: “The  
4 Applicant has established that the request for the Conditional Use Permit should be granted *subject to*  
5 *the following conditions*,” after which the Examiner lists 31 conditions to mitigate the marina’s  
6 impacts. *See id.* at 43–47 (Conclusion 5; emphasis added). In other words, Seattle Boat Company  
7 carried its burden to obtain a CUP *with* the listed conditions. It did not carry its burden to obtain a  
8 CUP *without* those conditions.<sup>2</sup>

10           Now, Seattle Boat Company asks the Examiner to modify Conditions 1, 2, and 9, each of  
11 which is designed to mitigate adverse traffic-safety conditions in Lake Ridge Cove and the channel  
12 leading to Lake Tapps. The proposed changes would effectively open the marina to boating traffic  
13 from the entire lake. But the record demonstrates that Seattle Boat Company has not carried its burden.

15           Throughout this case, Seattle Boat Company has never been transparent or forthcoming about  
16 the number of boats expected to travel to and from the proposed marina on a daily basis. In response  
17 to the County’s request for “a breakout of the maximum number of estimated customers that will be  
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20           <sup>1</sup> *See, e.g., Id.* at 40 (Finding 8(c), first summarizing the County’s position that , “irrespective of best  
21 intentions,” Seattle Boat Company cannot control boater behavior; and then summarizing what the “Applicant  
22 asserts” in response).

23           <sup>2</sup> At one point, Seattle Boat Company implies that the Examiner’s bare denial of the SEPA appeal  
24 indicates that the marina “would not result in boat traffic impacts that require additional mitigation.” Mot. at  
25 4:1–2. Factually, however, Seattle Boat Company confuses the basis of the County’s Determination of Non-  
26 Significance (“DNS”). The County did not find that there were no adverse impacts in need of mitigation, only  
that such mitigation could be provided under other laws (that is why the county later recommended denial of  
the over-water component of the marina). Legally, this assertion also conflicts with Washington case law, under  
which the bare issuance of a DNS does not insulate a project from mitigation under other laws designed to  
protect the environment. *See, e.g., Bellevue Farm Owners Ass’n v. State of Wash. Shorelines Hearings Bd.*, 100  
Wn. App. 341, 352, 997 P.2d 380 (2000) (holding that a DNS “does not restrict determinations made under  
other environmental schemes, such as the SMA”). That the Examiner denied the SEPA appeal does not imply  
that Seattle Boat Company met its *own* burden to obtain a CUP.

1 using the fueling dock, boat rental and individual pods per day,” Seattle Boat Company provided an  
2 incomplete response, failing to mention that the entire boating public would be invited to drive their  
3 boats to the new marina simply to visit the showroom and pro shop. *See* WTMC Closing Brief at 11–  
4 13. Seattle Boat Company has never disclosed how many boats are expected to travel to the facility  
5 for service and repair; yet, according to its motion, “it is reasonable to expect that a significant number  
6 of service and repair customers will in fact be boat owners in need of minor repairs and servicing, and  
7 whose preferred method of arrival would be by boat.” Mot. at 5:7–10. Nor has Seattle Boat Company  
8 demonstrated that its proposed fueling schedule will be effective at avoiding dangerous cross-traffic  
9 in the channel and cove, especially after Mr. Bohling confirmed that he hopes fueling customers will  
10 stay and shop in his new store. *See* WTMC Closing Brief at 15–19. Seattle Boat Company has not  
11 provided any information enabling the Examiner or public to determine how many boats will use the  
12 new facility, when, or how often. Nor did it present any expert testimony on this issue.

15 Similarly, Seattle Boat Company has not provided any information about actual levels of  
16 boating traffic in the channel and cove today, let alone about levels of non-motorized forms of  
17 recreation in those areas (*e.g.*, swimmers, kayakers, and the like). Yet, the record is replete with citizen  
18 testimony that boating activity and traffic levels are dangerous now, and will only get worse with an  
19 unregulated marina inviting every boater on Lake Tapps to an attractive new marina with the only fuel  
20 dock on the lake, a new boat showroom, repair and service business, and a pro shop selling all manner  
21 of gear from sunglasses to wake boards.

23 Frankly, it is disturbing that Seattle Boat Company was required to produce a traffic study for  
24 cars (*see* WTMC Ex. S), but has not endeavored to provide even the most basic information about  
25 how the new marina will affect existing and anticipated traffic levels on the water. We understand the  
26 Examiner’s reservations about penalizing Seattle Boat Company for the bad behavior of other private

1 actors. But it is still Seattle Boat Company’s burden to demonstrate that the marina will be safe if it is  
2 opened to the general boating public across the entirety of the lake. It has not met that burden here.

3 Nor is there any proof that the establishment of an unregulated “oversight committee” is  
4 sufficient to ensure public safety, as suggested in Seattle Boat Company’s motion for reconsideration.  
5 See Mot. at 5:12–15. Under the terms of the Examiner’s Report and Decision, the proposed  
6 “committee” could consist of as little as two members—one Seattle Boat employee and one nearby  
7 resident. See Report and Decision at 44 (Condition 8). There is no assurance that these members will  
8 have any relevant training or experience in regulating boat traffic, or ensuring boating safety. The  
9 important public-safety issues raised in this case cannot be left to the unsupervised decisions of an  
10 unknown two-person committee. See PCC 18A.75.030.B.1.c (Examiner must ensure that all CUP  
11 conditions “can be monitored and enforced”).  
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### 14 III. CONCLUSION

15 Seattle Boat Company has not demonstrated that the Examiner misinterpreted any facts or  
16 committed any other errors within the meaning of PCC 1.22.130. It has failed to carry its burden of  
17 demonstrating that the proposed marina will meet the approval criteria for a CUP, absent the  
18 conditions imposed by the Examiner.

19 If Seattle Boat Company wants to open the new marina to the entirety of the general boating  
20 public—inviting every resident on the lake to come visit and shop by boat—then it needs to provide  
21 information about current and future traffic levels. It has not done so. The Examiner cannot make this  
22 decision in the dark. Seattle Boat Company’s motion for reconsideration should be denied.  
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Dated this 16th day of September, 2021

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By:   
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Company.*