



Pierce County

Office of the Pierce County Hearing Examiner

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Tacoma, Washington 98405  
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STEPHEN K. CAUSSEAU, JR.  
Pierce County Hearing Examiner

September 16, 2021

**TO:** Tapps Marine Management, LLC; Seattle Boat Company, Krannitz Kent Architects, West Tapps Maintenance Company; Bricklin & Newman, LLP; Cascade Water Alliance, Cairncross & Hempelmann P.S.

**RE: CONDITIONAL USE PERMIT / SITE PLAN REVIEW / ENVIRONMENTAL REVIEW AND ADMINISTRATIVE APPEAL:  
TAPPS MARINE MANAGEMENT, LLC  
Application Numbers: 910575, 910577, 910578 (CP/SPR/ENV)  
946861 (Environmental Appeal)**

The Hearing Examiner has received a Request to Reconsider dated September 7, 2021, from Attorney Donald E. Marcy, for Tapps Marine Management, LLC, in the above-entitled matter.

This request is being sent to the above for their review and/or comments. If any party wishes to comment on this request, their comments must be submitted to the Hearing Examiner no later than September 30, 2021 (ten business days). The Hearing Examiner would also request that a copy of any comments be sent to Pierce County Planning and Land Services, Attention: Andrew Van Gordon at 3201 South 35<sup>th</sup> Street, Tacoma, WA 98409, so that they might be aware of such comments.

The Hearing Examiner will make a determination on the request at the end of the above-stated time period.

Very truly yours,

**STEPHEN R. SHELTON**  
Deputy Hearing Examiner

SRS/jjp



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BEFORE THE PIERCE COUNTY HEARING EXAMINER

TAPPS MARINE MANAGEMENT, LLC,  
a Washington limited liability company,

Applicant and Appellant.

Application No. 910575  
Tax Parcel Nos. 5045000810, 5065001850,  
5065001900

REQUEST FOR RECONSIDERATION OF  
HEARING EXAMINER DECISION ISSUED  
ON AUGUST 26, 2021

I. INTRODUCTION

Tapps Marine Management, LLC, d/b/a Seattle Boat Company (“SBC”) hereby requests the Hearing Examiner reconsider the Report and Decision issued on August 26, 2021 (the “Decision”), regarding SBC’s proposed redevelopment and construction of, in relevant part, a new marina. The record and the Examiner’s findings and conclusions demonstrate that conditions in the Decision to restrict fueling at the marina and boater access to the upland boat sales and repair facilities were imposed in error based on misinterpretation of the facts. Specifically, SBC requests the Examiner revise the conditions to allow fueling of vessels owned by the residents of Lake Tapps, subject to terms established by the Oversight Committee. SBC further requests the Examiner revise the conditions to allow vessels to access the marina for purposes of boaters patronizing the upland boat sales, service, and repair facilities.

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## II. ARGUMENT

SBC's proposal includes, in relevant part, one floating fuel dock, two floating docks for moorage of eight shared-use boats, six shoreline moorage points for use by a single boat each, and a boat ramp (collectively, the "Marina"), as well as an upland boat sales, service, and repair facility (together with the Marina, the "Project"). In accordance with Pierce County Code 1.22.130.A, reconsideration should be granted and the Decision revised because the record establishes, and the Examiner's findings and conclusions confirm, that SBC's Project will not result in boat traffic that adversely impacts the surrounding residences. Thus, the Examiner erred by misinterpreting these facts and imposing conditions that unnecessarily "limit fueling to vessels stored onsite, i.e., the dry stack and boat club boats" and "prevent boaters who are not boat club boat members nor owners of boats stored at the dry docks from mooring to access the SBC pro shop or other SBC facilities." See Decision, p. 43, Conclusion 5.1 and p. 44, Conclusion 9.

During the hearing, SBC demonstrated that the proposed Marina uses, including the fueling facility, will be managed through a carefully designed appointment system coupled with numerous other traffic controlling elements that would effectively address issues related to boat congestion. In addition to these internal operating procedures, SBC also explained that the adoption of the Lake Tapps Management Plan and the regulations in PCC 8.88.460 would further assist in addressing boat traffic issues. These authorities regulate boating access and capacity, rafting, speed, and noise. This entire framework is explained in detail in SBC's Post-Hearing Brief at pages 3-5 and aptly summarized by the Examiner in the Decision at Finding 8(a)(1) as follows:

The Applicant states the fuel dock and boat-share reservation systems will prevent queuing in the Cove and will be timed such that incoming and outgoing boats will not create congestion. In addition, those signed up for fueling or boat-share will have contractual obligations to abide by a "no wake" policy and not be discourteous. The Applicant states in addition to the internal operating procedures that the Lake Tapps Management Plan and PCC Watercraft regulations such as the 5 mph speed limit and prohibiting boats with 1000 feet of

1 the fire launch or from obstructing the channel have substantially reduced boat  
2 congestion in the Cove. The Applicant also noted that[sic] neither the Pierce  
3 County Boat Commission, the Fire Department nor the Sheriff Department made  
4 comment on the proposal.

5 Decision, Finding 8(a)(1), p. 39.

6 After acknowledging the above measures that would be in place to address boat traffic,  
7 the Examiner noted that the concerns of the neighboring residents who oppose the project are  
8 based on observations of some "bad behavior." *Id.*, Finding 8(a)(3), p. 40. The Examiner then  
9 noted that although "these comments are credible and need to be addressed, the Examiner has  
10 reservations about allowing the bad behavior of some people to be the basis and rationale for  
11 reviewing the Applicant's proposal." *Id.* We agree with the Examiner that it would be  
12 inappropriate to restrict the scope of the Marina uses based on the previous bad behavior of some  
13 people.

14 The Examiner's aforementioned finding is further supported by the evidence presented  
15 by SBC in the form of testimony from resident boaters. Kim Scott, who is the immediate  
16 neighbor of SBC, and other Lake Tapps residents and recreators, Duane Bratvold and Adam  
17 Gregorich, all testified that the cove and channel are not congested, and that marina boat traffic  
18 would not be an issue.

19 Based on the above findings, the Examiner concluded the criteria for a Conditional Use  
20 Permit ("CUP") are met. *Id.*, Finding 9, p. 41. Notably, on similar grounds, the Examiner also  
21 denied the State Environmental Policy Act appeal and concluded that concerns related to boat  
22 traffic have "been addressed and mitigated" and required no further SEPA mitigation. *Id.*,  
23 Conclusion 6, p. 32. However, with respect to the CUP, the Examiner stated that "the Examiner  
24 also recognizes that the Applicant has recommended imposition of certain conditions of approval  
25 that will limit the number of boats utilizing the fuel dock and the moorage pods thereby further  
26 mitigating the impact on the boat traffic in the Cove and channel." *Id.* (emphasis added). These  
statements indicate that the Examiner first concluded that the Marina, with the proposed

REQUEST FOR RECONSIDERATION - 3

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1 operations framework detailed above, would not result in boat traffic impacts that require  
2 additional mitigation. However, the Examiner then endeavored to “further” mitigate the alleged  
3 impacts. The Examiner should reconsider this further mitigation and condition the approval only  
4 to the extent necessary.

5 In its Closing Brief, SBC proposed three sets of conditions with varying and specified  
6 degrees of severity. Closing Brief, p. 11-12. The most severe of these potential conditions  
7 indeed entailed limiting fueling to only those vessels stored at the Marina, i.e., dry stack and boat  
8 club boats. *Id.*, p. 12. SBC clarified that it proposed this condition with “significant  
9 reservations” and requested that it be given special consideration and imposed “only if  
10 determined to be absolutely necessary.” *Id.* Furthermore, SBC did not intend to prevent fueling  
11 of its own inventory, e.g., sales deliveries and demonstrations. Nonetheless, the Examiner  
12 imposed this condition as new Condition 1 notwithstanding making no findings that marina boat  
13 traffic would create adverse boat congestion. Decision, New Condition 1, p. 43. The Examiner  
14 also went a step further to address alleged boat traffic impacts by imposing an entirely new  
15 condition that precludes “boaters who are not boat club members nor owners of boats stored at  
16 the dry docks from mooring to access the SBC pro shop or other SBC facilities.” *Id.*, New  
17 Condition 9, p. 44.

18 Although SBC fully understands that the Examiner has the authority to impose conditions  
19 that the Examiner deems appropriate, the record and the Examiner’s own findings and  
20 conclusions do not justify these harsh conditions for all of the reasons detailed above. Again, the  
21 record demonstrated, and the Examiner confirmed that boat traffic issues would be addressed  
22 through the Marina’s numerous operating procedures and regulations in effect, therefore the  
23 Marina should not be restricted based on the “bad behavior” of some actors. Furthermore,  
24 allowing access from the Marina to patrons of the upland boat service and repair facilities will  
25 provide environmental and aesthetic benefits. For example, problems such as leaking oil or gas  
26 create adverse impacts to water quality, but some boaters will ignore these problems if getting

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1 them fixed is bothersome or inconvenient. Additionally, access via the Marina will reduce the  
2 number of trailers parked in front of the business such that visual blight and other aesthetic  
3 impacts to the surrounding neighborhood will also be reduced. Water access to the upland SBC  
4 facilities is an essential component of the Project design and is reflected by the fact that the  
5 entire design of the site is oriented to the launch, retrieval, and storage of vessels with full access  
6 to the lake. Without this access, the purpose of the site design as a lakefront marine dealership is  
7 essentially defunct. Lastly, as experienced at other SBC repair and service operations, it is  
8 reasonable to expect that a significant number of service and repair customers will in fact be boat  
9 owners in need of minor repairs and servicing, and whose preferred method of arrival would be  
10 by boat. Therefore, removing this method of access for these customers will have a significant,  
11 and potentially lethal impact on the viability of the Project.

12 In lieu of these harsh and unnecessary conditions that would significantly jeopardize the  
13 viability of the Marina, SBC respectfully requests the Examiner instead condition the Marina to  
14 allow fueling to residents of Lake Tapps only after the Oversight Committee evaluates such  
15 fueling activities and establishes parameters governing the same. Additionally, and as originally  
16 proposed, all fueling customers would be required to enter into a service agreement assuring  
17 appropriate boating behavior in the cove and channel. The specific language of these proposed  
18 conditions and corresponding revisions to other conditions are detailed in the attached Exhibit A.  
19 This proposal achieves the "further mitigation" desired by the Examiner, allows the residents in  
20 the area to address their own concerns, and creates a path for SBC to operate a viable Marina.  
21 Without these modified conditions, it is highly unlikely the Project will be economically viable  
22 and therefore, SBC may be forced to abandon the redevelopment altogether. This would be an  
23 unreasonably harsh result in light of the Examiner's findings and conclusions that boat traffic is  
24 already adequately addressed and mitigated.

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III. CONCLUSION

For all of the reasons detailed above, SBC requests the Examiner reconsider the Decision and revise the conditions of approval for the Project as reflected on the attached Exhibit A.

DATED this 7<sup>th</sup> day of September, 2021.

CAIRNCROSS & HEMPELMANN, P.S.



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Attorneys for Tapps Marine Management, LLC

1 Exhibit A

2 Proposed Revised Conditions

3 (revisions shown in underline/~~strikethrough~~ format)

4  
5 1. The Applicant ~~shall limit fueling to stored onsite, i.e., the dry stack and boat club boats~~  
6 may fuel vessels owned by residents of Lake Tapps, which must be verified by confirming a boat  
7 is registered to a Lake Tapps address; provided that, the Oversight Committee evaluates such  
8 fueling activity and implements reasonable parameters governing the scale of fueling activity  
9 (e.g., hours of operation).

10  
11 2. The Applicant shall require all boat club members and fueling customers enter into a  
12 service agreement with SBC that requires the customer obey a "no wake" policy in the channel  
13 and Lake Ridge Cove, prohibits indecorous behavior, and reserves SBC's right to terminate the  
14 agreement if these requirements are breached.

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16 9. The Applicant shall install "No Trespass" and "Private Property" signs on the docks, boat  
17 club docks and moorage pods to prevent boaters who are not SBC boat sales and repair facility  
18 customers, fueling customers, boat club members, nor owners of boats stored at the dry docks  
19 from mooring ~~to access the SBC pro shop or other SBC facilities.~~



1 Certificate of Service

2 I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington  
3 that on September 7, 2021, I caused a copy of the document to which this is attached to be served  
4 on the following via first-class U.S. mail postage pre-paid:

5 PLANNING AND PUBLIC WORKS DEPARTMENT  
6 Public Services Building  
7 Development Center  
8 2401 South 35<sup>th</sup> Street  
9 Tacoma, WA 98409

10 And via email to:

11 Amy E. Wakefield  
12 Permit and Development Center Supervisor  
13 Email: [amy.wakefield@piercecounvwa.gov](mailto:amy.wakefield@piercecounvwa.gov)

14 Hard copy via FedEx to the Hearing Examiner only at:

15 Stephen R. Shelton, Deputy Hearing Examiner  
16 Pierce County Planning and Land Services  
17 Pierce County Annex  
18 2401 South 35th Street  
19 Tacoma, Washington, 98409

20 Served via email:

21 Stephen R. Shelton, Deputy Hearing Examiner  
22 c/o Jenny Pelesky - [j.pelesky@mchlawoffices.com](mailto:j.pelesky@mchlawoffices.com)

23 Sue Larson, Administrative Official: [Sue.Larson@piercecounvwa.gov](mailto:Sue.Larson@piercecounvwa.gov)

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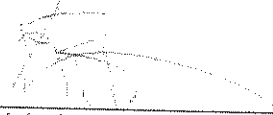
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1 DATED this 7<sup>th</sup> day of September, 2021, at Bothell, Washington.

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REQUEST FOR RECONSIDERATION - 9

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