

**DECISION OF THE HEARING EXAMINER  
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Appeal of

**Merrill Robison**

**BLD13681COM**

From a Building Permit Decision

**Introduction**

Merrill Robison appealed the issuance of a building permit for the remodel work at the WSDOT ferry maintenance yard at 497 Harbor View Drive.

A public hearing was held January 9, 2009. Mr. Robison appeared pro se. Amanda G. Phily, Assistant Attorney General, represented the State of Washington, and Rodney Kaseguma, Inslee Best Doezie & Ryder, represented the Department of Planning and Community Development.

All section numbers in the decision refer to the Bainbridge Island Municipal Code, unless otherwise indicated.

After due consideration of all the evidence in the record consisting of the testimony at the hearing and the documentary evidence admitted at the hearing, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner in this matter.

**Findings**

1. On March 28, 2008, the Washington State Department of Transportation filed a building permit application for “structural and electrical upgrades w/architectural & mechanical tenant improvements” for a site at 497 Harbor View Drive SE. Exhibit 29C.
2. The site of the proposed improvements is that of the existing maintenance facility for the Washington State Ferries. It is a waterfront parcel, approximately 7.33 acres in size, developed with a primary maintenance building, piers, miscellaneous buildngs and parking
3. The building permit was issued October 14, 2008, for “structural and electrical upgrades w/architectural & mechanical tenant improv.” Exhibit 29C.
4. Merrill Robison, appellant, filed an appeal on October 28, 2008, challenging the issuance of the building permit citing the following specific concerns:

This project has never had City Council or Community input for over 4 years.

This project should wait for the forthcoming 20 year Washington State Ferry Plan that will be in front of the State 2009 Legislative Session to make sure it is in the approved plan by the legislature.

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The plans do not show how WSF plans on accommodating the 1974 Shoreline Hearing Board decision to provide a 2+ acre community boatyard on the site.

Apparently has no approval from the US Home Security or US Coast Guard for the site or off the site for the water usage of adjacent Eagle Harbor waters.

Of the 273 formal drawings many prints concerning environmental issues apparently were not included in the formal application for the building permit.

Additional runoff from 135 parking places not adequately planned.

Disposal of an estimated 1100+ cubic yards of contaminated soils for new concrete pile caps, new elevator pit and failing foundation walls. Where will it be disposed?

No mention of the City Code for noise or lighting requirements during construction or normal operation of the facility.

Exhibit 1.

5. A SEPA checklist was filed March 8, 2006, for the Eagle Harbor Maintenance Facility Phase 2 Preservation and Phase 4 Maintenance Building Project. The checklist provided an extensive description of the work to be done in the two phases. The description of the proposal included foundation repairs for the Maintenance Building along with remodeling and seismic upgrades. Under the Maintenance Building creosote-treated timber piles are to be removed, existing untreated timber pile caps to be replaced with treated pile caps, and other untreated timber caps replaced with cast-in-place concrete. Cross bracing is to be installed under the building's foundation. Exhibit 31C. The work authorized by the appealed building permit is included in this description.

6. The Washington State Department of Transportation as lead agency, issued a SEPA determination of non-significance (DNS) on March 8, 2008, for the project described as

- Repairs or replacement of the existing dock facilities to make them structurally sound and to the existing utilities to improve functionality.
- Improvements to the existing maintenance building to make it structurally sound, upgrade it seismically, and improve the functionality. This will include the repair or replacement of existing utilities.

Exhibit 30C.

7. The shoreline is under the Maintenance Building so some of the work would be in or over water. Testimony of Machen; Exhibit 43R.

8. Edward Thomas, Jr., project manager and consultant to WSF, coordinated the design team. He explained that all the work subject to the permit would occur within and below the maintenance building. Within the building, shop spaces would be rearranged requiring relocation of walls, doors, windows and finish work, there would be new structural framing, the elevator would be replaced, and associated work on the mechanical, ventilation, heating, electrical systems would be done. Under the building, a number of rotting timber piles would be replaced or repaired, for example with concrete stringers and some timber caps replaced with concrete and some concrete caps repaired. Testimony of Thomas and Exhibit 42R (S00.10).

9. Mark Scott, a registered architect with the WSDOT Facilities Office signed the architectural plan sheets and explained that a structural engineer signed the structural sheets, a mechanical engineer the mechanical sheets, and an electrical engineer the electrical sheets.
10. The site currently has 135 parking spaces to serve the facility. No new surfacing for parking is proposed but two spaces will have to be restriped to meet the current requirement for a minimum of five accessible stalls (four for cars and one for a van) for a lot containing 100-150 parking spaces.
11. Though the current stormwater system for the facility may not conform to current standards, because the proposal does not include any additional impermeable surface, the applicant is not required to alter its storm water system to conform to current standards of Chapter 14.20, the Stormwater Management chapter. Testimony of Machen.
12. Section 15.04.040 provides that issuance of a building permit does not approve violation of the code or other regulation. Construction noise levels are regulated by Chapter 16.16 and outdoor lighting by Chapter 15.34.
13. Appellant contends that the City has not reviewed the proposed disposal of contaminated soil. The City's code does not contain regulations regarding disposal of soil.
14. The site is an EPA "Superfund" site. Appellant is concerned that sign-off by the EPA for the work under the building is required and has not been obtained. The work on the maintenance building is outside the capped area of the EPA restoration site. (Testimony of Thomas) and Notes on sheet C02.01 of Exhibit 42R, Building Permit Plans, states that "Activities at the site shall not affect the condition of the caps."
15. Initial plan review comments, Exhibit 33C, were responded to and reviewed by an engineers retained by the City. Testimony of Machen. Revised replacement sheets were submitted. Exhibit 46C.
16. Sheets shown as deleted in the Index of Sheets were those that related to work either regulated by a different agency or not covered by the International Building Code.
17. The hearing examiner is authorized to hear appeals of decisions made by the building official or director of planning and community development "relative to the application and interpretation of the city building code." Section 15.04.130A. Subsection B of that section provides:

An application for appeal shall be based on a claim that the true intent of the city building code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the city building code do not fully apply or an equally good or better form of construction is proposed. The hearing examiner shall have no authority to waive requirements of the city building code.

## **Conclusions**

1. The Hearing Examiner has jurisdiction to hear and decide this appeal pursuant to Sections 15.04.130 and 2.16.130.
2. The City Council has expressly limited the Hearing Examiner's authority in building permit appeals. That authority does not include considering whether circumstances have changed since the original proposal making it useful to have additional community input or whether the proposal is consistent with plans for the future of the service or whether the work should be delayed to complete planning. The scope of the authority also does not include determining whether the building permit approval is consistent with Shoreline Hearing Board decisions or deed restrictions or whether approvals from other agencies will be required or have been obtained.
3. As the findings show, the only change to the parking area is to be the restriping of spaces which does not trigger the requirement for a drainage permit and that other City regulations will apply addressing construction noise and outdoor lighting.
4. No evidence was adduced that the building official did not have the drawings or plan sheets necessary to determine compliance with the city building code.
5. The Hearing Examiner is required to give substantial weight to the decision of the Director. Section 2.16.130F2. The "substantial weight" requirement means that the decision must be reviewed under a "clearly erroneous" standard. *Norway Hill Pres. & Prot. Ass'n v. King County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976). The decision is clearly erroneous when, although there is evidence to support it, the reviewer is left with the definite and firm conviction that a mistake has been made. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). Here, the record did not show evidence of any error in the in the interpretation and application of building code provisions, so the Hearing Examiner must affirm the decision.

### **Decision**

The decision to issue a building permit is AFFIRMED and the appeal denied.

Entered this 27th day of January 2009.

    /s/ Margaret Klockars      
Margaret Klockars  
Hearing Examiner *pro tem*

### **Concerning Further Review**

*NOTE: It is the responsibility of a person seeking review of a Hearing Examiner decision to consult applicable Code sections and other*

*appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.*

The decision of the hearing examiner shall be final in this matter unless, within 21 days after issuance of a decision, a person with standing appeals the decision in accordance with Chapter 36.70 RCW.