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7 **STATE OF WASHINGTON**
8 **SPOKANE COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,
10 DEPARTMENT OF ECOLOGY,

11 Petitioner,

12 v.

13 THE CITY OF SPOKANE VALLEY
14 and COYOTE ROCK, LLC,

15 Respondents.

NO.

PETITION FOR REVIEW OF LOCAL
LAND USE DECISION

16 **I. INTRODUCTION**

17 The State of Washington, Department of Ecology (Ecology), by and through its
18 attorneys, Attorney General Rob McKenna and Thomas J. Young, Assistant Attorney General,
19 appeal pursuant to the Land Use Petition Act (LUPA), RCW 36.70C, the decision of the City
20 of Spokane Valley (decision) attached hereto as Exhibit A, authorizing construction of a dock
21 without a shoreline substantial development permit.

22 **II. PARTIES**

23 1. Petitioner is the Washington State Department of Ecology, a state agency, 300
24 Desmond Drive, P.O. Box 47600, Lacey, WA 98503. Ecology's Eastern Regional Office is
25 located at N. 4601 Monroe Street, Spokane, WA 98205-1295.
26

1 file LUPA appeal before pursuing enforcement under SMA); *Grundy v. Brack Family Trust*,
2 116 Wn. App. 625, 67 P.3d 500 (2003), *rev'd on other grounds*, 155 Wn.2d 1, 117 P.3d 1089
3 (2005) (SMA exemption subject to LUPA appeal).

4 2. The City of Spokane Valley Municipal Code (SVMC) designates shoreline
5 exemptions for docks as Type I decisions subject to appeal to the local Hearings Examiner.
6 SVMC § 17.80.030; § 17.90.010. However, the code limits standing to pursue such an appeal
7 to the property owner and adjacent property owners. SVMC § 17.90.030A. Ecology is not the
8 property owner or an adjacent property owner. Therefore, Ecology has no adequate remedy
9 under the local code. Further, the Shorelines Hearings Board has no jurisdiction to review
10 exemptions. *See Putnam v. Carroll*, 13 Wn. App. 201, 534 P.2d 132 (1975). Ecology
11 therefore has exhausted its administrative remedies.

12 V. STATEMENT OF FACTS

13 1. Neighborhood, Inc. is the developer of a residential subdivision in the City of
14 Spokane Valley, known as Coyote Rock, located along the banks of the Spokane River. The
15 property that is the subject of this case is one of 30 waterfront lots in this subdivision.

16 2. The City of Spokane Valley has adopted the Spokane County Shoreline Master
17 Program (SMP) as part of its municipal code. SVMC § 21.50.010. The SMP is set forth in
18 Appendix 21-H to the code. The Spokane River is a shoreline of statewide significance under
19 the SMA.

20 3. The SMP designates the area where the subject property is located in the
21 Pastoral Environment. Under this designation, docks are prohibited except for those docks that
22 meet the terms of the exemption in RCW 90.58.030(3)(e)(vii). SMP § 18.1.1.

23 4. The SMP states that the "Pastoral area is intended to protect and maintain those
24 shorelines which have historically been subject to limited human interference and have
25 preserved their natural quality as wildlife habitat and places of scenic beauty. These areas are
26

1 appropriate for passive agricultural and recreational uses.” SMP § 2 at 2-2. Relevant sections
2 of the SMA are attached hereto as Exhibit B.

3 5. Coyote Rock, LLC, and/or Invest Northwest, installed a dock on the subject
4 property without first obtaining a permit or exemption under the SMA in violation of RCW
5 90.58.140(1) and RCW 90.58.210(2). A picture of this dock is attached hereto as Exhibit C.
6 The installation of this dock caused significant damage to shoreline vegetation along the river.

7 6. Ecology issued a Notice of Correction to Coyote Rock, LLC, and Invest
8 Northwest on February 26, 2010, informing them of this violation and requesting that Coyote
9 Rock, LLC, take remedial action. A true and correct copy of the Notice of Correction is
10 attached hereto as Exhibit D. As far as Ecology is aware, Coyote Rock, LLC, has not taken
11 any remedial action as requested in the Notice.

12 7. In meetings between Ecology and the City, Ecology has been informed that
13 Coyote Rock, LLC, intends to install docks on all 30 of the waterfront lots in this subdivision.
14 The purpose of the installation of these docks is to increase the value of the lots for resale.
15 Coyote Rock, LLC, does not intend to use the dock on the subject property for its own private
16 noncommercial use. Marketing information on the Coyote Rock website indicates the
17 waterfront homes will have docks.

18 8. A single family residence is under construction on the subject lot by Invest
19 Northwest. Ecology has been informed that this home is a “spec” home that Invest Northwest
20 is constructing for the purpose of resale to an individual purchaser. This information has also
21 been reported in local newspaper articles. True and correct copies of these newspaper articles
22 are attached hereto as Exhibit E.

23 9. On April 21, 2010, the City issued a shoreline exemption to Coyote Rock, LLC,
24 for the subject dock. This exemption is the decision under appeal in this action.

25 10. The City has received an application for a second dock on another lot in the
26 same subdivision. Ecology submitted comments to the City on May 4, 2010, regarding this

1 application. In the comments, Ecology states that the “impact from docks in this location is in
2 developing access through the shoreline buffer to access the dock. We believe the intent,
3 goals, and use policies of the SMP will require limiting access and the destruction to the
4 riparian corridor inherent in developing that access, through the use of joint access and docks.
5 The cumulative effects of locating 30 individual docks on this reach of river will result in
6 complete degradation of the shoreline” A true and correct copy of Ecology’s comment
7 letter is attached hereto as Exhibit F.

8 VI. GROUNDS FOR RELIEF

9 1. The Shoreline Management Act (SMA) is a comprehensive scheme of
10 regulation of the state’s shorelines intended to protect state shorelines “as much as possible.”
11 *Buechel v. Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994).

12 2. The SMA declares that “unrestricted construction on the privately owned or
13 publicly owned shorelines of the state is not in the best public interest.” RCW 90.58.020.

14 3. Under the SMA, local governments must adopt Shoreline Master Programs
15 (SMPS) to regulate developments and uses on state shorelines. RCW 90.58.080. All
16 developments on state shorelines must be consistent with the SMA and the local SMP. RCW
17 90.58.140(1).

18 4. The SMA requires that, before undertaking any “substantial development” on
19 state shorelines, the developer first obtain a shoreline substantial development permit. RCW
20 90.58.140(2).

21 5. Certain developments are exempt from the requirement to obtain a substantial
22 development permit. RCW 90.58.030(3)(e). These exemptions must be construed narrowly so
23 as not to undermine the purposes of the SMA. WAC 173-27-040(1)(a) states that “only those
24 developments that meet the precise terms of one or more of the listed exemptions may be
25 granted exemption from the substantial development permit process.”
26

1 6. Developments that are exempt under RCW 90.58.030(3)(e) are exempt only
2 from the requirement to obtain a substantial development permit, they are not exempt from the
3 SMA. WAC 173-27-040(1)(b). Exempt developments must still be consistent with the SMA
4 and the local SMP. RCW 90.48.140(1); *Putnam v. Carroll*, 13 Wn. App. 201, 534 P.2d 132
5 (1975).

6 7. RCW 90.58.030(3)(e)(vii) exempts from the requirement to obtain a substantial
7 development permit “construction of a dock, including a community dock, designed for
8 pleasure craft only, for the private non-commercial use of the owner, lessee, or contract
9 purchaser of single and multiple family residences.”

10 8. The dock that is the subject of this case does not meet the precise terms of this
11 exemption because the dock was constructed for the purpose of increasing the resale value of
12 the lot on which it was built and not for the private noncommercial use of Coyote Rock, LLC.
13 The dock, like the single family residence with which it is associated, is a “spec” dock that is
14 intended for the future use of the purchaser of the lot.

15 9. In its exemption decision, the City concluded the exemption in RCW
16 90.58.030(3)(e)(vii) applied because Coyote Rock, LLC, is the owner of the single family
17 residence associated with the proposed dock. Ex. A at 2. The City, however, failed to
18 conclude, as required by the terms of the exemption, that the dock is for the private
19 noncommercial use of Coyote Rock, LLC.

20 10. Because the dock does not meet the terms of the exemption, it is prohibited by
21 SMP § 18.1.1.

22 11. In addition, the City’s exemption decision is erroneous because the dock is one
23 of a series of docks to be located in the same subdivision that, if constructed, will cause
24 substantial damage to the shoreline environment. The exemption fails to contain appropriate
25 conditions to address cumulative effects arising from the reasonably foreseeable construction
26 of similar docks in the area. The exemption is therefore inconsistent with the policy of RCW

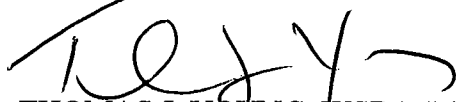
1 90.58.020, WAC 173-26-186(8)(d), and with the policy of the Pastoral environment under the
2 City's SMP.

3 **VII. REQUEST FOR RELIEF**

4 Ecology requests that the court reverse the exemption issued by the City of Spokane
5 Valley and deny the application. In the alternative, Ecology requests that the court reverse the
6 exemption and remand the matter to the City with instructions to include conditions in the
7 exemption to address cumulative impacts. Such conditions should include requirements to
8 construct joint use docks only, or joint access, or other appropriate conditions.

9 DATED this 11 day of May, 2010.

10 ROBERT M. MCKENNA
11 Attorney General

12 

13 THOMAS J. YOUNG, WSBA # 17366
14 Assistant Attorney General

15 Attorneys for Petitioner
16 State of Washington
17 Department of Ecology
18 (360) 586-4608

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**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

11707 E Sprague Ave Suite 106 ♦ Spokane Valley WA 99206
509.921.1000 ♦ Fax: 509.921.1008 ♦ cityhall@spokanevalley.org

**SHORELINE MANAGEMENT ACT
SUBSTANTIAL DEVELOPMENT PERMIT
EXEMPTION**

RECEIVED

APR 23 2010

TO: COYOTE ROCK, LLC
608 NORTHWEST BLVD., SUITE 103
COEUR D' ALENE, ID 83814

DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

FROM: MICKI HARNOIS
ASSOCIATE PLANNER

DATE: April 21, 2010

A. SUBJECT: A dock for the purposes of private watercraft is exempt from a substantial development permit pursuant to the Revised Code of Washington (RCW) 90.58 (Shoreline Management Act), Washington Administrative Code (WAC) 173-27-040(2)(h)(ii) and the City of Spokane Valley Shoreline Master Program.

B. PROPOSAL: Install an 8' x 20' floating dock and a 3' x 24' ramp to the shore. A hand held hydraulic post driver will be used to drive pipe piling to stabilize dock. The estimated cost of the dock is under \$10,000.

C. LOCATION: Parcel No. 45043.1523, located at 11501 East Coyote Rock Drive, situated on the south bank of the Spokane River, located in the southwest quarter of Section 04, Township 25 North, Range 44 East, Willamette Meridian, Spokane County, Washington.

D. SHORELINE ENVIRONMENT DESIGNATION: PASTORAL

E. EXEMPTION AUTHORITY: The project is exempt from the requirements of a substantial development permit because the development is qualified as exempt pursuant to:

WAC 173-27-040 Developments exempt from substantial development permit requirement.

(2) The following development shall not require substantial development permits:

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single family and multiple-family residences. A dock is a landing and moorage facilities for watercraft and does NOT include recreation decks, storage facilities or other appurtenances. This exception applies if either:

(ii) In fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered substantial development for the purpose of this chapter.

CONCLUSION: The project qualifies as exempt from a substantial development permit to install a dock provided the cost is less than \$10,000. The City of Spokane Valley Shoreline Master Program allows such development pursuant to Section IV, Regulations for Use Activities, subsection 18.4.1. Coyote Rock, LLC (the applicant) is currently the owner of the single-family residence associated with the proposed dock.

CHECK ONE:

Consistent

Inconsistent

 ✓

Policies of the Shoreline Management Act

 ✓

Spokane Valley Municipal Code (Chapter 21. Shoreline Master Program)

 ✓

Spokane Valley Municipal Code (Chapter 21.40 Critical Areas)

CONDITIONS OF APPROVAL:

1. This exemption is issued only pursuant to the Shoreline Management Act, RCW 90.58, WAC 173-27-040, and the City of Spokane Valley Shoreline Master Program and nothing in this exemption shall excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

2. Upon discovery of potential or known archaeological resources at the subject properties prior to or during future on-site construction, the developer, contractor, and/or any other parties involved in construction shall immediately cease all on-site construction, shall act to protect the potential or known historical and cultural resources area from outside intrusion, and shall notify, within a maximum period of twenty-four hours from the time of discovery, the City of Spokane Valley Community Development Department of said discovery.

3. No disturbance in the seventy-five (75) foot wide shoreline setback from the ordinary high water mark (OHWM) of the Spokane River can occur without the approval of the City of Spokane Valley Planning Division, Washington State Department of Ecology and Washington State Department of Fish & Wildlife. Detail plans shall be submitted showing the development in the seventy-five (75) foot wide shoreline setback. This also includes any proposed access from the area of the residence to the dock access.

4. A floodplain permit is required prior to installation of the dock.

5. To ensure public safety and reduce the applicant's personal liability for the dock, federal, state, or universally accepted dock installation and construction standards should be used. The City of Spokane Valley does not have any such dock standards; however the City recommends that an appropriate agency be contacted with any questions regarding dock installation or construction.

cc: Washington State Department of Fish and Wildlife; attn: Jeff Lawlor – 2315 N
Discovery Place, Spokane Valley, WA 99216
Washington State Department of Ecology Eastern Regional Office; attn: Michael
Maher; 4601 N. Monroe Street, Spokane WA 99205-1295

Those areas most appropriate for designation in the Natural Area possess 1) natural features which are not suitable for substantial developments due to the natural hazards or physical inaccessibility, 2) natural features which are culturally unique or interesting, 3) biological systems which are intolerant of intensive use and critical to the continuing function and maintenance of larger ecological systems, and 4) those areas which should be restored because of any of the above criteria.

The Pastoral Area Designation

The Pastoral area is intended to protect and maintain those shorelines which have historically been subject to limited human interference and have preserved their natural quality as wildlife habitat and places of scenic beauty. These areas are appropriate for passive agricultural and recreational uses. Areas most appropriate are 1) open spaces used for livestock grazing and harvesting of noncultivated crops, 2) shorelines which have physical limitations which would preclude permanent structures, such as floodplains, meandering streamways, cliffs, and steep slope areas subject to landslides, and 3) wildlife habitats and areas of beauty whose ecological systems will only tolerate limited human interference. Because the areas are not suited for permanent structures, they are valued wildlife areas which provide for grazing and "wild hay" for dispersed-use outdoor recreation. Management of the area should be designed to prevent the loss or reduction of the wetland area and to restrict development from hazardous areas.

The Conservancy Area Designation

The Conservancy Area is designated in Spokane County for the purpose of maintaining the existing character of shoreline resources while providing for nonintensive uses. Those uses that are preferred in the Conservancy Area are those which may utilize the natural resources on a sustained-yield basis. These uses include passive agricultural activity, timber harvesting on a sustained yield basis, and diffuse outdoor recreation. The Conservancy Area is designated to protect agricultural land from encroachment by urban uses while providing for recreation wherever recreation will not interfere with agricultural practices. Nonpermanent kinds of structures and uses which will not reduce the quantity or quality of the physical and biological resources of the area are to be given priority in the Conservancy Area.

The Conservancy Area is intended to prohibit intensive use of areas having physical hazards, severe biophysical limitations which would not be appropriate for rural or urban uses, areas prone to flooding, and areas which cannot provide adequate water supply or sewage disposal for intensive activities.

The Rural Area Designation

The Rural Area is presently used for agricultural, recreational and low density suburban types of development, and/or has the potential of becoming prime farmland.

17.2.2 Bulkheads may be permitted for the following purposes and conditions:

a) Purposes:

- 1) To protect water quality or aquatic life from erosion or siltation.
- 2) To provide public recreation areas, if necessary.
- 3) To provide public access to the waterfront if no other means is available.
- 4) To protect upland areas from erosion.
- 5) To provide private or public access to watercraft.
- 6) To restore lands lost to erosion after June 30, 1972, provided this restoration is completed within two years of the occurrence.

b) Conditions:

- 1) Bulkheads shall be located at or above the ordinary high-water mark.
- 2) Bulkheads shall be of riprap construction whenever feasible and when the riprap does not create hazards or health problems.
- 3) Bulkheads shall not increase the scouring or erosion of adjacent lands or impede stream flow.
- 4) Bulkheads shall not serve the purpose of extending landfills into the water body.
- 5) The existing natural and scenic quality of the shoreline area is protected or enhanced.

18. REGULATIONS FOR PIERS AND DOCKS

The construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of a single-family residence, the cost of which does not exceed ~~\$2,500.00~~, \$10,000.00 is exempt from the permit system. (90.58.030 (3)(e)(vii) RCW)

18.1 The Natural Area, The Pastoral Area

18.1.1 Except for those included in the above exemptions, piers and docks are prohibited.

18.1.2 Floating buoys may be used for moorage to minimize the impact on the natural and aquatic environment.



K



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

February 26, 2010

CERTIFIED MAIL (7003 1680 0007 1587 2001)

Coyote Rock, LLC
608 Northwest Blvd., Suite 103
Coeur d'Alene, ID 83814

Invest Northwest
3508 E. Wellesley Court
Spokane, WA 99202-5268

Dear Sir or Madam:

Ecology Docket #7409

Re: **NOTICE OF CORRECTION** – Unauthorized Dock Placement and Access Through
Shoreline Buffer at 11501 E. Coyote Rock Drive Lot, City of Spokane Valley, WA

THIS NOTICE OF CORRECTION IS TO INFORM YOU OF THE ABOVE-REFERENCED VIOLATION AND TO SEEK YOUR COOPERATION IN BRINGING THIS MATTER INTO IMMEDIATE COMPLIANCE.

Summary of Complaint:

It has come to our attention that you appear to have undertaken unauthorized development along the shoreline of the Spokane River at the address listed above.

A site visit on February 9, 2010 confirmed that a wheeled tractor was used to deliver a dock to the site by driving through the length of the shoreline buffer from the Centennial Trail Pedestrian Bridge to the project site. Damaged vegetation and tracks were evident along the access route. A dock has been placed in the water, secured to the steam bank and with pilings driven in the river bed.

Applicable Shoreline Management Act/WAC/SMP Provisions

RCW 90.58.140 (1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and... the applicable master program.

RCW 90.58.210 (1) Except as provided in ... the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions... to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

Spokane County SMP 5.1 No development shall be undertaken within the shoreline areas of Spokane County unless these regulations and policies... have been complied with and all required permits have been obtained.



Notice of Correction / Docket #7409 - Coyote Rock, LLC
February 26, 2010
Page 2 of 2

Steps Necessary to Comply with this NOTICE OF CORRECTION:

To comply with this NOTICE OF CORRECTION, the following shall be completed by the assigned deadlines:

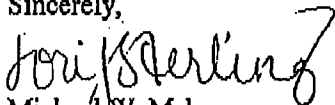
1. **Contact Michael Maher at (509) 329-3584 to discuss the elements, requirements and timetable for restoration of the site no later than 15 days from receipt of this Notice. Ecology will coordinate with applicable agencies for review and concurrence with the goal and intent of the draft restoration plan.**
2. **Submit your restoration plan to Ecology within 45 days of receipt of this notice. Ecology will review the plan for consistency with the goals and policies of the Spokane County Shoreline Master Program. We will provide written approval of the plan or return it for modification within 15 days of receipt.**
3. **Secure any permit or authorization required by the applicable agencies prior to commencing restoration of the site.**
4. **Complete restoration of the site, per the above mentioned plan, no later than 90 days from receipt of this Notice.**

Please note that, according to RCW 90.58.210 (2) Any person..... who shall undertake development on the shorelines of the state without first obtaining any permit required ...shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Failure to comply with this NOTICE OF CORRECTION will result in immediate enforcement action and may result in an assessment of penalties in the amount of \$1,000 per day for each day that development activities took place and for each day the violation continues beyond the deadlines above

Contacts for Obtaining Technical Assistance or Extension of Compliance Deadlines:

To obtain technical assistance in complying with this NOTICE OF CORRECTION or to request an extension (for good cause) of the compliance deadline, please contact me at (509) 329-3584 or through email at mmah461@ecy.wa.gov.

Sincerely,



Michael W. Maher
Shorelands Compliance Coordinator
Eastern Regional Office

for

MWM:ljs

cc: Greg McCormick, Planning Manager, City of Spokane Valley
Sara Hunt, ERO
Jaime Short, ERO
Jeff Lawlor, WDFW

Young, Tom (ATG)

From: Cochrane, Cathy (ECY)
Sent: Monday, April 12, 2010 1:36 PM
To: Hunt, Sara (ECY); Pfeifer, Grant D. (ECY); Maher, Michael W. (ECY); Pineo, Doug (ECY)
Subject: Inlander: Coyote Rocks and the Riverkeeper (no mention of Ecology)

Pacific Northwest Inlander
April 7, 2010

Dock Fight

A developer dreams of 30 new docks on the Spokane River, but environmental activists aren't too happy about it

Daniel Walters

Owning property on the shores of the Spokane River is a rare and valuable thing. Add a dock, says Cliff Mort, president of Neighborhood, Inc., and that value doubles or triples.

That's what Mort was thinking when, in 2005, he bought 60 acres -- including 30 parcels along the river -- in Spokane Valley above Upriver Dam. That's what he was thinking when he pumped \$4 million into sewer infrastructure, turning dumpsites and gravel pits into habitable, developable land.

He called it Coyote Rock Acres. The price for a building-less waterfront parcel begins at \$299,500.

But those docks have become a prime target for ecological activists. With one dock built already, Trout Unlimited and Rick Eichstaedt, Center for Justice's Riverkeeper, have challenged the permits Fish and Wildlife have issued.

They're worried about fish.

At first, that seems counterintuitive. Fish like docks, right? They congregate under them.

That's the problem. For bass, at least, the darkness beneath a dock makes a perfect hiding place. Redband trout like the shade as well, Eichstaedt says. When small redband trout meet largemouth bass, the bass leave with a full stomach.

Add 30 new docks, Eichstaedt worries, and watch the non-native bass population skyrocket while the redband trout population sinks even further.

But Fish and Wildlife approved the permit anyway. After all, in the paperwork submitted, there was only one dock-building request.

That's where Eichstaedt cries foul. Instead of asking for approval for 30 separate docks, all in one swoop, Neighborhood, Inc. is asking for one dock permit at a time. "They are trying to evade the impact for the project," Eichstaedt says. "If that's what they want to do, we will appeal it 30 times."

Eichstaedt is asking Fish and Wildlife to consider the cumulative impact. "How many docks does it take until they realize it's going to have an impact?" Eichstaedt says.

Jeff Lawlor, with Fish and Wildlife, explains that his job is to look merely at current requested permits. If they have to consider any possible future developments, Lawlor says, it gets rapidly more complicated.

Neighborhood, Inc. hasn't sold all 30 properties yet, Mort says. With the dour real estate market, that may take a long time. Since each future builder may have a different vision, it makes more sense to him to help each builder apply individually.

Mort doesn't believe his docks will harm the fish.

"I've been a fan of fly-fishing since I was a kid," Mort says. "I don't know that docks in this particular area, based upon my research, are spawning areas..."

Locals have other concerns. Fly-fisher Mark Pinch hears grumblings of neighbors who worry that the docks may damage the river's aesthetic.

Spokane Fly Fishers member Judy Kaufman would prefer a community dock that everybody can use. "I'm not going to buy expensive property in the river. I am left with lesser access," Kaufman says. "That is not equitable."

Neighbor Dan Hansen, however, has the opposite worry. He remembers the days before the Sheriff's department shut down the informal boat launch at Boulder Beach, when the river was packed with motorboats. "My concern is you're taking a quiet stretch of river and putting however many boats on it," Hansen says. "It's going to become very congested."

The Spokane Valley shoreline master plan is currently being updated. If neighbors want to, say, add a new no wake-zone or restrict dock use, Spokane Valley spokesperson Carolbelle Branch says, a public comment period on the revised plan will open soon. (Of course, since the parcels Mort bought were originally formed in 1906, they may escape most new regulations.)

For Mort, at least, getting those docks approved is crucial. "We wouldn't have put in all the infrastructure had we have not thought that docks are an allowable use," Mort says.

Young, Tom (ATG)

From: Cochrane, Cathy (ECY)
Sent: Monday, April 12, 2010 1:31 PM
To: Hunt, Sara (ECY); Pfeifer, Grant D. (ECY); Maher, Michael W. (ECY); Pineo, Doug (ECY)
Cc: Gilbert, Janis (ECY)
Subject: Spokesman-Review: Coyote Rocks shoreline violations, Ecology mentioned (highlighted below)

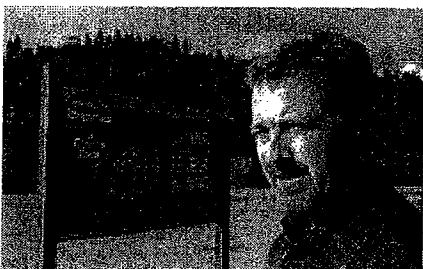
The Spokesman-Review
April 8, 2010

River lots approved

Private docks violate city, state regulations, agency says

Nina Culver

The Spokesman-Review



Real estate developer Cliff Mort has been granted approval by the Spokane Valley Hearing Examiner to build 51 single family homes on a 10.98-acre parcel of land along the Spokane River. The development is called Coyote Rock, and, as a whole, will include about 250 homes.

A developer has been granted permission by the Spokane Valley Hearing Examiner to place 51 single family homes on a 10.98-acre parcel of land that is part of the Coyote Rock development along the Spokane River, but plans to add private docks on another part of the development have hit a snag.

The 60-acre project is located between Empire Way and the Spokane River across from Plantes Ferry Park where a footbridge carries the Centennial Trail across the river.

Neighbors had expressed concern about roads leading into the project being too narrow to handle increased traffic.

The decision by hearing examiner Mike Dempsey approved the preliminary plat for the 10-acre section with some revisions. A 2.6-acre "remainder lot" may need to be left empty to meet open space requirements and the developer must stop work if any Native American artifacts are unearthed during construction, Dempsey wrote.

Developer Cliff Mort, president of Coeur d'Alene-based Neighborhood Inc., said he doesn't anticipate finding any artifacts on the parcel because it was a former gravel pit that he filled in. "We moved all of this dirt in here and nothing was found during site construction," he said.

Mort also doesn't believe he needs the 2.6-acre section as open space because of the 30-acre Myrtle Point Park next door. The Centennial Trail also follows the Spokane River shore in front of the development. "We don't have to set it aside," he said. "We've satisfied the open space requirement in other areas."

Mort plans to put in another road this spring and then begin building on the parcel Dempsey's decision approved. "These will be sold this summer, or be for sale," he said.

The development as a whole will include about 250 homes, including 30 on waterfront parcels that were platted in 1908. Those home sites are being heavily marketed as being the on "Spokane's last section of boatable waterfront" with "private docks."

The dock issue may be a more notable stumbling block than getting the hearing examiner to approve the preliminary plat.

A spec home is being built on a waterfront lot by Invest Northwest. A permit to install a dock was granted, but the Department of Fish and Wildlife stipulated that the dock could only be installed between June 16 and Aug. 31 to protect spawning fish. The dock was installed sometime around the end of January or the beginning of February in violation of Wildlife's project approval.

In an on-site interview, Mort denied any knowledge of the dock issue. "I don't understand why we're pointed at as a criminal," he said.

While the Fish and Wildlife hydraulic project approval was applied for by Invest Northwest, it is Mort's cell phone number that is listed as the contact. Mort also signed the SEPA checklist for the dock, said Jeff Lawlor, area habitat biologist for the Department of Fish and Wildlife. Mort did not return messages seeking additional comment.

Lawlor said that whoever installed the dock also violated the city of Spokane Valley's shoreline ordinance. He found tractor tracks leading from a nearby road that traveled along a significant section of the shoreline. The heavy equipment left crushed vegetation and broken trees in its wake, which Lawlor photographed. Fish and Wildlife's approval was also contingent on the requirement that shoreline vegetation be disturbed as little as possible and be fully repaired after installation.

The dock has been fully installed, but a second dock was apparently brought in at the same time and is sitting in the water, chained to a tree, Lawlor said. That, too, is a violation.

Spokane Valley associate planner Micki Harnois said a second dock permit was applied for by Monarch Development, one of the builders associated with the development. The application is on hold because of the issues with the first dock permit, she said.

Lawlor said his biggest concern is the impact to the shoreline. "I was really upset that they (city of Spokane Valley) entertained a permit for a dock without a shoreline application," he said. "They're not independent actions."

The city has not taken any action on the shoreline violation but the Department of Ecology is, Lawlor said. "They're just sitting in the back seat and watching the Department of Ecology file," he said. "They should be taking the lead. It's their ordinance that has been violated."

Spokane Valley Planning Manager Greg McCormick said that DOE has issued a violation notice. "I'm kind of waiting to see where that goes before we proceed," he said. "I'm working with the Department of Ecology. We have not started any enforcement action. This needs to be a coordinated situation."

McCormick said a shoreline exemption that would have allowed installation of the dock was applied for, but it has not been granted. "We're working on it," he said.

Lawlor said he was also worried about how residents would get from their homes to any docks. There are no access points being built and if people just walk down to the shore and create paths that would also be a violation of the shoreline ordinance.

That may not be the only issue facing owners of shoreline homes in the Coyote Rocks development. The only river access for the boatable stretch of the river between Upriver Dam and the Centennial Trail footbridge is a boat launch owned by the city of Spokane at the dam.

Upriver Dam superintendent Mark Cleveland said the launch is not open to the public. The city has an informal "goodwill" agreement with Millwood residents to open the launch for one day every spring to allow residents to put their boats in the water. It is opened again in the fall for one day so the boats can be removed.

Neighborhood Inc. has not asked the city for access to the boat ramp, Cleveland said. Without it, homeowners would be unable to get any boats in the water. "They would have to negotiate with the city of Spokane for access," Cleveland said. "Otherwise they would have to figure out a way to portage them in off their own property, but then you have shoreline concerns. You're not supposed to disturb the land within 100 feet of the water."

There are about 50 or 60 docks currently on the river in the Millwood area, Cleveland said, and he would have concerns about increased river traffic. "You're adding 30 docks," he said. "It's a very small waterway."

Residents of the new development would also be limited to the stretch of river between the dam and the Centennial Trail footbridge from April 16 to Oct. 14, said Spokane County Sheriff Marine Deputy Patrick Bloomer. Power boats are not allowed east of the footbridge during the high river traffic months because it is considered a whitewater area, Bloomer said.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

May 4, 2010

Ms. Micki Harnois, Associate Planner
City of Spokane Valley
Community Development Department
11707 East Sprague Avenue, Suite 106
Spokane Valley, WA 99206

Dear Ms. Harnois:

Thank you for the opportunity to provide comments regarding a proposal to construct a private dock on pilings in the Spokane River (Proponent-Monarch Development, Inc.). The Department of Ecology has reviewed the documents and would like to submit the following comments:

Shorelands and Environmental Assistance Program

The Shoreline Master Program (SMP) designates the shoreline area in question as being in the Pastoral Environment. The Pastoral designation, with its relatively restrictive goals, policies and use regulations, is intended to preserve and enhance those shorelines which have historically been subject to limited human interference and have preserved their natural qualities as areas of wildlife habitat and scenic beauty. Management of these shoreline areas is focused on preventing their loss or reduction. This particular reach of the Spokane River still has the majority of its riparian vegetation intact and provides significant function and value to wildlife, water quality and aesthetics.

In an effort to preserve these fragile and rare environments the SMP prohibits all piers and docks in the Pastoral environment. Necessary moorage in these shoreline environments is to be provided by floating buoys to minimize impacts. The use regulations in the SMP prohibit all docks in this environment except for those docks "designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of a single family residence, the cost of which does not exceed \$10,000..." which can be authorized via the "exemption" from the substantial development process.

Chapter 173-27 WAC, Shoreline Management Permit and Enforcement Procedures, at 173-27-040 1(a) requires that exemptions be construed narrowly and that only exemptions meeting the precise terms of one or more of the listed exemptions be granted exemption from the substantial development process.

Ms. Micki Harnois
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As can be plainly seen from both the language in the SMP and from WAC 173-27-040 2(h) the dock exemption's precise terms require that the dock be "for the private noncommercial use of the owners, lessee or contract purchaser..." emphasis added. The application submitted and conversations with the developer and home builder make it perfectly clear that this is a spec home and a spec dock. It has not been purchased for the private use of an owner as of yet.

In summary, no docks other than those meeting the precise terms of the exemption, which these docks obviously do not meet, can be constructed in this environment. And, until the residence is purchased, no docks can be constructed along this reach of the river. After the spec home is sold and the new owner decides they would like a dock, application could be made.

As can be seen by the existing illegal dock, the real impact from docks in this location is in developing access through the shoreline buffer to access the dock. We believe that the intent, goals and use policies of the SMP will require limiting access and the destruction to the riparian corridor inherent in developing that access, through the use of joint access and docks. The cumulative effects of locating 30 individual docks and access on this reach of river will result in complete degradation of the shoreline and should be reviewed and quantified prior to any dock authorization.

Contact Mike Maher at (509) 329-3584 for more information.

State Environmental Policy Act (SEPA)

Ecology's comments are based upon the information provided with the SEPA checklist. As such, they do not constitute an exhaustive list of the various authorizations that must be obtained or legal requirements that must be fulfilled in order to carry out the proposed action.

Sincerely,



Terri Costello
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C-2010-2145

cc: Monarch Development, Inc.