

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF KENNEWICK**

In the Matter of the Application of)	SDP 20-01/PLN-2020-02001
)	FINDINGS,
Clover Island Yacht Club)	CONCLUSIONS and
for a Substantial Development Permit)	DECISION
_____)	

SUMMARY OF DECISION

A Substantial Development Permit for the replacement and remodel of boathouses of the Clover Island Yacht Club at Southwest Clover Island, east of the Clover Island Drive causeway, in Kennewick Washington, is granted, subject to the conditions as listed herein.

INTRODUCTION

The Clover Island Yacht Club (Applicant) requested approval of a Shoreline Substantial Development Permit (shoreline permit) for the replacement and/or remodel of boathouses of the Clover Island Yacht Club at Southwest Clover Island, east of the Clover Island Drive causeway in Kennewick, Washington.¹ Included in the shoreline permit request is work that was proposed as part of a Clover Island Yacht Club’s issued 2016 Substantial Development Permit. However, the work permitted by that shoreline permit was not completed before that shoreline permit lapsed.

Date and venue of hearing

A hearing on the request was held before the Hearing Examiner of the City of Kennewick on November 9, 2019. Because of Covid-19 restrictions the hearing was held on-line. All required participants were given notice of the hearing and notice of the on-line venue.

Witnesses at hearing

At the hearing the following presented testimony and evidence:

Mr. Steve Donovan-City of Kennewick

¹ The legal description of the site is:

Beginning at the Southeast corner of lot 14, Plat of Clover Island, Thence 4° 18’00” E a distance of 18.6 feet more or less, Thence S 5° 42’00” W a distance of 23.4 feet more or less to the intersection with the Ordinary High Water Line of the McNary Pool and the TRUE POINT OF BEGINNING, Thence N 5° 42’00” W a distance of 526 feet, Thence N 84°18’00” W a distance 400 feet more or less, Thence N 5° 42’00” a distance of 527 feet more or less to the Ordinary High-Water Line of the McNary Pool. Thence Southeasterly along the OHWL of the McNary Pool for a distance of 400 feet more or less to the TRUE POINT OF BEGINNING.

Mr. Greg McCormick-City of Kennewick
 Mr. Steve Sigler-Applicant's Representative
 Ms. Julie Cunningham-Applicant's Representative

Exhibits admitted as part of the public record

At the hearing the following exhibits were submitted and admitted as part of the administrative record of the hearing:

1. Staff Report
2. Application
3. Notice of Public Hearing/Mailing List
4. Vicinity Map
5. Boathouse Replacement Location and Construction Location Maps
6. Application Narrative and Clover Island Yacht Club Boathouse Standards
7. Clover Island Public Access Plan – Appendix A-6-2
8. Hydraulic Project Approval, dated October 6, 2016
9. Department of Army, NWS-2011-972, dated July 6, 2017
10. Determination of Non-Significance Adoption of Existing Document, dated August 5, 2020
11. Benton Public Utility District, Date August 7, 2020
12. Kennewick Irrigation District, dated August 11, 2020
13. BPA Response, dated August 14, 2020
14. Memorandum – Fire Department, dated August 17, 2020
15. Hard copy of Power Point presentation

Based upon the testimony and evidence admitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions.

FINDINGS OF FACT

1. Many of the existing boathouses on site at the Clover Island Yacht Club in Kennewick, Washington were constructed between 1950 through 1972. While the initial development at the site predated the requirements of the Washington State Shorelines Act, *RCW 90.58*, construction on site is now subject to review of the Shorelines Act. Since the enactment of *RCW 90.58*, shoreline permits have been issued for the activity.² The Applicant is in the process of replacing dated structures and seeks a shoreline permit to continue replacement and remodeling work for seven boathouses. The replacement and remodel of boathouses will be consistent with other boathouses that have been updated. The updates will be consistent with required Clover Island Yacht Club standards and regulations as set

² Shoreline permits for the replacement or remodel were issued in 2002, 2008, 2011 and 2016.

forth in the Shoreline Act and the Kennewick Shoreline Master Program (SMP). *Exhibit 1, pg.2-3.; Testimony of Mr. Donovan.*

2. In addition to the shoreline permit, the Applicant requested an increase of approximately 10% for the size of the rebuilt or remodeled boathouses. *Testimony of Mr. Sigler. KMC 18.68.070(5)(a)(ii)(B)* restricts the size of new over-water structures to the minimum necessary to support the structure's intended use. *Exhibit 5.* Many of the boathouses to be replaced are smaller boathouses that were in the 1979's and 1980's. According to the City's review of the request, the increased size is the minimum necessary to accommodate the larger boats that yacht club members now have as opposed to 40 or 50 years ago, and, to improve the aesthetics of the area. *Testimony of Mr. Donovan and Testimony of Mr. Sigler.* The additional overwater coverage is relatively minimal and it is staff's opinion that there will be no significant impacts to the environment. *Testimony of Mr. Donovan.*
3. Clover Island is zoned Commercial Marina (CM) by the City. When constructed, the boathouses will be located in the water at the west end of Clover Island, between Clover Island and a levee. *Testimony of Mr. Donovan.*
4. The replacement boathouses will be constructed on vacant Port of Kennewick property at the west end of Clover Island. Once built, each structure will be lifted into the water and then moved by flotation into its proper space. The work will include full encapsulated foam for flotation. There will be no pile driving activity during the construction process and all new exterior lighting will be fully shielded. The anchoring of the new boathouses will be done with use of existing posts and docks. *Testimony of Mr. Donovan; Testimony of Mr. Sigler.*
5. Because a shoreline permit for the boathouse work has lapsed, approval of the requested shoreline permit is required to continue the activity. *Exhibit 1, pg.2-3; Testimony of Mr. Donovan.* The project is being reviewed to determine if there are any parts of the development that would interfere with the normal public use of the water or shorelines of the State. *Testimony of Mr. Donovan; Exhibit 1, pg. 3*
6. There is a Clover Island Master Plan that provides guidance for development of the island. While the boathouse area is shown on the Clover Island Master Plan, the plan does not specifically address boathouses and restrictions on their development. Without specific directions from the Master Plan, the City determined that proposed boathouse replacement project is not in conflict with the SMP and other uses aquatic in the area. Further, the City determined that the proposed replacement project is not in conflict with other provisions of the Clover Island Master Plan. *Exhibit 1, pg. 4*
7. The Applicant submitted an historical "existing and proposed overwater coverage map" that depicted the boathouses that have been replaced since 2008 and the seven boathouses that will be expanded or replaced. The current list of seven

replacements and expansions is listed in the footnotes.³ *Exhibit 5*. All work will be done to Clover Island Yacht Club boathouse standards. *Exhibit 6; Testimony of Mr. Sigler*

8. All of the proposed houseboat construction activity will be within the 200-foot of the ordinary high-water mark. The ordinary high-water mark is determined by the Corps of Engineers and all the proposed activity is subject to the City of Kennewick Shoreline Management code. In addition to the shoreline distance criteria, the total cost of the proposed development exceeds \$7,047, the monetary threshold, and is a “Substantial Development” as defined in *RCW 90.58.030 f(v)B*. Pursuant to *RCW 90.58.030* and *KMC 18.68.230* a Substantial Development Permit is required⁴. *Exhibit 1, pg. 3; Testimony of Mr. Donovan.*
9. The City’s Master Shoreline Program (MSP) designates the site as an Aquatic Environment. *KMC 18.68.070(5)(iii)(A)*. The portion of the site proposed for boathouse replacement is waterward of the ordinary high-water mark. “Water Dependent” uses are allowed in the Aquatic Environment. (*KMC 18.68.130*), but a Substantial Development Permit is required for “Water Dependent” uses. The City’s Planning Department reviewed the proposed use and determined that that the proposed boathouse replacement and remodel would be consistent with Aquatic Environment management policies. *Testimony of Mr. Donovan; Exhibit 1 pg. 3; Exhibit 15*
10. The area of the site for the construction of the boathouses will be a vacant lot that is classified in the MSP with a Clover Island High Intensity designation. The City’s Planning Department reviewed this segment of the proposed use and determined that the construction would be consistent with the Clover Island High Intensity management policies. *Testimony of Mr. Donovan; Exhibit 1, pg. 3*
11. Water access from Clover Island is a requirement of the SMP. The lot that is proposed to be used for boat construction will provide future public access. The temporary use of the lot for boathouse construction will not prevent part of an access pathway from being completed with future development of the lot. The entire project will not interfere with the Port of Kennewick’s plans for extending walking paths on the perimeter of Clover Island, as well as supporting boating activity. The Public access requirements are being satisfied. *Testimony of Mr. Donovan; Exhibit 1, pgs. 3 and 4; Exhibit 7.*

³ Reference is made to exhibit 5 of the public record. The boathouses that remain to be expanded or replaced are identified as: slips A-2, A-6, and A-15; B-2, B-8 and B-9; C-10.

⁴ In the SMP the site is included in Map Segment D. *SMP pg. 1*

12. In designated Aquatic Environments the maximum building height is 35 feet above the ordinary high-water mark. For the instant project no structures will exceed this height. *Testimony of Mr. Donovan.*
13. Flotation material will be encapsulated within a shell that prevents breakup or loss of flotation material. The flotation material also will not be located where it impedes fish passage. The existing covered boat facilities (boat garages, covered moorage) will be composed of clear translucent materials that have a minimum 25% light transmittance in either the roof material or exposed wall; The night lighting will be oriented to minimize illumination of surrounding waters.
14. Based on the information presented by the Applicant, including plans and maps, and the Applicant's prior acceptable activity performed on site, the City recommended approval of the Substantial Development Permit. For the proposed development, appropriate provisions will be made for the public health, safety and welfare. *Testimony of Mr. Donovan; Exhibit 1, pgs. 1-5*
15. Subsequent to a review by the Planning Department, the City recommended approval of the shoreline permit subject to stated conditions. The basis of the City's recommendation is that the location, design and construction of proposed development and replacement in this shoreline area will be able to be done in a manner that protects the public's health, safety, and welfare, as well as the land and the vegetation and wildlife. The proposed project will protect property rights while implementing the policies of the Shoreline Management Act. *Testimony of Mr. Donovan.*
16. Other governmental requirements and regulations have been addressed. The Washington State Department of Fish and Wildlife issued a Hydraulic Project Approval (HPA) (2016-3-72+01) on October 6, 2016. This HPA applies to the instant project and will remain effective until it expires on September 20, 2021. The required mitigation for the HPA has been completed as part of the activity approved by HPA #124757-1. *Exhibit 1, pg. 3; Exhibit 8, pgs. 1-4.* Another agency, the Army Corps of Engineers, issued permit NWS-201-972 on July 6, 2017 for work proposed by the Clover Island Yacht Club. A condition of the Corps permit is that the proposed work must be completed before the permit expires on March 18, 2022. *Exhibit 9; Testimony of Mr. Donovan.* The shoreline permit will be valid for two years with a possible one-year extension. *Testimony of Mr. Donovan.* The HPA permit and the Corps permit could lapse during the life of the shoreline permit but those permits can be renewed. During the construction of the proposal the Applicant must have active permits, including the HPA, the Army Corps and City building permits. *Testimony of Mr. Donovan; Testimony of Mr. McCormick*
17. Pursuant to the Washington State Environmental Act (SEPA) (*RCW 42.21c*) the City of Kennewick was designated as the lead agency for the review of any environmental impacts that could be caused by the proposed development. On

August 5, 2020 the City issued a threshold decision of Determination of Non-Significance for the project. *Exhibit 10; Testimony of Mr. Donovan*. No appeals were filed.

18. The shoreline development request has been reviewed pursuant to the City's Comprehensive Plan. The Planning staff determined that the proposal is consistent with, and generally conforms, to the Comprehensive Plan, and that it will implement the goals and policies of the Plan. *Exhibit 1, pg. 4; Testimony of Mr. Donovan*.
19. The project has been reviewed pursuant to the SMP. The Staff concluded that the project, subject to conditions recommended by the City, complies with the City of Kennewick Shoreline Management ordinance and the requirements of the Comprehensive Plan section CRITICAL AREAS AND SHORELINE GOAL 3: and will regulate or mitigate activities in or adjacent to critical areas or the shoreline to avoid adverse environmental impacts. *Exhibit 1, pg. 4*
20. The proposed project will not interfere with the Port of Kennewick's plans for extending walking paths on the perimeter of Clover Island. The project will support boating activity. The project is consistent with CRITICAL AREAS AND SHORELINE GOAL 4: and will encourage and support public access to the shoreline for recreational purposes. *Testimony of Mr. Donovan; Exhibit 1, pgs. 3 and 4; Exhibit 7*.
21. The proposed project has been reviewed by the Washington State Department of Fish and Wildlife and approval is valid until September 30, 2021. It satisfies the CRITICAL AREAS AND SHORELINE GOAL 2, POLICY 3: and will preserve and protect anadromous fish and threatened, endangered and candidate species as identified by federal and state agencies." *Testimony of Mr. Donovan; Exhibit 1, pgs. 3 and 4*
22. The proposed project will replace and remodel boathouses in a CM zoning district and will contribute to revitalization of Clover Island. By doing so, the project is consistent with the Comprehensive Plan COMMERCIAL GOAL 1: and will revitalize declining commercial areas. *Testimony of Mr. Donovan; Exhibit 1, pg. 4*

CONCLUSIONS

Relevant law

Jurisdiction: The Hearing Examiner of the City of Kennewick has jurisdictional authority to hold a hearing and to issue the decision. That authority is set forth in KMC 4.02.080(1)(b)iii.

Relevant statutes and ordinances and regulations:

WAC 173-27-140 Review criteria for all development.

No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review. The use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.

KMC 18.68.070: - Policies—Environment Designation of Shorelines.

(1) The City of Kennewick environment designation (ED) classification system consists of three shoreline environments. These environment designations have been established based on the findings in the Shoreline Inventory and Assessment Report of 2005. The delineation of each environment has been aimed to assure the protection of existing shoreline ecological functions. Such designations are consistent with policies for restoration of degraded shorelines, and aquatic and riparian habitat enhancement. The three shoreline environments are:

- (a) Aquatic;
- (b) Clover Island High Intensity; and
- (c) Urban Conservancy.

RCW 90.58.140- Development permits — Grounds for granting permit

- A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.
- A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter
- A permit shall be granted:
After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

KMC 18.68.230(1)

KMC 18.68.230(1) states that applications for a Substantial Development Permit must comply with submittal requirements of 18.68.260 and state that “A Substantial Development Permit shall be granted only when the development proposed is consistent with:

- a. The policies and procedures of the Shoreline Management Act;
- b. The provisions of this regulation; and
- c. The adopted Shoreline Master Program for Kennewick’s shoreline.”

KMC 18.68.070(5)(a)(ii)(B)(5)

The following policies apply to lands falling under the respective Environment Designation:

- (a) "Aquatic" Environment.

(B)(5) The size of new over-water structures shall be limited to the minimum necessary to support the structure's intended use.

Washington State Environmental Act-RCW 43.21C

City of Kennewick Comprehensive Plan

Conclusions based on facts of administrative record of request

1. The Applicant is in the process of replacing dated structures and seeks a shoreline permit to continue replacement and remodeling work for seven boathouses. The replacement and remodel of boathouses will be consistent with other boathouses that have been updated. The updates will be consistent with required Clover Island Yacht Club standards and regulations as set forth in the Shoreline Act and the Kennewick Shoreline Master Program (SMP). *Findings of Fact Nos. 1, 15, 17-22*
2. Pursuant to its review of the Permit, the City of Kennewick Planning Staff concluded that the proposed improvements on Clover Island are consistent with the policies and regulations of the City of Kennewick's Shoreline Master Program. The staff also concluded that the proposed project will have no negative impacts on ecological shoreline functions. The proposal will be consistent with, and will conform to, the City's Comprehensive Plan. It will be developed to implement, goals and policies of the Comprehensive Plan. *Findings of Fact Nos. 9-10, 14, and 17-22*
3. The project, as conditioned, will be consistent and comply with the City of Kennewick Shoreline Management ordinance and will increase public access to the shoreline. After construction, the boat houses will be upgraded and will be able to accommodate the boats that are actively used by the public. The site will provide safety along the shoreline; and will provide a functional and orderly moorage for the public. *Findings of Fact 6 and 9-10.*
4. Based on the City's shoreline master plan and map and the facts and law presented in the staff report for the shoreline permit, the proposed project is consistent with the policies and regulations of the City of Kennewick's Shoreline Master Program. The proposed work for this application will increase the usefulness of the boat moorage, provide more public access to the shoreline, and is consistent with the state and local shoreline policies and provisions. *Findings of Fact Nos. 6, 9-10, 11. 14-17 and 18-22.*
5. With conditions of approval, the proposed development is consistent with the policies of Chapter 90.58 RCW. *Findings of Fact 1-22*
6. Chapter 90.58 RCW, the Washington State Shoreline Management Act of 1971, establishes a cooperative program of shoreline management between the local and state governments. The local government (City of Kennewick) has the primary responsibility

for initiating the planning required by the chapter and administering the regulatory program consistent with the Shoreline Management Act. The Kennewick Master Program provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW. The proposed improvements to the boathouses at Clover Island will benefit the shoreline with a more efficient and aesthetic moorage; will provide an area for greater accessibility to the shoreline. The structure will also provide for an economic use of the property. *Findings of Fact Nos. 1-22*

7. The City reviewed the project pursuant to its Shoreline Master Program and Shoreline Map. The proposal is a permitted use with a Shoreline Permit in the designated environment as established in the SMP. The proposed boathouse improvements will be consistent with the regulations and requirements of these documents. *Findings of Fact Nos. 1-22*
8. There will be no significant environmental impact to the shoreline will not be created by the project. *Finding of Fact No.17.*
9. The proposed development will be consistent with the policies and procedures of the State Shoreline Act, the regulations of KMC chapter 18.68 and the regulations and restrictions of the City's Shoreline Master Program. *Findings of Fact Nos. 9-22*
10. The proposed development will be consistent with the City of Kennewick's stated purpose for the Clover Island High Intensity Environment. It will provide economic development and recreation opportunities that add to existing water dependent uses and near-shore ecological functions and maintaining view corridors consistent with the Clover Island High Intensity Special Area Plan Standards. *Finding of Fact No. 11.*
11. The Applicant requested an increase of approximately 10% for the size of the rebuilt or remodeled boathouses. Although, *KMC 18.68.070(5)(a)(ii)(B)* restricts the size of new over-water structures to the minimum necessary to support the structure's intended use, the City has determined that the increase is warranted and justified to accommodate the size of boats used by the public. *Finding of Fact No. 2*

DECISION

Based on the testimony and evidence of the official administrative record and the above stated Findings of Fact and Conclusions, a Shoreline Substantial Development Permit for the replacement and remodel of boathouses at Southwest Clover Island, east of the Clover Island Drive causeway, in Kennewick Washington, is granted subject to the conditions as listed herein.

1. The Applicant and/or its successors must comply with City of Kennewick and State of Washington regulatory controls, policies and codes, including, but not limited to, the City's Ordinance for Shoreline Management KMC 18.68.
2. The upland construction site for the boathouses shall not impact existing Clover Island public access and the accessibility of the public to reach, touch, and enjoy the water's edge.
3. The maximum building height of any structure constructed or placed on Clover Island Yacht Club site shall not be more than 35-feet above the ordinary high-water mark (KMC 18.68.110(e)(iii)(D)).
4. All floatation material must be encapsulated within a shell that prevents breakup or loss of flotation material. No flotation can be located in any area where it will impede fish passage.
5. Any new boathouses that replace an existing structure shall be composed of clear translucent materials that has a minimum 25% light transmittance in the roof material and exposed wall.
6. All night light that emanates from the boathouses must be oriented to minimize illumination of the surrounding waters. Exterior lighting must be shielded to comply with the City of Kennewick lighting ordinance.
7. Residential use of the boathouses is prohibited.
8. By September 30, 2021, a new Hydraulic Project Approval (HPA), or a letter that stating an HPA permit is not required, must be obtained by the Applicant, from the Washington State Department of Fish and Wildlife prior to issuance of building permits and commencement of any work.
9. All proposed construction is subject to the Army Corps of Engineers requirements referenced in NWS-20111-972.
10. In order for work to commence or continue all required permits must be active.
11. For the disturbed areas of the upland site that are used for construction, the Applicant, and/or its successors, must provide a means of dust control approved by the city of Kennewick.
12. An NPDES Construction Stormwater General Permit is required from the Washington State Department of Ecology for any stormwater discharge from the construction site with more than one acre of disturbed ground. It is the Applicant's responsibility to obtain required stormwater permits from the Washington State Department of Ecology.
13. Building permits must be applied for within two (2) years as required by the Shoreline

Management Act. The entire project must be completed within five (5) years of the date of approval.

Dated this 17th day of November, 2020

James M. Driscoll-Hearing Examiner