

July 20, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **A08F0014**

W.M. LUKE LUKOSKIE

Fee Appeal

Location: 21600 block of Dockton Road Southwest (Tramp Harbor), Vashon Island

Appellant: **W.M. Luke Lukoskie**
16254 Westside Highway Southwest
Vashon, Washington 98070
Telephone: (206) 953-7656

King County: Department of Development and Environmental Services
represented by **Doug Dobkins**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing opened:	October 7, 2008
Hearing closed:	October 7, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. The subject property lies on the east shore of Vashon Island in Tramp Harbor. Its waterfront consists of a bulkhead (of post and timber and concrete construction), as well as a barge loading/unloading ramp. The barge ramp is evidently the only barge ramp on the island and provides a transportation terminus alternate to the Washington State Ferry system, particularly for large freight.
2. In early April 2008, the north 25 feet of the bulkhead collapsed into Puget Sound. Mr. Lukoskie engaged a contractor to construct a temporary repair of the collapse. Mr. Lukoskie contends that such repair was immediately necessary to prevent sedimentation from the collapse and further erosion of the unprotected shoreline and also to protect the remaining bulkhead on the property, which was thought to be in imminent danger of collapse as well.
3. On April 11, 2008, DDES issued a Stop Work Order (SWO) for the temporary repair work.
4. In response to the SWO, Mr. Lukoskie hired a geotechnical engineer to conduct a site inspection and prepare plans, and applied for King County and Washington State Department of Fish and Wildlife (WDFW) emergency permits for the repair work.
5. DDES personnel conducted site and plan reviews in response to the emergency permit application and engaged in site inspections, including meetings on the site among several DDES personnel (the nature of the work and permit involving several different professional disciplines), consultation with Mr. Lukoskie and his engineer, coordination with WDFW, and numerous inter-party communications. The reviews included necessary critical area review as well as clearing and grading permit review.
6. Permit review-related staff time is charged to project applicants under county code. For its emergency permit review time, DDES formally billed Mr. Lukoskie the amount of \$2,135.00. (DDES notes that not all of the actual time undertaken for the permit review was charged.)
7. During the time of the emergency permit review by the county, the property's bulkhead experienced further collapse, with another approximately 50 feet of the bulkhead collapsing.
8. Mr. Lukoskie filed a fee waiver request with DDES for the emergency permit fee billing. The request for fee waiver noted the costs of the initial temporary repair work (terminated by the Stop Work Order) as well as an estimate for the entire permanent repair, which Mr. Lukoskie claims was greatly increased in cost due to the inordinate length of the emergency permit review by DDES (approximately 59 days). Mr. Lukoskie also notes that the bulkhead collapse constituted a natural disaster, the implications of which (brought out in the later appeal to the Hearing Examiner) should justify a fee waiver under county code. Lastly, Mr. Lukoskie noted that the subject barge loading ramp has been identified by a Vashon emergency preparedness committee "as the only known place on Vashon Island where in the event of a regional disaster which incapacitated the ferry system waterborne transportation could be loaded and unloaded," and that repair of the subject collapse is therefore a public necessity. Mr. Lukoskie requested a complete waiver of the fees associated with the emergency permit, and any fees associated with a future final work permit, as well as reimbursement of his direct costs to repair the portion of the collapse occurring after the SWO was issued.

9. In response to Mr. Lukoskie's July 22, 2008 fee waiver request, DDES on July 25, 2008 denied the request, finding that the staff review time charged to the permit was found to be valid, and noting that the request for reimbursement for repair work associated with the collapse after the stop work order was issued was not a matter addressable by permit fee waiver but through some other claims forum. (DDES suggested that Mr. Lukoskie address his claims to the County's Risk Management Office.)
10. Mr. Lukoskie appealed DDES's fee waiver denial to the Examiner, enclosing his fee waiver request with his appeal letter and also stating his understanding of county regulation that in cases of natural disaster permit fees may be waived, and reiterating the public necessity of maintaining the subject barge facility. There is no claim or statement in either Mr. Lukoskie's original fee waiver request to DDES or in his notice and statement of appeal to the Examiner that any of the specific charges by DDES are in and of themselves improper or unreasonable.
11. Despite the untimeliness of any claim of specific impropriety or unreasonableness of the billed hours of staff review time, Mr. Lukoskie presented such claims at hearing. Despite their untimeliness and therefore being non-actionable claims, the Examiner in any case finds them not to be justified by the evidence in the record. The record, including the testimony of DDES personnel (cross examined by Lukoskie), shows that all of the staff review time expended in the subject permit review was necessary to proper evaluation of, and coordination of the agency response to, the subject event and the requested emergency permit request, and was reasonable and appropriate. The billed review hours were necessary given the impacts and potential impacts of the collapse, the remedial and repair work necessary, the coordination among the various professional disciplines within DDES, and coordination with WDFW. The onsite meetings decried by Mr. Lukoskie as an unnecessary expense appear appropriate for proper site review and necessary consultation in the field. Of particular note in this case is that the collapse had a potential adverse effect on an adjacent public road, and the subject area is landslide-prone and merits cautious review.
12. The property and surrounding area were not the subject of any natural disaster declaration by the County Executive or of any other governing body with due authority in response to the subject bulkhead collapse. Under county code, such a formal disaster declaration is necessary for permit fees to be waived. Without such declaration, DDES is without authority to waive such fees on a natural disaster basis.

CONCLUSIONS:

1. The billed DDES staff review time for the subject permit is not shown to be unreasonable or unwarranted.
2. Given the absence of a formal declaration of natural disaster associated with the subject bulkhead collapse, no fee waiver is authorized by any natural disaster provisions of county code or other law.
3. The request for reimbursement of Mr. Lukoskie's anticipated work expenses claimed to be caused by the permit review delays (asserted to have allowed the further collapse of the bulkhead) is not properly a matter of fee waiver request. The Examiner's jurisdiction in this case is limited solely to the reasonableness of billed permit fees. There is no authority in the permit

fee appeal process established by Chapter 27.50 KCC to weigh into other project costs and liabilities/potential liabilities. (As noted above, DDES suggested that Mr. Lukoskie address his claims to the County's Risk Management Office.)

4. Any future billable staff time associated with plan review and permit issuance associated with permanent repair of the bulkhead cannot be waived prematurely, and in any case as concluded above cannot be granted on the basis of alleged county causation or exacerbation of a problem and resultant increased project costs.
5. Mr. Lukoskie's viability concerns about what he contends as a vital public facility appear to be legitimate concerns on their face but cannot be addressed through the fee waiver process. There can be no *quid pro quo* transaction in waiving fees in return for some provision of public benefit in this regard; that issue would have to be taken up with the legislative authority or some other appropriate governmental agency.

DECISION:

The appeal is DENIED as not supported by the record presented.

ORDERED July 20, 2009.

Peter T. Donahue
King County Hearing Examiner

MINUTES OF THE OCTOBER 7, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. A08F0014

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Doug Dobkins and Fred White, representing the Department, and W.M. Luke Lukoskie, the Appellant.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | DDES staff report to the Hearing Examiner for October 7, 2008 |
| Exhibit No. 2 | Copy of Time Reporting System printout dated September 10, 2008 |
| Exhibit No. 3 | Copy of Permits Plus Comments dated September 10, 2008 |
| Exhibit No. 4 | Copy of letter to Mr. Lukoskie from DDES dated July 25, 2008 |
| Exhibit No. 5 | Summary of charges and payments dated September 10, 2008 |
| Exhibit No. 6 | Findtime report with notes dated September 10, 2008 |
| Exhibit No. 7 | Hourly charges detail dated September 10, 2008 |
| Exhibit No. 8 | <i>Not submitted</i> |
| Exhibit No. 9 | Email from Luke Lukoskie to Fred White, re: Permit L08CG174/clearing and grading permit dated June 24, 2008 |
| Exhibit No. 10 | Email string from Greg Wessel to Fred White, Tim Lane, Sheryl Lux, Laura Arber, Pesha Klein, Jon Sloan and Luke Lukoskie, re: permit update for case E0800385 dated June 4, 2008 |
| Exhibit No. 11 | Email from Luke Lukoskie to Jon Sloan, re: permit update for case E0800385 |

	dated June 4, 2008
Exhibit No. 12	Email from Jon Sloan to Luke Lukoskie, re: permit update for case E0800385 dated June 4, 2008
Exhibit No. 13	Email from Luke Lukoskie to Fred White, Jon Sloan and Sheryl Lux, re: permit update on case E0800385 dated June 2, 2008
Exhibit No. 14	Email from Jon Sloan to Fred White, re: permit update
Exhibit No. 15	Email from Fred White to Jon Sloan and Sheryl Lux, re: permit update for case E0800385 dated May 30, 2008
Exhibit No. 16	Email from Luke Lukoskie to Fred White, Jon Sloan, Sheryl Lux, re: permit update for case E0800385 dated May 30, 2008
Exhibit No. 17	Email from Greg Wessel to Jon Sloan, Sheryl Lux, Fred White, re: Case E0800385 dated May 29, 2008
Exhibit No. 18	Email from Jon Sloan to Fred White and Sheryl Lux, re: permit update for case E0800385 dated May 29, 2008
Exhibit No. 19	Email from Jon Sloan to Fred White, Steve Bottheim, Greg Wessel, Laura Casey and Deidre Andrus, re: E0800385 dated May 28, 2008
Exhibit No. 20	Email from Luke Lukoskie to Fred White, Sheryl Lux, Todd Hurley, Doug Dobkins, Steve Bottheim and Laura Casey, re: Case E0800385 dated May 28, 2008
Exhibit No. 21	Email from Jon Sloan to Sheryl Lux, re: E0800385 dated May 16, 2008
Exhibit No. 22	Letter to Luke Lukoskie from Fred White, re: L08CG174 – Tramp Harbor Bulkhead Emergency Repair dated June 10, 2008
Exhibit No. 23	Email from Sheryl Lux to Luke Lukoskie, re: E0800385 dated May 12, 2008

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