



MEDINA, WASHINGTON

HEARING EXAMINER

Remote Public Hearing

Tuesday, February 27, 2024 – 10:00 AM

AGENDA

Virtual Meeting Participation

City of Medina's city hall is currently closed to the public. The scheduled hearing will be held using remote meeting technology. Please either log in or call in a few minutes prior to the start of the meeting to participate. Written comments may still be submitted prior to the hearing by emailing Jonathan Kesler, Planning Manager, at jkesler@medina-wa.gov comments are given the same weight as public testimony.

Join Zoom Meeting

<https://us06web.zoom.us/j/85129703509?pwd=U3FHYZZDSWVTWWNhZVVneWpKMG1WUTQ9>

Meeting ID: 851 2970 3509

Passcode: 868235

One tap mobile +12532158782,,85129703509#,,,,*868235# US (Tacoma)

Public Hearings:

***NOTE:** The Hearing Examiner has the discretion to limit testimony to relevant non-repetitive comments and to set time limits in order to ensure an equal opportunity is available for people to testify.*

PRE-DECISION HEARING:

File No.: P-23-006 Non-Administrative Substantial Development Permit, P-23-017 SEPA Threshold

Proposal: Non-Administrative Substantial Development Permit to remove an existing pier and two jet ski lifts, and construct a new pier with a boat lift, platform lift, and double jet-ski lift.

Location: 3619 Evergreen Point Road

Date and Time: Tuesday, February 27 at 10:00 AM

Applicant: Evan Wehr | Ecco Design Inc. (Agent)



CITY OF MEDINA

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STAFF ANALYSIS AND RECOMMENDATION HILL NON-ADMINISTRATIVE SUBSTANTIAL DEVELOPMENT PERMIT, CRITICAL AREAS REVIEW, SEPA THRESHOLD

Prepared by: Thomas Carter, Associate Planner, and Kimberly Mahoney, Principal Planner
Date: February 14, 2024

Summary of Recommendation: Staff supports approving the subject application.

PART 1 – GENERAL INFORMATION

CASE NO: P-23-006

LOCATION: 3619 Evergreen Point Road, 98039

TAX PARCEL NO: 2425049155

PROPERTY OWNER: David Hill

LEGAL DESCRIPTION:

PTN OF GOV LT 5, SECTION 24, TOWNSHIP 25 NORTH,
RANGE 4 EAST, W M

PROPOSAL: Non-Administrative Substantial Development Permit to remove an existing dock and lifts and construct a new pier with new jet-ski lifts and a boat lift.

ZONING: Single Family Residence, R-20

COMPREHENSIVE PLAN DESIGNATION: Single Family Residential

SHORELINE ENVIRONMENT DESIGNATION: Shoreline Residential

CRITICAL AREAS: The project site fronts Lake Washington, a critical area within Medina as per MMC 16.67.080.

ENVIRONMENTAL (SEPA) REVIEW: The lead agency for this proposal has determined that the proposed action does not have a probable significant impact on the environment. A Determination of Nonsignificance was issued on February 6, 2024; its appeal period ended on February 20, 2024. No comments or appeals were timely filed with the lead agency.

EXHIBITS:

1. Staff Report
2. Declaration of Agency, received January 24, 2023
3. Statutory Warranty Deed, received January 24, 2023
4. Ecological No Net Loss Assessment Report, dated January 2023

5. Legal Notices
6. Non-Administrative Substantial Development Application, dated December 27, 2022
7. Comment Response Letters, August 11, 2023 and December 4, 2023
8. Plan Set, prepared December 4, 2023
9. Mailing Labels for Noticing
10. Water Depth Waiver dated July 24, 2023
11. SEPA Checklist, signed December 23, 2022

PART 2 – SITE CHARACTERISTICS

EXISTING CONDITIONS: The subject property is developed with a single-family residence and appurtenant dock on site.

SURROUNDING ZONING:

Direction	Zoning	Present Use
North	R-20 District	Residential
South	R-20 District	Residential
East	R-20 District	Residential
West	Lake Washington	Residential

ACCESS: Ingress and egress are from Evergreen Point Road.

PART 3 – COMPREHENSIVE PLAN

The residential nature of the City’s shoreline makes preservation of this character, while encouraging good stewardship and enjoyment of the shoreline, including protecting and preserving shoreline ecological functions, the primary vision of the shoreline master program. The following comprehensive plan goals and policies apply to the proposed project:

SM-G8: Manage shoreline modification to avoid, minimize, or mitigate significant adverse impacts.

SM-G9: Minimize impacts to the natural environment and neighboring uses from new or renovated piers and docks and their associated components, such as boatlifts and canopies.

SM-P4.4 At a minimum, development should achieve no net loss of ecological functions, even for exempt development.

SM-P7.2: Where feasible, boating facilities should include measures that enhance degraded and/ or scarce shoreline features.

SM-P7.3: Boating facilities should not unduly obstruct navigable waters and should avoid causing adverse effects to recreational opportunities such as fishing, pleasure boating, swimming, beach walking, picnicking and shoreline viewing.

SM-P7.4: Preference should be given to boating facilities that minimize the amount of shoreline modification, in-water structure, and overwater coverage.

SM-P7.6: Boating facilities should be located, designed, constructed and operated so that other appropriate water-dependent uses are not adversely affected and to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; and impacts to public visual access to the shoreline.

SM-P8.4: Structures should be located and designed to avoid the need for future shoreline stabilization where feasible.

SM-P9.3: Moorage should be spaced and oriented in a manner that minimizes hazards and obstructions to public navigation rights and corollary rights thereto such as, but not limited to, fishing, swimming and pleasure boating.

SM-P9.5: Establish development regulations that encourage property owners to make renovations to their existing piers and docks outside of normal maintenance and repairs that improve the environmental friendliness of their structure.

SM-P9.6: Moorage facilities should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term, and have been approved by applicable state agencies.

SM-P13.4: The City should encourage retention and development of the shoreline for joint use private recreational activities, such as moorage, decks, beach clubs, etc.

PART 4 – AGENCY REVIEW/PUBLIC COMMENT

NOTICES: (Exhibit 5)

Application received:	January 24, 2023
Determination of Completeness:	August 10, 2023
Notice of Application and Optional DNS:	December 20, 2023
Notice of Issued DNS:	February 6, 2024
Notice of Hearing:	February 6, 2024

The application was received on January 24, 2023, and was determined Complete on August 10, 2023 pursuant to MMC 16.80.100 after an iterative review process of incomplete application determinations and resubmittals of revised materials from the applicant. A Notice of Application was issued on December 20, 2023, by mailing to property owners pursuant to MMC 16.80.140(B)(2); posting on-site; and posting at other public notice locations (City Hall, Medina Post Office, Park Board, and City of Medina website). A 30-day comment period was used pursuant to MMC 16.80.110(B)(7). The SEPA DNS and a Notice of Hearing were issued on February 6, 2024, consistent with MMC 16.80.120. The Notice of Hearing was mailed to property owners pursuant to MMC 16.80.140(B)(2), published in *The Seattle Times* newspaper, and posted on the site and other public notices locations (City Hall, Medina Post Office, Medina Park Posting Board, and City of Medina website).

GENERAL PUBLIC COMMENTS: As of the date of the staff report, the City has not received any public comment regarding the proposed project.

AGENCY COMMENTS: No agency comments were received.

PART 5 – STAFF ANALYSIS

GENERAL:

1. David Hill is the owner and taxpayer of record of the property identified as 3619 Evergreen Point Road, tax parcel no. 2425049155, according to the Statutory Warranty Deed (Exhibit 3). The property owner has an agent, Evan Wehr, acting on behalf of the owner (Exhibit 2).
2. The property is zoned R-20 (Single Family Residence) and is approximately 17,760 square feet (0.41 acres) in size. The lot is rectangularly shaped with maximum overall dimensions of approximately 320 feet at its greatest length and approximately 62 feet at its greatest width. The lot is developed with a single-family dwelling, a dock and related site improvements, including a driveway and landscaping.
3. The applicant applied for a non-administrative substantial development permit to replace his existing pier and two jet ski lifts with a new pier, boat lift, platform lift, and double jet ski lift located on the western portion of the property. The proposed pier redevelopment is within 200-feet of the ordinary high-water mark of Lake Washington.

STATE ENVIRONMENTAL POLICY ACT (SEPA):

4. The applicant applied for a Type 2 SEPA Threshold Determination (file no. P-23-017) on May 1, 2023. Pursuant to Washington Administrative Code (WAC) 197-11-355 and Medina Municipal Code (MMC) 16.80.150, the City made use of the Optional DNS Noticing process and jointly noticed the project's NOA and likely threshold determination to the public on December 20, 2023. The Optional DNS Process afforded 30 days for public comment to be submitted for staff's consideration on the likely threshold determination. The City issued a Determination of Nonsignificance (DNS) threshold determination on P-23-017 on February 6, 2024; its appeal period closed on February 20, 2024 without any public appeals having been timely filed with the City.

ANALYSIS OF THE NON-ADMINISTRATIVE SUBSTANTIAL DEVELOPMENT PERMIT:

5. The MMC 16.72.100(D) requires a non-administrative substantial development permit for activities and uses defined as "development" pursuant to RCW 90.58.030(3)(a) and located within the shoreline jurisdiction as defined by the shoreline management act. The Hill project proposal for a replaced pier structure and associated replacement of lift structures meets these criteria, and the proposed project does not qualify for an exemption as set forth in MMC 16.70.040 or qualify for an administrative substantial development permit as set forth in MMC 16.71.060. Therefore, a non-administrative substantial development permit is required to authorize the proposed project.
6. The shoreline use table is codified in MMC 16.62.040 and sets forth that the proposed use (piers, docks, boat lifts, and moorage pilings) is permitted in the site's Shoreline Residential environment designation.
7. The MCC 16.65.040 establishes the design standards for piers in Medina. Maximum overwater surface coverage area is 480 square feet, with a minimum side setback of 12 feet; the maximum overwater surface coverage area may be increased to 900 square feet when consistent with MMC 16.65.040(B). The maximum length of the pier at its farthest

point is 100 feet from the Ordinary High Water Line (OHWL). The maximum width of the pier's walkway located within 30 feet of the OHWL is 4 feet; the pier's width may be 6 feet when more distant from the OHWL than 30 feet. The height of the pier measured between its stringers and the OHWL cannot be more than 1.5 feet. The minimum distance of all piles waterward of the OHWL is 18 feet. The minimum distance of the landward edge of all piers, fingers, and floats waterward from the OHWL is 30 feet of length and 10 feet of water depth. Decking for piers and associated overwater structures must use grated or other materials that allow a minimum of 40 percent light to transmit through; materials treated with pentachlorophenol, creosote, chromate copper arsenate, or similar toxic compounds are prohibited.

The applicant has prepared a scaled plan set (Exhibit 8) that conveys consistency with each of the aforementioned pier design standards set forth in MMC 16.65.040. The replaced pier and lift structure is proposed to be 741 square feet in size; this aligns with the MMC, provided the design complies with MMC 16.65.040(B). Per MMC 16.65.040(B)(1), a new pier or dock for single-property ownership may be up to 900 square feet, provided the conditions set forth in MMC 16.65.040(C) are satisfied. MMC 16.65.040(C) allows the proposed pier to be developed up to 900 square feet if the requested overwater coverage is the minimum necessary to provide vessel access, if the necessary federal and state agency approvals for the increased overwater coverage is acquired by the property owner, and if mitigation is provided in addition to that required by MMC 16.65.040(E) demonstrating that the additional overwater coverage will result in no net loss of ecological function. Given that the pier has been designed to accommodate access to the property owner's vessels while adhering to the dimensional standards of piers governed by MMC 16.65.040 without the need for a variance, the applicant has demonstrated that the proposed increase in overwater coverage is the minimum amount of increased surface coverage necessary to allow vessel access. To ensure the applicant acquires all needed permits from federal and state agencies, staff has recommended the Hearing Examiner adopt Condition No. 1 into the decision of P-23-006. Lastly, the applicant has prepared an Ecological No Net Loss Assessment Report (Exhibit 4) demonstrating that sufficient mitigation has been proposed to ensure that the additional overwater surface coverage will not result in a new loss of shoreline ecological function. An address of the proposed project's consistency with no net loss standards governed by MMC 16.66.010 is included on page 7 of this staff report.

The proposed replaced pier and lift structure does not encroach within the 12-foot side setbacks, is not longer than 100 feet from the OHWL, is no wider than 4 feet within 30-feet of the OHWL and is otherwise no longer than 6 feet when more distant than 30-feet from the OHWL, and is no taller than 1.5 feet when measured between the OHWL surface level and the pier's stringers. All piles proposed to support the replaced pier are no closer than 18 feet from the OHWL, and all piers, fingers, and floats are located at least 30-feet waterward of the OHWL with at least 10 feet of water depth. The applicant proposes to construct the replaced pier of grated decking material that is engineered to allow approximately 43 percent light penetration. Finally, the pier is proposed to be constructed of grated decking and epoxy-coated steel piles; no materials proposed in the pier's construction would be treated with toxic compounds. Therefore, the proposed pier has been designed consistent with the pier design standards set forth in MMC 16.65.040.

8. The MCC 16.65.080 establishes the dimensional and design standards for boat lifts in Medina. Boat lifts cannot be more distant than 100 feet from the OHWL, and cannot be less distant than 30 feet from the OHWL with 9 feet of water depth; the water depth

requirement can be waived pursuant to MMC 16.65.080(D). The maximum number of freestanding or deck-mounted boat lifts and/or jet ski lifts allowed per single-family dwelling is 3. The minimum side setback for lifts is 12 feet.

The applicant has prepared a scaled plan set (Exhibit 8) that conveys consistency with each of the aforementioned boat lift dimensional and design standards set forth in MMC 16.65.080. The applicant's proposed boat lifts are closer than 100 feet from the site's OHWL, do not encroach on the site's 12-foot side setbacks, and do not exceed the maximum number of 3 boat lifts per single-family dwelling unit. The proposed boat lifts are also at least 30-feet waterward of the OHWL; however, the water depth of the landward-most jet ski lift is less than 9 feet, and the applicant has applied for a water depth waiver (Exhibit 10) to this end.

The Water Depth Waiver Request form requires the applicant to provide a discussion of the request's consistency with the waiver approval criteria set forth in MMC 16.65.080(D). The applicant has provided related discussion (Exhibit 10), which has been reviewed by staff and has been found consistent with MMC 16.65.080(D). The applicant has conveyed that strict conformance with the water depth provisions in the MMC is not feasible without the need for a shoreline variance, has described the site's bathymetry and the existing overwater structures on adjacent sites creating no reasonable alternative to the designed development in less than 9 feet of water depth, and has demonstrated that a minimum of 5 feet of water depth is maintained at the boat lift. Therefore, the applicant has designed the proposed boat lifts consistent with the dimensional and design standards set forth in MMC 16.65.080, and has demonstrated consistency with the review criteria set forth in MMC 16.65.080(D) that reasons its approved waiver from boat lift water depth standards.

9. The MMC 16.66.010(B) requires that, to assure no net loss of shoreline ecological functions, applicants must demonstrate a reasonable effort to analyze environmental impacts from a proposal and include measures to mitigate impacts to shoreline ecological functions.

The applicant has prepared an Ecological No Net Loss Assessment Report (Exhibit 4); the No Net Loss Report was prepared by a professional biologist and details the direct and indirect impacts, avoidance and minimization measures, shoreline planting plan, conservation measures, and best management practices that ensures the proposed project will not yield a loss of ecological function. Therefore, the applicant has demonstrated a reasonable effort to analyze environmental impacts from its proposed replaced pier and boat lift structure and has included measures to mitigate potential impacts to shoreline ecological functions.

PART 6 – CONCLUSION

1. Pursuant to MMC 16.72.100(C) and MMC 16.80.060(C), the Hearing Examiner has the authority to hold a public hearing and decide on applications.
2. Proper notice for this public hearing has been provided. Notice was posted on the property and mailed to surrounding property owners within 300 feet, published in the Seattle Times newspaper on February 6, 2024, more than 15 days prior to the date of the hearing (Exhibit 5).
3. Pursuant to MMC 16.72.100(F), a substantial development permit may only be approved

if the following criteria are met:

- a. *The proposed development is consistent with the policy and provisions of the State Shoreline Management Act of 1971 (chapter 90.58 RCW).*

CONCLUSION: The Medina Shoreline Master Program (SMP) has been adopted in a manner which is consistent with the policies and provisions of the Washington Shoreline Management Act (“the Act,” RCW 90.58). MMC 16.60.060(A) sets forth that “all uses and development proposals, included those that do not require a permit, must comply with the policies and regulations established by the Act as expressed through the shoreline master program” (emphasis added). Because the Medina SMP has been adopted to express the Act’s policies and regulations, an applicant’s consistency with the provisions of the Medina SMP inherently conveys consistency with the policies and provisions of the Act. As is concluded in Part 5 of this staff report, the proposed project is consistent with the provisions of the Medina SMP; therefore, this criterion has been satisfied.

- b. *The proposed development with the State Shoreline Management Permit and Enforcement Procedures (chapter 173-27 WAC).*

CONCLUSION: The Medina SMP has been adopted in a manner which is consistent with the guidelines of WAC Chapter 173-27. MMC 16.60 has been adopted under the authority of RCW 90.57 and WAC Chapter 173-27 (MMC 16.60.040), and its purpose is to comply with WAC Chapter 173-27 (MMC 16.60.030). Because the Medina SMP has been adopted in a manner which complies with WAC Chapter 173-27, an applicant’s consistency with the provisions of the Medina SMP inherently conveys consistency with WAC Chapter 173-27. As is concluded in Part 5 of this staff report, the proposed project is consistent with the provisions of the Medina SMP; therefore, this criterion has been satisfied.

- c. *The proposed development is consistent with the provisions of the city shoreline master program.*

CONCLUSION: As has been demonstrated in the analysis provided in Part 5 of this staff report, the applicant’s proposed covered moorage structure is consistent with all germane provisions of the Medina SMP. Therefore, this criterion has been satisfied.

PART 7 – STAFF RECOMMENDATION

Staff recommends the Hearing Examiner approve the non-administrative substantial development permit (file no. P-23-006) as the project has demonstrated consistency with the Medina Municipal Code, Medina Shoreline Master Program, the State Shoreline Management Act of 1971, and the State Shoreline Management Permit and Enforcement Procedures. Staff recommends the following conditions be included:

1. The applicant shall secure all necessary permits and authorizations from all other agencies with jurisdiction regulating development of the site; this includes, but may not be limited to, the Washington Department of Fish and Wildlife and the U.S. Army Corps of Engineers. The applicant shall provide proof of approved permits or authorizations from other agencies with jurisdiction prior to issuance of a building permit from the City of Medina.

February 20, 2024

Thomas Carter, Associate Planner, and Kim Mahoney, Principal Planner
LDC, Inc on behalf of the City of Medina