

Prehearing Statement OAH Case No. 26-320-05

Objector, Justin Yancey & Descendants Trust for JYD ID, LLC, submits this statement as evidence that the standards have not been met for issuance of Applicant's permit for a community dock.

Facts:

Community Dock applications are held to a stricter standard than single-family docks. For the purposes of the application, a commercial navigational aid standard is used.

Applicants' Community Dock application exceeds allowable square footage, calculated as frontage feet of shoreline x 7, less deductions for additional lifts. After reducing the allowable surface area by 50% of the footprint of the largest lifts, the Application exceeds the Allowed Dock Sq Ft by approximately 1,705.10 square feet. Applicant's planned dock square footage would need to shrink and/or lift count reduced to adhere to the allowed dock square footage requirement.

Applicant's drawings, maps and submittals are not drawn to sufficient scale or detail. The proposed encroachment definition or outline adjoining our property and littoral rights was requested and not provided. IDL requested additional maps and drawings to provide the required to-scale dimensions and features and to aid conversations with all involved parties. Although Applicant had sufficient opportunity, maps and drawings remained minimal and insufficient. The start point of the Applicant's proposed common littoral line is not called out with markers from any specific set point. The result is incorrect, unmeasurable set start points. The insufficient, non-scaled drawings do not meet the stricter, commercial standard for this application.

Application maps and drawings do not provide detail on the Line of Navigability. The Line of Navigability is important in this narrow, busy, curved bottleneck portion of the Spokane River. Applicant's plan includes encroachment in aid of navigation (docks) as well as encroachments not in aid of navigation (2 boat houses). The application does not distinguish between the two. Determining if either type of encroachment impedes the Line of Navigability cannot be completed in this insufficient application. Boat houses reduce available navigation space in addition to diminishing lines of sight for boaters navigating this river bend and pilings, etc. Given the large pilings zone located closely in the river to the north, these lines and measurements should be mapped in detail for consideration before further contribution to the bottleneck of a busy river bend is approved. The stricter

commercial standard and required markings for Line of Navigability are not met. The consideration for implementation of safety measures such as signage and speed zones are foregone without the aid of property scaled and detailed submittals.

Applicant's dock will have adverse effects on Objector's adjacent littoral rights. The required 25' dock setback has not been accomplished according to the scaled depiction created by Objector's professional land surveyor. The surveyor estimates 5 - 8 feet in littoral line encroachment using the Applicant's littoral line. Other measures of the littoral line demonstrate additional intrusion of our neighboring property littoral line. Protection of property is the first item in the listed Policy regulation requirements.

The adjacent lots' Community Dock moorage is very large for this portion of the river, the river is especially bottle-necked at this portion of this river with a "highway" of boaters, and this application increases the quantity of watercraft and watercraft activity in the neighborhood. Adding 20 slips in total plus the visual impairment of 2 boat garages at the expense of the property of the littoral neighbor and use and enjoyment of the river community can be avoided by amending this application.

Objector requests alternatives that will accomplish the proposed encroachment permit application in addition to staking and review the location of the gangplank prior to construction. However, if those alternatives are not satisfactory to Applicant and IDL, Objector requests denial of this application.

Conclusion

In the absence of an amended or workable application safely placing Applicant's dock behind the littoral line, and for the many other reasons outlined, this application must be rejected.

Applicable / Relevant Legal Provisions:

Idaho Administrative Code, Department of Lands

IDAP A 20.03.04

10. Definitions:

06. Boat Garage. A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area.

07. Boat Lift. A mechanism for mooring boats partially or entirely out of the water.

11. Community Dock. A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock.

15. Encroachments in Aid of Navigation. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" is used interchangeably with the term "navigational encroachments."

16. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation, such as float homes and boat garages. The term "encroachments not in aid of navigation" is used interchangeably with the term "nonnavigational encroachments."

19. Jet Ski Ramp, Port, or Lift. A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier.

20. Line of Navigability. A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

22. Moorage. A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc.

23. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

27. Piling. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures.

32. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to

navigation but does not include any right to make any consumptive use of the waters of the lake.

33. Riparian or Littoral Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant.

34. Riparian or Littoral Right Lines. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline.

37. Slip. Moorage for boats with pier or dock structures on at least two (2) sides of the moorage.

12. Policy:

Section 12.01. Environmental Protection and Navigational or Economic Necessity. It is the express policy of the State of Idaho that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. Moreover, it is the responsibility of the State Board of Land Commissioners to regulate and control the use or disposition of state-owned lake beds, so as to provide for their commercial, navigational, recreational or other public use.

Section 12.02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state may be made unless approval has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho.

15. Encroachment Standards:

Section 15.2.a. Community Docks. A community dock is considered a commercial navigational aid for purposes of processing the application.

Section 15.2.c: A community dock may not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking

area of the community dock is limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values.

Section 15.13.b.iv: Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip must be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02.

Section 15.13.d. Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the Director. If a normally accepted line of navigability has not been established through use, the Director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules.

Section 15.13.e: Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments are subject to the above presumptions of adverse affects.

20. Applications

Section 20.07: Plans shall include the following information at a scale sufficient to show the information requested:

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (3-18-22) ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (3-18-22) iii. Proof of current ownership or control of littoral property or littoral rights. (3-18-22) iv. A general vicinity map. (3-18-22) v. Scaled air

photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (3-18-22) vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (3-18-22) vii. Names and current mailing addresses of adjacent littoral landowners.

30. Processing of Applications

Section 30.04.a: Notify the Department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values;

Idaho Department of Lands, Idaho Lake Protection Act Community Docks brochure

Objector's alternate plan recommendations:

- A. Shift proposed Olinger Lot 1 ramp & dock west (northwest) 10+ feet.
 - a. Relieves the pressure from miscalculations and littoral line issues
 - i. Gangplank staked prior to construction to allow for review and approval
 - b. Reduces adverse impacts from encroachment
 - c. Accomplishes required 25' setback
 - d. Over 100' available on the west (northwest) to move/shift this dock
- B. Shrink the proposed Olinger Lot 1 dock
 - a. Allows compliance with dock size
 - b. Allows room to set ramp and dock 25+' away from littoral line
 - i. Gangplank staked prior to construction to allow for review and approval
 - c. Relieves some pressure for narrow boating channel in this portion of the Spokane River
- C. Construct docks on Lots 2 – 4, leaving a “placeholder” for redesign on Lot 1
 - a. Allows timely progress for construction of 3 of the docks
 - b. Allows redesign for Lot 1 dock to happen later
 - i. Eventual owner of Lot 1 will want their own custom dock slip design, preventing a redesign.
 - ii. New approval process for Lot 1 dock only
- D. If any alternate plan is unacceptable to Applicant, Reject Community Dock application

We have owned lots in this neighborhood since 2017. We are the most senior property owners in this development. Our land was purchased years ago to eventually provide a place for retirement and family gatherings. We have designed a home and look forward to living on Millview in the future. It is important to us that this section of the river remains safe for enjoyment of the water and in compliance with regards to our neighbors' builds.

Let's address the issues with this Community Dock Permit Application:

- Community dock applications are held to a stricter standard than single-family docks. Community docks such as this are processed as a commercial application.
- To-scale drawings were not provided. We requested these via phone, email, and in meetings. We have not seen to-scale drawings so that dock placement and compliance can be verified. The drawings for our adjacent neighbor's project, are lacking.
 - It does not seem right that neighbors un-benefitting from this Community Dock, should bear the time and expense of to-scale drawings and measurements/staking when these things are required of all applicants. Standards benefit the boating and water-enjoyment of the whole community.
 - Missing the full-scale view of the river with impediments such as pilings and corners disservices the water-enjoying public. Spokane River bottlenecks are designed to worsen with this application, and these bottlenecks are at a busy corner with a large swim park nearby (OBJ-7). The distances noted on the application do not reflect the bottleneck hazards from the curve of the river and the obstructions nearby.
 - Missing information on the Line of Navigability. The application cannot proceed without consideration for the Line of Navigability as required.
 - We request Applicant be required to stake out the location of the gangplank for review and approval (by Department of Lands and us) prior to construction.
- Applicant's littoral lines are not calculated correctly. We consulted 3 industry veterans: 2 dock builders and one Idaho Professional Land Surveyor. They all agreed that Applicant did not use a method they would use and furthermore, Applicant's presented littoral line result is not to standard

nor property's benefit. In addition, IDL indicated the littoral lines were missing or not correct from some of Applicant's submissions.

- It was determined by the land surveyor that Olinger's Lot 1 dock is at least 5-8' over the littoral line. Our licensed surveyor drew the to-scale map (Exhibit OBJ-1) to demonstrate that using the Applicant's nominal littoral line, they encroach 5-8' on the 25' required setback (leaving only 17-20' in setback). 25' is clearly required for a Community Dock.
- Kootenai County provides a map of the Ordinary High Water Mark that can be overlaid with property boundaries (OBJ-3). Since Ordinary High Water Marks do not move or change (like the neighboring lot lines along the river did in 2018), we can see another way that the littoral line was miscalculated (OBJ-4). Applicant appears to rely on an ambiguous line as opposed to correctly measuring and calculating the shoreline, OHWMark, and littoral lines.
- The remaining application details regard the over-sized dock square footage. While 7,584.78 sf of dock is the starting point for "Allowable Dock Sq Ft," after adjustments due to the "# of boat lifts," only 6,384.78 is Allowed (Exhibit OBJ-6). This is UNDER the Applicant's 6,964.50 actual Dock Sq Ft. Additionally, the overage in square footage is concentrated at the Olinger's dock adjacent to ours. The Olinger dock individually is over hundreds of square feet more than the allowable square footage.
 - This places the bulk and burden of the encroachment on the neighboring lot (Objector).
 - The benefit to the Olinger Lot for this oversized dock does not outweigh the missive to protect property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality.
- It would be premature to approve this Community Dock Application given the challenges the slipping/moving slope presents. The slope involving and immediately above these 4 lots involved in this Community Dock Application is the target of much interest and investigation. Currently, excessive amounts of silt and clay are flowing into the Spokane River. The shoreline is reshaping given the huge amounts of material coming off the slope in muddy runoff. This is actively being documented and monitored by several landowners, Geotech firms, attorneys, County Commissioners, and developers. Multiple agencies have taken notice and placed holds on all projects in this area, including: Panhandle Health, Avista Utilities, and construction contractors.

- Several agreeable alternatives exist. We hope to remedy this objection via agreeable alternative or plead that the Office of Administrative Hearings declines this Community Dock Permit Application if no agreeable alternative can be reached.