

GEORGE BACON
Interim Director
Idaho Department of Lands
954 W. Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of;)
)
Encroachment Permit No. L-95-S-4798D) **FINAL ORDER**
Tom Hamilton)
)
Applicant.)
_____)

I. NATURE OF PROCEEDINGS/ISSUES

A reconsideration hearing was held on November 9, 2006 at 6:00 pm PDT at the IDL Staff Office in Coeur d'Alene, Idaho. Eric Wilson served as Hearing Coordinator. The Hearing Coordinator issued his reconsideration hearing decision document on December 4, 2006.

My responsibility is to render a decision on the behalf of the State Board of Land Commissioners based on the record reviewed in the context of my personal expertise gained through education, training and experience. In making this determination I have relied on the record provided. Specifically,

- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator's reconsideration hearing document in light of the entire record.

Encroachments, including floathomes, placed on navigable waters require a permit issued by the Idaho Department of Lands pursuant to the requirements of Chapter 13,

Title 58, Idaho Code and the Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04 as promulgated by the State Board of Land Commissioners.

II. FINDINGS OF FACT

I concur with the Findings of Fact presented by the Hearing Coordinator.

III. CONCLUSION AND RECOMMENDATION

I concur with the Conclusion and Recommendation presented by the Hearing Coordinator.

IV. FINAL ORDER

On the basis of the record, it is my order that Encroachment Permit L-95-S-4798D be approved and the permit be issued. This is a final order of the agency.

DATED this 12 day of December, 2006.



GEORGE BACON
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2006, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

George Bacon, Director
Idaho Department of Lands
PO Box 83720
954 W. Jefferson
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- X Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Tom Hamilton
6318 Maplewood
Post Falls, ID 83854

- X U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Jim Brush
Spokane River Association
PO Box 1737
Post Falls, ID 83877

- X U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail



Eric Wilson
Idaho Department of Lands

**BUREAU OF SURFACE AND
MINERAL RESOURCES**
954 West Jefferson
Post Office Box 83720
Boise ID 83720-0050
Phone (208) 334-0200
Fax (208) 334-3698




GEORGE BACON, INTERIM DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF LAND COMMISSIONERS
James E. Risch, Governor
Ben Ysursa, Secretary of State
Lawrence G. Wasden, Attorney General
Keith L. Johnson, State Controller
Marilyn Howard, Sup't of Public Instruction

December 4, 2006

MEMORANDUM

TO: George Bacon, Interim Director

FROM: Eric Wilson, Navigable Waters/Minerals Program Manager 

SUBJECT: Reconsideration Hearing – Tom Hamilton - L-95-S-4798D

On November 9, 2006, the Idaho Department of Lands (IDL) convened a reconsideration hearing in Coeur d'Alene, Idaho concerning a previous IDL decision to issue a non-navigational encroachment permit to Tom Hamilton (Applicant). IDL's original decision followed a public hearing process, triggered by objections from the Harbor Island Property Cooperative Owners Association (HIPOCA). The encroachment permit in question would approve the relocation of a floathome on the Spokane River above the Post Falls Dam and the addition of a partial second story to the floathome. Subsequent to the decision to approve the permit, the Spokane River Association (SPA), submitted a letter dated October 11, 2006 to IDL requesting reconsideration.

As the hearing coordinator for the reconsideration hearing process, I am providing this letter as the documentation of my decision. All documents and exhibits representing the record from the original public hearing, including the decision documents, and all documents submitted to IDL in conjunction with the reconsideration hearing are incorporated into this document by reference.

A. BACKGROUND

IDL received a completed encroachment application from Applicant on May 24, 2006. The application requested relocation of a floathome to the Spokane River near Post Falls, Idaho and the addition of a partial second story to the floathome.

IDL processed the encroachment permit application as a non-navigational encroachment pursuant to Idaho Code § 58-1306 and IDAPA 20.03.04.030. In accordance with Idaho Code § 58-1306(c) and IDAPA 20.03.04.030, IDL held a public hearing on August 23, 2006 at 6:00 pm PDT at the IDL Staff Office in Coeur d'Alene, Idaho. Mr. Michael J. Murphy, IDL Bureau Chief, coordinated the public hearing.

Objections to the proposed project included:

- Floathomes do not match the existing developments on the river
- Addition of the floathome will increase congestion on the river and narrow the channel
- Water quality concerns from old plumbing
- Potential for floathome to break away and impact the river downstream
- Poor condition of the existing floathome
- Incompatible color of the proposed floathome
- Although sewer was not proposed, it could be added in the future
- Wave action on the river will destroy the floathome

In addition to testimony from HIPOCA, the Spokane River Association (SRA) gave testimony in opposition to the proposed project.

On September 22nd, 2006, Mr. Murphy issued IDL's findings of fact and conclusions of law with regard to the Willow Bay Marina application. Mr. Murphy recommended issuing encroachment permit L-95-S-4798D to Applicant. Mr. George Bacon, IDL Interim Director, affirmed Mr. Murphy's recommendation in a written Final Order dated September 22, 2006. Mr. Bacon's affirmation included the condition that the floathome use a color scheme other than blue so it can be distinguished from commercial marinas.

B. FINDINGS OF FACT

As a result of SRA's request for reconsideration on October 11, 2006, IDL convened a reconsideration hearing on November 9, 2006 at approximately 6:00pm PDT at the IDL Staff Office in Coeur d'Alene, Idaho. In attendance were Mr. Tom Hamilton, the applicant, and Mr. Jim Brady, IDL staff. Although SRA was notified in writing of the meeting time and place, no representatives from SRA attended the hearing.

C. CONCLUSION AND RECOMMENDATION

Based on the lack of attendance by the Spokane River Association and a corresponding lack of additional information regarding their objection to the application, I have concluded that the decision to issue encroachment permit no. L-95-S-4798D should be upheld. I recommend that you, as Director of IDL, issue a Final Order affirming my conclusion.