

**Bob Wilbur**

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**From:** "Gwyn Staton" <gwynstaton1@msn.com>  
**Date:** Thursday, August 29, 2013 12:03 PM  
**To:** "Bob Wilbur" <bbwilbur@broadstripe.net>  
**Subject:** I would send Kurt's comment to chris

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From: kblankenship@bluewilliams.com  
To: bbwilbur@broadstripe.net; gwynstaton1@msn.com  
CC: dustin@local519.org  
Subject: RE: ACBC and the swimming pool issues  
Date: Thu, 29 Aug 2013 03:26:21 +0000

I'm sorry that I have not had a chance to look at it until now. BIG CAVEAT: I am not familiar with Washington law so take that into account when considering my comments. I have two suggestions: 1) it might strengthen our argument that there may be irreparable harm if we point out that the pool might not ever be re-opened due to more stringent regulations governing such structures so near the beach and Sound. I would attach a picture of the pool showing it's location so close to the beach to enhance that point; 2) given that our main focus is that the Board failed or refused to follow the October 2012 motion, perhaps we should add some allegations that the Board is bound to follow all such lawful motions and that it is a breach of their fiduciary duty if they fail to do so.

**Kurt S. Blankenship**  
**Partner**

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**From:** [Chris Skinner](#)  
**Sent:** Thursday, August 22, 2013 7:32 PM

To: [bbwilbur@broadstripe.net](mailto:bbwilbur@broadstripe.net)  
Subject: ACBC and the swimming pool issues

**Bob –**

**I was also under the impression that any filling or modification of that pool would fall under the purview of the permitting requirements of the Shoreline Management Act. At a minimum they should have a determination that no substantial development permit is required.**

**I know you are anxious to get going on this so I am working on it tonight and tomorrow to provide the analysis and budget I promised when we met Tuesday.**

**One point of clarification – I have been contacted several times by Ms. Staton. I have not responded. She is anxious to help but this is not the type of case where I am interested in having multiple clients (beyond you and Mr. Frederick) nor do I think it advisable to have Ms. Staton preparing draft pleadings for me to use in connection with your case. She has prepared a complaint already and emailed it to me to review. I am sure her intentions are genuine and we will be able to have her assist with gathering factual material for me to digest; but she and I are not going to be co-counsel in this endeavor if you elect to hire me. If you concur with my thinking here, I will contact her and tell her what I am and am not willing to do as far as she is concerned. If you have another thought on that subject, I am certainly willing to give it some consideration.**

**(My concern has nothing to do with Ms. Staton, personally. I have learned over the years, however, that its best to have one person steering the ship when navigating the sea of litigation.)**

*Christon Skinner*

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**From:** Bob Wilbur [<mailto:bbwilbur@broadstripe.net>]  
**Sent:** Thursday, August 22, 2013 10:01 AM  
**To:** Receptionist  
**Cc:** Dustin Frederick  
**Subject:** ACBC: more justification?

Hi Chris,

Although Johnson at the County apparently gave the ACBC board a tentative nod on their plans to drill 8 drainage holes in the pool and fill with sand and rock, David Pater (425) 619-4253 (Shoreline, Dept of Ecology) seems to disagree. Anyway, we might want to add this into the reasons for an injunction, that is, there is current uncertainty as to whether a permit is required and has not been obtained per item 6 in the WAC below.

Thanks,  
 Bob Wilbur

**WAC 173-27-030**

No agency filings affecting this section since 2003

## **Definitions.**

The following definitions shall apply:

- (1) "Act" means chapter [90.58](#) RCW, the Shoreline Management Act of 1971, as amended;
- (2) "Applicable master program" means the master program approved or adopted by the department pursuant to RCW [90.58.090](#)(6) or [90.58.190](#)(4) prior to acceptance of a complete application by local government;
- (3) "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure;
- (4) "Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program;
- (5) "Department" means the department of ecology;
- (6) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level;

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