

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: None

APPELLANT: The Laurels Home Owner's Association
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RESPONDENT: City of Sammamish Landmarks Commission
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TYPE OF CASE: Appeal from the City Landmarks Commission's Designation of the Baker House as a Landmark

EXAMINER DECISION: REVERSE designation of the Baker House

DATE OF DECISION: March 5, 2018

INTRODUCTION ¹

The Laurels Home Owner's Association ("Laurels HOA") appeals from the City Landmarks Commission's ("Commission's") Designation of the Baker House as a Landmark.

Laurels HOA filed the subject appeal on November 13, 2017. (Exhibit 9001 ²) The appeal was timely filed in accordance with Sammamish Municipal Code ("SMC") 21.10.090(1).

The Baker House is located at approximately 24122 SE 24th Street, Sammamish. (Exhibit 25, p. 1)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

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The Sammamish Hearing Examiner (“Examiner”) held a prehearing conference with the parties on December 7, 2017. (Exhibit 9003) The prehearing conference is memorialized in Exhibit 9004.

The Examiner held a closed record hearing on February 27, 2018. The City gave notice of the hearing as required by SMC 20.10.180(2). (Exhibit 9008)

The Principal Parties stipulated to the materials comprising the record which was before the Commission in the Baker House case. The record below consists of Exhibits 1 - 29 as listed on the index supplied by the Principal Parties with the record documents.³

Pursuant to City of Sammamish Hearing Examiner Rule of Procedure (“RoP”) 224(c), the Examiner entered the following administrative exhibits into the hearing record:

Exhibit 9001:	Appeal letter, November 13, 2017
Exhibit 9002:	Appeal Guidance Letter, Examiner to Principal Parties, November 16, 2017
Exhibit 9003:	Notice of Prehearing Conference, issued November 21, 2017
Exhibit 9004:	Order Memorializing a Prehearing Conference, issued December 8, 2017
Exhibit 9005:	Appellant’s Opening Brief, January 29, 2018
Exhibit 9006:	City of Sammamish’s Response to Appellant’s Opening Brief, February 9, 2018
Exhibit 9007:	Appellant’s Reply Brief, February 14, 2018
Exhibit 9008:	Notice of Hearing, e-mailed January 25, 2018

The Deputy City Clerk has the record copy of the exhibit index list and exhibits.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. The Sammamish Heritage Society (“SHS”) nominated the Baker House for landmark designation on or about June 22, 2017. (Exhibit 13) After conducting a public hearing on July 27, 2017, the Commission on August 2, 2017, issued a Preliminary Determination of Significance that the Baker House was potentially eligible for designation as a City of Sammamish landmark. (Exhibits 10; 11; 17; 20) The Commission continued its hearing to September 28, 2017. (Exhibit 19) On October 23, 2017, the Commission formally designated the Baker House a City of Sammamish landmark. (Exhibits 23; 25) The Commission applied the criteria of SMC 21.10.040(1)(c) and (3)(c) to support designation of the Baker House as a landmark. (Exhibit 25, p. 4)

³ The Index lists a possible additional exhibit: Exhibit 30. The principal parties agreed at the outset of the hearing that Exhibit 30 would not be part of the record.

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2. The criteria for and limitations on designation of a landmark are set forth in SMC 21.10.040. The criteria relied upon by the Commission are underlined in the following quote.

(1) An historic resource may be designated as a City of Sammamish landmark if it is more than 40 years old or, in the case of a landmark district, contains resources that are more than 40 years old, and possesses integrity of location, design, setting, materials, workmanship, feeling and association, and:

(a) Is associated with events that have made a significant contribution to the broad patterns of national, state or local history; or

(b) Is associated with the lives of persons significant in national, state or local history; or

(c) Embodies the distinctive characteristics of a type, period, style or method of design or construction, or that represents a significant and distinguishable entity whose components may lack individual distinction; or

(d) Has yielded, or may be likely to yield, information important in prehistory or history; or

(e) Is an outstanding work of a designer or builder who has made a substantial contribution to the field of construction or design.

(2) An historic resource may be designated a community landmark through the designation process in SMC 21.10.060 because it is an easily identifiable visual feature of a neighborhood or the City and contributes to the distinctive quality or identity of such neighborhood or City or because of its association with significant historical events or historic themes, association with important or prominent persons, or recognition by local citizens for substantial contribution to the community. An improvement or site qualifying for designation solely by virtue of satisfying criteria set out in this section shall be designated a community landmark and shall not be subject to the provisions of SMC21.10.070.

(3) Cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 40 years shall not be considered eligible for designation. However, such a property shall be eligible for designation if it is:

(a) An integral part of districts that meet the criteria set out in SMC 21.10.020; or

(b) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(c) A building or structure removed from its original location but which is significant primarily for its architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

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(d) A birthplace, grave or residence of a historical figure of importance if there is no other appropriate site or building directly associated with his or her productive life; or

(e) A cemetery that derives its primary significance from graves of persons of importance, from age, from distinctive design features, or from association with historic events; or

(f) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner or as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(g) A property commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

(h) A property achieving significance within the past 40 years, if it is of exceptional importance.

[Emphasis added]

3. Laurels HOA, owner of the property upon which the Baker House is situated, participated in the Commission's hearings and timely appealed the Commission's designation. Laurels HOA challenges compliance with the underlined provisions in the above quote. Laurels HOA contends that the Commission erroneously interpreted and applied the underlined code provisions. (Exhibits 17; 20; 23; 25; 9001; 9005; 9007)

Laurels HOA initially also alleged that the Commission had committed a procedural error regarding the hearing process. (Exhibit 9001, § III.C; 9005, p. 12 *et seq.*) Respondent defended that allegation, but "[took] no position on the remaining issues raised by Appellant regarding the landmark status of the Baker House." (Exhibit 9006, p. 1) In response, Laurels HOA treated its procedural allegation as moot and dropped it. (Exhibit 9007, p. 1)

4. Laurels HOA does not dispute the "Background" Findings set forth by the Commission in its Designation decision. Therefore, for efficiency, Findings 1 – 7 as set forth on pages 2 and 3 of Exhibit 25 are incorporated herein by reference as if set forth in full.
5. When *The Laurels* subdivision was developed, the Baker House was moved from its original location to its present location. None of its associated farm buildings have been preserved. (Exhibits 13, pp. 3 & 4; 14, photograph 2)
6. The designation states that the Baker House "is significant primarily for its architectural value, namely as a vernacular farmhouse that is an exceedingly rare resource on the Sammamish Plateau." (Exhibit 25, p. 4, Criteria Paragraph 2) The designation does not define the characteristics of a "vernacular farmhouse." (Exhibit 25) The SHS's nomination form describes a "vernacular

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farmhouse” as “characterized by a steeply pitched gable roof with porches on the gable ends, narrow double-hung windows, and horizontal wood siding.” (Exhibit 13, p. 3)

7. The Baker House currently has a steeply pitched gable roof, no porch on its front gable, a significantly deteriorated and modified rear porch (to create an indoor bathroom area), narrow, boarded-over double-hung window frames (without glass?), and deteriorating horizontal lap siding. (Exhibits 5; 6; 15; 21; 29, Exhibit 2)
8. The designation states that the Baker House is the “most intact vernacular house” on the Sammamish Plateau. Other “vernacular examples” include the Reard-Freed House, the Eddy House,⁴ and the Bengston Cabin. (Exhibit 25, p. 4, Criteria Paragraph 5)

The Reard House is an L-shaped two-story structure with a bay window and a partial wrap-around porch. (Exhibit 6, Slide 22)

The Bengston Cabin is a rough-hewn log cabin with a relatively shallow roof pitch. (Exhibit 6, Slide 23)

The SHS provided the Commission with a list of seven houses that it said were similar examples of a “vernacular farmhouse,” although its description of those houses and the associated pictures indicate that all are quite different from the Baker House. (Exhibits 6, Slides 22 – 29; 17, p. 2)

9. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK⁵

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

The Examiner is charged with adjudicating appeals from designation decisions of the Commission. [SMC 21.10.090(1)] The Examiner is to base his decision solely on the record of the Commission’s proceedings. [SMC 21.10.090(3)] Chapter 21.10 SMC does not require that the Examiner hold a hearing on a Commission appeal. However, SMC 20.10.150(2) requires that the Examiner hold “an appeal hearing” on every appeal that comes before him/her (unless the appeal is summarily dismissed under SMC 20.10.090). Therefore, the Examiner held a closed record hearing before rendering this written Decision which is final subject to the right of reconsideration and appeal to Superior Court. [SMC 20.10.260 and 21.10.090(5)]

Review Criteria

⁴ The Examiner cannot determine from the written record whether the record contains a picture of the Eddy House.

⁵ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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Section 21.10.090(2) SMC states the following:

If, after examination of the written appeal and the record, the hearing examiner determines that:

(a) An error in fact may exist in the record, [he/she] shall remand the proceeding to the commission for reconsideration; or

(b) The decision of the commission is based on an error in law, [he/she] may modify or reverse the decision of the commission.

Standard of Review

The standard of review is preponderance of the evidence. The appellant has the burden of proof. [RoP 316(a)]

Scope of Consideration

The Examiner has considered: the record made before the Commission; applicable adopted laws and ordinances; and the pleadings, positions, and arguments of the principal parties.

CONCLUSIONS OF LAW

1. The distance that the Baker House was moved is completely irrelevant to whether it can qualify as a landmark. City ordinances are subject to the same rules of interpretation and construction as apply to statutes. [*Tahoma Audubon Soc. v. Park Junction Partners*, 128 Wn. App. 671, 116 P.3d 1046 (2005); *Neighbors v. King County*, 88 Wn. App. 773, 778, 946 P.2d 1188 (1997)] One rule of statutory construction is that a statute speaks for itself: words are not added to a statute in the interpretation process. Nothing in SMC 21.10.040(3) excludes a structure from the restriction of that section if it has been moved only a short distance. If a structure has been moved, then it is not eligible for landmark designation unless it meets at least one of the eight provisions of SMC 21.10.040(3)(a) – (h).
2. The Commission acknowledges that the Baker House has been moved. (Exhibit 25, p. 4, Criteria Paragraph 2) But the Commission believes that it qualifies for landmark designation under SMC 21.10.040(3)(c) because of its architectural value. (*Ibid.*)

The Examiner agrees with Laurels HOA that the Baker House currently has no architectural value. If the examples of “vernacular farmhouses” listed by the SHS and the Commission are actually vernacular farmhouses, then a vernacular farmhouse has no distinctive architectural style as every one of their examples evidences different stylistic characteristics.

The Examiner concurs with Laurels HOA that the Commission committed an error of law in concluding that the Baker House could qualify for landmark status even though it had been moved.

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3. Even if the Baker House could qualify for an exemption under SMC 21.10.040(3)(c), which it cannot, it would not qualify for landmark status under SMC 21.10.040(1)(c).

First of all, it does not “possess[] integrity of location, design, setting, materials, workmanship, feeling and association”. Because of the conjunctive “and,” it must possess integrity of all seven factors to even qualify for consideration under SMC 21.10.040(1)(a) – (e). The Baker House has no integrity of location or setting. Its design integrity has been ruined by removal of the front porch and severe alteration of the rear porch. It may still have materials integrity. But without the others, it does not pass the foundational test.

Second, even if it passed the foundational test, there is no evidence that it embodies a distinctive style. The examples proffered as similar are not similar at all. There seems to be circular logic at play: The Baker House is significant because it’s a vernacular farmhouse; it’s a vernacular farmhouse because we say it’s a vernacular farmhouse.

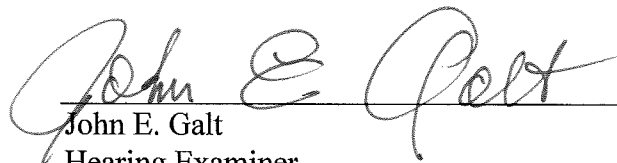
The Examiner concurs with Laurels HOA that the Commission committed an error of law in concluding that the Baker House could qualify for landmark status under SMC 21.10.040(1)(c).

4. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the record of the Commission as submitted at the closed record hearing, the Examiner **REVERSES** the designation of the Baker House as a landmark.

Decision issued March 5, 2018.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁶

Blair Russ, unsworn counsel

Hillary Evans Graber, unsworn counsel

⁶ The official Parties of Record register is maintained by the City’s Hearing Clerk.

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

The action of the Examiner sustaining, reversing, modifying or remanding a decision of the Commission shall be final unless within 20 calendar days from the date of the action an aggrieved person obtains a writ of certiorari from the superior court of King County, state of Washington, for the purpose of review of the action taken. [SMC 21.10.090(5)]

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."
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