

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

DECISION ¹

FILE NUMBER:	SSDP2019-00190	RECEIVED
APPLICANT:	Stephen Parkinson 1926 W Beaver Lake Drive SE Sammamish, WA 98075	OCT 09 2019 CITY OF SAMMAMISH
TYPE OF CASE:	Shoreline Substantial Development Permit to construct a 444 square foot, fully grated, private dock	
STAFF RECOMMENDATION:	Approve subject to conditions	
EXAMINER DECISION:	GRANT subject to conditions	
DATE OF DECISION:	October 7, 2019	

INTRODUCTION ²

Stephen Parkinson ("Parkinson") seeks approval of a Shoreline Management Act ("SMA") Substantial Development Permit ("SSDP") to construct a 444 square foot ("SF"), fully grated, private dock.

Parkinson filed a Shoreline Substantial Development Land Use Application on April 18, 2019. (Exhibit 8 ³) The Sammamish Department of Community Development ("Department") deemed the application to be complete when filed. (Exhibit 6.a) The Department issued a Notice of Application on May 30, 2019. (Exhibit 6.a)

The subject property is located at 1926 W Beaver Lake Drive SE, along the west shoreline of Beaver Lake.

The Examiner held an open record hearing on September 27, 2019. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 6.b)

Subsection 20.05.100(1) SMC requires that decisions on SSDPs be issued within 120 net review days after the application is found to be complete. The open record hearing was most likely held after net review day

¹ This written Decision memorializes and expands upon an oral Decision rendered on the record after completion of the open record predecision hearing on September 27, 2019.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ 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.

120. (Testimony) The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or written notice from the Department explaining why the deadline was not met [SMC 20.05.100(4)]. Parkinson chose to extend the deadline. (Testimony)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 – 7.c: As enumerated in Exhibit 1, the Departmental Staff Report
- Exhibit 8: Shoreline Substantial Development Land Use Application, filed April 18, 2019

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. Parkinson proposes to construct a 444 SF, fully grated, private dock in Beaver Lake in front of the property at 1926 W Beaver Lake Drive SE (“Parcel 9042”).
2. Parcel 9042 is a more or less rectangular “panhandle” lot located between W Beaver Lake Drive SE and the west shoreline of Beaver Lake.⁴ It has a north-south dimension of about 100 feet and an east-west dimension, measured from the ordinary high water mark (“OHWM”) but excluding the lot’s panhandle, that varies from about 330 to about 410 feet. Parcel 9042 has about 150 linear feet of frontage on Beaver Lake due to the irregular nature of the shoreline. The upland property contains about 42,033 SF. (Exhibits 2; 8)
3. Beaver Lake and shorelands within 200 feet of the lake’s OHWM are within the jurisdictional area of the SMA. The City’s Shoreline Master Program (“SMP”) designates the subject property Shoreline Residential. A private dock is a preferred water-oriented and water-dependent use under the SMP. An SSDP is required because the estimated cost of the dock exceeds the established threshold requiring a permit. (Exhibits 1; 7.c, p. 6)
4. “A closed canopy of Douglas fir and western red cedar dominate in the vicinity of the north and south property lines, and along the shoreline of Beaver Lake. The majority of the site is a maintained lawn with no canopy cover. ... [A]ggressive non-native species that include Japanese knotweed, Himalayan blackberry, and scotch broom” are found along the lake shoreline. (Exhibit 3.a, p. 2) A single-family residence is located near the center of the subject property. (Exhibits 1, p. 1; 2, Sheet 1; 3, Sheet 2/3)

⁴ The Beaver Lake shoreline and W Beaver Lake Drive SE in the vicinity of Parcel 9042 lie generally on a southwest – northeast axis. (Exhibit 1, p. 1) For ease of directional references in this Decision, their axes will be assumed to lie on a north-south line.

5. The SMP contains extensive design and location standards for docks and boat lifts, referred to by the Department as the “Dock Design Requirements.” [SMC 25.07.050] The Dock Design Requirements are self-mitigating through design parameters to meet the requirement of No-Net-Loss of Ecological Function. [SMC 25.01.005, ¶ 2]
6. The proposed dock will be 444 SF in area, extend into the lake approximately 62 feet, be framed with ACZA treated fir stringers (4” by 8”) and pile caps (6” by 8”). The dock will be supported on 12 steel piles. Approximately the inboard 50 feet of the dock will be 6 feet wide; the remainder will be a 12’ x 12’ platform. The dock surface will be grated, and the dock will maintain well more than 15 feet of setback from the north and south property lines extended. (Exhibit 2; and testimony) The proposed Parkinson dock complies with all applicable provisions of the Dock Design Requirements. The dock will be constructed from a floating work barge in the lake. (Exhibits 1; 7.c, p. 5, § 6a)
7. The SMP requires establishment of a Vegetation Enhancement Area (“VEA”) along a property’s shoreline whenever a project will disturb uplands within the established SMA setback area. [SMC 25.06.020(10)] Parkinson may construct a pathway in an open area of the lawn down to the dock above the OHWM; all construction work on the dock will occur from a floating work barge in the lake. Therefore, a VEA would be required if the path is constructed, but not if the path is not constructed. Parkinson has developed a mitigation plan in case he elects to construct the path and in anticipation of requirements that will likely be levied by the Washington State Department of Fish and Wildlife (“WDFW”) and/or the United States Army Corps of Engineers (“USACE”). (Exhibits 3.a; 7.c, p. 5, § 6a; and testimony)
8. Sammamish’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for the Parkinson dock project on August 28, 2019. (Exhibit 7.b) The DNS was not appealed. (Testimony)
9. The Departmental Staff Report (Exhibit 1) contains a thorough analysis of the project’s compliance with SMA and SMP requirements. The Department recommends approval of the SSDP subject to eight conditions. (Exhibit 1, unnumbered p. 5)
10. Parkinson has no objection to the Departmental Staff Report or its recommended conditions. (Testimony)
11. One nearby family on Beaver Lake opposes the proposed length of the dock. The neighbors assert that the dock “will impede boaters, swimmers, and fishers”. They also believe that the dock length will set a bad precedent. (Exhibit 5.a)

Subsection 25.07.050(3)(e) SMC regulates the length of docks on Beaver (and Pine) Lake:

The maximum waterward extent of any new dock or other in-water/over-water moorage structure shall be no longer than 80 feet or the length needed to reach a depth of eight feet (measured from ordinary high water), whichever is greater. No dock shall be more than one-quarter the distance to the opposite shoreline.

(Emphasis added) The proposed dock, at a length of 62 feet, is well within the limit set by the code. The width of Beaver Lake in front of Parcel 9042 is approximately 600 feet. The proposed dock will be only about 10% of the width of the lake. Further, other docks along the shoreline appear to be in the ± 60 feet range. (Exhibit 1, p. 1)

12. 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

An SSDP is a Type 4 procedure. A Type 4 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on Type IV applications which is subject to the right of reconsideration and appeal to the State Shorelines Hearings Board. [SMC 20.05.020, 20.10.240, 20.10.260, and 25.35.080(1)]

The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision ..., he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision ... is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies,

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

objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Subsection 25.08.020(2) SMC requires that a proposed Substantial Development be “consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and [the City of Sammamish Shoreline Master Program].”

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department’s issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on April 18, 2019.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [SMC 25.08.050(4) and City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. This is a fundamentally uncontested case in which there is no challenge to the Department’s analysis nor to the Recommended Conditions as contained in Exhibit 1. The neighbors’ objection to the proposed dock length is without foundation in fact or regulation: Its length is well within the limit set by code; it will not set a bad precedent as there are numerous other docks on the lake of similar length; it will not impede lake users as it extends into the lake only about 10% of the lake’s width. Lengthy, detailed Conclusions of Law are, therefore, unnecessary. Rather, the Examiner adopts the Department’s analysis contained in Exhibit 1 by reference as if set forth in full.

2. The proposed dock is consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and the SMP.

Chapter 90.58 RCW is the SMA. The SMP, by definition, is consistent with the policies of the SMA. Therefore, a project which is consistent with the SMP is also consistent with the SMA.

Chapter 173-27 WAC contains procedural requirements for implementation of the SMA. The City's procedures were approved by the State when its SMP was approved. Therefore, its procedures are consistent with the WAC requirements.

The proposed dock complies with the SMP's Dock Design Requirements. The proposed dock is thus consistent with the SMP.

3. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment except as noted below. Section 173-27-190 WAC contains certain content and format requirements for any SSDP which is issued:

(1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).

(2) Permits for substantial development, conditional use, or variance may be in any form prescribed and used by local government including a combined permit application form. Such forms will be supplied by local government.

(3) A permit data sheet shall be submitted to the department with each shoreline permit. The permit data sheet form shall be as provided in Appendix A of this regulation.

Subsection (2) allows this Decision to serve as the SSDP. Subsection (1) requires that an additional condition be added. The data sheet required by Subsection (3) will be prepared by the Department when it transmits the SSDP and supporting exhibits to the state as required by Chapter 90.58 RCW.

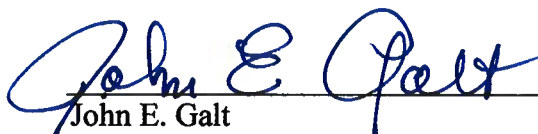
4. Mitigation plantings might be required for this SSDP: They would be needed if Parkinson decides to construct the path to the shoreline. As described in Exhibit 1 and noted above, the SMP's Dock Design Requirements were developed to be self-mitigating. Therefore, the dock itself does not require mitigation plantings under the SMP since it will be constructed waterward of the OHWM. If WDFW and/or USACE have requirements that include mitigation, then such agencies may impose mitigation under their authority. But the City should not and cannot do it for them. Therefore, in this case the Examiner will leave in the mitigation-related conditions as recommended by the Department to cover the possibility that the path will be constructed.

5. The Examiner believes that any permit which approves a specific site development plan should specify which exhibit in the record is being approved. None of the Department's recommended conditions do that in a simple, direct fashion. Therefore, the Examiner will add a condition to fulfill that need.
6. 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 testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** the requested Shoreline Substantial Development Permit to construct a 444 square foot, fully grated, private dock **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued October 7, 2019.


John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁶

Jay Irwin
Stephen Parkinson

Avril Baty

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)]

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

NOTICE of RIGHT of APPEAL

This Decision is final and conclusive subject to the right of review before the State Shorelines Hearings Board in accordance with the procedures of Chapter 90.58 RCW, the Shoreline Management Act of 1971. See SMC 20.35.080, Chapter 90.58 RCW, and Washington Administrative Code regulations adopted pursuant thereto for further guidance regarding Hearings Board appeal procedures.

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."

CONDITIONS OF APPROVAL PARKINSON DOCK SSDP2019-00190

This Shoreline Substantial Development Permit is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following **SPECIAL CONDITIONS**:

1. **Approved Plans.** Exhibit 2 is the approved project plan set for this SSDP. Revisions to approved SSDP plans are regulated under SMC 25.08.140.

Exhibits 3.a and 3.b are the approved shoreline mitigation planting plans to be employed if a pathway is constructed to the dock.
2. **Compliance with Local and State Laws.** The Permittee shall comply with all city rules and regulations in effect on April 18, 2019, the vesting date of the subject application, including any necessary permits from applicable state or federal agencies.
3. **Building Permit.** A building permit issued in accordance with Title 16 SMC must be approved prior to commencing project construction. Final construction plans showing the proposed dock shall be in substantial conformance with the **Exhibit 2.b** attached to this staff report and subject to applicable conditions of approval specified by the Hearing Examiner.
4. **Tree Removal.** No significant tree removal is allowed.

5. **Conformance to Plans.** Final construction plans, including staging plans, shall be prepared and submitted to the City for review with application for building permit. Site disturbance shall be the minimum necessary to accommodate the scope of work.
6. **Weed Control.** A condition shall be placed on the building permit as follows: *Fertilizer used in planting areas shall be minimized and any fertilizer used shall not contain phosphorous and shall be utilized consistent with the product's timing and quantity specifications. No herbicide shall be used for weed control, unless specifically authorized by the City of Sammamish.*
7. **Archeology.** Prior to building permit issuance, a note on the construction plans shall be added regarding compliance with SMC 25.06.010 and requiring notification the Washington State Department of Archaeology and Historic Preservation if artifacts are discovered.
8. **Notice on Title.** Prior to the issuance of Building Permits, a notice shall be recorded on title in accordance with SMC 25.06-020(16) regarding the maintenance of the vegetation enhancement area (VEA) established as a result of this SSDP. This notice shall run with the land.
9. **Permit Expiration.** Pursuant to WAC 173-27-090, construction shall be commenced on the proposed dock within two (2) years of the date that the SSDP is issued (or becomes final following any reconsideration or appeal periods, if applicable). Authorization to conduct development activities under the SSDP shall terminate five (5) years after the effective date of this permit. The City may authorize a single extension for a period not to exceed one (1) year based on a showing of good cause to the Director of reasonable factors, if a request for extension has been filed before the expiration date, and notice of the proposed extension is given to parties of record and the City.

EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a) AND (b), CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE THIS PERMIT IS FILED WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY AND ATTORNEY GENERAL AS REQUIRED BY RCW 90.58.140(6) AND WAC 173-27-130, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF SUCH FILING HAVE BEEN TERMINATED.