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BEFORE the HEARING EXAMINER for the  
CITY of SAMMAMISH

CITY OF SAMMAMISH

DECISION

FILE NUMBER: SSDP2019-00303

APPLICANT: Marcio Roberio Contrigiani  
2809 226<sup>th</sup> Avenue SE  
Sammamish, WA 98075

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 377± square foot, fully grated, private floating dock

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: February 3, 2020

INTRODUCTION <sup>1</sup>

Marcio Roberio Contrigiani (“Contrigiani”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 377± square foot, fully grated, private floating dock <sup>2</sup> in Pine Lake.

<sup>1</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.  
<sup>2</sup> Contrigiani describes the proposed structure as a “floating pier” connected to the shoreline by a “ramp”. (Exhibit 3) Those terms are at least in part based on Washington State Department of Fish and Wildlife (“WDFW”) terminology used in conjunction with Hydraulic Project Approvals. (Exhibit 1, p. 3) In WDFW parlance,

Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, piling-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a structure that connects a pier or shoreline to a float and provides access between the two.

[WAC 220-660-140(1)]

Unfortunately, the WDFW terminology is not fully consistent with SMC terminology – nor is Contrigiani’s terminology completely consistent with WDFW terminology. The SMC defines dock as “a fixed or floating platform structure anchored in and/or floating upon a water body and connected to land to provide moorage or landing for waterborne vessels and/or water-dependent recreation uses.” [SMC 25.02.010(29), emphasis added] The SMC defines a float as “a structure that is moored, anchored, or otherwise secured in a water body and which is not connected to the shoreline.” [SMC 25.02.010(38), emphasis added] The SMC does not define the word “pier,” although it is used in passing in SMC 25.02.010(81) and SMC 25.07.050(1)(m). The SMC does not use or define the term “ramp” other than as part of a “boat ramp.”

Contrigiani filed a Shoreline Substantial Development Land Use Application on June 18, 2019. (Exhibits 1, p. 1; 2<sup>3</sup>) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Exhibit 6) The Department issued a Notice of Application on July 11, 2019. (Exhibit 5)

The subject property is located at 2809 226<sup>th</sup> Avenue SE along the east shoreline of Pine Lake.

The subject property is located in Section 9, Township 24 N, Range 6 E, Willamette Meridian and is further identified as King County Assessor’s Parcel 6795100170 (“Parcel 0170”).

The Examiner held an open record hearing on January 30, 2020. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 11)

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 application was under staff review for 123 days. (Exhibit 1, p. 2) 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)]. Contrigiani chose to waive irregularities in the processing deadline. (Testimony)

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

- Exhibits 1 - 10: As enumerated in Exhibit 1, the Departmental Staff Report
- Exhibit 11: Notice of Public Hearing, issued December 12, 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. Contrigiani proposes to construct a 377± square foot, fully grated, private floating dock in Pine Lake in front of Parcel 0170.

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Under WDFW terminology, a dock must be a floating structure while a pier is a fixed structure. That distinction is not present in the SMC. The Examiner must use SMC terminology wherever it is defined. Therefore, the Contrigiani proposal is simply a floating dock, not a floating pier with a ramp.

<sup>3</sup> 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.

2. Parcel 0170 is a more or less parallelogram-shaped lot located along the east shoreline of Pine Lake. It has a north-south dimension that averages about 100 feet, a shoreline length of about 104 feet, and an east-west dimension, measured from the ordinary high water mark (“OHWM”), of about 240 feet. It is separated from 226<sup>th</sup> Avenue SE by an undeveloped parcel which is about 165 feet deep. Parcel 0170 contains about 17,272 SF of upland area according to King County Assessor on-line records. <sup>4</sup>
3. Pine Lake and shorelands <sup>5</sup> within 200 feet of the lake’s OHWM are within the jurisdictional area of the SMA. [SMC 25.02.010(77) and (80)] The City’s Shoreline Master Program (“SMP”) designates the subject property Shoreline Residential. [SMC 25.05.020(3), Appendix A] Uses that are proposed waterward of the OHWM are “governed by the regulations pertaining to the adjoining shoreland area and all such uses shall be considered accessory to the primary use.” [SMC 25.05.010(2)] Private docks, floats, and mooring buoys are permitted uses in all SMA jurisdictional areas within the City. [SMC 25.07.010, Table 25.07.010-1] An SSDP is required because the estimated cost of the proposed floating dock exceeds the established dollar threshold requiring a permit. (Exhibits 1; 4)
4. Parcel 0170 is relatively flat. A large single-family residence is located about 50 feet east of the Pine Lake OHWM. The shoreline is not revetted. There is no dock in front of Parcel 0170. The area between the house and the lake is manicured lawn. Mature trees are common on the portion of Parcel 0170 east of the house; there are no trees within about 30 – 40 feet of the OHWM. Each of the two abutting lots along the lake contains a single-family residence with a dock. (Exhibits 1, p. 1, Figure 1; 3)
5. The proposed floating dock will have an area of 377± SF, extend into the lake approximately 49 feet, and be built with ACZA treated timbers on high density polyethylene float tubs. The dock will be six feet wide; <sup>6</sup> an approximate 8’ x 10’ ell will extend south at the outboard end of the dock. The dock surface will be fully grated (47% open space). The dock will be 15 feet from the north property line

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<sup>4</sup> The record contains substantially conflicting depictions of the subject property. The site plan submitted on behalf of Contrigiani depicts the property extending the full distance, about 430 feet, from the Pine Lake OHWM to 226<sup>th</sup> Avenue SE. (Exhibit 3) The Department Staff Report includes a portion of a King County iMap of the area which depicts Parcel 0170 not extending all the way to 226<sup>th</sup> Avenue SE. (Exhibit 1, p. 1, Figure 1) The Examiner went outside the record to the King County iMap program to resolve the conflict.

The SSDP application is for Parcel 679510-0170. (Exhibit 2, p. 2) In other words, it is for Parcel 0170. According to iMap, Parcel 0170 is only the westerly 240± feet of the area depicted on Exhibit 3. The easterly 165 feet of the area depicted on Exhibit 3 is Parcel 679510-0172 (“Parcel 0172”). The iMap records show that Contrigiani owns both Parcels 0170 and 0172. However, the application is for only Parcel 0170. Since elimination of the easterly 165 feet will not affect evaluation of the project, the Examiner has elected to simply ignore the area depicted on Exhibit 3 that is not part of Parcel 0170. The property figures stated herein are for only Parcel 0170. Therefore, when using Exhibit 3, the reader must ignore the easterly 165± feet of the depicted parcel.

<sup>5</sup> “‘Shorelands,’ also referred to as ‘shoreland areas,’ means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the OHWM; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of this program; the same to be designated as to location by the Department of Ecology (RCW 90.58.030).” [SMC 25.02.010(77)]

<sup>6</sup> Docks in Pine Lake may be six feet wide. [SMC 25.07.010, Table 25.07.010-2; SMC 25.07.050(3)(c)(i)]

extended and about 75 feet from the south property line extended. The inboard end of the dock will be attached to two 2” galvanized steel pin piles at the OHWM; the outboard end of the dock will be anchored in place with two galvanized steel Danforth anchors. (Exhibits 1, p. 3; 3)

6. The SMP contains extensive design and location standards for docks and associated facilities. [SMC 25.07.010, Table 25.07.010-2; SMC 25.07.050] The proposed floating dock complies with those standards which are applicable to the proposal. (Exhibit 1)
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(13)] No construction is proposed above the OHWM; all construction work will occur from the lake. Therefore, no VEA is required. (Exhibits 1; 3; and testimony)
8. A critical areas report was prepared before the house was remodeled a few years ago. That report reportedly described the lake as a critical area. When the Department was reviewing the floating dock proposal, it asked Contrigiani to explain that report. Contrigiani contacted the consultant who prepared the original report. The consultant revised its report to indicate that the lake itself was not a critical area. (Exhibit 6; and testimony) Thus, according to the testimony in the record, there are no critical areas on Parcel 0170.
9. Sammamish’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for the Contrigiani floating dock project on December 12, 2019. (Exhibit 10) The DNS was not appealed. (Testimony)
10. 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 seven conditions. (Exhibit 1, p. 5)
11. Contrigiani has no objection to the Departmental Staff Report or its recommended conditions. (Testimony)
12. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
13. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

## LEGAL FRAMEWORK <sup>7</sup>

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

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<sup>7</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

### 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, 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 June 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 an uncontested case in which there is no challenge to the Department's analysis nor to the Recommended Conditions as contained in Exhibit 1. 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 (except to the extent of any inconsistency with the Findings of Fact and Conclusions of Law herein).
2. The proposed floating 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 proposal complies with the SMP's requirements for floating docks. (See Finding of Fact 6, above.) 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.
  - A. 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.

- B. An SSDP involves approval of a specific development plan for a specific parcel. The SSDP should clearly and prominently identify the exhibit which represents the approved plan. While the Department's recommended conditions indirectly identify the approved exhibit, direct identification is preferred. Therefore, the Examiner will insert a new Condition 1 which will specify that Exhibit 3 is the approved development plan for this SSDP.
  - C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Condition 3 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
4. There is no justification based upon this SSDP to require any mitigation plantings. If other agencies have requirements that include mitigation, then such agencies may impose mitigation under their authority.
  5. 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 377± square foot, fully grated, private floating dock **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued February 3, 2020.



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John E. Galt  
Hearing Examiner

## HEARING PARTICIPANTS <sup>8</sup>

Gregory Ashley, for the Applicant

Andrew Johnson, for the City  
Avril Baty, for the City

## 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, 801 228<sup>th</sup> 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 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.

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<sup>8</sup> The official Parties of Record register is maintained by the City's Hearing Clerk.



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  
CONTRIGIANI FLOATING DOCK  
SSDP2019-00303**

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 3 is the approved project plan set for this SSDP. Revisions to approved SSDP plans are regulated under SMC 25.08.140.
2. **Approved Construction Materials.** New structures installed below OHWM or that regularly and frequently come in contact with water shall be constructed of Washington Department of Fish and Wildlife ("WDFW")-approved materials.
3. **Compliance with Local and State Laws.** The Permittee shall comply with all city rules and regulations in effect on June 18, 2019, the vesting date of the subject application, including any necessary permits from applicable state or federal agencies.
4. **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 Exhibit 3.
5. **Tree Removal.** No significant tree removal is allowed.
6. **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.
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. Any ground disturbing activities must be monitored by a licensed archeologist.
8. **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.