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BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

CITY OF SAMMAMISH

DECISION

FILE NUMBER: SSDP2019-00585

APPLICANT: Shea Beal
3201 E Lake Sammamish Shore Lane SE
Sammamish, WA 98075

*or*¹

3219 E Lake Sammamish Shore Lane SE
Sammamish, WA 98075

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 440± square foot, fully grated, private dock with an associated free-standing covered boat lift in Lake Sammamish

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: June 22, 2020

¹ The Examiner is unsure of the Beal mailing address. The initial site plan, dated November 8, 2019, lists 3201 E Lake Sammamish Shore Lane SE as Beal's mailing address. (Exhibit 9, PDF p. 1) The SEPA checklist, signed by Beal's agent on November 14, 2019, lists 3219 E Lake Sammamish Shore Lane SE as Beal's mailing address. (Exhibit 7, PDF pp. 3 & 15) The revised site plans, dated February 18, 2020, and March 6, 2020, list 3219 E Lake Sammamish Shore Lane SE as Beal's mailing address and 3201 E Lake Sammamish Shore Lane SE as Beal's "previous" mailing address. (Exhibits 16, PDF p. 1 and Exhibit 20, PDF p. 1, respectively) The house at 3219 E Lake Sammamish Shore Lane SE is still under construction as of June 19, 2020. (Testimony) The Examiner did not inquire during the hearing whether Beal had been residing in the incomplete house since November, 2019. Thus, the Examiner does not know which, if either, mailing address is current. (To add a little more uncertainty: King County iMap does not even recognize a 3201 E Lake Sammamish Shore Lane SE property address. According to iMap, the address of the subject property is 3219 E Lake Sammamish Shore Lane SE. [<https://gismaps.kingcounty.gov/iMap/>, last visited June 20, 2020; and Exhibit 1, PDF p. 1, Figure 1])

INTRODUCTION ²

Shea Beal (“Beal”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a a 440± square foot, fully grated, private dock with an associated free-standing covered boat lift in Lake Sammamish. ³

Beal filed a Shoreline Substantial Development Land Use Application on November 14, 2019. (Exhibits 1, PDF p. 1; 2; 8 ⁴) The Sammamish Department of Community Development (“Department”) deemed the application to be complete on December 13, 2019. (Testimony ⁵) The Department issued a Notice of Application on December 26, 2019. (Exhibit 14)

The subject property is located at 3219 East Lake Sammamish Shore Lane SE (“Shore Lane”) along the east shoreline of Lake Sammamish. ⁶

The subject property is located in Section 8, Township 24 N, Range 6 E, Willamette Meridian and is further identified as King County Assessor’s Parcel 0824069127 (“Parcel 9127”). (Exhibits 2, PDF p. 2; 6, PDF p. 3, § 5e)

The Sammamish Hearing Examiner (“Examiner”) viewed the subject property on June 18, 2020.

The Examiner held a remote open record hearing on June 19, 2020. ⁷ The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibits 24, 25)

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 held after the 120th net review day. 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)]. Beal chose to extend the deadline. (Testimony)

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

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 “‘Dock’ means 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)]
⁴ 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. All of the exhibits were provided to the Examiner electronically as PDF documents. Citations to pages in those documents will use the PDF page number without regard to any original document pagination.
⁵ The date of application “completeness” in Exhibit 15 is incorrect. (Testimony)
⁶ For ease of reference, the shoreline will be assumed to lie on a north-south axis.
⁷ The hearing was conducted remotely using the “GoToMeeting” program due to assembly restrictions attendant to the current COVID-19 pandemic.

Exhibits 1 - 25: As enumerated in Exhibit 1, the Departmental Staff Report

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. Beal proposes to construct a private dock in Lake Sammamish in front of Parcel 9127. The proposed dock will have an area of 440± square feet ("SF"),⁸ extend into the lake approximately 80 feet beyond the ordinary high water mark ("OHWM"⁹), and be built with ACZA treated timbers on 16 galvanized steel piles and one shore bent. The dock will be 4 feet wide with one 6' x 20' ell on the north side of the dock at its outboard end. The dock surface will be fully grated (43% open space), and the dock will maintain well more than 15 feet of setback from the north and south property lines extended. One free-standing, covered boat lift is proposed along the inside edge of the ell. The boat lift will be smaller than its 10' x 24' canopy. The canopy will be not more than 10 feet above water level. The canopy will be translucent.¹⁰ (Exhibits 20¹¹; 22)
2. Lake Sammamish and shorelands¹² within 200 feet of the lake's OHWM are within the jurisdictional area of the SMA. [SMC 25.02.010(77) and (80)] Lake Sammamish is a designated Shoreline of Statewide Significance under the SMA. [SMC 25.05.030] The City's Shoreline Master Program ("SMP") designates the subject property Shoreline Residential. [SMC 25.05.020(3),

⁸ The plans (Exhibit 20) and all other record documents state that the surface area of the dock will be 440 SF. The main dock is to be 4' x 80' = 320 SF; the ell is to be 6' x 20' = 120 SF; 320 SF + 120 SF = 440 SF. However, the plans also show a triangular gusset at the inside corner where the main dock and the ell intersect. Each leg of that triangular gusset appears to be about 2 feet long. The area of a triangle having 2' legs is ½ of 2' x 2' or 2 SF. To be absolutely accurate, the surface area of the proposed dock is more likely than not closer to 442 SF than to 440 SF. The 2 SF difference is immaterial to the analysis of the application. Therefore, the Examiner will refer to the surface area of the proposed dock as 440± SF.

⁹ The City's policy regarding determination of the OHWM for Lake Sammamish has evolved over time. There was a period where the City used a standard lake elevation to identify all OHWMs on the Lake within its jurisdiction. The City has now returned to a policy of lot-by-lot physical delineation of the OHWM followed by a survey of the delineated line. That process was used in this application. (Testimony)

¹⁰ The Department asked Beal's consultant to submit specifications for the canopy material. (Exhibit 19) The consultant responded with a specification sheet for an opaque canopy. (Exhibit 21) Every other document and all testimony state that the canopy will be translucent. Subsection 25.07.050(2)(j) requires that boat lift canopies be translucent. The Examiner finds and concludes that submittal of Exhibit 21 was an error. Exhibit 21 will be ignored.

¹¹ The record contains two earlier versions of the site plan: Exhibits 9 and 16. Those site plan versions have not been considered in preparing this Decision.

¹² "'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)]

Appendix A; and testimony] 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 dock and boat lift exceeds the established dollar threshold requiring a permit.¹³ (Exhibit 6, PDF p. 6, § 6g)

3. The SMP regulations governing private docks located in Lake Sammamish are contained in SMC 25.07.050(1) and (2). Subsection (1) contains regulations applicable to all docks within the City; Subsection (2) contains additional regulations specific to docks located within Lake Sammamish. Compliance with the regulations in Subsections (1) and (2) are not at issue: Beal’s proposed dock complies with all applicable regulations in those subsections. (Exhibits 1; 20)
4. Parcel 9127 is a relatively narrow strip of land between the Lake shoreline and Shore Lane. The parcel is relatively flat with a small drop-off at the water’s edge. A small bulkhead exists along the shoreline. (Exhibits 1; 5; 11; and testimony)

Beal obtained building permit BLD2018-03977 in or around 2018 to construct a single-family residence on Parcel 9127. (Exhibit 1, PDF p. 3) The residence is still under construction as of the date of the hearing.¹⁴ Mitigation for shoreline impacts associated with the residence was addressed during building permit review. (Exhibits 1; 5; and testimony)

Parcel 9127 is bordered on the north by the Waverly Hills Beach Club, a recreational tract for a group of homeowners in the area. Parcel 9127 is bordered on the south by a single-family residence. The east side of Parcel 9127 borders the west edge of the East lake Sammamish Trail (“ELST”) right-of-way. Shore Lane exists within a narrow easement abutting the west side of the ELST right-of-way. (Exhibits 5, PDF p. 1; 11; and testimony)

5. As noted, the proposed Beal dock complies with the SMP’s extensive design and location standards for docks and associated facilities. [SMC 25.07.010, Table 25.07.010-2; SMC 25.07.050] Mitigation for the dock *per se* is not required for this SSDP; mitigation may be required by the U.S. Army Corps of Engineers and/or the Washington State Department of Fisheries under their permitting authority. (Testimony) Beal has developed a mitigation plan for consideration by those agencies. (Exhibit 5)
6. 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

¹³ The Staff Report (Exhibit 1) cites an incorrect WAC section regarding the dollar threshold for SSDP exemption. The correct WAC citation for new docks in fresh water is WAC 173-27-040(2)(h)(ii)(B), which sets a \$10,000 exemption threshold. The Beal dock will cost more than twice that amount. (Exhibit 6, PDF p. 6, § 6g) Therefore, the dock is not exempt from the requirement to obtain an SSDP.

¹⁴ The JARPA Form, signed on May 20, 2019, states that “There is a new single family residence on site.” (Exhibit 5, PDF p. 4, § 5o) Just to be clear, the new residence may well have been under construction in May, 2019, but it most certainly had not been completed as it is still under construction as of June 19, 2020.

25.06.020(10) {Lake Sammamish} and (13) {Beaver and Pine lakes}] No construction is proposed above the OHWM; all construction work will occur from a barge in the lake. (Exhibits 5, PDF p. 2; 8) Therefore, no VEA is required.

7. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the Beal dock project on April 8, 2020. (Exhibit 23) The DNS was not appealed. (Testimony)
8. The Departmental Staff Report (Exhibit 1) contains a thorough analysis of the project's compliance with SMA and SMP requirements.¹⁵ The Department recommends approval of the SSDP subject to seven conditions. (Exhibit 1, p. 7)
9. Beal has no objection to the Departmental Staff Report or its recommended conditions. (Testimony)
10. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.

The Muckleshoot Indian Tribe sought clarification of what shoreline impact mitigation was required for construction of the new residence and what mitigation was required specifically for the proposed dock. The Department responded to the Tribe's inquiries. (Exhibit 17) Since the mitigation plan does not specifically relate to this SSDP, the Tribe's concerns will not be addressed here.

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

LEGAL FRAMEWORK¹⁶

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

¹⁵ A few misstatements in the Staff Report were discussed during the hearing. None have a material effect on the Report's analysis.

¹⁶ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 December 13, 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 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 docks and boat lifts. 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.

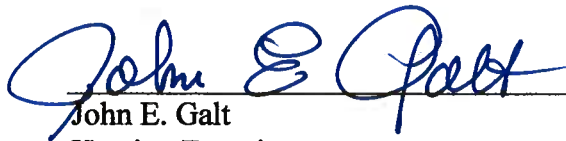
Subsection (2) allows this Decision to serve as the SSDP. Subsection (1) requires that an additional condition be added. The data sheet required by Subsection (3) will be prepared by the Department when it transmits the SSDP and supporting exhibits to the state as required by Chapter 90.58 RCW.

- 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 20, subject to certain provisos discussed below, is the approved development plan for this SSDP.
 - C. Recommended Condition 2. This condition has an incorrect vesting date: December 16, 2019, should be December 13, 2019. That change will be made.
 - D. Recommended Condition 3. The ending clauses in the second sentence (beginning with "attached to ...") will be eliminated as they are superfluous and confusing.
 - E. Recommended Condition 4 will be eliminated. That condition says that tree planting as called out on Exhibit 20 is not required. (Exhibit 1, p. 7) In fact, no mitigation is required for the dock *per se* under the SMP. The best way to deal with the tree call-out on Exhibit 20 is to include a proviso clause in new Condition 1.
 - F. While Exhibit 20 does not contain any specifications for boat lift canopy material, the question of type of material arose during the Department's review of the Beal application. Beal's consultant submitted Exhibit 21 in response. But Exhibit 21 would violate SMP regulations: The canopy cannot be opaque. Because Exhibit 21 is in the record, the Examiner concludes it best to add another proviso to new Condition 1 stating that the canopy shall be made of translucent material as required by code.
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. But the City should not and cannot do it for them.
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 a 440± square foot, fully grated, private dock with an associated free-standing covered boat lift in Lake Sammamish **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued June 22, 2020.


John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁷

Jay Irwin
Neil Pederson

Jasvir Singh
Michael Beal

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 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."

¹⁷ The official Parties of Record register is maintained by the City's Hearing Clerk.

**CONDITIONS OF APPROVAL
BEAL RESIDENTIAL DOCK
SSDP2019-00585**

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 20 is the approved project plan set for this SSDP; *PROVIDED THAT*: 1) The tree planting call-out on Sheet 1 is not a requirement of this Shoreline Substantial Development Permit; and 2) The boat lift canopy shall be made of translucent material as required by code. 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 December 13, 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 20.
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. **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.
7. **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.

HEARING EXAMINER DECISION

RE: SSDP2019-00585 (Beal Dock)

June 22, 2020

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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.