

SEP 24 2020

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

DECISION

FILE NUMBER: SSDP2018-00172

APPLICANT: ¹ Richard Saada
3925 East Lake Sammamish Shore Lane SE
Sammamish, WA 98078

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 462 square foot, fully grated, private dock with an associated free-standing boat lift in Lake Sammamish ²

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: September 22, 2020

INTRODUCTION ³

Richard Saada (“Saada”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 462 square foot, fully grated, private dock with an associated free-standing boat lift in Lake Sammamish. ⁴

Saada filed a Shoreline Substantial Development Land Use Application on March 23, 2018. (Exhibits 1; 2 ⁵) The Sammamish Department of Community Development (“Department”) deemed the application to be

¹ Since the application (Exhibit 2) was filed the Applicant has moved into the new residence on the subject property. (Testimony) This is the Applicant’s correct, current mailing address.

² Saada redesigned the proposed dock during the staff review period in order to comply with a City requirement that the boatlift be perpendicular to the shoreline. (Testimony) The original design had a dock surface area of 445 square feet (“SF”) (Exhibit 11); the revised proposal has a surface area of 462 SF (Exhibit 20). The Staff Report erroneously uses the square footage from the original proposal, not the current proposal.

³ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

⁴ “‘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)] The applicant refers to the proposed structure as a “pier.” (Exhibits 2; 5; 6; 11; 20) The Examiner will use the term that is preferred by the SMC: Dock.

⁵ 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. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. 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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complete when filed. (Exhibit 10) The Department issued a Notice of Application on May 1, 2018. (Exhibit 15)

The subject property is located at 3925 East Lake Sammamish Shore Lane SE 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 082406-9057 ("Parcel 9057").

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on July 28, 2020 (but was not able to observe the actual shoreline from the public right-of-way).

The Examiner held an open record hearing on September 16, 2020. The hearing was conducted remotely using the "GoToMeeting" program due to assembly restrictions attendant to the current COVID-19 pandemic. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 24)

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 on or about net review day 877. (Exhibit 1, p. 3) 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)]. The delay in processing the Saada application was attributable primarily to staff turnover during the processing period. (Testimony) Saada chose to extend the deadline. (Testimony)

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

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.

⁶ The Lake Sammamish shoreline in the area of the Saada property generally follows a northwest-southeast alignment. For simplicity, this Decision will adopt a convention that the shoreline follows a north-south alignment. Many of the documents in the record use the convention that the shoreline followed an east-west alignment. The Examiner declines to adopt that convention: The Examiner has consistently adopted a north-south alignment convention in all previous Lake Sammamish dock decisions. The Examiner hopes that use of a different convention here does not confuse the reader.

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FINDINGS OF FACT

1. Saada proposes to construct a private dock in Lake Sammamish in front of Parcel 9057. The proposed dock will have an area of 462 SF, extend into the lake approximately 80 feet beyond the ordinary high water mark (“OHWM”), and be built with ACZA treated timbers on galvanized steel piles. The dock will be 4 feet wide, widening to 6 feet approximately 56 feet from the shoreline. A 6-foot wide ell will extend towards the north at the end of the dock. The dock surface will be fully grated (47% open space), and the dock will maintain the required 15 feet of setback from the north property line extended and more than 17 feet from the south property line extended. One free-standing boat lift is proposed on the south side of the dock, about 50 feet from the shoreline. The application does not request approval for a covered boat lift. (Exhibit 20)
2. Lake Sammamish and shorelands⁷ 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), 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 dock and boat lift (over \$24,000) exceeds the established dollar threshold requiring a permit.⁸ (Testimony)
3. Parcel 9057 is a small (5,891 SF) lot. It is about 53 feet wide; its depth between East Sammamish Shore Lane SE and the OHWM varies from about 95 feet to about 125 feet. (It is the angled shoreline which necessitated the design change so that the boatlift could be placed perpendicular to the shoreline.) (Exhibit 20) Parcel 9057 “slopes toward the lake, steeply in places.” (Exhibit 12, PDF p. 7) The Eastern portion of the site contains a new single-family residence constructed under building permit BLD2016-01407. The site is partly encumbered with a 25-foot wide wetland buffer associated with a Category IV lake shore wetland located on the abutting parcel to the south. A mitigation plan was previously approved for construction of the single-family residence. (Exhibit 12)

⁷ “‘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)]

⁸ The Staff Report cites an incorrect WAC section regarding the dollar threshold for SSDP exemption. (Exhibit 1, PDF p. 4) 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 Saada dock will cost more than twice that amount. (Testimony) Therefore, the dock is not exempt from the requirement to obtain an SSDP.

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As of 2014 when the critical areas study (“CAS”) for the single-family residence project was prepared, “[t]he majority of the shoreline [had] a low bank and [was] unarmored except for the [northern] end where an old, approximately 15-foot [long] timber bulkhead [was] present. A gravel beach [was] present below the OHWM.” (Exhibit 12, PDF pp. 8 & 11) The new residence was under construction in 2018 when a CAS for the dock project was prepared. (Exhibit 13, PDF p. 1) That CAS includes the following description of the shoreline area: “The on-site shoreline comprises a low bank and is unarmored except for a short length of concrete bulkhead present near the [northern] property line. The OHWM is confined within the site by an abrupt change in topography. A gravel beach is present below the OHWM” (Exhibit 13, PDF p. 4) The 2018 CAS concludes that the proposed dock, located entirely waterward of the OHWM, will result in no net-loss of shoreline ecological function. (Exhibit 13, PDF, pp. 8 & 9)

4. The property to the north contains a single-family residence with a private dock; the property to the south is undeveloped, but has an existing dock in front of it. (Exhibit 20, PDF p. 1)
5. 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 dock and boat lift comply with those standards which are applicable to the proposal, provided that it receives approval from the U.S. Army Corps of Engineers (“USACE”) and/or the Washington State Department of Fish and Wildlife (“WDFW”) for that part of the dock which is six feet wide. (See SMC 25.07.050(2)(i).) (Exhibit 1)
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 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 the lake (except for cutting timbers to length). (Testimony) Therefore, no VEA is required. (Exhibit 1, PDF p. 4) Saada has developed a mitigation plan in anticipation of requirements that will likely be levied by WDFW and/or USACE. (Exhibit 13; and testimony)
7. Sammamish’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for the Saada dock project on June 29, 2020. (Exhibit 24) The DNS was not appealed.
8. The Snoqualmie and Muckleshoot Indian Tribes both want the remnant bulkhead removed as mitigation for the proposed dock. (Exhibits 16; 22)
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 six conditions. (Exhibit 1, PDF p. 7)
10. Saada has no objection to the Departmental Staff Report or its recommended conditions. (Testimony)

11. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
12. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK⁹

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, 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.

⁹ 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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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 March 28, 2018.

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 material 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 Examiner understands and sympathizes with the Muckleshoot and Snoqualmie Indian Tribes’ desire to have the remnant bulkhead removed. (The photographic evidence shows that the bulkhead is upslope of the actual shoreline and, thus, is not retaining earth along the OHWM. (Exhibit 12, PDF p. 11)) But where, as here, the evidence shows that the proposal (a dock waterward of the OHWM) will result in no-loss of shoreline ecological function, there is no basis under local regulation to require such removal.

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3. 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. (See Finding of Fact 5, above.) The proposed dock is thus consistent with the SMP.

4. 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,

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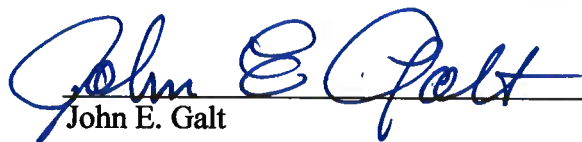
direct identification is preferred. Therefore, the Examiner will insert a new Condition 1 which will specify that Exhibit 20 is the approved development plan for this SSDP.

- C. Recommended Condition 2 contains an incorrect vesting date for the application. The incorrect date will be replaced with the correct date.
 - D. 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.
5. 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.
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 462 square foot, fully grated, private dock with an associated free-standing boat lift **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued September 22, 2020.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁰

Gregory Wayne Ashley

Mark Newman

¹⁰ 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 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 SAADA PRIVATE DOCK SSDP2018-00172

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. 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.

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3. **Compliance with Local and State Laws.** The Permittee shall comply with all city rules and regulations in effect on March 28, 2018, 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 and boat lift 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.

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.