

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

DECISION

FILE NUMBER: SSDP2019-00312

APPLICANTS: Robert and Lara Humble
26503 SE 22nd Street
Sammamish, WA 98075

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 334 square foot, fully grated, private dock along the west shoreline of Beaver Lake

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: March 4, 2021

INTRODUCTION ¹

Robert and Lara Humble (“the Humbles”) seek approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 334 square foot, fully grated, private dock along the west shoreline of Beaver Lake. ²

The Humbles filed a Shoreline Substantial Development Land Use Application on June 20, 2019. (Exhibits 1; 2 ³) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Testimony) The Department issued a Notice of Application on August 1, 2019. (Exhibit 6)

The subject property is located at 2124 W Beaver Lake Drive SE, along the west shoreline of Beaver Lake.

The subject property is located in Section 2, Township 24 N, Range 6 E, Willamette Meridian and is further identified as King County Assessor’s Parcel 0224069024 (“Parcel 9024”).

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² “‘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)]

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.

The Sammamish Hearing Examiner (“Examiner”) held an open record hearing on March 3, 2021. The hearing was conducted remotely using the “GoToMeeting” platform 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 10) No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.

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 beyond the 120th net review day. (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)]. The Humbles chose to waive the deadline irregularities. (Testimony)

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

Exhibits 1 - 13: 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. The Humbles propose to construct a private dock in Beaver Lake in front of Parcel 9024. The proposed dock will have an area of 334 square feet (“SF”), extend into the lake approximately 59 feet beyond the ordinary high water mark (“OHWM”), and be built with ACZA treated timbers on 10 steel piles. The inboard 39 feet of the dock will be 4 feet wide, increasing to 6 feet wide for the outboard 20 feet. A 6 foot by 10 foot ell will be attached to the south side of the dock at its outboard end. The dock surface will be fully grated (43% open space), and the dock will maintain 15 feet of setback from the south and about 71 feet of setback from the north property lines extended. The dock will be about 1.5 feet above lake surface. (Exhibit 3) The dock is estimated to cost between \$20,000 and \$30,000. (Testimony)
2. Beaver Lake and shorelands⁴ 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

⁴ “‘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)]

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 exceeds the established dollar threshold requiring a permit.

3. Parcel 9024 is about 100 feet wide with an average depth of about 400 feet between W Beaver Lake Drive SE and the west shoreline of Beaver Lake. It is relatively flat with a gentle slope towards the shoreline. Parcel 9024 contains one or more wetland areas; the proposed dock will not affect the wetland area(s). The Humbles have obtained a building permit for construction of a single-family residence on Parcel 9024. That permit included mitigation for environmental impacts; no additional mitigation is required for the dock. The residence is currently about 50% complete. (Exhibits 1; 3; and testimony)

Docks of similar size and configuration as the proposed dock are common along the west shore of Beaver Lake. (Exhibit 1)

4. 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] Section 25.07.050 SMC is divided into three subsections: (1) contains requirements for all docks; (2) contains additional requirements for docks in Lake Sammamish; and (3) contains additional requirements for docks in Pine and Beaver Lakes. The proposed dock complies with those standards which are applicable to the proposal. (Exhibit 1⁵)
5. 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}] A VEA and mitigation plan were required in conjunction with the residential building permit. Nothing further is required. (Exhibit 1; and testimony)
6. Sammamish’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for the Humbles’ dock project on December 8, 2020. (Exhibit 12) The DNS was not appealed.
7. The Departmental Staff Report (Exhibit 1) contains an analysis of the project’s compliance with SMA and SMP requirements. The Department recommends approval of the SSDP subject to seven conditions. (Exhibit 1, unnumbered p. 5)
8. The Humbles expressed no objection to the Departmental Staff Report or its recommended conditions. (Testimony)
9. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

⁵ The table of regulatory compliance on unnumbered page 4 of Exhibit 1 omits (presumably inadvertently) one aspect of the dock length requirements: “No dock shall be more than one-quarter the distance to the opposite shoreline.” [SMC 25.05.070(3)(h)] The proposed Humble dock is well short of that upper limit. (Exhibit 1, p. 1, aerial photograph)

LEGAL FRAMEWORK ⁶

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.

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.

⁶ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 20, 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. (See Finding of Fact 4, 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. Recent Department recommendations for dock SSDPs have routinely included a recommended condition requiring that all dock elements which may come in contact with the lake water must meet WDFW materials standards.⁷ This Departmental recommendation does not include such a condition. (Exhibit 1, unnumbered p. 5)

As a result of a brief discussion during the hearing, the Examiner concludes that the omission may be due in part or in full to staff turnover: Three different staffers were assigned to this application during the Departmental review period.

The Examiner will add the common condition in an effort to provide condition consistency among essentially identical permits. If the Department desires to make a policy change and

⁷ See, for example: Saada, SSDP2018-00172, Decision issued September 22, 2020; Beal, SSDP2019-00585, June 22, 2020; Hofmann, SSDP2019-00331, February 3, 2020; Contrigiani, SSDP2019-00303, February 3, 2020; etc.

no longer include such a condition on future permits, the Examiner asks that it so indicate in the text of its next recommendation. Inclusion of such a statement would explain the change in permit conditions and eliminate any possible charge of favoritism.

- D. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Condition 2 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 additional mitigation plantings: Mitigation as required by the SMC was assessed and required in conjunction with issuance of the residential building permit. If other agencies have requirements that include additional 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 334 square foot, fully grated, private dock along the west shoreline of Beaver Lake **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued March 4, 2021.

ls/ John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁸

Jay Irwin
Lara Humble

Jasvir Singh
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

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

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 ROBERT and LARA HUMBLE DOCK SSDP2019-00312

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. **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** and subject to applicable conditions of approval.
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. **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.