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CITY OF SAMMAMISH

BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

DECISION

FILE NUMBER: SSDP2018-00482

APPLICANT: ¹ Justin Johnson
845 E Lake Sammamish Pkwy NE
Sammamish, WA 98074

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 420 square foot, fully grated, private dock with an associated free-standing boat lift

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: July 19, 2019

INTRODUCTION ²

Justin Johnson (“Johnson”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 420 square foot, fully grated, private dock with an associated free-standing boat lift in Lake Sammamish.

Johnson filed a Shoreline Substantial Development Land Use Application on July 26, 2018. (Exhibits 7; 8 ³) The Sammamish Department of Community Development (“Department”) deemed the application complete when filed. (Exhibits 8; 10) The Department issued a Notice of Application on September 5, 2018. ⁴ (Exhibit 9)

The subject property is located at 897 E Lake Sammamish Pkwy NE, between the East Lake Sammamish Trail (“ELST”) right-of-way and the east shoreline of Lake Sammamish. ⁵

¹ Some record documents list Johnson’s mailing address street number as “845,” others as “897.”

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

³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

⁴ The filing and “completeness” dates in Findings of Fact II.1 and II.2 in the Departmental Staff Report (Exhibit 1) are incorrect. (Testimony)

⁵ Some record documents list the property street number as “847.” (Exhibits 7; 16, *e.g.*) The Examiner believes, based upon the preponderance of the credible evidence, that “897” is the correct street number.

The Examiner held an open record hearing on July 17, 2019. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 20)

Subsection 20.05.100(1) SMC requires that decisions on SDPs be issued within 120 net review days after the application is found to be complete. The open record hearing was presumptively held after 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)]. Johnson, through his agent, chose to extend the deadline. (Testimony)

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

Exhibits 1 - 20: As enumerated in Exhibit 1 at page 2, 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. Johnson proposes to construct a 420 square foot (“SF”), fully grated, private dock with an associated free-standing boat lift in Lake Sammamish in front of the property at 897 E Lake Sammamish Pkwy NE (the “subject property”).⁶
2. The subject property is a more or less rectangular parcel located between the ELST right-of-way and the east shoreline of Lake Sammamish. It has a north-south dimension of about 75 feet and an east-west dimension, measured from the ordinary high water mark (“OHWM”), that varies from about 64 to 71 feet. The upland property contains about 5,782 SF. Until in or around 2015 the subject property was vacant except for a sport court which covered about 1,830 SF of the parcel. A small Type Np stream (perennial, non-fish bearing) crosses the south edge of the property, emptying into Lake Sammamish through an old, raised concrete flume. (Exhibits 2; 3; 6.4, The Watershed Company March 28, 2014 letter; 6.4, Hearing Examiner Decision in SVAR2014-00170, pp. 2 &3, Findings of Fact 1, 3, & 4; 13)
3. Lake Sammamish and shorelands within 200 feet of the lake’s OHWM are within the jurisdictional area of the SMA. Lake Sammamish is a designated Shoreline of Statewide Significance under the SMA. The City’s Shoreline Master Program (“SMP”) designates the subject property Shoreline Residential. A private dock is a preferred water-oriented and water-dependent use under the SMP.

⁶ The boat lift was a component of the proposal when the application was filed. (Testimony) Any potential indication in some exhibit documents that the boat lift was a later addition would be incorrect.

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An SSDP is required because the estimated cost of the dock and boat lift exceeds the established threshold requiring a permit. (Exhibits 1; 15, p. 6, §6g)

4. The SMP contains extensive design and location standards for docks and boat lifts, referred to by the Department as the “Dock Design Requirements.” [SMC 25.07.050]
5. The proposed dock will be 420 SF in area, 80’ in length, framed with ACZA treated fir, stringers to be 4” by 8”, joists/pile caps to be 6” by 8”. The inboard 30 feet of the dock will be four feet wide; the remaining 50 feet will be six feet wide. The dock will be supported on 12 steel piles. The dock surface will be grated, and the dock will maintain more than 15 feet of setback from the north and south property lines extended. A free-standing, aluminum boat lift will be placed adjacent to the south side of the dock at its outboard end. The boat lift will be about 6 – 8 feet wide by about 9 – 10-foot long. The boat lift will not have a canopy. (Exhibit 2; and testimony) The proposed Johnson dock complies with all applicable dock and boat lift provisions of the Dock Design Requirements. (Exhibit 1)
6. In 2014 Raymond Castor, Johnson’s Father-in Law, filed an application for an SMA Variance (“Shoreline Variance”) to facilitate construction of a single-family residence with an approximate 900 SF footprint on the subject property. The Shoreline Variance sought “to: reduce Lake Sammamish setback from 50 to 30 feet; reduce stream buffer from 75 feet to not less than 20 feet; reduce wetland buffer from 50 feet to not less than zero; and reduce building setback from critical area buffers from 15 feet to 5 feet.” (Exhibit 6.4, Hearing Examiner Decision in SVAR2014-00170, p. 1) The undersigned Examiner gave the City’s approval to that application on May 8, 2015. (Exhibit 6.4, Hearing Examiner Decision in SVAR2014-00170) The Washington State Department of Ecology (“Ecology”) approved the Castor Shoreline Variance on June 23, 2015. In doing so Ecology stated that

[r]estoration to reconnect the stream on site to Lake Sammamish to support fish passage is not required as mitigation for this variance approval. However, in the future, if a restoration sponsor such as King County offered to undertake the necessary studies to determine the feasibility of the restoration, the applicant agrees to discuss the project, but is not committed to allowing or contributing to the restoration.

(Exhibit 11, pp. 1 & 2) Johnson acquired the subject property in 2015. (Testimony) The City issued building permit BLD2015-02576 in 2015 for construction of a three-story, single-family residence with an approximate 900 SF footprint. The residence was completed in or around 2018. (Exhibit 1, p. 4; and testimony)

7. The SMP requires establishment of a Vegetation Enhancement Area (“VEA”) along a property’s shoreline whenever a project will disturb uplands within the established SMA setback area. [SMC 25.06.020(10)] Mitigation for impacts associated with construction of the residence included creating

- a 2,329 SF VEA on the subject property. (Exhibits 3; 6.4, Hearing Examiner Decision in SVAR2014-00170, p. 4, Finding of Fact 8 and pp. 12 & 13, Conditions 3 – 6) The amount of plantings was calculated to mitigate for the proposed residence and a future dock, should one be proposed. (Testimony)
8. Prior to filing the current application, Johnson and representatives of the Washington State Department of Fish & Wildlife, the Department, and the Muckleshoot Indian Tribe visited the subject property to evaluate the need, if any, for additional shore mitigation. The group suggested placement of the boat lift at the outboard end of the dock, some different emergent and tree species than approved in 2015, and removal of debris in the near shore area. (Exhibit 6.1 *et al.*) Following that meeting, Johnson submitted a Mitigation Plan Addendum prepared by Wetland Resources, Inc. (Exhibit 4) Johnson has agreed to implement the Mitigation Plan Addendum. ⁷ (Testimony)
 9. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the Johnson dock project on June 13, 2019. (Exhibit 5) 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. ⁸ The Department's recommendation is for approval of the SSDP subject to nine conditions. (Exhibit 1, p. 10)
 11. Johnson 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 FRAMEWORK⁹

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

Authority

⁷ The group also discussed removal of the concrete flume. Johnson is not proposing to undertake that project, in part because of a lack of regulatory authority to require such action. (Exhibit 6.8, p. 1, Item 1 response)

In addition to the mitigation described in this SSDP application, additional off-site mitigation may be required by other permitting agencies. (Testimony)

⁸ Scrivener's errors on page 6 have been previously noted.

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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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 July 26, 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 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.
2. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment. 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.

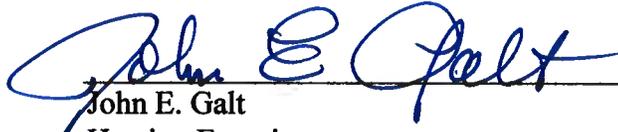
A few minor, non-substantive structure, grammar, and/or punctuation revisions will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

3. 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 420 square foot, fully grated, private dock with an associated free-standing boat lift **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued July 19, 2019.


John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁰

Jay Irwin, for the applicant
David Pyle, for the Department

Jennie Johnson, applicant's wife
Niels Pedersen, for the applicant

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

¹⁰ The official Parties of Record register is maintained by the City's Hearing Clerk.

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
JOHNSON PRIVATE DOCK and BOAT LIFT
SSDP2018-00482**

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. **Exhibit 2** is the approved project plan set and **Exhibit 4** is the approved mitigation plan addendum for this SSDP.
2. The Permittee shall comply with all city, county, state, and federal rules and regulations in effect on July 26, 2018, the vesting date of the subject application.
3. A building permit issued in accordance with SMC Title 16 must be approved prior to commencing project construction. Final construction plans showing the proposed dock shall be in substantial conformance with **Exhibits 2** and **4**.
4. Prior to building permit issuance, the Permittee shall hire a qualified professional and delineate the lake's OHWM which must be surveyed and clearly reflected on final construction plans. Final construction plans showing the proposed dock shall be in substantial conformance with **Exhibit 2**.
5. No significant tree removal is allowed.
6. Final construction plans, including staging plan, shall be prepared and submitted to the City for review with application for the building permit. Site disturbance shall be the minimum necessary to accommodate the scope of work.
7. A condition shall be placed on the grading permit as follows: *Fertilizer used in planting areas shall be minimized and any fertilizer used shall not contain phosphorous and shall be utilized consistent*

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with the product's timing and quantity specifications. No herbicide shall be used for weed control unless specifically authorized by the City of Sammamish.

8. Prior to building permit issuance, a note shall be placed on the construction plans/permit regarding compliance with SMC 25.06.010 and requiring notification the Washington State Department of Archaeology and Historic Preservation if artifacts are discovered.
9. Prior to Construction Permit issuance, the Permittee shall post a performance bond to ensure completion of mitigation work. After mitigation installation, the project biologist must document installed mitigation in an as-built report and plan that is supplied for City Review. After the City accepts the as-built condition, the performance bond will be released, and the mitigation project will shift into the required 5-year mitigation monitoring period after a maintenance and defect bond is posted to replace the performance bond.
10. 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 Community Development Department 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.