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BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

CITY OF SAMMAMISH

DECISION

FILE NUMBER: SSDP2018-00268

APPLICANT: Ronald Stevens
3459 East Lake Sammamish Shore Lane NE
Sammamish, WA 98074

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 480 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: March 18, 2019

INTRODUCTION ¹

Ronald Stevens (“Stevens”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 480 square foot (“SF”), fully grated, private dock with an associated free-standing boat lift.

Stevens filed a Shoreline Substantial Development Application on April 24, 2018. (Exhibits 1;7; 9 ²) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when submitted. (Exhibit 8; and testimony) The Department issued a completion letter on May 9, 2018, and a Notice of Application on May 21, 2018. (Exhibits 8; 9)

The subject property is located at 3459 East Lake Sammamish Shore Lane NE, on Weber Point between the eastern shoreline of Lake Sammamish and the East Lake Sammamish Trail (“ELST”).

The Sammamish Hearing Examiner (“Examiner”) viewed the subject property on March 13, 2019.

The Examiner held an open record hearing on March 14, 2019. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 20)

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 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.

Subsection 20.05.100(1) SMC requires that decisions on SSDP applications 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. (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)]. Stevens, by and through his agent, chose to waive any irregularities in the time line. (Testimony)

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

- Exhibits 1 - 20: As enumerated in Exhibit 1, the Department Staff Report
- Exhibit 21: E-mail, King County Department of Natural Resources & Parks to the Department, January 2, 2019

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. The Stevens property is an approximately 8,392 SF, more or less rectangular parcel located on the eastern shore of Lake Sammamish.³ It has approximately 50 feet of frontage on the lake shoreline and an average depth to the ordinary high water mark ("OHWM") of about 150 feet. (Exhibits 1; 2, Sheet 1; 13) The Stevens property is one of about 15 single-family residential lots located on what is locally known as Weber Point; all those lots are accessed from East Lake Sammamish Parkway NE via a street crossing of the ELST. (Exhibit 19; and official notice) The property is essentially flat. (Exhibit 2, Sheet 1) The property contains a single-family residence built in 1949 and a concrete retaining wall located 10 – 25 feet upland of the OHWM. (Exhibits 2, Sheet 1; 6.3, p. 2, top and bottom photographs⁴) The nearshore area in front of the Stevens property is characterized by sparse brushy vegetation and an assortment of unnatural debris. (Exhibit 6, pp. 2, 4, & 5) There is no dock presently associated with the Stevens property. (Exhibits 1, p. 5; 6.3, p. 2)
2. Stevens proposes to construct a fully grated, 96 foot long dock in front of the residence. The water depth at the end of the dock will be only 7.97 feet at ordinary high water. The dock will be 4 feet wide. A small 6' x 16' ell (20 feet overall length) will be located at its outboard end. The first pile bent will be 18 feet waterward of the OHWM. A free-standing, uncovered boat lift will be placed on

³ The lake shoreline in this area follows a more or less northwest – southeast alignment. The north arrow on Exhibit 4 is accurate; the north arrow on Exhibit 2 is not. (Exhibit 4, Sheet W1; and testimony) In order to simplify directional references in this Decision, the shoreline will be assumed to follow a north to south alignment.

⁴ The personal watercraft on a launching ramp visible in the center background of the top photograph is in front of the property to the south. The ramp was destroyed in a storm this past winter and is no longer there. (Testimony)

the lake bed on the south side of the end of the dock. The submitted plans state that the boat lift will be “± 5’ ” from the south property line, extended. Stevens testified, by and through his agent, that the boat lift would be placed so that it would be no closer than five feet to the south property line, extended. The dock is estimated to cost in the range of \$18,500. (Exhibits 2; 3; 15, p. 6, § 6g; and testimony)

Stevens proposes to install 510 SF of vegetative mitigation both above and below the OHWM. (Exhibit 4) Two Indian tribes (Muckleshoot and Snoqualmie) commented critically on the initial mitigation plan. Stevens modified the mitigation plan in response to those comments. The Department believes that the current, modified mitigation plan is appropriately responsive to the comments received. (Exhibits 1; 4; 6.1 – 6.8)

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. An SSDP is required because the dock’s estimated cost exceeds the established threshold requiring a permit. (Exhibit 1)
4. The SMP contains extensive design and location standards for docks, referred to by the Department as the “Dock Design Requirements.” [SMC 25.07.050] The proposed Stevens dock complies with all applicable provisions of the Dock Design Requirements. (Exhibits 1; 2)
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)] Although the proposed dock will be located almost entirely waterward of the OHWM, as previously noted, Stevens is proposing to install native shoreline vegetation as mitigation for any shoreline impacts. (Exhibits 1, pp. 5 & 6, § I.11; 4)
6. No testimony was entered into the record by the general public either in support of or in opposition to the application.

The King County Department of Natural Resources & Parks, Capital Planning & Land Management Section (“King County”), sent the Department an e-mail on January 2, 2019, stating that it “was unable to find record of access to the property across [the ELST]. Neither the HOA (if it exists) nor the previous owner had a permit.” (Exhibit 21) The “permit” referred to by King County is a King County Special Use Permit (“SUP”) which it requires “both for temporary construction access and long term vehicular access” across the ELST right-of-way. (*Ibid.*) The King County e-mail concludes: “As noted for previous SSDP applications, this comment does not impact the SSDP process itself and is an FYI for construction permits.” (*Ibid.*)

7. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the Stevens dock project on December 31, 2018. (Exhibit 5) The DNS was not appealed. (Testimony)
8. The Department staff report (Exhibit 1) contains a thorough analysis of the project's compliance with SMA and SMP requirements.⁵ The Department's written recommendation is for approval of the SSDP subject to eight conditions. (Exhibit 1, p. 11) The Department orally added an additional recommended condition during the hearing; to wit: A King County Special Use Permit must be obtained prior to building permit issuance. (Testimony)
9. Stevens, by and through his agent, did not object to the staff report nor voice any objection to the written recommended conditions. Stevens did state that all construction would be carried out from a barge in the lake, thus obviating any construction access across the ELST right-of-way. Therefore, Stevens asked that a condition requiring use of barge-based construction be imposed in lieu of the suggested SUP condition. (Testimony) The Department concurred with the suggested substitute condition. (Testimony)
10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK⁶

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

Authority

A Shoreline SSDP is a Type 4 procedures. 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.

⁵ One minor scrivener's error in Exhibit 1 was corrected during the open record hearing; § II.2: The application was complete on April 24, 2018, and a "Letter of Completion" was sent to Stevens on May 9, 2018. (Testimony)

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

[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 April 24, 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

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1. This is essentially an uncontested case in which there is no challenge to the Department's analysis nor to all but one of the Recommended Conditions as contained in Exhibit 1 and as augmented orally during the hearing. 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.

3. Frankly, the Examiner may not have dealt consistently with prior comments from King County regarding the need for SUPs. The Examiner agrees with the King County author of Exhibit 21: The SUP requirement "does not impact the SSDP process itself." The Examiner would go further and conclude that it has nothing to do with SSDP approval criteria. The Examiner believes that the King County e-mail is just what it says it is, "an FYI for construction permits." (Both quotes from Exhibit 21) By inclusion of Exhibit 21 in the record and discussion of it in both the hearing and in this Decision, Stevens is now on notice of King County's position regarding SUPs. No condition is warranted on this SSDP.
4. One additional provision is needed in the conditions. Exhibit 2, as noted, states that the boat lift will be "± 5' " from the south property line, extended. Subsection 25.07.050(2)(i) SMC specifies that "[n]o boat lift shall be located closer than five feet from the side property line extended." [Emphasis added] "Shall" operates as a mandatory verb. Thus, to the extent that Exhibit 2 implies that the boat lift may be closer than five feet from the side property line, extended, it cannot stand. The easy

solution to this problem is to add wording to Recommended Condition 2 calling out a minimum five foot setback. Such wording will be added.

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

Decision issued March 18, 2019.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁷

Jay Irwin, for the applicant

Tracy Cui, for the Department

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

⁷ 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
STEVENS PRIVATE DOCK
SSDP2018-00268**

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 for this SSDP; PROVIDED, that the boat lift shall be not less than five feet (5') from the south property line, extended.
2. The Permittee shall comply with all city, county, state, and federal rules and regulations in effect on April 24, 2018, the vesting date of the subject application, including any necessary permits from applicable state or federal agencies.
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**; PROVIDED, that the boat lift shall be not less than five feet (5') from the south property line, extended.
4. No significant tree removal is allowed.
5. 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.
6. 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 with the product's timing and quantity specifications. No herbicide shall be used for weed control unless specifically authorized by the City of Sammamish.*

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7. 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.
8. 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.
9. 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.