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City of Sammamish

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

DECISION

FILE NUMBER: SSDP2019-00331

APPLICANT: Evelyn Hofmann
211 E Lake Sammamish Shore Lane NE
Sammamish, WA 98074

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 340± square foot, fully grated, private dock with an associated free-standing boat lift and a dock-mounted personal water craft lift in Lake Sammamish

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: February 3, 2020

INTRODUCTION ¹

Evelyn Hofmann (“Hofmann”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 340± square foot (“SF”), fully grated, private dock ² with an associated free-standing boat lift and a dock-mounted personal water craft (“PWC”) lift in Lake Sammamish.

Hofmann filed a Shoreline Substantial Development Land Use Application on June 26, 2019. (Exhibit 17 ³) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Exhibit 9) The Department issued a Notice of Application on July 18, 2019. (Exhibit 13)

The subject property is located at 211 E Lake Sammamish Shore Lane NE along the east shoreline of Lake Sammamish.

The subject property is located in Section 32, Township 25 N, Range 6 E, Willamette Meridian and is further identified as King County Assessor’s Parcel 1738700095 (“Parcel 0095”).

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 Examiner held an open record hearing on January 30, 2020. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 15)

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 Hofmann application was under staff review for 128 days. (Exhibit 1, p. 2) 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)]. Hofmann chose to waive irregularities in the processing deadline. (Testimony)

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

- Exhibits 1 - 16: As enumerated in Exhibit 1, the Departmental Staff Report
- Exhibit 17: Shoreline Substantial Development Land Use Application, filed June 26, 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. Hofmann proposes to construct a 340± SF, fully grated, private dock with an associated free-standing boat lift and a dock-mounted PWC lift in Lake Sammamish in front of Parcel 0095. (Exhibit 1, p. 1)
2. Parcel 0095 is a more or less rectangular lot located between E Lake Sammamish Shore Lane NE and the east shoreline of Lake Sammamish. The East lake Sammamish Trail (“ELST”) and East lake Sammamish Parkway NE lie to the east of and parallel with E Lake Sammamish Shore Lane NE. ⁴ (Exhibit 1, p. 1, Figure 1) It has a north-south dimension of about 50 feet and an east-west dimension, measured from the ordinary high water mark (“OHWM”), of about 260 feet. The upland property contains about 13,170 SF. (Exhibit 17, p. 2)
3. Lake Sammamish and shorelands ⁵ 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

⁴ The Lake Sammamish shoreline, the ELST, and the E Lake Sammamish Parkway NE in the vicinity of Parcel 0095 lie generally on a northeast – southwest axis. (Exhibit 16) For ease of directional references in this Decision, their axes will be assumed to lie on a north-south line.

⁵ “‘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)]

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, boat lift, and PWC lift exceeds the established dollar threshold requiring a permit. (Exhibit 2)

4. Parcel 0095 is relatively flat. A garage is located along E Lake Sammamish Shore Lane NE and a single family residence is located about 60 feet east of the OHWM. The OHWM along about the southern 30 feet of the parcel is an approximate three foot high timber plank bulkhead;⁶ the remainder of the OHWM follows a gravel beach. The area between the residence and the bulkhead/beach is a manicured lawn. Parcel 0095 contains no wetlands. Each abutting lot contains a single-family residence with a dock (and boatlift). (Exhibits 4; 5; 11)
5. The proposed dock will be 340± SF in area, extend into the lake approximately 54 feet, and be built with ACZA treated timbers on galvanized steel piles. The inboard end of the dock will rest on a pin pile bent adjacent to the existing timber bulkhead. Approximately the inboard 34 feet of the dock will be four feet wide; the remainder is proposed to be six feet wide. A 14' x 6' ell will extend north at the outboard end of the dock. The dock surface will be fully grated (47 % open space), and the dock will maintain 15 feet of setback from the north and south property lines extended. A free-standing boat lift (no canopy) will be placed at the outboard end of the dock on the south side. The PWC lift will be attached to the south side of the dock. (Exhibits 2; 11; and testimony)
6. 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, boat lift, and PWC lift comply with those standards which are applicable to the proposal, provided that Hofmann receives approval from the U.S. Army Corps of Engineers or the Washington State Department of Fisheries for that part of the dock which is six feet wide. (Exhibit 1)
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)] No construction is proposed above the OHWM; all construction work will occur from the lake. Therefore, no VEA is required. (Exhibits 8, p. 5, § 6e; 10; 11; and testimony)

⁶ Exhibits 8, 10, and 11 describe the bulkhead as a "sheet pile bulkhead". Exhibit 5 says it is a "wood bulkhead". Contrigiani's project designer/representative testified that the bulkhead is composed of horizontal wood planks attached to driven posts. (Testimony) According to Dictionary.com, a "sheet pile" is "one of a number of piles, usually flat, driven side by side to retain earth, etc., ..." [https://www.dictionary.com/browse/sheet-pile. last visited February 2, 2020] In the Examiner's experience, that is an apt description of a sheet pile bulkhead. The bulkhead on the Hofmann property is not a sheet pile bulkhead under that definition and will not be described as such herein.

8. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the Hofmann dock project on December 12, 2019. (Exhibit 14) The DNS was not appealed. (Testimony)
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 nine conditions. (Exhibit 1, pp. 5 & 6)
10. Hofmann 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 FRAMEWORK ⁷

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:

⁷ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 June 26, 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, as conditioned, complies with the SMP's requirements for docks, boat lifts, and PWC lifts. (See Finding of Fact 6, 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. **Recommended Condition 4.** This recommended condition deals with that part of the dock which is proposed to be six feet wide. Most of the condition is a summary of the SMC's provisions about dock width. A summary of a code provision is not a condition and should not be included in a condition. The actual condition is embedded in the concluding two sentences – which can be combined, shortened, and simplified to accomplish their intended purpose.
- C. **Recommended Condition 8.** This condition apparently derives from a review letter provided to Hofmann by the Department on September 6, 2019. (Exhibit 9) Paragraph 5 in that letter advises that a “King County Special Use Permit may be required both for temporary construction access and for long term pedestrian access” across the ELST “[i]f the dock is not being constructed via the water”.

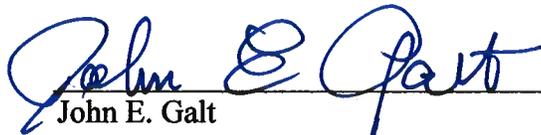
The Examiner will delete this condition for three reasons. First, Hofmann has stated that the dock will be constructed from the water. Thus, the “if” clause is not met and the condition is not warranted. Second, there is nothing in the record to indicate that King County asked that such a condition be imposed on the City's SSDP. Third, even if King County had requested such a condition, it has been the consistent position of the undersigned that the City should not condition its permits with conditions implementing another jurisdiction's specific regulations.

- D. **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 11 is the approved development plan for this SSDP.
 - E. **A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1 and 3 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 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 340± square foot, fully grated, private dock with an associated free-standing boat lift and a dock-mounted personal water craft lift **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued February 3, 2020.


John E. Galt
Hearing Examiner

HEARING PARTICIPANTS⁸

Gregory Ashley, for the Applicant

Jasvir Singh, for the City

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.

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

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
EVELYN HOFMANN DOCK
SSDP2019-00331**

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 11 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. **Compliance with Local and State Laws.** The Permittee shall comply with all city rules and regulations in effect on June 26, 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 11.
5. **Dock Width.** The dock, exclusive of the ell at its outboard end, shall not exceed four feet in width unless the City has received an approval notice from the U.S. Army Corps of Engineers or the WDFW, pursuant to SMC 25.07.050(2)(e), prior to issuance of the dock building permit.
6. **Tree Removal.** No significant tree removal is allowed.
7. **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.
8. **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

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Department of Archaeology and Historic Preservation if artifacts are discovered. Any ground disturbing activities must be monitored by a licensed archeologist.

9. **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.