

Debbie Beadle

From: Evan Maxim
Sent: Tuesday, June 4, 2013 8:28 AM
To: Melonie Anderson; Kamuron Gurol; Susan Cezar; Kathy Curry
Cc: Debbie Beadle
Subject: FW: In advance of 6-4- 13 City Council Meeting Please Distribute to City Council and Post to the ECA Public Comment Site
Attachments: JUNE 3 RESPONSE TO MAY 29 GUROL MEMO.pdf - Adobe Acrobat.pdf

Public Comment

*Evan Maxim
Senior Planner
City of Sammamish
425.295.0523*

Effective March 1st, my email address is: emaxim@sammamish.us. Emails sent to my old email address are being forwarded temporarily, however please update your email address for me accordingly.

From: David Gee [mailto:dgee@gsblaw.com]
Sent: Monday, June 03, 2013 9:13 PM
To: David Gee; ECA; meggee@comcast.net
Subject: In advance of 6-4- 13 City Council Meeting Please Distribute to City Council and Post to the ECA Public Comment Site

Please Distribute to City Council and Post to the ECA Public Comment Site on behalf of Megan and David Gee in advance of 6-4- 13 City Council Meeting. Thank you.

Unless expressly stated otherwise, any federal tax advice contained in this communication (including attachments) is not intended to be used, and cannot be used, for the purpose of avoiding federal tax penalties.

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DAVID W. GEE

Owner | Tel: 206.464.3939 ext 1351 | Mobile: 425.760.9312 | Fax: 206.464.0125 | dgee@gsblaw.com

GARVEY SCHUBERT BARER | 18th Floor | 1191 Second Avenue | Seattle, WA 98101 | ► GSBLaw.com

EXHIBIT NO. EC084

David and Megan Gee
22201 NE 28th Place
Sammamish, WA 98074

June 3, 2013

City Council
City of Sammamish
801 - 228th Avenue SE
Sammamish, WA 98075

Re: Objection to May 29, 2013 Gurol Memorandum--Public Comment

Dear Council Members:

Please accept this formal objection and public comment in response to the May 29, 2013 Memorandum from Kamuron Gurol, Director of the City of Sammamish Department of Community Development (DCD), addressed to Sammamish City Manager Ben Yazici, copied to the City Council and posted at the City website on May 30.

It is no secret that we have challenged and continue to disagree with DCD's administration of the current Environmentally Critical Areas (ECA) regulation. As citizens of Sammamish we are fully within our rights to do so. Indeed, we feel it is our civic responsibility as well. However, it has been our sincere intent since the formal ECA review process commenced with the Planning Commission in January 2012, to spare the City Council, the Planning Commission, and others who have worked hard to keep the process on track and focused on substance and merit, the unnecessary time and distraction of reviewing and weighing an extended list of personal grievances between our family and DCD. Instead, we determined in good faith to try to identify and pursue the least intrusive and least controversial "fix" available to add flexibility to the Sammamish ECA Code to allow us to achieve a balanced and reasonable resolution of our concerns as citizen property owners in Sammamish.

For that reason, rather than seeking global revision of the entire Sammamish ECA Code, we identified through our research and proposed in early 2012, and have throughout the past 17 months encouraged and advocated, a very minor adjustment to the existing ECA Code, namely, expanding the administrative and regulatory flexibility of the existing exemption in the Sammamish ECA Code for small isolated wetlands up to 1000 square feet in size enacted by the City of Sammamish in 2006 (SMC Section 21A.50.320). Through our research we discovered and provided to DCD and the Planning Commission examples of ECA codes from 12 other Western Washington jurisdictions that offer property owners and city officials greater flexibility with wetlands up to 5000 square feet. In the interest of efficiency alone, we might well have pushed for the simplest of changes – replacing a single digit – substituting **4,000** for **1,000** square feet in the existing SMC. In fact, our research (shared with DCD and the Planning Commission) revealed that at least one other nearby city, Maple Valley, had

adopted in 2006 the very same code language as Sammamish, but had opted for a 5,000 square foot Isolated Wetlands Limited Exemption.

However, we discovered through our review of ECA codes of these other jurisdictions that many had incorporated a much more evaluative and less arbitrary approach than the “size-only” approach of the 2006 Sammamish exemption. We concluded that these ECA codes offered an environmentally sensitive and sensible basis for offering greater property development and planning flexibility for small wetlands by focusing on a wetland’s limited function and value (as determined under the Western Washington State Wetland Rating System), instead of granting an exemption based upon on size alone. We also determined that several of these codes tracked very closely (if not verbatim) guidance previously provided by DOE (notwithstanding DOE’s varying positions over the course of the current ECA review).

After extensive review of all of the information provided by DCD, DOE and the public, both in support and in opposition, the Planning Commission adopted an approach conceptually similar to the one we had advanced initially, and prepared its recommended amendment to SMC 21A.50.320. Indeed, we remain optimistic, despite Mr. Gurol’s Memorandum, that the City Council will give due regard to the thorough review and fact finding by the Planning Commission on this issue and adopt an amendment to the Sammamish ECA Code that is consistent with the Planning Commission’s proposed amendment, such as the version proposed by Deputy Mayor Valderrama-Aramayo. We continue to believe this approach gives both Sammamish citizens and DCD greater flexibility to design and implement land use solutions that better balance the costs and benefits to each.

We also believe that adopting this very narrow revision within the ECA review process is more likely to offer a win-win solution than prior efforts to resolve our concerns with Mr. Gurol and DCD staff.

We are confident that as City Council Members and our elected representatives you will base your vote on the proposed amendment on its substance and merit.

However, given our good faith investment of significant time and effort throughout this multi-year public process, we strongly object to the context and content of Mr. Gurol’s Memorandum, for the reasons set forth below.

1. Mr. Gurol’s Claims Improperly Target Individual Participants.

As of June 2, 2013, DCD has posted at the City’s website a total of 360 written public comments (79 to the City Council, and 281 to the Planning Commission) related to the City’s “2011/2012/2013 Environmentally Critical Areas Regulations Update,” comprised of thousands of pages of information from a large number of participants and a broad range of policy and political perspectives. In addition, a

large number of other documents and reports have been entered into the public record from consultants and from the Planning Commission and from DCD. Moreover, public stakeholders have offered numerous verbal comments during the approximately 30 public meetings dedicated in whole or in part to this process.

From that voluminous public record, a mere 3 business days before public comment closes on June 4 and on the “eve” of the Council’s deliberations on the proposals of the multi-year public process, Mr. Gurol has singled out for his criticism extracts of 4 public comments submitted by just 2 of the hundreds of stakeholders who have provided public comments during this multi-year process—the first public comment targeted by Mr. Gurol was given at the most recent City Council Meeting (May 20, 2013) by Mr. Walter Pereyra, a 40 + year resident of what is now Sammamish—and the other 3 public comments Mr. Gurol now seeks to discredit were given by our family between 11 and 13 months ago. Our family has lived in the City of Sammamish since before its founding, and has participated actively with the City of Sammamish on this and other matters of civic concern.

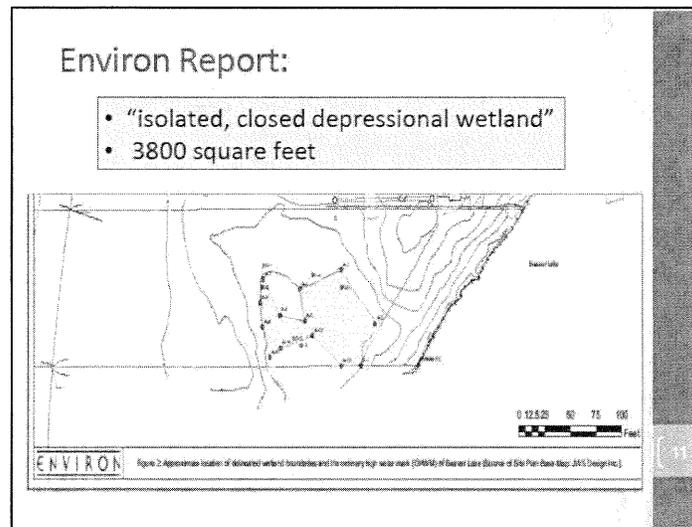
Whatever Mr. Gurol’s motive for publicly challenging the veracity of Mr. Pereyra’s public comment at the last City Council Meeting (on May 20, 2013), we believe it is reasonable for us and the City Council to question the motivation and propriety of Mr. Gurol’s decision at this point in time to seek to discredit public comment offered by our family over a year ago. Although Mr. Gurol and his DCD staff have adopted a mission statement to “serve all members of our community in a responsive, consistent, and courteous manner,” Mr. Gurol’s last-minute attempt to brand our public comments as “factually inaccurate”, like his staff’s selective disregard of the Washington Public Records Act (addressed in detail in our May 6, 2013 letter to the Council and in our public comment at the May 7 City Council Meeting), not only makes a mockery of that mission statement, but subverts the integrity of this public process.

Even more disturbing than the patent bias of Mr. Gurol’s Memorandum is the fact that his purported “Correction to the ECA public record” is itself factually inaccurate in each instance to the particular public comment offered by our family.

2. Mr. Gurol’s Challenge to Slide 11 of the April 19, 2012 Gee Slide Presentation Mischaracterizes Our Public Comment.

Mr. Gurol’s first allegation seems to be that Slide 11 is inaccurate because we did not include that powerpoint the entirety of the “Gee Critical Areas Study prepared by Scott Luchessa (Environ International Corporation - Seattle) and accepted by DCD in May 2009 (Environ Report).

For your convenient reference, here is a snapshot of Slide 11:



Given the 5-minute time limit imposed upon all public testimony to the Planning Commission, we did not include in our slide presentation to the Commission all 63 pages of the Environ Report. Instead, we provided key excerpts from the Report, including the citation in Slide 11 to two of the key factual determinations by Environ regarding the size and nature of the wetland on our property. (For those of the City Council who took the time to review our May 6, 2013 letter, which appends (as Appendix G) a complete copy of the Environ Report, you will be sympathetic to the fact that we did not include the entire Environ Report in our powerpoint). Moreover, given that Mr. Gurol and DCD have had an original version of the Environ Report for as long as we have, since DCD accepted the Report in May 2009, Mr. Gurol has had ample opportunity to provide the full report to the Planning Commission at any point in time.

To the extent Mr. Gurol seeks to contest the accuracy of the Environ Report itself, his challenge is improper and misleading in several respects:

1. The DCD confirmed its acceptance of the Environ Report in May 2009, and raised no challenge to its factual accuracy at that time.
2. To our knowledge, Mr. Gurol is not a "qualified professional" who meets the requirements of SMC 21A.1S.942 (1) for purposes of making wetland determinations or preparing critical areas reports – and therefore Mr. Gurol is not qualified to dispute the conclusions rendered by Scott Luchessa (and Environ) who does possess those credentials.

Furthermore, given Mr. Gurol's stated intent to provide clarification, his excerpt

David and Megan Gee
22201 NE 28th Place
Sammamish, WA 98074

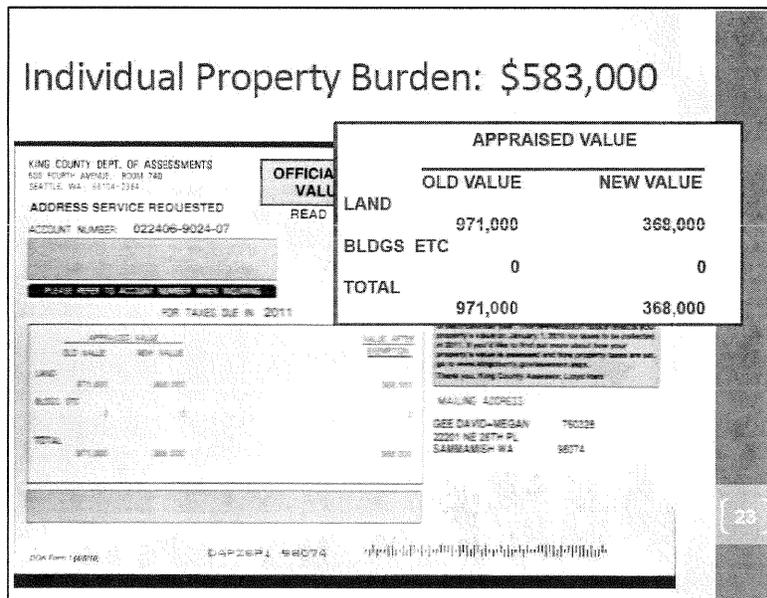
from page 10 of the Environ Report should be read within the context it was rendered by Mr. Luchessa:

Potential development of the south parcel is constrained by the presence of the existing wetland. This wetland would be regulated by the City's Critical Areas Regulations (SMC 21A.50) and by Ecology under an administrative order. The delineated wetlands do not appear to be jurisdictional wetlands under the federal Clean Water Act in light of the 2006 U.S. Supreme Court decisions on *Rapanos v. U.S.* (126 S. Ct. 2208) and *Carabell v. U.S.*, which are collectively referred to as *Rapanos*. In that split decision, Justice Kennedy established a "significant nexus" test. There is no apparent significant nexus. There is no surface water connection between Wetland A and Beaver Lake, and it does not appear to exert much influence on the biological integrity of Beaver Lake. **This is a preliminary jurisdictional determination subject to verification by the Corps. In addition, the delineated wetland boundaries are also subject to verification.**

These statements, read in context, serve only to amplify Environ's description on page 1 of its Report of the wetland on our property as an "isolated closed depressional wetland," which is the language quoted in Slide 11.

3. Mr. Gurol's Challenge to the Tax Assessor's Appraisal in Slide 23 of the April 19, 2012 Gee Slide Presentation is Misplaced.

For your convenient reference, here is a snapshot of Slide 23:



It is unclear what "factual inaccuracy" Mr. Gurol is challenging in Slide 23. Indeed, Mr. Gurol's attempt to contest the King County Tax Assessor's determination is itself highly misleading. Other than pure conjecture, there is no

factual basis upon which Mr. Gurol can suggest that our introduction into the public record of a Slide 23 containing a copy of our King County Tax Assessment is “factually inaccurate.” It is equally troubling that Mr. Gurol would presume to question the accuracy of that determination by the County Tax Assessor. Perhaps most astonishing is Mr. Gurol’s statement that Slide 23 is somehow unreliable because we did not within our 5 minute slide presentation provide “information...about how a property assessed value reduction was achieved through an appeal that the Gees themselves pursued through King County.” It is unclear whether Mr. Gurol is suggesting (1) the Planning Commission was somehow misled by the slide to think that King County offered a tax reduction on its own initiative, or (2) that there is something deceptive or improper about a taxpayer seeking a tax reduction--a public process available to any taxpayer.

From the date we purchased the property in 2003, like every other property owner in Sammamish, we have been assessed property taxes by King County based upon King County’s independent valuation of the property. In 2009, consistent with our rights as citizen taxpayers and common sense, we submitted a request for adjustment of the taxes we were paying to the King County for the property impacted by the wetland initially identified by DCD and formally confirmed by the Environ Report. We provided the Tax Assessor with a copy of the Environ Report as part of our request. As shown by the King County Tax Assessment included in Slide 23, the Tax Assessor determined to reduce its valuation of our tax parcel from \$971,000 to \$368,000.

4. Mr. Gurol’s Challenge of Slides 2-5 of July 30, 2012 Gee Slide Presentation seeks to Discredit the Impartial Property Valuation of the King County Department of Assessments.

As Mr. Gurol acknowledges, we provided the Planning Commission on July 30, 2012, with a copy of the record we received from the King County Department of Assessments that states the conclusion of the Assessor and the justification for the Assessor’s re-valuation of our property. [See, Comment #186 to the Public Record, Slides 2 – 5]. Note that we were provided that information in response to our request to the Department of Assessments in July 2012. We were requested by the Planning Commission at that time to provide more information about the Tax Assessor’s re-valuation of the property in order to respond to the very same challenge by DCD that Mr. Gurol is raising again nearly one year later. The contemporaneous notes of the Tax Assessor faxed to us in July 2012, and provided to the Planning Commission as Slide 4, clearly show that the Tax Assessor’s re-valuation of the property was based upon the findings of the Environ Report:

“Critical area study submitted by the taxpayer states, ‘A preliminary estimate of the useable area... is about 12,000 sf. However, there is not sewage service available in this area and there appears to be insufficient

David and Megan Gee
22201 NE 28th Place
Sammamish, WA 98074

room for a house and a septic drainfield.’ Value reduced by 60% according to land schedule and equalized with similarly impacted lots on Beaver Lake. [Emphasis added].

The following snapshot of Slide 4 is provided here for your convenient review:

022406-9024 Department of Assessment

Parcel
Area: 069-005-0
Spec Area:
QSTR: SE-2-24-6
Folio: 23687B2
Type: R
Recap: R
Property Desc:
Property Address:
Legal Desc: N 100 FT OF S 830 FT OF GL 3

Account 022406-9024-07
Owner GEE DAVID+MEGAN
Address 22201 NE 28TH SAMMAMISH WA. 98074

Notes

Note	By	Date
TRC by RHOF considering previous note for 2007, 2008, 2009 submitted to accounting.	MNAK	11/19/2009
Critical area study submitted by the taxpayer states, "A preliminary estimate of the useable area ... is about 12,000 sf. However, there is no sewage service available in this area and there appears to be insufficient room for a house and a septic drainfield." Value reduced by 60% according to land schedule and equalized with similarly impacted lots on Beaver Lake.	RHOF	10/21/2009
vacant land value select ok = baseland	JRAM	6/16/2009

11/09 King Co Tax Assessor's Determination Based upon Review of Environ Critical Area Study:
"Value reduced by 60%..."

4

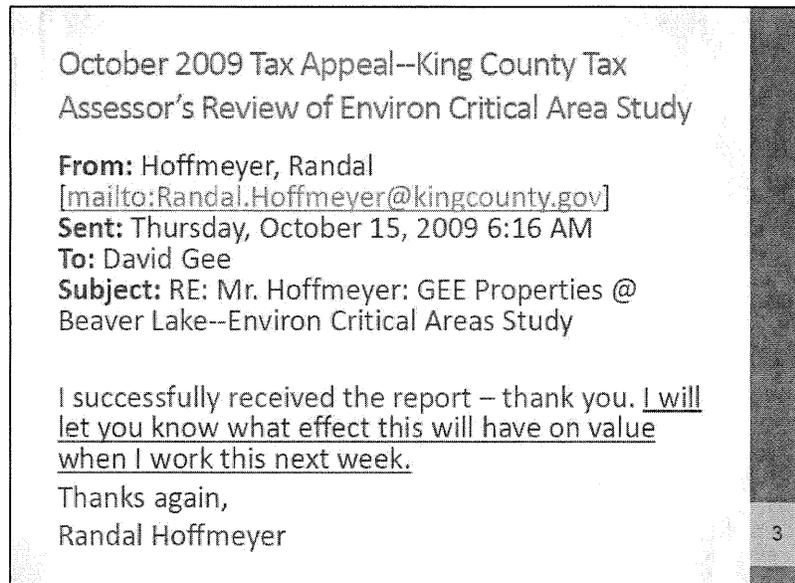
Note that Mr. Gurol's citation of this language misplaces the quotation marks—this is significant in that the determination that the value of our property was reduced by 60% was made by the King County Department of Assessments, and not by Environ. Indeed, it is notable that the Environ Report concludes that "application of the [Sammamish ECA] would appear to deny all reasonable economic use" of the property, not just 60 percent.

As further evidence that the Tax Assessor's re-appraisal of the property was based upon his review of the Environ Report, we also provided as Slide 3 to our July 30, 2012 Public Comment the content of email correspondence received from the King County Assessor in October 2009 prior to his re-appraisal of the property. The Assessor makes clear his intent to consider the effect of the findings of the Environ Report regarding the wetland on the property:

"I have successfully received the report--thank you. I will let you know what effect this will have on value when I work this next week." [Emphasis added].

[See, Comment #186 to the Public Record—Slide 3].

A snapshot of Slide 3 is provided here:



Mr. Gurol attempts to argue with the 2009 Tax Assessment on the ground that DCD has “generated site plans for the subject parcel that depicted room for a septic drainfield, a 3 story main house with an approximate 4,500 to 4,900 square foot house footprint, an additional approximate 1,000 to 1,500 square foot cabana or other structure near the lake, and a path between the main house and the cabana.” However, DCD’s hypothetical site plans (even with the cabana) do not in any way render “inaccurate” the King County Tax Assessor’s actual (rather than hypothetical) professional and formal determination that the use and value of a lakefront property have been greatly reduced (by 60 percent) by regulations that significantly limit the owner’s access to the waterfront, and afford little if any view of the lake on the heavily-treed lot. Perhaps it is surprising to Mr. Gurol that the option of building a cabana on a one-acre lakefront lot likely would do very little to reverse the de-valuation of our tax parcel from \$971,000 to \$368,000.

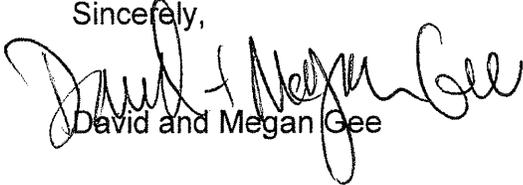
In fact, the veracity of the Assessor’s appraisal was confirmed empirically when we listed the property for sale in 2010 and 2011, at prices recommended by our realtor to take into account the “wetland.” We had a single inquiry during the entire listing period. In fact, we presented to the potential buyer with some of the development “suggestions” from Mr. Gurol and DCD plus concessions on our end to make the deal happen, but the potential buyer was not willing to proceed in light of the ECA restrictions on the property, even at a reduced value in line with the revised Tax Assessment. Finally, DCD’s proposal that we build a house on the opposite end of the lot from the lake, in the back corner that abuts West Beaver Lake Road, is not a feasible option for our family in any case because we have a 19 year-old severely autistic son who could easily wander into that road.

David and Megan Gee
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Mr. Gurol's final conjectural challenge to the Tax Assessor's decision is based upon his unsubstantiated assertion that the value of our property has not been diminished by the ECA restrictions because we own an adjacent tax parcel. The facts disprove Mr. Gurol's hypothesis--the Tax Assessor was well aware of the fact we own the two adjacent tax parcels when he reduced King County's valuation of the impacted tax parcel from \$971,000 to \$368,000. Indeed, we were informed by the Tax Assessor at the time of our request that he also had reduced his appraisal of the value of our adjacent lot due to the fact that a portion of the delineated wetland buffers cross onto that tax parcel.

Based upon the foregoing, we respectfully request the City Council to disregard Mr. Gurol's inaccurate and prejudicial commentary regarding our family's public comment.

Sincerely,


David and Megan Gee