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BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

CITY OF SAMMAMISH

DECISION ¹

FILE NUMBER: SSDP2018-00571

APPLICANT: Sean Selitrennikoff
3105 E Lake Sammamish Pkwy NE
Sammamish, WA 98074

TYPE OF CASE: Shoreline Substantial Development Permit to replace an old dock with a 479 square foot, fully grated, private dock with two associated free-standing boat lifts

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: August 22, 2019

INTRODUCTION ²

Sean Selitrennikoff (“Selitrennikoff”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to replace an old dock with a 479 square foot (“SF”), fully grated, private dock with two associated free-standing boat lifts in Lake Sammamish.

Selitrennikoff filed a Shoreline Substantial Development Land Use Application on September 13, 2018. (Exhibits 1, p. 7; 10 ³) The Sammamish Department of Community Development (“Department”) deemed the application complete when filed. ⁴ (Exhibit 11) The Department issued a Notice of Application on October 10, 2018. (Exhibit 12)

The subject property is located at 3105 E Lake Sammamish Pkwy NE, between the East Lake Sammamish Trail (“ELST”) right-of-way and the east shoreline of Lake Sammamish.

¹ This written Decision memorializes and expands upon an oral Decision rendered on the record after completion of the open record predecision hearing on August 9, 2019.

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 An interpretation of Finding of Fact 2 in the Departmental Staff Report (Exhibit 1, p. 7) that the application was complete on September 27, 2018, would be incorrect. (Testimony)

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The Examiner held an open record hearing on August 9, 2019. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 23)

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)]. Selitrennikoff, through his agent, chose to extend the deadline. (Testimony)

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

Exhibits 1 - 23: 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. Selitrennikoff proposes to replace an old, existing floating dock with a 479 SF, fully grated, private dock with two associated free-standing boat lifts in Lake Sammamish in front of the property at 3105 E Lake Sammamish Pkwy NE (“Parcel 9073”).
2. Parcel 9073 is a more or less rectangular lot located between the ELST right-of-way and the east shoreline of Lake Sammamish.⁵ It has a north-south dimension of about 104 feet and an east-west dimension, measured from the ordinary high water mark (“OHWM”), that varies from about 72 to 82 feet. The upland property contains about 8,248 SF. Approximately 15 – 30 feet south of and roughly parallel to the south line of Parcel 9073 is Stream 0143 F, a small Type F stream which empties into Lake Sammamish.⁶ (Exhibits 1; 2; 6; and Official Notice of stream name from the Hearing Examiner Decision in SVAR2016-00376, p. 3, Finding of Fact 1, cited at page 5 of Exhibit 1)
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

⁵ The Lake Sammamish shoreline, the ELST, and the E Lake Sammamish Parkway NE in the vicinity of Parcel 9073 lie generally on a northwest – southeast axis. (Exhibit 5) For ease of directional references in this Decision, their axes will be assumed to lie on a north-south line.

⁶ The SMC requires preservation of a 150-foot wide buffer adjacent to Type F streams. [SMC 21A.50.330(1)] The Department’s position is that stream buffers apply to land adjoining a stream, not to the water body into which the stream discharges. (Testimony) The Examiner accepts, without deciding, that interpretation for the purposes of this application. Therefore, the stream buffer does not apply to the proposed dock or boat lifts as they will be totally waterward of the OHWM.

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SMA. The City's Shoreline Master Program ("SMP") designates the subject property Urban Conservancy. A private dock is a preferred water-oriented and water-dependent use under the SMP. An SSDP is required because the estimated cost of the dock and boat lift exceeds the established threshold requiring a permit. (Exhibits 1; 19)

4. When Selitrennikoff purchased Parcel 9073 in or around the late 1990s, it was developed with a single-family residence, a Keystone retaining wall above the OHWM, a concrete boat ramp, and a floating dock. Selitrennikoff pulled the dock out of the lake each winter. Over time he replaced the old wood planking with "EZ Dock" solid plastic planking. (Testimony)

None of the hearing participants were able to describe the size of the existing dock. The record contains one small photograph of the existing dock: An insert on the Notice of Application. (Exhibit 12) Based upon that photograph and the known length of the east line of Parcel 9073 (104 feet) the Examiner has roughly estimated that the existing dock is 4 to 6 feet wide by 60 feet long with a 14 foot by 24 foot rectangle at its outer end. There appears to be a narrower approach ramp at the shore end which is about 3 - 4 feet wide by 15 feet long. (Dimensions interpolated from Exhibit 12.)

5. 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] The Dock Design Requirements are "self-mitigating through design parameters ... [to] meet the requirement of No-Net-Loss of Ecological Function." (Exhibit 1, p. 7, Finding of Fact 11)
6. The proposed dock will be 479 SF in area, extend into the lake approximately 70 feet, framed with ACZA treated fir, stringers to be 4" by 12", pile caps to be 6" by 8". Approximately the inboard 50 feet of the dock will be four feet wide; the remainder will vary from 2 feet to 6 feet wide and include a boat slip. The dock will be supported on approximately 20 steel piles. The dock surface will be grated, and the dock will maintain well more than 15 feet of setback from the north and south property lines extended. Two free-standing, aluminum boat lifts will be placed at the outboard end of the dock, one in the slip. The boat lifts will be about 10 feet square. Neither boat lift will have a canopy. (Exhibit 2; and testimony) The proposed Selitrennikoff dock complies with all applicable dock and boat lift provisions of the Dock Design Requirements. (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. Selitrennikoff has developed a mitigation plan in anticipation of requirements that will likely be levied by the United States Army Corps of Engineers ("USACE"). (Exhibit 3; and testimony)
8. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the Selitrennikoff dock project on July 8, 2019. (Exhibit 7) The DNS was not appealed. (Testimony)

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9. The Departmental Staff Report (Exhibit 1) contains a thorough analysis of the project's compliance with SMA and SMP requirements. The Department's recommendation is for approval of the SSDP subject to 10 conditions. (Exhibit 1, p. 10)
10. Selitrennikoff 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:

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

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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 September 13, 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.

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2. 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. 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. There is no justification based upon this SSDP to require any mitigation plantings. As described in Exhibit 1 and noted above, the SMP's Dock Design Requirements were developed to be self-mitigating. 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. Therefore, Recommended Condition 1 will be revised to delete reference to a mitigation plan and Recommended Conditions 6 and 8 will be deleted.
4. Recommended Condition 5 requires preparation of a habitat assessment "for the purpose of implementation of the Puget Sound Biological Opinion." (Exhibit 1, p. 10) The Puget Sound Biological Opinion is associated with the National Flood Insurance Program. The City implements the National Flood Insurance Program in conjunction with building permit review. (Exhibits 1, p. 6; 9) Therefore, the need for a habitat assessment in this case will be triggered when the required building permit application is filed; it is not a requirement of this SSDP. Therefore, Recommended Condition 5 will be deleted.
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 replace an old dock with a 479 square foot, fully grated, private dock with two associated free-standing boat lifts **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued August 22, 2019.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁸

Greg Ashley, for the applicant
Tracy Cui, for the Department

Sean Selitrennikoff, 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

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
SELITRENNIKOFF PRIVATE DOCK and BOAT LIFTS
SSDP2018-00571**

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 for this SSDP.
2. The Permittee shall comply with all city, county, state, and federal rules and regulations in effect on September 13, 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 **Exhibit 2**.
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. 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.
7. 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.

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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.