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BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

CITY OF SAMMAMISH

DECISION ¹

FILE NUMBER: SSDP2018-00432

APPLICANT: Stewart & Shawna Blyth
2227 E Beaver Lake Drive SE
Sammamish, WA 98075

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 380 square foot, fully grated, private dock

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: May 31, 2019

INTRODUCTION ²

Stewart & Shawna Blyth (“Blyth” ³) seek approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 380 square foot (“SF”), fully grated, private dock along the shoreline of Beaver Lake.

Blyth filed a Shoreline Substantial Development Application on July 5, 2018. (Exhibits 7; 8 ⁴) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when submitted. (Exhibit 8) The Department issued a completion letter on August 1, 2018, and a Notice of Application on August 13, 2018. (Exhibits 8; 9)

The subject property is located at 2227 E Beaver Lake Drive SE along the east shore of Beaver Lake.

The Examiner held an open record hearing on May 29, 2019. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 18)

¹ This written Decision memorializes and expands upon an oral Decision rendered on the record after completion of the open record predecision hearing on May 29, 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 In order to simplify grammatical construction, the applicants will be referred to using the singular form of their last name: Blyth. No disrespect is meant toward either applicant.

⁴ 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)]. Blyth, by and through their 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 - 18: As enumerated in Exhibit 1, the Department 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. The Blyth property is an approximately 11,180 SF, more or less rectangular parcel located on the eastern shore of Beaver Lake. It has approximately 50 feet of frontage on the lake shoreline and an average depth between E Beaver Lake Drive SE and the ordinary high water mark ("OHWM") of about 260 feet. (Exhibits 2, Sheet 1; 15) The Blyth property slopes moderately down from E Beaver Lake Drive SE to the lake shoreline with an elevation change of about 20 feet across the property. (Exhibit 15) The property contains a recently completed single-family residence. (Exhibit 2, Sheet 1; and testimony) The nearshore area on the Blyth property is characterized primarily by mown lawn; a portion of a Category III lacustrine aquatic bed wetland, containing a partially submerged log, with a narrow palustrine emergent fringe runs along the lake shoreline in front of the Blyth property. (Exhibits 3; 4; and testimony) There is no dock presently associated with the Blyth property; the lots abutting to the north and south each have a private-use dock. (Exhibit 4, Attachment 3)
2. Blyth proposes to construct a fully grated, 80 foot long dock in front of the residence. The dock will be 4 feet wide with a small 6' x 10' ell (14 feet overall length) located at its outboard end. The first 20 feet of the dock will rest on four steel piles and be about 18" above the lake's ordinary high water; the remainder of the dock will float on the lake's surface and be anchored in place by three steel piles. The dock will be "± 15'" from the south property line, extended, and "± 23'" from the north property line, extended. The dock is estimated to cost \$15,500. (Exhibits 2; 4, pp. 3 & 4; 11, p. 6, § 6g; and testimony)
3. Beaver Lake and shorelands within 200 feet of the lake's OHWM are within the jurisdictional area of 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.

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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 Blyth 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)] The proposed dock will not disturb the upland area; the dock will be constructed from a barge in the lake. (Exhibit 1, p. 5)

However, the Washington Department of Fish and Wildlife ("WDFW"), which also has jurisdiction over the proposed dock, has advised Blyth that it will require preservation of the partially submerged log (thus the elevated section of the dock) and mitigation for shoreline impacts. Therefore, Blyth's plans include a 10' x 25' upland planting area adjacent to the OHWM and south of the dock within which Blyth proposes to plant three Pacific dogwood, two Pacific crabapple, five spirea, and two evergreen huckleberry. (Exhibits 1, p. 5; 5; and testimony) The record does not indicate whether the mitigation depicted on Exhibit 5 has already been approved by WDFW.

6. The Department received no comments on the proposal. (Exhibit 1, p. 6, § I.14) No testimony was entered into the record by the general public either in support of or in opposition to the application.
7. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the Blyth dock project on April 22, 2019. (Exhibit 6) 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, pp. 9 & 10)
9. Blyth, by and through his agent, did not object to the staff report (subject to correction of one scrivener's error) nor voice any objection to the recommended conditions. (Testimony)
10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

⁵ One minor scrivener's error in Exhibit 1 was corrected during the open record hearing: § I.11: The lake bed wetland is Category III, not Category II. (Exhibits 3; 4; and testimony) In addition, Blyth moved into their new house on the subject property subsequent to completing the SSDP application. Thus, the mailing address as listed on the staff report is no longer current. (Testimony; and official notice) The current address is listed on page 1 of this Decision.

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 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.

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

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 5, 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 any of 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 with the following changes:
 - 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. One additional provision is needed in the conditions. An SSDP embodies the concept of approval of a specific development proposal. An SSDP evaluation is based upon the specific development plans submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the plans which are being approved. The Department's recommendation as drafted does not do so. Both Blyth and the Department agree that Exhibit 2 constitutes the plan which should be approved. Exhibit 15 provides the topographical information required by WAC for an SSDP. Exhibit 5 depicts near-shore mitigation that will be proposed for approval by WDFW. Reference to those exhibits will be incorporated into a new Condition 1.

The citation of Exhibit 2 as the approved SSDP plan must be slightly qualified. Exhibit 2, as noted, states that the south end of the dock's ell will be "± 15'" from the south property line, extended. Subsection 25.07.050(1)(a) SMC specifies that "[n]o new dock ... shall be located closer than 15 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 dock may be closer than 15 feet from the side property line, extended, it cannot stand. The easy solution to this problem is to add wording to new Condition 1 and to Recommended Condition 2 (now Condition 3) calling out a minimum 15 foot setback. Such wording will be included.

- C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 2, 3, and 7 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 380 square foot, fully grated, private dock **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued May 31, 2019.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁷

Pete Super, for the applicants

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

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.

⁷ 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
BLYTH PRIVATE DOCK
SSDP2018-00432**

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 15** depicts required topographic information; PROVIDED, that the dock shall be not less than fifteen feet (15') from the side property lines, extended. Since mitigation is not required under the City's SMP, any revision of **Exhibit 5**, proposed mitigation plan, required by the WDFW would have no effect on this SSDP.
2. The Permittee shall comply with all city, county, state, and federal rules and regulations in effect on July 5, 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 **Exhibit 2**; PROVIDED, that the dock shall be not less than fifteen feet (15') from the side property lines, 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.*
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.

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8. A notice shall be recorded on title in accordance with SMC 21A.50.180 to reflect the presence of the wetland, buffers, and/or mitigation site, as applicable, established as a result of this SSDP. This notice shall run with the land.

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.