

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

DECISION ¹

FILE NUMBER: SSDP2021-00308

APPLICANT: Heidi Ryan
4233 E Lake Sammamish Shore Lane SE
Sammamish, WA 98074

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 331 square foot, fully grated, private dock with an associated free-standing boat lift in Lake Sammamish

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: October 4, 2021

INTRODUCTION ²

Heidi Ryan (“Ryan”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 331 square foot, fully grated, private dock with an associated free-standing boat lift in Lake Sammamish. ³

Ryan filed a Shoreline Substantial Development Land Use Application on April 2, 2021. (Exhibits 2; 15 ⁴) The Sammamish Department of Community Development (“Community Development”) deemed the application to be complete when filed. (Exhibit 15) Community Development issued a Notice of Application on April 20, 2021. (Exhibit 16)

¹ This Decision memorializes and expands upon an oral decision rendered on the record at the close of the September 30, 2021, open record, pre-decision hearing.

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 “‘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)]

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. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. 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 subject property is located at 3103 E Lake Sammamish Parkway SE⁵ along the east shoreline of Lake Sammamish.⁶

The subject property is located in Section 7, Township 24 N, Range 6 E, Willamette Meridian and is further identified as King County Assessor's Parcel 0724069029 ("Parcel 9029").

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on September 24, 2021, via Google Earth.

The Examiner held an open record hearing on September 30, 2021. The hearing was conducted remotely using the "Zoom" platform due to assembly restrictions attendant to the current COVID-19 pandemic. Community Development gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 17)

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 open record hearing was held on or about net review day 140. (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 Community Development explaining why the deadline was not met [SMC 20.05.100(4)]. Ryan chose to extend the deadline. (Testimony)

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

Exhibits 1 - 18: As enumerated in Exhibit 1, the Community Development Staff Report

The Hearing Examiner Clerk has the record copy of all exhibits.

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.

⁵ The record shows two different addresses. (Cf. Exhibits 1(3023) and 2 (3103)) During the hearing the Examiner was told that an official address number had not been assigned. (Testimony) Therefore, the Examiner said that he would use neither of the reported addresses, instead he would opt for "3xxx".

During preparation of this Decision the Examiner had occasion to question the parcel area figure contained in record documents. The Examiner turned to the King County Parcel Viewer system, a publicly available, on-line source of property records in the public domain, to find the answer to his question. What the Examiner found was that the property which is the subject of the Ryan application extends from the lake shore easterly to the East Lake Sammamish Parkway ("Parkway"), separated into two parts by the East Lake Sammamish Trail ("ELST"). King County records provide the address 3103 East Lake Sammamish Parkway NE for the entire parcel and indicate that the entire parcel contains 5,025 square feet ("SF") of upland area (0.12 acres). [<https://gismaps.kingcounty.gov/parcelviewer2/>, last visited September 30, 2021] Exhibit 5 indicates that the portion west of the ELST (the "lower portion") encompasses about 1,257 SF (0.03 acres). (Exhibit 5, PDF 2) The Examiner will use the information in this footnote to describe the property.

⁶ The Examiner routinely uses a directional convention which holds that the Parkway, the ELST, and the shoreline of Lake Sammamish in the City run north-south. The Examiner will follow that convention in this Decision.

FINDINGS OF FACT

1. Ryan proposes to construct a private dock in Lake Sammamish in front of the “lower portion” of Parcel 9029 (the portion between the lake at the ELST). The proposed dock will have an area of 331 SF, extend into the lake approximately 54 feet beyond the ordinary high water mark⁷ (“OHWM”), and be built with ACZA treated timbers on galvanized steel piles. The dock will be 4 feet wide for the first 34 feet and will then widen to 6 feet and include a 6-foot by 18-foot ell at the outboard end. The dock surface will be fully grated (47% open space), and the dock will maintain well more than 15 feet of setback from the north and and at least 15 feet of setback from the south property lines extended. Ryan has designed the dock to accommodate one free-standing boat lift. The application does not request approval for covered boat lifts. (Exhibit 5)
2. Lake Sammamish and shorelands⁸ 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 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 and boat lift exceeds the established dollar threshold requiring a permit. (Exhibit 4)
3. Parcel 9029 is a small parcel located between the Parkway and the lake shoreline. It has an area of approximately 5,025 SF (0.12 acres) of which approximately 1,257 SF (0.03 acres) lies between the ELST and the lake shore. Parcel 9029 has approximately 66 feet of lake frontage. It slopes moderately down from the ELST to a small bench along the shoreline. Ryan is currently building a residence on the upper portion of Parcel 9029. There are no wetlands on the area west of the ELST. (Exhibits 5; 7; 9; and testimony))

⁷ ““Ordinary high water mark (OHWM)’ means the mark on all lakes and streams that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the Department of Ecology; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water (RCW 90.58.030(2)(b)).” [SMC 25.02.010(61)]

⁸ “‘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)]

4. 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] Section 25.07.050 SMC is divided into three subsections: (1) contains requirements for all docks and associated facilities; (2) contains additional requirements for docks and associated facilities in Lake Sammamish; and (3) contains additional requirements for docks and associated facilities in Pine and Beaver Lakes. The proposed dock and boat lift comply with those standards which are applicable to the proposal, provided that Ryan receives approval from the U.S. Army Corps of Engineers (“USACE”) and/or the Washington State Department of Fish and Wildlife (“WDFW”) for that part of the dock which is greater than 4 feet wide. (Exhibit 1) Ryan has received approval from the USACE. (Testimony)
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) {Lake Sammamish} and (13) {Beaver and Pine lakes}] No construction is proposed above the OHWM; all construction work will occur from the lake. (Exhibits 4; 5) Therefore, no VEA is required. (Exhibit 1)
6. Sammamish’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for the Ryan dock project on August 30, 2021. (Exhibit 18) The DNS was not appealed. (Testimony)
7. The Community Development Staff Report (Exhibit 1) contains a thorough analysis of the project’s compliance with SMA and SMP requirements. Community Development recommends approval of the SSDP subject to 10 conditions. (Exhibit 1, PDF 5 & 6) Two of the recommended conditions relate to the need for an inadvertent discovery plan in case archeological artifacts are encountered during the project. (Recommended Conditions 7 and 9).
8. Ryan has no objection to the Community Development Staff Report or its recommended conditions with the following minor corrections: the phrase “does not result in no-net-loss” on page 3 is a typographical error which should read “result in no-net-loss;” and the Table 1 (PDF 4) entry for deck grating light penetration should be 47% not 40%. (Testimony)
8. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
9. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁹

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

⁹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 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 2, 2021.

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 Community Development's analysis nor to the Recommended Conditions as contained in Exhibit 1. Lengthy, detailed Conclusions of Law are, therefore, unnecessary. Rather, the Examiner adopts Community Development'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 complies with the SMP's requirements for docks and boat lifts. (See Finding of Fact 4, 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 Community Development when it transmits the SSDP and supporting exhibits to the state as required by Chapter 90.58 RCW.

- B. 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 Community Development'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 5 is the approved development plan for this SSDP.
- C. Recommended Condition 4 contains a lengthy explanation of the circumstances under which a dock in Lake Sammamish may exceed a width of 4 feet. Explanations are not appropriate in Conditions; explanations belong in Findings or Conclusions. The Examiner will treat that part of Recommended Condition 4 as a Finding and will delete it from the text of the condition.

In addition, the condition contains an incorrect SMC citation. Subsection 25.07.050(2)(e) SMC is cited for the proposition that docks in Lake Sammamish may generally not be wider than 4 feet. The cited code section, however, regulates maximum overwater area coverage, not maximum width. The maximum width regulations are contained in SMC 25.07.050(2)(i). The citation will be changed accordingly.

- D. 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.
 - 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 331 square foot, fully grated, private dock with an associated free-standing boat lift in Lake Sammamish **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued October 4, 2021.

/s/ John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁰

Gregory Wayne Ashley
Jasvir Singh

Avril Baty

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: Cynthia Schaff, Hearing Examiner Clerk, 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.

¹⁰ 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
HEIDI RYAN DOCK
SSDP2021-00308**

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 5 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 only of galvanized steel (or other Washington Department of Fish and Wildlife (WDFW)-approved material), as shown on the approved plans only.
3. **Compliance with Local and State Laws.** The Permittee shall comply with all city rules and regulations in effect on April 2, 2021, 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 fixed pile dock and a freestanding boatlift shall be in substantial conformance with **Exhibit 5** and subject to the conditions of approval herein.
5. **Dock Width.** An approval notice from the U.S. Army Corps of Engineers or the WDFW prior to the issuance of the dock building permit is required pursuant to SMC 25.07.050(2)(i).
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/Inadvertent Discovery Plan.** An Inadvertent Discovery Plan (“IDP”) for archaeological resources will be required for this project. Prior to building permit issuance, a note on the construction plans shall be added regarding compliance with SMC 25.06.010 and requiring notification of the Washington State Department of Archaeology and Historic Preservation and the

Snoqualmie Tribe if artifacts are discovered. Any ground disturbing activities must be monitored by a licensed archeologist.

9. **Special Use Permit.** A Special Use Permit will be required for any use of and/or crossing of the East Lake Sammamish Trail corridor. The contractor and/or property owner may contact the King County Parks Hotline at parksproperty@kingcounty.gov or 206-477-9770 for further direction on the Special Use Permit process.

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.