Ex 88

Lindsey Ozbolt

From: Samantha Axtman <saxtman@romeropark.com>
Sent: Thursday, November 2, 2017 4:53 PM
To: Lindsey Ozbolt
Cc: Craig Simmons
Subject: RE: Comments for Hearing Examiner re: Issuance of SSDP2016-00415 Permit Application
Attachments: 2017-11-02_Response to Hearing Examiner Comments.ltr.pdf

Ms. Ozbolt,

There was an inadvertent error in the previous attachment. Attached is the correct correspondence regarding this matter.

Thank you,

Samantha

From: Samantha Axtman
Sent: Thursday, November 02, 2017 4:45 PM
To: 'lozbolt@sammamish.us' <lozbolt@sammamish.us>
Cc: Craig Simmons <Csimmons@romeropark.com>
Subject: Comments for Hearing Examiner re: Issuance of SSDP2016-00415 Permit Application

Ms. Ozbolt,

Attached please find correspondence from Craig Simmons on behalf of Pell Kessden, owner of the property located at 1104 East Lake Sammamish Parkway SE, for the Hearing Examiner's review and consideration.

Thank you,

Samantha Axtman, Legal Assistant
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Via Hand Delivery
November 2, 2017

John Gault
Hearing Examiner
City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Email: lozbolt@sammamish.us

RE: Comments for Hearing Examiner re: Issuance of SSDP2016-00415 Permit Application
Our Reference: KESP 501

Dear Hearing Examiner:

Property Owner in Opposition

This office represents Pell Kessden, the owner of the property located at 1104 East Lake Sammamish Parkway SE (the "Property"). She has lived on the Property for over 20 years and has worked with the City on numerous occasions as she has tried to develop her property in a manner of cooperation with the City.

Requested Relief

Ms. Kessden respectfully requests that the Hearing Examiner ("Examiner") deny King County's application for a Shoreline Substantial Development Permit, as outlined in the December 28, 2016 Notice of Application for Shoreline Substantial Development Permit; East Lake Sammamish Trail Segment 2B – SSDP2016-00415 (the "Permit Application") for the reasons set forth below, notably the County's continued inability to provide a title report/insurance for the property over which it seeks to improve the interim trail. Alternatively, and at the minimum, Ms. Kessden respectfully requests that the Examiner approve the Permit Application only if and when the County first strictly complies will all conditions set forth in the Director's Recommendation dated October 4, 2017.

Procedural Grounds for Requested Relief

1. The Permit Application should be denied because the County has not complied with SMC 20.05.040.

The County has not complied with SMC 20.05.040, which requires denial of the Permit Application. SMC 20.05.040 provides in part:

(1) The department shall not commence review of any application set forth in this chapter until the applicant has submitted the materials and fees specified for complete applications. Applications for land use permits requiring Type 1, 2, 3, or 4 decisions shall be considered complete as of the date of submittal upon determination by the department that the materials submitted meet the requirements of

this section. Except as provided in subsection (2) of this section, all land use permit applications described in SMC 20.05.020, shall include the following:

...

(r) Verification that the property affected by the application is in the **exclusive** ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the **consent of all owners** of the affected property; provided, that compliance with subsection (2)(d) of this section shall satisfy the requirements of this subsection (1)(r); and

...

(2) Additional complete application requirements apply for the following land use permits:

...

(d) For all applications for land use permits requiring Type 2, 3, or 4 decisions, **a title report** from a reputable title company indicating that the applicant has either **sole marketable title** to the development site or has **a publicly recorded right to develop the site** (such as an easement); if the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site.

(emphasis added).

There can be no dispute that the following statements about the County's application are correct:

1. It did not provide verification of exclusive ownership to *all* of the Property in question (in fact, it concedes it does not own the subject property in fee simple, rather it acknowledges that it acquired the **railroad easement** through the Rails to Trails Act, which means that it does not possess all of the bundle of rights of the subject property).

2. It did not provide consent of the affected property owners (in fact, this letter continues to demonstrate that many of the affected property owners are opposed to the proposed shoreline development). Ms. Kessden has not and will not consent to the development as currently planned because the County has not established that it has the right to effectively take her land as its own.

3. It did not provide a copy of a title report showing the County has "sole marketable title" or has a "publicly recorded right to develop the site."

Given the County's failure to provide these requisite deliverables, the Permit Application should be denied as incomplete, despite the Director's Recommendation.

2. Not insisting on title insurance only serves to put the City at risk unnecessarily because the County has admitted for years that title to much of the trail Corridor is clouded.

While the Director may waive submittal requirements if they are determined as "unnecessary," SMC 20.05.040(3), there is nothing unnecessary about the title insurance requirement in this case. In fact,

SMC 20.05.040(2)(d) should never be determined by the Director as "unnecessary," especially under the circumstances of this Permit Application, and the Examiner has the responsibility and the opportunity to protect the City and its citizens by denying the Permit Application until SMC 20.05.040(3) is satisfied.

Ms. Kessden strongly denies that the County owns a 100-foot easement for the trail that would allow them to wipe out portions of many peoples' homes and permitted improvements—on her property alone, the County plans to eliminate her access to the waterfront portion of her property, planning to send her to neighboring lots to find access (without any assurances that the County will make sure her neighbors will cooperate). It is very likely that Ms. Kessden will be prevented from accessing a valuable portion of her land, land outside even the claimed 100 feet right of way, and the City's approval of this plan is untenable. Even if the County did have a 100-foot easement it still is limited by the Rails to Trails Act to only be allowed to build a trail in the Corridor – it is not allowed under any circumstances to remove anything that is outside the actual 20-foot trail since doing so would be going outside its authorized use of the subject alleged easement. The current version of the plan has the County removing Ms. Kessden's stairs accessing the waterfront portion of her property, most of her deck and a shed that the City itself inspected and approved of years ago.

Further, as it relates to the proposed trail improvements themselves, Ms. Kessden does not believe the County should be allowed to construct a trail that will eliminate her deck, shed (both of which were inspected and approved by the City years ago) and stairs accessing the waterfront portion of her property. The plan will also significantly affect the wetland area on her property that the City required her to consent to being labeled as such when she rebuilt her home. Now, rather than challenge the County on its planned impacts on the wetlands-designated area, the City appears to be looking the other way. The Hearing Examiner should not allow the County to disregard the critical areas along the trial—not just those on Ms. Kessden's property—in the name of "improving" the trail.

In summary, the County's ownership of the Corridor is challenged on at least the following grounds:

1. The County only has an easement, not fee ownership;
2. The County does have the use of 100 feet for a trail;
3. Even if the County has the right to build a trail over the entire alleged 100-foot Corridor it does not follow that it has the right to remove decks and other structures and/or deny property owners access rights to Lake Sammamish that they have enjoyed for decades; and
4. The County's plan will negatively impact areas that the City has previously (perhaps when it suited the City's purpose at the time) characterized as critical areas.

Because of these "ownership challenges" the County should be required to provide a title insurance policy from a reputable title insurance company.[1]

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[1] The City will also benefit from title insurance because if the permit is issued, and Ms. Kessden and/or other injured City residents bring legal action challenging the ownership issue then the City will be able to call upon the title insurance to defend itself in any such proceeding. Of course, if the such property owners prevail and it is determined the permit was wrongfully issued, then the City will also have a source of recovery for the likely multi-million-dollar damage claim said residents will have if the trail is constructed and ultimately determined to be violative of the property owners' rights.

The presumed reasons the City enacted SMC 20.05.040(2)(d) are at least: a) to have the backing of title insurance in the event the applicant and/or the City get sued based on a claim of a lack of title to the project site; and b) to receive an independent verification that the applicant does in fact have the requisite title authority to construct the project. The City should step back and ask itself, "why has the County failed to provide a copy of its title insurance to the subject property?" Should that not be a red flag?

Since the SMC does not define the word "unnecessary," (the ***only*** grounds upon which the City Director can ignore the requirements of SMC 20.05.040(2)(d)) the word should be given its ordinary meaning. Webster's defines "unnecessary" as "not needed" or of "no import." Applying this definition to the question at hand, the Examiner must decide, "is requiring the County to provide title insurance not needed or of no import to the City?" How can the answer to this question be "no?" It must be yes. Securing title insurance will give the City an independent, experienced, third party opinion that the County does indeed have ownership/exclusive rights to the subject property and more importantly, that the insurance is there to cover damages if Ms. Kessden bring legal action against the County and/or City in the event they prevail, and/or other affected property owners prevail on appeal in the Federal Case.

Additional Grounds for Requested Relief

1. Conditions 2 and 3 must be imposed because the purported "Corridor Parcel" runs through Ms. Kessden's improvements.

While the County is, at the present time, "only" seeking to use 20 feet of its purported 100 feet of width of the "Corridor Parcel"[2], the City should, along with Ms. Kessden, share the concern that granting the Permit Application could be used by the County to assert ownership over the entire Corridor Parcel. The Corridor Parcel runs through access stairs, Ms. Kessden's shed, and a substantial portion of her deck that the City previously inspected and approved.[3]

It is critically important that the Examiner requires the County to amend its plans, using conditions 2 and 3, to avoid the destruction of structures that are not owned/controlled by the County but are nevertheless properly installed via municipal approval and in compliance with the law.

2. The City should prevent the County from developing west of the current trail across the Property, relying on Condition 4.

The City has recommended a condition preventing the County from developing, including clearing and grading, west of the current trail situs in certain locations along the Corridor Parcel. Ms. Kessden's

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[2] The County uses the term "Corridor Parcel" to define both the width of the trail along the abandoned railroad bed but also 50 feet out from the midway point each way, for a total purported width of 100 feet (the County does concede that by recorded instrument the 100 feet width of the Corridor Parcel is less than this amount on a few lots). While Ms. Kessden disagrees that there is a Corridor Parcel running through across her property, solely for purposes of definition she will use this term.

[3] It is interesting that the County never had a problem with the owners' improvements when the Railroad was in operation (neither did the Railroad) and even approved the majority of the same without requiring permission from the Railroad because the County understood that the land was not controlled or owned by the Railroad.

property, and the wetlands the City has designated thereon that sit west of the trail, is located approximately between Stations 374+089 and 374+7729. The recommended Condition 4 seeks to limit development in that area, but Ms. Kessden asks that her property be specifically included in that as well.

3. Conditions 9, 10, and 15 are critically important for the preservation of the shoreland.

The Parcel Corridor crosses Ms. Kessden's Property in close proximity to the waterfront, and the current trial has created a drainage and erosion issue because the County did not adequately plan for what impact the current surface of the trail would do to the soils and vegetation in this section of the Parcel. Flooding is common along the east side of the trail and the County has not maintained sufficient protocols to allow for the water to drain to the North. Final plans for the widened trail, which will add significant impervious square footage to the area, must be made to properly account for the water run-off sure to be created. Conditions 9, 10, and 15 should be imposed to ensure that this is done correctly and in a way that will protect the City and its citizens.

4. The County must be made to comply, if it can, with all the Conditions recommended by the Director before construction of the trail "improvements" should be allowed to move forward.

The City is not recommending that the County be given carte-blanche to being construction even if the Examiner approves the Permit Application. It has set forth requirements that the County must adhere to and comply with, if it can, prior to the issuance of any permit and the beginning of construction. Many of the conditions, including Conditions 2, 3, 4, 9, 10, and 15, seek to have the County mitigate the damage it will do to the properties across which it seeks to "improve" the trail—not just Ms. Kessden's Property. These areas include critical areas regulated by Sammamish City Code and other regulatory schemes, all of which will be impacted by the "improvements" to the trail. For example, the County seeks to significantly change the width and nature of the trail, proposing to widen and pave the same, which will drastically increase the volume of water run-off in the area. Given the topography, the County, through conditions imposed by the Examiner, must demonstrate and put into practice, its plans for dealing with this storm water in a way that will not negatively impact critical areas, the lake itself, and the private properties being bisected by what amounts to this new road being installed.

Thank you for your time in reading Ms. Kessden's response in opposition. Both Ms. Kessden and I are available to answer any questions the City staff has regarding this response.

Sincerely,
ROMERO PARK P.S.

Craig Simmons

Craig Simmons

cc: Client