

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

DECISION ¹

FILE NUMBER: SSDP2017-00254

APPLICANT: Greg Emens
4109 East Lake Sammamish Parkway SE
Sammamish, WA 98075

TYPE OF CASE: Shoreline Substantial Development Permit to replace an existing private dock with a new 478 square foot, fully grated, private dock

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: December 28, 2017

INTRODUCTION ²

Greg Emens ("Emens") seeks approval of a Shoreline Management Act ("SMA") Substantial Development Permit ("SDP") to replace an existing private dock with a new 478 square foot, fully grated, private dock.

Emens filed a Base Land Use Application on April 7, 2017. (Exhibits 6; 7 ³) The Sammamish Department of Community Development ("Department") deemed the application to be complete as of June 2, 2017. (Testimony) The Department issued a completion letter on June 14, 2017, and a Notice of Application on June 26, 2017. (Exhibits 8; 9)

The subject property is located at 4109 East Lake Sammamish Parkway SE, between the eastern shoreline of Lake Sammamish and the East Lake Sammamish Trail.

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on December 14, 2017.

The Examiner held an open record hearing on December 14, 2017. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 12)

¹ This Decision memorializes and expands upon an oral decision rendered on the record at the close of the December 14, 2017, open record 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 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 SDPs be issued within 120 net review days after the application is found to be complete. The open record hearing was held within that review time.

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

Exhibits 1 - 20: As enumerated in Exhibit 1, 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. The Emens property is an approximately 16,000 square foot ("SF"), more or less rectangular parcel located on the eastern shore of Lake Sammamish. It has approximately 100 feet of frontage on the lake shoreline. The property contains a single-family residence built in 1992 and a 478 SF private use dock extending approximately 80 feet into the lake. A free-standing boat lift (about 10' x 15') stands beside the northern edge of the existing dock at its outboard end, but is not attached to the dock. (Exhibits 1; 2; and testimony)
2. Emens proposes to remove the existing dock and replace it with a fully grated, 4' x 109' dock with a small 6' wide ell at its outboard end. The existing boat lift will remain in place. Water depth at the outboard end of the dock will be slightly less than eight feet. (Exhibits 1; 2; and testimony)
3. Lake Sammamish and shorelands within 200 feet of the lake's ordinary high water mark ("OHWM") are within the jurisdictional area of the SMA. Lake Sammamish is a designated Shoreline of Statewide Significance under 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. An SDP 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 Emens 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 is located entirely waterward of the OHWM. Therefore, there will be no upland disturbance and a VEA is not required. (Exhibit 1, p. 5, § I.11)

6. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application. The record contains one comment from an Indian tribe and one comment from a state agency.

The Muckleshoot Indian Tribe questioned why the boat lift was not included on project plans and asked for information regarding mitigation planting. (Exhibit 5) The boat lift was not included because the project will not alter it in any way. (Testimony) The Dock Design Requirements are considered “as self-mitigation through design parameters.” (Exhibit 1, p. 7, § II.13)

The Department of Ecology provided information regarding proper disposal of treated wood. (Exhibit 5)

7. Sammamish’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for the Emens dock project on October 19, 2017. (Exhibit 4) 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. The Department recommends approval of the SDP subject to six conditions.

The Department made two oral corrections to its staff report during the open record hearing. First, the suggestion in Section III.6 on page 9 that a survey is needed is obsolete: Exhibit 2 was prepared based upon a formal survey. (Exhibit 2; and testimony)

Second, the date in Recommended Condition 1 should be June 2, 2017, not April 7, 2017, since the SDP application was not complete until June 2nd. (Testimony)

9. Emens agent stated that Emens concurred with the staff report and had no objection to the recommended conditions. (Testimony)
10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁴

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

Authority

A Shoreline SDP is a Type 4 procedures. 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

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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 June 2, 2017.

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, subject to the correction noted in Finding of Fact 8, Paragraph 2, above, 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. Recommended Condition 1. The Examiner prefers to not use the word "applicant" in permit conditions. "Applicant" is typically construed to refer to the party which applied for the permit at issue. However, land use entitlement permits, such as the requested SDP, "run with the land." They remain valid regardless of who owns the property. Therefore, the current applicant may not always be the holder/beneficiary of the SDP. In order to avoid any possibility of future confusion, the Examiner prefers to use a term such as "Permittee" to refer to the permit holder. That change will be made.
 - B. Section 173-27-190 WAC contains certain content and format requirements for any SSDP R 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 SVAR and 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 SVAR and SSDP and supporting exhibits to the state as required by Chapter 90.58 RCW.

- C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Condition 2 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 replace an existing private dock with a new 478 square foot, fully grated, private dock **SUBJECT TO THE ATTACHED CONDITIONS**.

Oral Decision issued December 14, 2017; Written Decision issued December 28, 2017.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁵

Jay Irwin

Tracy Cui

⁵ The official Parties of Record register is maintained by the City's Hearing Clerk.

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.

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 EMENS PRIVATE DOCK REPLACEMENT SSDP2017-00254

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. The permittee shall comply with all city, county, state, and federal rules and regulations in effect on June 2, 2017, the vesting date of the subject application, including any necessary permits from applicable state or federal agencies.
2. A Construction Permit issued in accordance with SMC Title 16 must be approved prior to commencing project construction. Final construction plans for the proposed dock shall be in substantial conformance with Exhibit 2 and subject to these conditions of approval.

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3. No significant tree removal is proposed with this SSDP; therefore, no significant tree removal is allowed.
4. Final construction plans, including staging plans, shall be prepared and submitted to the City for review with application for Construction Permit. Site disturbance shall be the minimum necessary to accommodate the scope of work.
5. Prior to Construction Permit, a note on the Construction plans shall be added regarding compliance with SMC 25.06.010 and requiring notification the Washington State Department of Archaeology and Historic Preservation if artifacts are discovered.
6. 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 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.