

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

<b>DECISION</b>
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FILE NUMBER: SSDP2016-00416

APPLICANT: TJ Square Homeowners Association  
C/o Luca Barone  
19639 NE 33<sup>rd</sup> Place  
Sammamish, WA 98074

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 520 square foot, shared-use dock within Lake Sammamish

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: November 21, 2017

**INTRODUCTION <sup>1</sup>**

TJ Square Homeowners Association (“TJ Square”) seeks approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SDP”) to construct a 520 square foot, shared-use dock within Lake Sammamish.

TJ Square filed a Base Land Use Application on October 20, 2016. (Exhibit 9 <sup>2</sup>) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Exhibit 10) The Department issued a Notice of Application on October 26, 2016. (Exhibits 1, p. 3; 11)

The subject property is located along the east shore of Lake Sammamish in the 3300 block of East Lake Sammamish Parkway NE (“Parkway”).

The Sammamish Hearing Examiner (“Examiner”) viewed the subject property on November 13, 2017.

The Examiner held an open record hearing on November 13, 2017. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 1, p. 1)

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<sup>1</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

<sup>2</sup> 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.

## HEARING EXAMINER DECISION

RE: SSDP2016-00416 (TJ Square Shared-use Dock)

November 21, 2017

Page 2 of 9

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 most likely held after the 120<sup>th</sup> net review day. 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)]. TJ Square did not mention the review period during the open record hearing.

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

Exhibits 1 - 13: As enumerated in Exhibit 1, the Departmental Staff Report  
Exhibit 14: Letter, Michael A. Spence on behalf of TJ Square, November 13, 2017

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. TJ Square proposes to construct a 520 square foot ("SF") grated surface, shared-use dock four feet (4') in width, 78 feet long, in Lake Sammamish. The proposed dock includes a 4' by 66' walkway/pier with a 6' by 28' ell at the waterward end and two 2' by 24' finger piers, all three angled to the north. The proposed dock has a 15 foot setback from the south property line (extended) and a 24 foot setback from the north property line (extended). (Exhibit 2) The shared-use dock will provide boat moorage for six upland lots within the TJ Square development, the owners of which have approved the construction of the dock and regulated its use for exclusive, shared recreational use by the owners. (Exhibit 3) The TJ Square development is located on the upland to the east of the Parkway, overlooking Lake Sammamish. (Exhibit 1) The proposed dock site is located to the west of both the Parkway and King County's East Lake Sammamish Trail ("ELST") along the shoreline of Lake Sammamish.<sup>3</sup> (Exhibit 2)
2. The site is within the Lake Sammamish Urban Conservancy Shoreline overlay district of the City of Sammamish Shoreline Master Program ("SMP"). Lake Sammamish is designated by the SMA as a Shoreline of Statewide Significance. In accordance with Title 25 SMC and Chapter 90.58 Revised Code of Washington ("RCW"), an SDP is required because the fair market value of the dock exceeds the threshold limit. (Exhibit 1)
3. The proposed dock, a Boating Facility by definition [SMC 25.02.010(13)], is a preferred water-oriented and water-dependent use that is given priority in both the SMA and the SMP. (Exhibit 1) Boating Facilities are allowed as a permitted use and must meet the design requirements for private

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<sup>3</sup> The directional conventions used in this Decision are that the Lake Sammamish shoreline, ELST and Parkway all run north to south and are roughly parallel to one another. (See Exhibit 2)



docks established by SMC 25.07.050 (the “Dock Design Requirements”). Exhibit 2 demonstrates compliance with the Dock Design Requirements.

4. The dock has been designed so that no part of it is located upland of the ordinary high water mark (“OHWM”) of Lake Sammamish. (Exhibit 2) The SMP requires a Vegetation Enhancement Area (“VEA”) when new development displaces or affects the shoreline setback. [SMC 25.06.020(10) (a) (i)] The shoreline setback for Lake Sammamish is the area extending 50 feet landward from the OHWM. [SMC 25.06.020(9)] Since the proposed dock is entirely waterward of the OHWM, no VEA is required for this project.
5. Subsection 25.06.020(7) SMC requires that mitigation for environmental impacts be applied in sequencing principle order. TJ Square proposes to offset potential impacts to the aquatic environment by installing native vegetation along 37 lineal feet of the shoreline (334 SF total planting area). The proposal is expected to improve in-water habitat quality by placing submerged and overhanging vegetation at water level, and by providing future sources of small and large wood recruitment. The project will also provide a modest erosion control function. (Exhibit 5)
6. No testimony was entered into the record by the general public either in support of or in opposition to the application.

The hearing record contains written comments from three parties, all written during the official comment period in the Fall of 2016, at a time when TJ Square was proposing a 120 foot long dock with ends pointing toward the south. (Exhibit 6, Fig. 2/2; and testimony) Bill Way (Exhibits 8.1; 8.2) and Julia Creighton/John Bronson (Exhibit 8.3) objected to the length of the dock as then proposed. King County Parks (Exhibit 8.4) asked that the property be surveyed before construction to assure that no work would occur on King County ELST property, requested that vegetation within Park property not be disturbed, and noted that approval from King County would be required for any work within Park property.

TJ Square revised its proposal to the current configuration after receiving the public comments and, at least in part, in response to those comments. (Testimony)

7. Sammamish’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for the proposal on August 18, 2017. (Exhibit 7) The DNS was not appealed. (Testimony)
8. The Department’s staff report (Exhibit 1) provides an analysis of SMP compliance and recommends approval of the SDP subject to nine conditions. (Exhibit 1, pp. 8 and 9) In response to a question from the Examiner, the Department stated that the performance bond required under Recommended Condition 5 should be posted prior to building permit issuance. (Testimony)

9. TJ Square concurs with the Department's analysis and recommended conditions. (Exhibit 14; statement of counsel)
10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

### **LEGAL FRAMEWORK <sup>4</sup>**

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 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.

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<sup>4</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.



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 October 20, 2016.

#### 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. TJ Square’s SDP application is, fundamentally, a simple, straight-forward, non-controversial application. The proposed shared-use dock is a permitted, preferred use. All evidence demonstrates that the proposed shared-use dock complies with all applicable provisions of the SMP.
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. The Examiner believes that permits which approve site development plans should clearly identify the exhibit or exhibits which depict the approved plans. In the present case, that would be Exhibits 2 (site development plans) and 5 (mitigation plan). A condition will be added to perform that function.

HEARING EXAMINER DECISION

RE: SSDP2016-00416 (TJ Square Shared-use Dock)

November 21, 2017

Page 6 of 9

- B. Recommended Conditions 4 and 6 include explanatory and/or factual statements that are unnecessary in permit conditions. Those clauses will be removed.
- C. Recommended Condition 5 will be revised to state that the performance bond must be posted prior to issuance of the Construction Permit.
- D. The Examiner does not like to use the word “applicant” in a permit condition. Land use entitlement permits “run with the land.” It is theoretically possible that the “applicant” for the current permit might not be the future developer. Therefore, the Examiner prefers to use the word “permittee” to refer clearly to the holder of the permit. That change will be made wherever the word “applicant” has been used in the recommended conditions.
- E. 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.

- F. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 2 - 5, and 7 - 9 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 520 square foot, shared-use dock within Lake Sammamish **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued November 21, 2017.



John E. Galt  
Hearing Examiner

### HEARING PARTICIPANTS <sup>5</sup>

Steven Goldbloom  
Tracy Cui

Mike Spence, unsworn counsel

### 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, 801 228<sup>th</sup> 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.

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<sup>5</sup> 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**  
**TJ Square Shared-Use Dock**  
**SSDP2016-00416**

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 Substantial Development Permit; Exhibit 5 is the approved mitigation plan for this Substantial Development Permit.
2. The Permittee shall comply with all city, county, state, and federal rules and regulations in effect on October 20, 2016, the vesting date of the subject application, including any necessary permits from applicable state or federal agencies.
3. A Construction Permit issued in accordance with Title 16 SMC must be approved prior to commencing project construction. Final construction plans for the proposed dock shall be in substantial conformance with Exhibit 2 and these conditions of approval.
4. As part of the Construction Permit application, the Permittee shall provide a site plan which contains the location of the OHWM, as surveyed by a professional land surveyor licensed in the State of Washington.
5. No significant tree removal is allowed.
6. Prior to Construction Permit issuance, the Permittee shall post a performance bond to ensure completion of mitigation work. After mitigation installation, the project biologist must document installed mitigation in an as-built report and plan that is supplied for City Review. After the City accepts the as-built condition, the performance bond will be released and the mitigation project will shift into the required 5-year mitigation monitoring period after a maintenance and defect bond is posted to replace the performance bond.
7. Final construction plans, including staging plans, shall be prepared and submitted to the City for review with application for the Construction Permit. Site disturbance shall be the minimum necessary to accommodate the scope of work.



HEARING EXAMINER DECISION

RE: SSDP2016-00416 (TJ Square Shared-use Dock)

November 21, 2017

Page 9 of 9

8. 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.*
9. Prior to Construction Permit issuance, a note shall be placed on the construction plans/permit regarding compliance with SMC 25.06.010 and requiring notification of the Washington State Department of Archaeology and Historic Preservation if artifacts are discovered (an "inadvertent discovery" provision).
10. Pursuant to WAC 173-27-090 construction shall be commenced on the proposed dock within two years of the effective date of a shoreline permit. Authorization to conduct development activities shall terminate five years after the effective date of this permit. The City may authorize a single extension for a period not to exceed one year based on 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.