



City of Sammamish

801 – 228th Avenue SE • Sammamish, WA 98075 • Phone: 425-295-0500 • Fax: 425-295-0600 • web: www.sammamish.us

Appeal of a Decision of an Administrative Official

This document is intended to assist in the submittal of an appeal of an administrative decision on a Type 2 land use decision, street variation, or other administrative decision as provided in the Sammamish Municipal Code ("SMC"). Additional information regarding appeals may be found in the SMC Title 20, which is available on the city's website at www.sammamish.us. Copies of the SMC and the Hearing Examiner's Rules of Procedures are also available at Sammamish City Hall for review.

PLEASE NOTE:

- Appeal fee is due upon submittal of the Appeal.
- Submit three (3) copies of all Appeal documents.
- Appeals should be filed with the Hearing Examiner's Assistant

RECEIVED
JUL 28 2015

City of Sammamish

Location: See Attachment 1

Appellant's Name: King County

Phone: 206-477-4527

Address: 201 S. Jackson Street, Ste. 700

City: Seattle, WA

Zip: 98104

Email: Mary.Livermore@Kingcounty.gov

Decision being appealed (File No. & project or applicant name):

City of Sammamish File No. SSDP 2014-00171

King County - East Lake Sammamish Trail South Segment A

Date of Decision: July 7, 2015

Would you be interested in mediation as provided for in SMC 20.05.120?

Yes ☒ No ☐

What is the basis for the

Appeal: See Attachment 1. In addition, King County asserts that the appropriate venue for an appeal of SSDP 2014-00171 is the Shorelines Hearings Board pursuant to SMC 20.10.070. King County is filing this appeal with the hearing examiner to preserve any and all rights to appeal SSDP 2014-00171 in the event that it is determined that the hearing examiner has jurisdiction over this matter.

Office Use Only

Received by: _____

Fee Paid: \$ _____ Cash ☐ Check ☐

Date Stamp

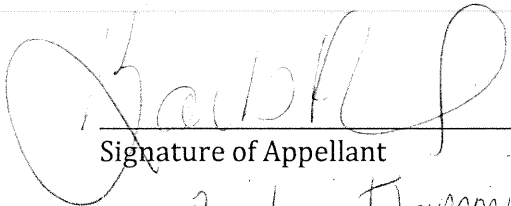
COPY

What are the regulations you believe have not been followed or correctly interpreted?

See Attachment 1

What remedy or relief are you seeking through the Appeal?

See Attachment 1



Signature of Appellant

July 28, 2015

Date

Print Barbara Flemming

Barbara Flemming, WSBA #20485

Devon Shannon, WSBA #34534

Attorneys for Appellant

BEFORE THE HEARING EXAMINER FOR THE CITY OF SAMMAMISH

In the Matter of the Appeal of SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
2014-00771

No.

APPEAL OF CITY OF SAMMAMISH
DECISION FOR SHORELINE
SUBSTANTIAL DEVELOPMENT
PERMIT 2014-00171

I. INTRODUCTION

In accordance with the Sammamish Municipal Code (SMC) 20.10.080, appellant King County ("County") hereby files an appeal to the City of Sammamish's ("City") Hearing Examiner of the Shoreline Substantial Development Permit ("SSDP") for File No. 2014-00171. The County is appealing conditions number 2-8, 10, 14 and 17 of SSPD 2014-00171 ("the Decision") and alleges error by the City in imposing these conditions.

II. ALLEGED ERRORS IN THE CITY'S PERMIT CONDITIONS

In an appeal to the hearing examiner, SMC 20.10.080 requires appellants to set forth alleged errors in the decision, specific reasons why the decision should be reversed or modified, and identify the harm suffered or anticipated by the appellant. The County alleges errors with the imposition of Condition 2-8, 10, 14 and 17 of the Decision. Specific reasons why the decision to impose each of these conditions should be reversed or modified are set forth below.

APPEAL OF CITY OF SAMMAMISH CONDITIONS
FOR SHORELINE SUBSTANTIAL DEVELOPMENT
PERMIT 2014-00171 - 1

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-0430/FAX (206) 296-0415

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

a. Condition Number 2:

Condition 2 requires the County to “capture and manage” the drainage from driveways 1 and 2. In addition, it states that “additional improvements may be required if deemed appropriate by the City.” This requirement should be stricken for the following reasons:

1) The City exceeded its authority by imposing this condition as it is not necessary to ensure consistency of the project with the Shoreline Management Act (SMA) or the local shoreline master program (SMP) pursuant to WAC 173-27-150(2);

2) This condition is unnecessarily onerous and burdensome and is not reasonably calculated to achieve purposes set forth in the SMA and SMP;

3) This condition is unlawful where no development regulations provide a basis to require this condition;

4) This condition is not supported by the Findings or Conclusions in the Decision, including but not limited to Finding of Fact number 26 and Conclusion number 9 which concludes that this development proposal meets the City of Sammamish stormwater regulations;

5) This condition unlawfully requires that the applicant rectify preexisting drainage problems unrelated to this development proposal;

6) The City acted arbitrarily and capriciously by imposing this condition.

In addition, the City’s open-ended condition requiring “additional improvements if deemed appropriate by the City” should be stricken for the following reasons:

1) The City exceeded its authority by imposing this condition as it is not necessary to ensure consistency of the project with the SMA or SMP pursuant to WAC 173-27-150(2);

1 2) This condition is unnecessarily onerous and burdensome and is not reasonably
2 calculated to achieve purposes set forth in the SMA and SMP;

3 3) This condition is unlawful where no development regulations provide a basis to
4 require this condition;

5 4) This condition is not supported by the Findings or Conclusions in the Decision,
6 including but not limited to Findings of Fact 26 Conclusion 9, which concluded that this
7 development proposal meets the City of Sammamish storm water regulations;

8 5) The City exceeded its authority by requiring that the applicant rectify preexisting
9 drainage problems unrelated to this development proposal;

10 6) This condition is incomplete, impractical and ambiguous. As such it is
11 unconstitutionally vague and unenforceable;

12 7) The City acted arbitrarily and capriciously by imposing this condition.

13 The County anticipates substantial harm as a result of this condition, including but not
14 limited to significant delay and additional project costs. The County requests that this condition
15 be stricken from the SSPD.

16 **b. Condition Number 3:**

17 Condition 3 requires the County to “further analyze” the culvert located within the
18 corridor and to submit additional information to the City regarding “culvert storm water capacity,
19 fish passage potential, and the storm water outfall location.” In addition, this condition requires
20 the County to “coordinate with the City and neighboring properties [sic] owners on culvert
21 replacement and other needed work to improve fish passage, where appropriate and any needed
22 flood control measures on this stream.” Finally, this condition requires the County to submit
23 revised plans, which “shall reflect the successful outcome of this coordination effort” as a

1 precondition for issuance of the required grading permit. This condition should be stricken for
2 the following reasons:

3 1) The City exceeded its authority by imposing this condition as it is not necessary to
4 ensure consistency of the project with the SMA or SMP pursuant to WAC 173-27-150(2);

5 2) This condition is unnecessarily onerous and burdensome and is not reasonably
6 calculated to achieve purposes set forth in the SMA and SMP;

7 3) This condition is unlawful where no development regulations provide a basis to
8 require this condition;

9 4) This condition is not supported by the Findings or Conclusions in the Decision;

10 5) The City exceeded its authority by requiring that the applicant rectify a preexisting
11 condition unrelated to this development proposal;

12 6) The City has no authority to require the County to coordinate with private citizens to
13 determine project design and this requirement unlawfully grants authority to private citizens to
14 set permit conditions;

15 7) This condition is incomplete, impractical and ambiguous. As such it is
16 unconstitutionally vague and unenforceable;

17 8) The City acted arbitrarily and capriciously by imposing this condition.

18
19 The County anticipates substantial harm as a result of this condition including significant
20 additional project costs and delays. The prospective and vague requirement for successful
21 negotiation with adjacent property owners may indefinitely delay the project. Rather than
22 benefiting the public and ensuring protection of the public's interests, this condition benefits a
23 handful of private citizens. The County requests that this condition be stricken from the SSPD.

1 **c. Condition Number 4:**

2 This condition requires the County to narrow the trail “by elimination of one soft-surface
3 shoulder and clear zone a minimum of three feet” or to revise the plans to save approximately 20
4 additional significant trees. In addition, the condition requires that, “to the greatest extent
5 practicable, all non-significant trees and other vegetation in this location shall also be saved.”

6 This condition should be stricken for the following reasons:

7 1) The City exceeded its authority by imposing this condition as it is not necessary to
8 ensure consistency of the project with the SMA or SMP pursuant to WAC 173-27-150(2);

9 2) This condition is unnecessarily onerous and burdensome and is not reasonably
10 calculated to achieve purposes set forth in the SMA and SMP;

11 3) This condition is unlawful where no development regulations provide a basis to
12 require this condition;

13 4) This condition is not supported by the Findings or Conclusions in the Decision;

14 5) This condition is in violation of the City’s own development regulations for Trail
15 Corridors SMC 21A.30.210;

16 6) The City exceeded its authority by requiring the applicant to rectify non-shoreline
17 impacts;

18 7) The City acted arbitrarily and capriciously by imposing this condition.

19 The County anticipates substantial harm as a result of this condition. In addition to
20 anticipated increases in costs and delays, this condition is inconsistent with applicable national
21 standards for trail design and safety, triggering liability risks for the County and safety concerns
22 for trail users. The County requests that this condition be stricken from the SSPD.

1 **d. Condition Number 5:**

2 This condition requires the County to “work with neighboring property owners” to
3 review alternatives to a vault design and to “move the proposed wall further away from private
4 properties sufficient to allow for landscaping to be planted and maintained at the base of the
5 wall.” This condition should be stricken for the following reasons:

6 1) The City exceeded its authority by imposing this condition as it is not necessary to
7 ensure consistency of the project with the SMA or SMP pursuant to WAC 173-27-150(2);

8 2) This condition is unnecessarily onerous and burdensome and is not reasonably
9 calculated to achieve purposes set forth in the SMA and SMP;

10 3) This condition is unlawful where no development regulations provide a basis to
11 require this condition;

12 4) This condition is not supported by the Findings or Conclusions in the Decision,
13 including but not limited to Finding of Fact number 26 and Conclusion number 9 which
14 concludes that this development proposal meets the City of Sammamish stormwater regulations;

15 5) The City exceeded its authority by requiring that the applicant rectify preexisting
16 drainage problems unrelated to this development proposal;

17 6) The City has no authority to require the County to “work with” private citizens to
18 determine project design and this requirement unlawfully grants authority to private citizens to
19 set permit conditions;

20 7) This condition is incomplete, impractical and ambiguous. As such it is
21 unconstitutionally vague and unenforceable;

22 8) The City acted arbitrarily and capriciously by imposing this condition.
23

1 9) The City lacks authority to require the County to cede public property to private
2 landowners for their landscaping/other purposes, which represents an unconstitutional taking and
3 a gift of public property.

4 The County anticipates substantial harm as a result of this condition. This condition
5 allows private citizens to determine design results on a public project, resulting in significant
6 uncertainty both in terms of cost and process. Rather than benefiting the public and ensuring
7 protection of the public's interests, this condition benefits a handful of private citizens. The wall
8 relocation and additional modifications will be cost prohibitive and will result in further delay.

9 The County requests that this condition be stricken from the SSPD.

10
11 **e. Condition Number 6:**

12 This condition requires the County to relocate the stop sign on 206th Avenue SE so that
13 trail users are required to stop instead of traffic on the public roadway. The current intersection
14 follows roadway and intersection design principles which give right of way priority to the trail
15 users based on volume of use. This condition should be stricken for the following reasons:

16 1) The City exceeded its authority by imposing this condition as it is not necessary to
17 ensure consistency of the project with the SMA or SMP pursuant to WAC 173-27-150(2);

18 2) This condition is unnecessarily onerous and burdensome and is not reasonably
19 calculated to achieve purposes set forth in the SMA and SMP;

20 3) This condition is unlawful as it is inconsistent with applicable design principles and no
21 development regulations or other standards provide a basis to require this condition;

22 4) This condition is not supported by the Findings or Conclusions in the Decision;
23

1 5) This condition is in violation of the City's own development regulations for Trail
2 Corridors, SMC 21A.30.210;

3 6) The City exceeded its authority by requiring the applicant to rectify non-shoreline
4 impacts;

5 7) The City acted arbitrarily and capriciously by imposing this condition.

6 The County anticipates substantial harm as a result of this condition. In addition to
7 fundamental safety and liability concerns, relocating the stop sign will require removal of
8 additional trees and other vegetation to ensure adequate sight distances are maintained. The
9 County requests that this condition be stricken from the SSPD.

10 **f. Condition Number 7:**

11 This condition requires the County to narrow the trail by eliminating "one soft-surface
12 shoulder and clear zone a minimum of three feet or as necessary" to save additional trees. This
13 condition should be stricken for the following reasons:

14 1) The City exceeded its authority by imposing this condition as it is not necessary to
15 ensure consistency of the project with the SMA or the SMP pursuant to WAC 173-27-150(2);

16 2) This condition is unnecessarily onerous and burdensome and is not reasonably
17 calculated to achieve purposes set forth in the SMA and SMP;

18 3) This condition is unlawful where no development regulations provide a basis to
19 require this condition;

20 4) This condition is not supported by the Findings or Conclusions in the Decision;

21 5) This condition is in violation of the City's own development regulations for Trail
22 Corridors, which requires the width to be designed consistent with AASHTO standards, SMC
23 21A.30.210;

1 6) The City exceeded its authority by requiring the applicant to rectify non-shoreline
2 impacts;

3 7) The City acted arbitrarily and capriciously by imposing this condition.

4 The County anticipates substantial harm as a result of this condition. Requiring the trail
5 to be narrowed in this manner creates safety hazards and increases liability risk.

6 **g. Condition Number 8:**

7 This condition requires the County to obtain a separate tree removal permit for all trees
8 listed as “save” or “monitor” within the clearing limits. In addition, the condition provides that
9 removal of any of these trees “require an arborist report and/or meeting with neighboring
10 property owners.” This condition should be stricken for the following reasons:

11 1) The City exceeded its authority by imposing this condition as it is not necessary to
12 ensure consistency of the project with the SMA or SMP pursuant to WAC 173-27-150(2);

13 2) This condition is unnecessarily onerous and burdensome and is not reasonably
14 calculated to achieve purposes set forth in the SMA and SMP;

15 3) This condition is unlawful where no development regulations provide a basis to
16 require this condition;

17 4) This condition is not supported by the Findings or Conclusions in the Decision;

18 5) This condition is duplicative as issuance of this permit provides authority for tree
19 removal within the clearing limits;

20 6) The City exceeded its authority by requiring the applicant to rectify non-shoreline
21 impacts;

1 7) This condition violates the vested rights of the applicant where tree retention is being
2 required at a level that significantly exceeds the development regulations applicable to this
3 project;

4 8) The City acted arbitrarily and capriciously by imposing this condition.

5 The County anticipates substantial harm as a result of this condition. Requiring the
6 County to obtain a permit prior to removal of each tree within the clearing and grubbing limits
7 would be cost prohibitive and result in significant delay. The County requests that this condition
8 be stricken from the SSPD.

9 **h. Condition Number 10:**

10 This condition requires the County to make adequate provisions to allow wildlife passage
11 where fences and retaining walls exceed four feet. This condition should be stricken for the
12 following reasons:

13 1) The City exceeded its authority by imposing this condition as it is not necessary to
14 ensure consistency of the project with the SMA or the SMP pursuant to WAC 173-27-150(2);

15 2) This condition is unnecessarily onerous and burdensome and is not reasonably
16 calculated to achieve purposes set forth in the SMA and the SMP;

17 3) This condition is unlawful where no development regulations provide a basis to
18 require this condition;

19 4) This condition is not supported by the Findings or Conclusions in the Decision;

20 5) The plans as submitted provide adequate passage for wildlife;

21 6) This condition is incomplete, impractical and ambiguous. As such it is
22 unconstitutionally vague and unenforceable;

23 7) The City acted arbitrarily and capriciously by imposing this condition.

1
2 The appellant anticipates substantial harm as a result of this condition. In particular, the
3 County has submitted plans which demonstrate the location and dimensions of existing walls and
4 fences. If the City has determined that the plans as submitted do not provide adequate
5 opportunity to wildlife passage the City should request specific and measurable modifications to
6 the plans. Including this vague requirement allows the City to make demands/request
7 modifications to the plans in the future without specific guidance or standards.

8 **i. Condition Number 14:**

9 This condition requires plantings to meet 100% survival standard for all plants and trees
10 in the mitigation planting areas "one year following City acceptance of as-built mitigation." In
11 addition, this condition requires all shrubs and trees installed in mitigation planting areas to meet
12 an 80% survival standard during monitoring years two to five. This condition should be stricken
13 for the following reasons:

14 1) The City exceeded its authority by imposing this condition as it is not necessary to
15 ensure consistency of the project with the SMA or the SMP pursuant to WAC 173-27-150(2);

16 2) This condition is unnecessarily onerous and burdensome and is not reasonably
17 calculated to achieve purposes set forth in the SMA and the SMP;

18 3) This condition is unlawful where no development regulations provide a basis to
19 require this condition;

20 4) This condition is not supported by the Findings or Conclusions in the Decision;

21 5) The plans as submitted demonstrate that this development proposal far exceeds the
22 minimum number of plantings required for the project. Imposing 100% survival standards and
23

1 requiring an 80% survival standard during monitoring years 2 to 5 is unnecessarily onerous and
2 burdensome;

3 6) This condition unlawfully exceeds requirement set forth in SMC 21A.50.145;

4 7) This condition is incomplete, impractical and ambiguous. As such it is
5 unconstitutionally vague and unenforceable;

6 8) The City acted arbitrarily and capriciously by imposing this condition.

7 The County anticipates substantial harm as a result of this condition, including but not
8 limited to additional project costs. Requiring a 100% survival requirement would add major
9 costs including plant replacement, monitoring, watering and other costs.

10 **j. Condition Number 17:**

11 This condition requires a critical areas study that demonstrates how the project meets the
12 Critical Areas Aquifer Recharge Area (CARA) protection requirement in SMC 21A.50.280
13 during and post construction. This condition should be stricken for the following reason:
14 The County has submitted a critical areas study that demonstrates compliance with the
15 requirements of SMC 21A.50.280. The County has already met this s condition.

16 **k. Additional Grounds for Appeal/Errors in the City's SSDP Decision:**

17 In addition to the basis cited above, SSDP conditions number 2 through 8 , 10, 14 and 17
18 of the Decision are preempted by operation of federal law, including the Trails Act (16 U.S.C.
19 §1247(d)), the ICC Termination Act (49 U.S.C. 10501(b)), and the decisions of the Surface
20 Transportation Board (STB). The ELST is "railbanked" under the National Trails System Act,
21 16 U.S.C Section 1247(d) and therefore this corridor is regulated and subject to the authority of
22 the Surface Transportation Board ("STB"). The STB has exclusive and plenary authority over
23 this corridor and it is subject to the terms of the Notice of Interim Trail Use (NITU) issued in

1 1998. To the extent that these conditions preclude the siting of a trail and/or make construction
2 and operation of a trail impossible or impracticable, these conditions are preempted by 16 U.S.C.
3 1247(D).

4 Further, regional trails such as the ELST are "essential public facilities" as set forth in the
5 Growth Management Act ("GMA"). The SSDP conditions 3 through 8, 10, 14 and 17 violate
6 RCW 36.70A.200(5) because these conditions are so onerous, cost prohibitive and unreasonable
7 that they have the effect of precluding the siting of an essential public facility. In addition, these
8 conditions thwart the GMA mandate to (1) provide an efficient multi-modal transportation
9 system; (2) provide a permit process that is timely and fair; (3) retain open space and develop
10 parks and recreation facilities.

11 Finally, the SSDP conditions are redundant and/or in conflict with the SEPA conditions
12 imposed on the April 2010, Final EIS. To the extent compliance with environmental regulations
13 applied through SEPA and NEPA have already been achieved by imposing conditions in the
14 Final EIS, the City's attempt to impose more stringent or conflicting requirements on the County
15 through the SSDP is unlawful.

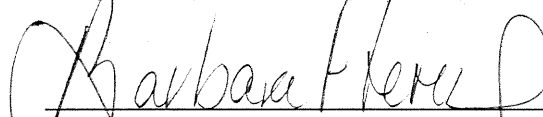
16 **III. REQUEST FOR RELIEF**

17 The County requests the following relief:

- 18 1. An order striking conditions 2 through 8, 10, 14, and 17 from City of Sammamish SSDP
19 2014-00171.
20 2. Any other relief that the Hearing Examiner may find just and equitable.
21
22
23

1 Respectfully Submitted this 28th day of July, 2015.

2 DANIEL T. SATTERBERG
3 King County Prosecuting Attorney

4 

5 Barbara Flemming, WSBA #20485

6 Devon Shannon, WSBA #34534

7 Attorneys for Appellant King County

8 900 King County Administration Building

9 500 Fourth Avenue

10 Seattle, WA 98104

11 206-296-0430(phone)

12 206-296-0415(fax)

13 Barabara.Flemming@KingCounty.gov

1
2
3
4
5 **BEFORE THE HEARING EXAMINER FOR THE CITY OF SAMMAMISH**

6 In the Matter of the Appeal of SHORELINE)
7 SUBSTANTIAL DEVELOPMENT PERMIT)
8 2014-00771)
9)

No.

CERTIFICATE OF SERVICE

10 I, Mary A. Livermore, certify that on July 28, 2015, I caused to be served via ABC Legal

11 Messenger Service, Cover Sheet for Appeal, King County's Appeal of City of Sammamish

12 Decision for Shoreline Substantial Development Permit 2014-00171; and a copy of this

13 Certificate of Service to:

14 Jeffrey Thomas, Director, Community Development
15 Susan Cezar, Deputy Director, Community Development
16 Community Development
17 City of Sammamish
18 801 228th Avenue S.E.
19 Sammamish, WA 98075
20 425-295-0500

(3 copies with check in the amount of \$250.00)

17 Debbie Beadle, Administrative Assistant, Community Development Support
18 Community Development
19 City of Sammamish
20 801 228th Avenue S.E.
21 Sammamish, WA 98075
22 425-295-0525

21 Courtesy copy:

22 Mona Davis, Sr. Planner
23 Community Development
City of Sammamish

CERTIFICATE OF SERVICE - 1

COPY

Daniel T. Satterberg,
King County Prosecuting Attorney
CIVIL DIVISION, DNR Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-0430 Fax (206) 296-0415


1 801 228th Avenue S.E.
2 Sammamish, WA 98075
3 425-295-0529

4 Courtesy copy:

5 Sammamish City Attorney
6 Kim Pratt
7 Kenyon Disend, PLLC
8 The Municipal Law Firm
9 11 Front Street South
10 Issaquah, WA 98027-3820
11 425-392-7090

12 I declare under penalty of perjury under the laws of the State of Washington that the
13 foregoing is true and correct.

14 Dated this 28th day of July, 2015.

15 
16 Mary A. Livermore,
17 Legal Secretary to Barbara Flemming
18 900 King County Administration Building
19 500 Fourth Avenue
20 Seattle, WA 98104
21 Telephone: 206 477 1091
22 Fax: 206 296 0415
23