

December 23, 2011

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Dear Margaret,

I am writing to officially submit my comments regarding the second draft Shoreline Master Program (SMP) regulations and proposed amendments to the City's Comprehensive Plan.

I am a property owner and resident of the Seaview pier homes community, located along north Salmon Bay on Seaview Ave NW. This unique neighborhood was established in the 1920's, and has significant historical and cultural relevance to Seattle/Ballard's maritime and Scandinavian heritage. The community consists of existing over-water single-family residences constructed on piers. The Seaview pier homes community is located on Seaview Ave NW between 34th Ave NW and NW 57th Street.

I am concerned that the draft SMP is at best ambiguous and potentially unfairly punitive to this existing over-water community, and does not meet the requirements of WAC 173-26-241 (Shoreline Uses), item (3)(j) Residential Development, which states that "It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property".

The intent to accommodate existing over-water homes such as those in my Seaview community is also expressed in the SMP Director's Report (City of Seattle Shoreline Master Program Update Proposal Summary January 2011) (http://www.seattle.gov/dpd/cms/groups/pan/@pan/@plan/@shorelinemasterprog/documents/web_informational/dpdp020617.pdf). Section B.2 of the report recognizes my community as "current Urban Stable environment is located in... areas along Seaview Avenue NW... These areas represent a unique environment within Seattle that accommodates... residential uses... Many of the lots have only small areas of dry land, with the majority of each parcel comprised of submerged lands. These lots support buildings that extend over-water on piers...". Furthermore, the report recommends (in B.1) that "redevelopment on lots with little or no dry land would be allowed as follows... If the dry land portion of the lot from OHW to the landward lot line is less than 30 feet, the replacement structure can be rebuilt... overwater to the extent reasonable and no larger than the existing footprint of the structure".

The Proposed Shoreline Environments map (dpdp021699) indicates that this Seaview neighborhood would be designated as Urban Residential (UR). However, since many of the lots in this community have little or no dry land, this neighborhood explicitly does not meet the location criteria for UR (23.60.220.C.11.b.4) requiring "sufficient dry land lot

area to allow for residential development entirely on dry land without intruding into the shoreline setback". Thus the UR designation is not appropriate for the Seaview pier homes community of existing over-water homes.

The Urban Commercial (UC) designation is more appropriate for this neighborhood because the lots more closely match the location criteria for UC (23.60.220.C.6.b.2 and b.3) regarding "minimal amounts of dry land between shoreline and first parallel street" and "large amounts of submerged land in relation to dry land". The fact that UC allows existing single family, multifamily and artist studio/dwelling units located overwater per 23.60.382 (while UR does not) also supports UC being the more appropriate designation. Also, UC is the most similar to the existing Urban Stable (US) shoreline environment designation that currently applies to this neighborhood.

Regarding UC environment's regulation of existing residential homes over water, the proposed requirement (23.60.382.D.2.b) to reduce decks overwater to 150 square feet is arbitrary and unfairly punitive. Leaving the deck size unchanged already meets the requirements for no increase in overwater coverage and no increase in environmental impacts (23.60.382.D.2.a.2 and a.3). The requirement to reduce deck size (and thus water coverage) is inconsistent with a.2 which allows no increase in coverage. What is the basis in science (or otherwise) for the fixed, arbitrary number of 150 sf of deck? At the very least, if a deck reduction is to be a requirement, then it should be related to the size of the existing deck rather than set at an arbitrary, absolute number. And the reduction in deck size should only be required if there is a corresponding increase in some other aspect (such as the height of the structure as in 23.60.382.D.3) being proposed. Otherwise a homeowner with a larger existing deck is being unfairly penalized (in terms of reduced living space and reduced property value) in comparison with a homeowner next door whose existing deck was 150 sf and thus had no reduction imposed. Existing overwater homes are already small by nature, typically having evolved from fisherman's shacks, so deck space is an integral and significant (in proportion to indoor space) part of the living space and property value of these properties. Requiring the replacement of treated piles (similar to 23.60.382.D.3) in order to allow deck size to remain unchanged would be costly, but a reasonable tradeoff. However, the requirement to reduce decks to an arbitrary size of 150 sf is unfair, disproportionately punitive to homeowners with larger existing decks, and inconsistent with the requirements of WAC 173-26-241, item (3)(j) to "allow improvements associated with... property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property". Also, the floating home regulations in SMP do not require floating homes to reduce deck size under similar circumstances, so why is it required of over-water homes on piers?

If SMP designates the Seaview pier homes neighborhood as Urban Residential, then SMP needs to add a section to UR which is similar to 23.60.382.D (as discussed above) for UC that would accommodate existing over water homes in UR. And I continue to have concerns below regarding inconsistent treatment in UR of overwater homes on piers relative to floating homes.

While the draft SMP does recognize and accommodate existing floating homes, it does not do so for existing over-water homes in UR, such as those in my Seaview community. The intent of WAC 172-26-241 (3)(j) with respect to floating homes is reflected in answers #4 and 5 in the Seattle Revised Shoreline Regulations FAQ 3/9/11 (http://www.seattle.gov/dpd/cms/groups/pan/@pan/@plan/@shorelinemasterprog/documents/web_informational/dpdp020616.pdf) as follows:

"All existing floating homes will remain conforming uses and these floating homes can be maintained, repaired, replaced and expanded within the development standards". And "The replacement of an existing floating home is not considered a new floating home".

Thus SMP designates this community as UR, then it should accommodate existing over-water homes along Seaview Ave NW in an analogous manner to the above, but the draft does not do so (specific examples and suggested changes will be discussed below). Floating and over-water homes share similar characteristics and impacts as residential uses over water – the only difference being that one is floating while the other is on piers. Their similarity is also reinforced by floating and over-water homes being addressed together in the same section of WAC 173-26 above. Furthermore, the Floating Homes Association (FHA) has stated that lots with no dry land (such as those along Seaview Ave) “deserve the same consideration as floating homes” (see page 32 of Seattle SMP Citizens Advisory Committee Report Sept 2009). And the CAC report (page 30) also noted that “existing overwater residences in the City’s Seaview Ave NW area face similar issues as floating home owners”. Thus treating existing over-water homes along Seaview in a manner that is inconsistent, and less accommodating, than that for existing floating homes, would be grossly unfair, inconsistent with WAC 173-26, and invite legal challenges to SMP.

The following is a discussion of the parts of the draft SMP that are not consistent with the above goals and intent, along with specific changes, and suggested language, to address my concerns as well as align the SMP with WAC and the issues above.

The key issue/principle that needs to be addressed in SMP is that existing over-water homes along Seaview (if designated UR) and existing floating homes should be treated and regulated in an equivalent manner at a conceptual level. By that I mean that the SMP FAQ answer to the question “how do these SMP changes affect existing over-water homes along Seaview Ave NW between 34th Ave NW and NW 57th Street?” should be analogous to the answer for floating homes (see above), i.e., existing over-water homes along Seaview Ave NW will be conforming uses and these over-water homes can be maintained, repaired, replaced and expanded within the Urban Residential development standards. For clarity, the replacement of an existing over-water home along Seaview Ave NW is not considered a new over-water home.

Thus the UR environment of SMP needs to explicitly acknowledge that existing over-water homes in the community along Seaview Ave NW between 34th Ave NW and NW 57th Street are an allowed use, just as it does in UC environment and for existing floating homes (23.60.202 A.1). This is also consistent with WAC 173-26-241(3)(j). Specifically, the suggested revision would be in 23.60.540 (Uses in the UR Environment), to add:

23.60.540.F. “Over-water homes along Seaview Avenue NW between 34th Ave NW and NW 57th Street that are legally established on the effective date of this ordinance are allowed”.

Note that this proposed revision to 23.60.540 is simply a modified version of 23.60.202 A.1 for existing floating homes.

In addition, the section for Lot coverage in the UR Environment (23.60.574) should be revised as well, in order to accommodate the fact that lots containing these existing over-water homes along Seaview Ave NW are on small lots and have little or no areas of dry land, with the majority (or entirety) of each parcel comprised of submerged lands. This again is analogous to floating homes, which have their own lot coverage provisions in 23.60.202. This is also consistent with B.2 of the SMP Director’s Report and WAC 173-26-241(3)(j) discussed above. Specifically, the suggested revision would be to modify 23.60.574.B.2 as follows:

23.60.574.B.2 “On single-family zoned lots the maximum lot coverage allowed for principal and accessory structures on dry land, (or on submerged land for over-water homes along Seaview Avenue NW between 34th Ave NW and NW 57th Street that are legally established on the effective date of this ordinance), is as follows...”.

Similarly, the section for Shoreline setbacks in UR Environment (23.60.575) should be revised to accommodate the fact that lots containing these existing over-water homes along Seaview Ave NW are on small lots and have little or no areas of dry land, with the majority (or entirety) of each parcel comprised of submerged lands. This also is consistent with B.1 of the SMP Director's Report and WAC 173-26-241(3)(j) discussed above. Specifically, the suggested revision would add:

23.60.575.G "Rebuilding or substantial improvement of a structure is allowed if it mitigates impacts to ecological function pursuant to Section 23.60.158 and complies with the following standards:

1. If the dry land portion of the lot from OHW to the landward lot line is at least 65 feet, the replacement structure shall be landward of the shoreline setback;
2. If the dry land portion of the lot from OHW to the landward lot line is less than 65 feet but at least 30 feet, the replacement structure shall be no further waterward from the landward lot line than 30 feet and shall be located outside of the shoreline setback to the extent reasonable; and
3. If the dry land portion of the lot from OHW to the landward lot line is less than 30 feet, the replacement structure can be rebuilt within the shoreline setback to the existing footprint of the structure or overwater to the extent reasonable and no larger than the existing footprint of the structure".

Note that this proposed revision to 23.60.575 is simply adding (unmodified) language that already exists in 23.60.124.D.2.

The Comprehensive Plan should also be updated to recognize the need to preserve the historic Seaview pier homes community of existing over-water homes in addition to already recognizing the floating home community. Specifically, the Comprehensive Plan language as proposed in the Seattle SMP CAC Report (page 30) should be modified as follows:

"Existing floating home and pier home communities represent an important cultural resource because of their historic and unique contribution to Seattle's maritime culture. Existing floating home communities, moorages and homes, as well as the Seaview pier homes community, should be preserved, including allowance for repair, replacement and relocation as necessary. Because current regulations treat floating homes and pier homes as overwater residences, not a preferred shoreline use, extension of floating home and pier home communities (as distinct from repair, replacement and relocation) would be allowed only if developed in a manner that provides a better environmental alternative than other allowed uses".

The photograph below of the unique and historic Seaview pier homes community was included in the Seattle SMP CAC Report (page 30) to illustrate its similarity to floating home communities:



In addition to the primary issues discussed above, another concern is the apparent conflict in the draft SMP related to maintaining/repairing over-water structures vs. replacing them if destroyed. In SMP 23.60.124, item C states "structure or development that is over water... may be maintained, repaired and structurally altered", item D.1 states that over

water “structures may be maintained and repaired”, item D.2 indicates “rebuilding or substantial improvement of a structure is allowed”, and item D.2.c states “replacement structure can be rebuilt... overwater”. Yet item I.A excludes structures destroyed by “normal deterioration of structures constructed in or over the water” from being rebuilt. Thus section 23.60.124 is internally inconsistent with respect to I.A and each of C, D.1, D.2, and D.2.c. How can you be allowed to maintain and repair a structure (i.e., prevent or repair deterioration) yet not be allowed to rebuild a structure destroyed by deterioration? Of even greater concern is whether the exclusion of normal deterioration precludes the right to perform maintenance and repair entirely? Furthermore, the existing SMP (see strikethrough text on page 55 of draft SMP) had the opposite language – normal deterioration was specifically included (along with fire and other acts of nature) as causes of destruction that would allow rebuilding. Thus the suggested revision to SMP 23.60.124.I.A should be as follows:

“structure or development that is destroyed by fire, act of nature, or other causes beyond the control of the owner, including normal deterioration of structures constructed in or over the water, may be rebuilt...”

Please answer the following questions with respect to the draft SMP:

- 1) How do these SMP changes affect existing historic community of over-water homes along Seaview Ave NW between 34th Ave NW and NW 57th Street?
- 2) Why is the proposed designation for the Seaview pier homes community specified as UR rather UC, when the lots do not meet location criteria for the former, but do for the latter? Why are existing over-water homes accommodated in UC, but not UR?
- 3) How can existing floating homes be an allowed use, but existing over-water homes in the community along Seaview Ave NW are not an allowed use? How is this disparity in compliance with WAC 173-26-241 (3)(j)?
- 4) How can two fundamentally identical residential uses over water (floating and pier homes are both over water, and differ only in the former being floating and the latter on piers) not be required to be accommodated in an equivalent manner under SMP? Please provide the specific legal basis which supports the less than equivalent treatment by SMP of existing floating homes and existing over-water homes along Seaview Ave NW between 34th Ave NW and NW 57th Street?
- 5) Please explain why the Seaview pier homes community is not recognized as historic despite having existed along Seattle’s Salmon Bay waterway for 90 years and representing an important cultural resource because of its historic and unique contribution to Seattle’s maritime culture and Scandinavian heritage? On what basis are floating home communities considered historic (and thus worthy of preservation), but the similarly long-standing community of existing over-water homes along Seaview is not (despite its similarly unique contribution to Seattle’s maritime culture)?
- 6) If the Seaview pier homes community is indeed considered historic and worth preserving, then why is it not accommodated in a manner equivalent to floating home communities under SMP and not recognized as such in the Comprehensive Plan?

Please provide the results of the economic review that CAC requested to be conducted by the City (see Seattle SMP CAC Report, page 33) with respect to 15 lots with no dry land in the Lake Union area to “determine if the new regulations will result in a reduction in the fair market value of each parcel”. Furthermore, I request that a similar economic review be conducted with respect to parcels with little or no dry land (and the existing over-water homes constructed on the lots) along Seaview Ave NW between 34th Ave NW and NW 57th Street.

Thank you for the opportunity to present my comments and concerns regarding the draft SMP. In your responses, please address the issues raised and changes suggested above, including (but not limited to) specific and complete responses to each of the following:

If my changes in language as specified above are not incorporated into SMP in the form proposed, please explain how your alternative language would be equivalent in substance.

If subsequent revisions to SMP are not equivalent in substance to those proposed above, please explain why the substance of the proposals above are not being incorporated in SMP, including how SMP is consistent with the WAC 173-26-241 (3)(j) requirement to recognize and accommodate existing communities of over-water homes.

If you disagree with intent and goals as discussed above, please provide a detailed justification and explanation as to how and why your alternative interpretation(s) are more accurate.

If existing over-water homes along Seaview Ave NW and existing floating homes are not being accommodated in SMP in an equivalent manner (as defined above), please explain and justify (including the specific legal basis) why these two essentially equivalent residential uses over water are being accommodated in a less than equivalent manner. If you assert that such existing over-water and floating homes are indeed being accommodated in an equivalent manner in SMP, please explain in detail and specifically address the contentions of lack of equivalent accommodation as discussed above.

Respectfully,
Ivar Michelsons