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STATE OF WASHINGTON  
SHORELINES HEARINGS BOARD

SAMMAMISH HOMEOWNERS, a  
Washington nonprofit corporation;  
HERBERT & ELYNNE MOORE, husband  
and wife; and PHILIP BRADBURY,

No.

**PETITION FOR REVIEW**

Petitioners,

v.

CITY OF SAMMAMISH, a Washington  
municipal corporation; CITY OF  
SAMMAMISH DEPARTMENT OF  
COMMUNITY DEVELOPMENT; KING  
COUNTY, a political subdivision of the  
State of Washington; KING COUNTY  
DEPARTMENT OF NATURAL  
RESOURCES AND PARKS; and LAKE  
SAMMAMISH 4257 LLC, a Washington  
limited liability company.

Respondents.

**INTRODUCTION**

Petitioners Sammamish Homeowners, Herbert & Elynne Moore, and Philip Bradbury seek review of a decision by the City of Sammamish (“City”), dated February 8, 2016, acting by and through its Hearing Examiner, affirming the approval of a shoreline substantial development permit to widen and make improvements to a certain portion of the East Lake

1 Sammamish Trail (“Trail”) within the City of Sammamish. Specifically, the Decision affirmed  
2 (with revisions) the City’s prior approval of Shoreline Substantial Development Permit  
3 SSDP2014-00171 (aka King County SHOR14-0022), dated July 7, 2015.

4 **PETITION FOR REVIEW**

5 Petitioners allege as follows:

6 1.0 **Petitioners** (WAC 461-08-350(1)) – The names, mailing addresses, telephone  
7 numbers, fax numbers (if available), and email addresses (if available) of the appealing parties  
8 are as follows:

9 **Sammamish Homeowners**

10 *Attn:* Reid Brockway, Vice-President  
11 and Registered Agent  
12 167 E. Lk. Sammamish. Shore Ln. NE  
13 Sammamish, WA 98074  
14 (425) 868-7899  
15 waterat@comcast.net  
16 *Contact only through legal counsel*

**Herbert & Elynn Moore**

4299 E. Lk. Sammamish Pkwy. SE  
Sammamish, WA 98075  
(425) 557-8237  
carvel.moore@comcast.net  
*Contact only through legal counsel*

14 **Philip Bradbury**

4011 E. Lk Sammamish. Pkwy SE  
Sammamish, WA 98074  
(425) 440-2593  
[cahuskie@hotmail.com](mailto:cahuskie@hotmail.com)  
*Contact only through legal counsel*

17 **Petitioners’ Representative** (WAC 461-08-350(1)) – The name, mailing  
18 address, telephone number, fax number (if available), and email address (if available) of  
19 Petitioners’ representative is as follows:

20 **Samuel A. Rodabough, Esq.**

21 Law Office of Samuel A. Rodabough PLLC  
22 11820 Northup Way, Ste. E200  
23 Bellevue, WA 98005  
(425) 440-2593 (phone)  
(425) 284-3051 (fax)  
sam@rodaboughlaw.com

1           2.0    **Respondents** (WAC 461-08-350(2)) – The agency and/or local government

2 whose decision is being appealed:

3                   **City of Sammamish**

4                   801 228th Ave. SE  
5                   Sammamish, WA 98075  
6                   (425) 295-0500

**City of Sammamish**

*Attn.* Kim Adams Pratt & David Linehan  
                  Kenyon Disend, PLLC  
                  11 Front St. S.  
                  Issaquah, WA 98027-3820  
                  (425) 392-7090  
                  (425) 392-7071  
                  kim@kenyondisend.com  
                  david@kenyondisend.com

8                   **City of Sammamish, Department of  
9                   Community Development**

10                  *Attn:* Jeffrey Thomas, Director  
11                  801 228th Ave. SE  
                  Sammamish, WA 98075  
                  (425) 295-0520  
                  jthomas@sammamish.us

**Office of Hearing Examiner,  
12                  City of Sammamish**

*Attn:* John E. Galt, Hearing Examiner  
                  801 228th Ave. SE  
                  Sammamish, WA 98075  
                  jegalt755@gmail.com

13                  The persons to whom the decision is directed:

14                  **King County**

15                  *Attn:* Barbara Flemming, Devon  
16                  Shannon, & Kevin Wright  
17                  King County Prosecuting Attorney’s  
                  Office, Civil Division  
                  King County Courthouse  
                  516 Third Ave., Rm. W400  
                  Seattle, WA 98104-2388  
                  (206) 296-9015 (phone)  
                  (206) 296-0191 (fax)  
                  barbara.flemming@kingcounty.gov  
                  devon.shannon@kingcounty.gov  
                  kevin.wright@kingcounty.gov  
                  mary.livermore@kingcounty.gov

**King County Dept. of Natural  
18                  Resources and Parks, Parks and  
19                  Recreation Division**

*Attn:* Gina Auld, Capital Project  
                  Manager  
                  201 S. Jackson St., Ste. 700  
                  Seattle, WA 98104-3854  
                  (206) 724-1296  
                  gina.auld@kingcounty.gov

1 **King County**

2 *Attn:* Anne Noris, Clerk of the Council  
3 King County Courthouse  
4 516 Third Ave., Rm. 1200  
5 Seattle, WA 98104  
6 (206) 477-1020  
7 clerk.council@kingcounty.gov

**Lake Sammamish 4257 LLC**

*Attn:* Duncan Greene  
Van Ness Feldman LLP  
719 Second Ave., Ste. 1150  
Seattle, WA 98104  
dmg@vnf.com

5 **Lake Sammamish 4257 LLC**

6 *Attn:* Arul Menezes  
7 3145 E. Lk. Sammamish Shore Ln. SE  
8 Sammamish, WA 98075

9 3.0 **Decision and/or Permit** (WAC 461-08-350(3)) – Petitioners seek review of a  
10 decision by the City of Sammamish, dated February 8, 2016, acting by and through its Hearing  
11 Examiner, together with all underlying interlocutory orders, incorporated therein by reference  
12 (collectively “Decision”). The Decision affirmed (with revisions) the City’s prior approval of  
13 Shoreline Substantial Development Permit SSDP2014-00171 (aka King County SHOR14-  
14 0022), dated July 7, 2015 (“Approval”). A copy of the Decision is attached hereto as **Exhibit 1**.  
15 A copy of the Approval is attached hereto as **Exhibit 2**. A copy of Ecology’s written notice of  
16 receipt of the Decision (confirming receipt on February 16, 2016) is attached hereto as  
17 **Exhibit 3**.

18 4.0 **Grounds for Appeal** (WAC 461-08-350(4)) – Petitioners provide the following  
19 short and plain statement of the grounds upon which the Decision or permit is unjust or  
20 unlawful under chapter 90.58 RCW, chapter 173-26 WAC, chapter 173-27 WAC, the  
21 Sammamish shoreline master program, and other applicable law:

22 4.1 The County failed to provide sufficient evidence establishing ownership to  
23 certain portions of the properties that were the subject of the SSDP application.  
In particular, the County failed to deliver to the City a title report or other legal  
evidence from a disinterested third party assuring that the County is the fee

1 owner, or has been granted an easement to cross, all of the properties within the  
2 section of the Trail described in the Decision. The County only offered a  
3 statement by County employee that the County owns all of the properties  
4 underlying the Trail. In so doing, the City deviated from its uniformly applied  
5 practice of relying upon a title report to confirm that the Applicant had a  
6 recorded interest in the affected properties and had a right to undertake the  
7 proposed work. The City thereby erred in the processing of the County's SSDP  
8 application and erred in resolving rights of ownership and use in favor of the  
9 County.

10 4.2 Beyond the question of evidence, the County does not have title to the property  
11 at issue. The County's claims to title or the right to develop are based entirely on  
12 unadjudicated, unproven adverse possession or prescriptive easement claims.  
13 Because these claims haven't been adjudicated by a court of competent  
14 jurisdiction, they cannot form the basis of the SSDP application or Decision here.

15 4.3 The Decision approves the construction of improvements outside the margins of  
16 the 12-foot wide railroad corridor actually used by Burlington Northern Railroad  
17 ("BNRR").

18 4.4 The Decision approves construction of improvements—within and without the  
19 former 12-foot wide rail corridor—that are inconsistent with, and do not serve  
20 the purposes of, the Rails to Trails legislation.

21 4.5 The Decision improperly applied wetland regulations in establishing the  
22 proposed Trail alignment, in violation of applicable law. In particular, the City  
23 erroneously relied upon provisions in the City's critical areas regulations that (1)

1 were not adopted as part of the City's shoreline master program in effect at the  
2 time of the filing of the County's SSDP application, and/or (2) are otherwise  
3 inapplicable here. Additionally, inasmuch as the shoreline master program  
4 constitutes a state regulation per applicable law and jurisprudence, the City was  
5 not entitled to deference in interpreting the shoreline master program, and/or was  
6 not entitled to interpret its own critical area ordinance as a means for indirectly  
7 interpreting the shoreline master program.

8 **5. Concise Statement in Support of Grounds for Appeal (WAC 461-08-350(5))**

9 – Petitioners provide the following statement sustaining the grounds for appeal:

10 5.1 Petitioners Bradbury and Moore each own property adjacent to the Trail.

11 5.2 Petitioner SHO is a non-profit corporation that represents a large number of  
12 property owners who are also affected by the Decision, many of whom own  
13 properties similarly situated to Bradbury's and Moore's.

14 5.3 During the public comment period on the SSDP application, Petitioners Moore  
15 and Bradbury submitted comments. Similarly, SHO representatives also  
16 submitted numerous comments on the SSDP application for its constituents.

17 5.4 After the City approved the SSDP application, Petitioners appealed the Approval  
18 to the City Hearing Examiner.

19 5.5 Bradbury's property, Moore's property, and many SHO-members' properties  
20 abut sections of the Trail in which the County's alleged right to perform the  
21 proposed work is based entirely on unproven adverse possession and/or  
22 prescriptive easement claims.  
23

1 5.6 Petitioners contend that the County should not be allowed to commence any  
2 work described in its SSDP application, and adjacent to their properties, until the  
3 adverse possession/prescriptive easement claims have been perfected, or  
4 rejected, in a quiet title lawsuit.

5 5.7 Petitioners also contend that, to the extent the County fails to prove its adverse  
6 possession claims, fee title to said adjacent properties should be quieted in them.

7 5.8 In numerous documents, the County has indicated that its right to perform work  
8 alongside of the properties at issue is based upon claims that (a) BNRR adversely  
9 possessed or acquired a prescriptive easement to cross portions of the properties,  
10 and (b) the County has succeeded to these off-record interests. Neither BNRR  
11 nor the County has obtained any court orders declaring that they have adversely  
12 possessed or obtained prescriptive easements over the properties.

13 5.9 Petitioners contend that (a) any adverse possession and/or prescriptive easement  
14 claims must be based upon BNRR's actual use of its former right of way and that  
15 BNRR's use does not exceed a width of six feet on each side of the centerline of  
16 the now-removed tracks, and (b) the County cannot construct any improvements,  
17 or remove trees, landscaping, or other improvements, or perform grading, outside  
18 the margins of this twelve-foot corridor as it existed at the time the tracks were  
19 removed.

20 5.10 Petitioners contend that the County's use, maintenance and repair of the Trail are  
21 limited to activities that are contemplated in the Rails to Trails legislation. To  
22 the extent the County proposes, or the Decision approves, improvements that  
23

1 serve purposes other than providing a hiking and biking trail, the improvements  
2 should be disallowed.

3 5.11 Petitioners contend that the County and the Decision improperly apply wetland  
4 regulations to justify realigning the trail away from the existing centerline and  
5 toward private residences located on the west side of the trail and the lake.

6 **6. Relief requested.** Petitioners respectfully request the Board for the following  
7 relief:

8 6.1 Entry of an order staying this appeal pending a decision, by a court of competent  
9 jurisdiction, declaring the width and location of any rights obtained by the  
10 County via adversely possession or prescriptive easement;

11 6.2 Entry of an order reversing the Decision and denying the permit requested in the  
12 Application on the grounds and to the extent that:

13 (a) the County failed to prove that BNRR had been granted, in any recorded  
14 document, a fee interest or an easement/right of way to cross all of the  
15 properties described in the Decision and, based upon that failure of proof,  
16 the County has not proven that it has a right to enter upon (or do any  
17 construction on) at least 39 of the properties abutting the trail;

18 (b) the City erroneously excused the County from having to deliver title  
19 reports or an opinion from a disinterested third party that confirmed the  
20 County's ownership or easement rights to cross 39 properties and then  
21 erred by resolving those ownership rights in favor of the County as to 39  
22 properties abutting the trail;



1 (c) it allows the County to construct improvements, or remove of trees,  
2 landscaping, or other improvements, or perform grading, outside the  
3 margins of any adversely possessed property or easement acquired by  
4 prescription;

5 (d) it allows the County to construct improvements within the margins of any  
6 adversely possessed property or prescriptive easement that is not  
7 permitted by the Rails to Trails legislation; and/or

8 (e) it allows the County to treat ditches in and long the Trail right of way as  
9 non-exempt from wetlands buffering requirements, to impermissibly  
10 realign the Trail rather than constructing it in its current locations, and/or  
11 fails to adequately mitigate impacts to wetlands and/or their  
12 accompanying buffers.

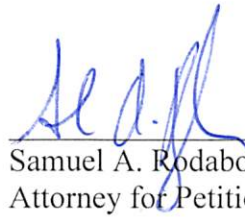
### 13 **RESERVATION OF RIGHTS**

14 Petitioners reserve the right to amend this Petition for Review as necessary, to the full  
15 extent allowed by applicable law. Petitioners also reserve the right to assert in Court any and all  
16 constitutional, common law, and statutory claims based on laws outside of the Shoreline  
17 Management Act, applicable shoreline regulations, or applicable shoreline master program  
18 provisions. These reserved claims include, but are not limited to, claims based on the federal  
19 and state constitutions and chapter 82.02 RCW. Petitioners submit and file this reservation of  
20 rights based on the long-established precedents of the Board that the Board has no jurisdiction  
21 over these issues, and thus Petitioners are avoiding the futile act of pleading those issues only to  
22 have them dismissed.

1 This reservation also serves as notice to the City, County (and to the Department of  
2 Ecology, should it intervene) that, if they contend these constitutional, common law, and  
3 statutory issues must be raised before the Board, and that the Board has jurisdiction thereof,  
4 they must provide notice to Petitioners. Such notice will ensure that Petitioners have the  
5 opportunity to exhaust their administrative remedies in that regard.

6 DATED this 7<sup>th</sup> day of March, 2016.

7 LAW OFFICE OF SAMUEL A. RODABOUGH PLLC

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9 \_\_\_\_\_

10 Samuel A. Rodabough, WSBA #35347  
11 Attorney for Petitioners