

**OFFICE OF THE HEARING EXAMINER**

**THURSTON COUNTY**

**REPORT AND DECISION**

**PROJECT NO.:** 2016100959, Branham Dock

**SEQUENCE NOs:** 16-102680 XC, Shoreline Substantial Development Permit  
16-109366 XM, Shoreline Variance

**TAX PARCEL NO.:** 58560001400

**LOCATION:** 116002 Lawrence Place S.E., Yelm

**APPLICANT:** Kim Cogger  
3040 B Street N.W., #7  
Auburn, WA 98001

**OWNER:** Felicia Branham  
8346-83<sup>rd</sup> Avenue S.E.  
Olympia, WA 98513

**PLANNER:** Robert Smith, Senior Planner

**SUMMARY OF REQUEST:**

Shoreline Substantial Development Permit and Shoreline Variance to allow construction of a 90 foot long dock on Lawrence Lake. The standard maximum dock length is 50 feet. The project is within a Conservancy shoreline environment as designated by the Shoreline Master Program for the Thurston Region.

**SUMMARY OF DECISION:** Request granted, subject to conditions.

**DATE OF DECISION:** January 31, 2017

**PUBLIC HEARING:**

After reviewing the Resource Stewardship Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on January 23, 2017, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Resource Stewardship Planning and Environmental Section Staff Report**
- Attachment a - Notice of Public Hearing**
- Attachment b - Zoning/Site Map**
- Attachment c - Master Application**
- Attachment d - JARPA Application**
- Attachment e - Project Description**
- Attachment f - Variance Narrative**
- Attachment g - Site Plan**
- Attachment h - Dock Plans**
- Attachment i - Notice of Application**
- Attachment j - Mitigated Determination of NonSignificance**
- Attachment k - Comment Letter from Kyle Overton**
- Attachment l - Comment Letter from Kevin Chambers**
- Attachment m - Comment Letter from Rich Schwartz**
- Attachment n - Comment Letter from Jackie Wall**
- Attachment o - Comment Letter from DOE**
- Attachment p - Neighbor Letter Comments**
- Attachment q - Notice Photograph**
- Attachment r - Plat Map**
- Attachment s - Aerial Photograph**
- Attachment t - Large Copy of Site Plan**
- Attachment u - Large Copy of Dock Plans**
- Attachment v - Comment Letter from Tom Parsons**
- Attachment w - Comment Letter from Scott Davis**

**The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.**

ROBERT SMITH appeared, presented the Resource Stewardship Department Staff Report, and introduced Exhibits Q-W that included comment letters from Tom Parsons and Scott Davis. The applicant requests a shoreline substantial development permit and shoreline variance to allow construction of a 90 foot long, eight foot wide pier and ramp that will include a ten foot wide, 20 foot long, floating dock at the waterward end. The cost of the structure requires the substantial development permit, and the length requires the variance. The applicant requests an extra long dock. The parcel is within a LAMIRD. The parcel is currently vacant and located within the Conservancy Environment of the Shoreline

Master Program. Docks are allowed within the Conservancy Environment subject to standards that include a maximum length of 50 feet, a depth of eight feet at the end, and a float of 200 square feet. The proposed structure meets all criteria with the exception of the 90 foot length. The shoreline variance criteria are set forth in WAC 173, and his evaluation shows that the dock meets said criteria as the water depth of the lake varies significantly throughout parts of the year and does not allow adequate access for a shorter dock. The lake depth has significant fluctuation. The main issue concerning the dock is its location at the entrance to a canal that provides sole lake access to ten lots. The comment letters express concern regarding the proximity of the dock to the canal entrance. The applicant met with the comment writers who use the canal for access, and upon review of the plans, they subsequently submitted letters withdrawing their concerns and now support the dock. He then referred to the location of the dock and canal on the aerial photograph (attachment s).

DAWN PEEBLES, Health Department, appeared and testified that the project satisfies all criteria of the Health Code, and therefore she has no objection to its approval.

KIM COGGER, applicant, appeared and testified that she agrees with Mr. Smith's Staff Report and testimony. The property owner also owns the abutting parcel to the south that accesses the lake via the canal. She grew up in the area and wants to retire on the lake. She doesn't plan on selling either lot.

MR. SMITH reappeared and testified that the subdivision predated the Master Program and therefore no regulations require a joint use dock. The applicant owns separate parcels, but it would be difficult for the southern lot to support a dock due to its location on the canal.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:20 a.m.

**NOTE:** A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

**FINDINGS, CONCLUSIONS, AND DECISION:**

**FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. A Mitigated Determination of NonSignificance (MDNS) was issued on November 1, 2016 (Attachment j) following review pursuant to the State Environmental Policy Act (SEPA). The environmental determination was not appealed and became final on November 15, 2016.

3. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on January 13, 2017, at least ten (10) days prior to the hearing. The site was posted January 13, 2017.
4. Felicia Branham (applicant), has a possessory ownership interest in Lot 14 of the Lake Lawrence West Division 1 Subdivision, an unimproved parcel that consists of approximately 1.36 acres. The parcel abuts Lake Lawrence for 130 feet and measures approximately 620 feet in depth. The parcel extends from the western shoreline of Lake Lawrence to the east side of Lawrence Place S.E., a private road. The parcel abuts said road for 52 feet. The applicant also owns Lot 13 of the Lake Lawrence West Division 1 Subdivision, an unimproved, 1.25 acre parcel that abuts the south property line of Lot 14.
5. The applicant requests a shoreline substantial development permit and shoreline variance to construct a 90 foot long pier, ramp, and float that will extend from the northcentral portion of Lot 14's shoreline. Approximately 68 linear feet will separate the pier from the lot's south property line. The site plan shows the structure will consist of a 60 foot long, four foot wide pier supported by 12, four inch, galvanized steel pilings; a 12 foot long ramp; and a ten foot wide, 20 foot long float supported by four, four inch, galvanized steel pilings. The structure requires a shoreline substantial development permit due to its cost exceeding the exemption amount. The structure also requires a shoreline variance because it will exceed the maximum authorized length of 50 feet.
6. Vegetation along the shoreline area of the parcel consists of grass, and the topography slopes generally downward from Lawrence Place S.E. Abutting uses to the north, west, and south are limited to single-family residential dwellings. A dock of equivalent length extends waterward from the abutting parcel to the north, approximately 16 linear feet from the joint property line. No docks are located on parcels to the south.
7. The applicant's parcel is located within the Conservancy Shoreline Environment of the Shoreline Master Program for the Thurston Region (SMPTR). The SMPTR became effective May 15, 1990, and the "Boating Facilities" criteria set forth in Chapter IV, Section Three SMPTR authorize docks within the Conservancy Environment. However, said chapter limits the length of such facilities to either a maximum of 50 feet as measured from the ordinary high watermark or the average of existing docks within 100 feet of property lines. To construct the dock as proposed the applicant must acquire a shoreline substantial development permit and variance.
8. Prior to obtaining a shoreline substantial development permit the applicant must show that the request satisfies all applicable general regulations set forth in SMPTR Section Three, Chapter IV, Part C. Findings on applicable criteria are hereby made

as follows:

- A. Criteria 13 authorizes only one dock for new residential development. Since the applicant's parcel is an existing lot, and since the applicant does not propose a subdivision, Criteria 13 is not applicable. However, the applicant proposes only one dock for her two parcels.
- B. Criteria 14 requires the marking of docks with reflectors to prevent hazardous conditions for water users during day or night. A condition requires such marking.
- C. Criteria 15 prohibits docks and piers on lakes or marine water bodies where the distance to the opposite shore measures 150 feet or less. Such ensures maintenance of navigation. In the present case the distance to the opposite shore of Lawrence Lake is in excess of 2,700 feet. However, Lot 13 abuts the canal, which is less than 150 feet in width.
- D. Criteria 19 limits the width of recreational docks or piers to eight feet. The fixed pier and ramp portion of the structure is proposed at four feet. Criteria 21 allows a ten foot wide float.
- E. Criteria 20 limits docks on freshwater shorelines to 50 feet or the average length of docks within 100 feet. However, staff could not find a permit for the existing 90 foot dock to the north and therefore the applicant cannot consider said dock for the purpose of averaging lengths. The applicant has therefore requested a shoreline variance to extend the length from 50 feet to 90 feet.
- F. Criteria 21 authorizes a maximum, 200 square foot float on freshwater shorelines, but includes said float within the total, 50 foot maximum length. The applicant proposes a ten foot wide, 20 foot long, or 200 square foot float in compliance with this criteria. The float is included in the proposed 90 foot long dock.
- G. Criteria 22 requires a setback from exterior property lines of ten feet for docks and piers on fresh water shorelines. The site plan shows a setback of 58 feet from the north side property line and 68 feet from the south side property line.
- H. Criteria 23 requires a minimum span of eight feet between support pilings. The site plan shows a minimum span of ten feet between pilings.

The request satisfies all criteria for a shoreline substantial development permit.

- 9. Prior to obtaining a shoreline variance the applicant must show that the request satisfies the criteria set forth in Section 173-27-170 of the Washington

Administrative Code (WAC). Findings on applicable criteria are hereby made as follows:

- A. Section 173-27-170(1) WAC authorizes shoreline variances where denial of such would thwart policies enumerated in RCW 90.58.020 the State Shoreline Management Act (SMA). The variance criteria requires an applicant to demonstrate that extraordinary circumstances exist, and that the public interest will suffer no substantial detrimental effect. The SMA also encourages public use and enjoyment of the shorelines consistent with the overall policy of protecting shorelines. Public recreation is preferred. In the present case denial of the requested length would limit water dependent recreational opportunities by limiting access to Lawrence Lake. The applicant has provided evidence that shows that water levels of the lake fluctuate dramatically from year to year and between different times of the year. These fluctuating water levels coupled with the shallowness of the near shore area of the lake significantly limit the usability of a 50 foot long dock. Thus, to satisfy the SMA policies of providing for public use and enjoyment of the shorelines, the applicant needs the requested, 90 foot long dock. No evidence shows that the additional 40 feet of length will damage the public interest or the shoreline environment.
  
- B. Section 173-27-170(3) WAC sets forth the criteria that a variance application must meet for development proposed waterward of the ordinary high watermark. Findings on applicable criteria are made hereinafter:
  1. Criteria (3)(a) requires an applicant to show that strict application of the performance standards set forth in the SMPTR preclude all reasonable use of the property. The applicant has submitted charts of past water levels of Lawrence Lake that show said levels can fall up to five feet below the ordinary high watermark. A 90 foot long dock provides a 3.5 foot water depth during winter high water levels. Depths during summer low water periods would be significantly less and would render a 50 foot long dock useless as a moorage for extensive portions of the year to include the summer months when water recreation occurs.
  
  2. Criteria 3(b) requires a finding that the variance request is consistent with the criteria set forth in WAC 173-27-170(2b)-(2f). These criteria address variances for development landward of the ordinary high watermark and are not applicable to the present application.
  
  3. Criteria 3(c) requires a showing that public rights of navigation and use of the shorelines will not be adversely affected. The length of the dock will not adversely affect public use of the lake. Even at ordinary high water the end of the dock attains a depth of only 3.5 feet. At

lower water levels during the summer, motorized marine recreation could not safely occur so close to the shoreline. However, the applicant's parcel and the proposed dock are located in proximity to the entrance to a narrow canal that provides sole access for ten property owners to the open area of Lawrence Lake. In June, 2016, two property owners whose parcels abut the canal (Marcum and Allen) expressed concerns regarding the location and length of the dock and its impact on access to the canal. These concerns are the same expressed by canal property owners Parsons and Davis in correspondence received immediately prior to the hearing. The applicant met with Marcum and Allen prior to the hearing to discuss their concerns and to review the dock plans and location. Marcum and Allen also spoke with several community club members and reviewed the applicant's additional diagram. In July, 2016, both Marcum and Allen sent emails to staff advising that they are now satisfied that the proposed dock will have no impact on access to the canal and withdrew their objection.

4. Criteria 4 requires consideration of cumulative impacts of additional requests for 90 foot long docks in the area. The SMPTR sets forth no limit as to the number of docks that can protrude from lots in Lake Lawrence West Division 1. Thus, the issue is docks of additional length along the shoreline. According to staff, based upon the depth of the lake and fluctuation of the water depth, longer docks are necessary to provide reasonable recreational opportunities. The cumulative impact of 90 foot long docks would not be inconsistent with the policies of the SMA as additional length facilities are necessary to provide reasonable water recreation.
  5. Criteria 5 prohibits variances from the use regulations of the SMPTR. The applicant does not request a use variance as docks are allowed in the Conservancy Environment.
10. The request for a substantial development permit and variance are also consistent with regional criteria set forth for all development within the SMPTR. The dock does not adversely impact public access to the shoreline as it is located on private property that cannot be used by the general public. The applicant must acquire an Hydraulic Project Approval (HPA) from the State Department of Fish and Wildlife (DFW) that will require environmentally sensitive construction methods and timing of construction. Furthermore, the applicant will utilize materials that will protect water quality. The Thurston County Public Health and Social Services Department has reviewed the dock for its effect on public health and identified no issues therewith.

## CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a shoreline substantial development permit and shoreline variance satisfies all relevant criteria set forth in the SMPTR and WAC. Therefore, said permit and variance should issue subject to the following conditions:
  1. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, The Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).
  2. Erosion control measures must be in place prior to any clearing, grading, or construction. These control Measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into the lake. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.
  3. The applicant shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area.
  4. To minimize impacts to shallow water and beach habitat, construction of the proposed dock shall conform to the following requirements:

Construction shall be done with non-treated wood and/or materials that will not release toxic substances into the water.
  5. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at:  
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant's responsibility to obtain this permit if required.
  6. The dock shall be constructed in the location proposed, maintaining a minimum of a 10-foot setback from property lines.
  7. If access to the beach for construction of the dock will be over the upland portion of this property it will need to be done so as to prevent any vehicle or equipment travel or parking on any portion of the proposed on-site septic



system or system components. Staging of equipment and materials for this project also should not be done on any portion of the proposed septic system or system components.

8. The dock shall be painted, marked with reflectors or otherwise identified so as to prevent unnecessarily hazardous conditions for water surface users during day or night.
9. A Hydraulic Project Approval is required from the Washington State Department of Fish and Wildlife. It is the applicant's responsibility to obtain this permit prior to construction.
10. The Applicant shall obtain an Aquatic lands lease from the Washington State Department of Natural Resources, if necessary.
11. If there are any Inadvertent Discoveries of Archaeological Resources/Human Burials, the Nisqually Indian Tribe shall be notified immediately.
12. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
13. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

**DECISION:**

The request for a shoreline substantial development permit and shoreline variance to allow construction of a 90 foot long pier, ramp, and float consisting of a 60 foot long, four foot wide pier; 12 foot long, four foot wide ramp; and ten foot wide, 20 foot long float at a site located at 16002 Lawrence Place S.E., Yelm, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 31st day of January, 2017.



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**STEPHEN K. CAUSSEAU, JR.**  
Hearing Examiner

TRANSMITTED this 31st day of January, 2017, to the following:

**APPLICANT:** Kim Cogger  
3040 B Street N.W., #7  
Auburn, WA 98001

**OWNER:** Felicia Branham  
8346-83<sup>rd</sup> Avenue S.E.  
Olympia, WA 98513

**OTHERS:**

Tom Parsons  
16005 S.E. Lawrence Place  
Yelm, WA 98597

Scott Davis  
8021 State Avenue  
Marysville, WA 98270

Roberta Allen  
16014 Lawrence Place S.E.  
Yelm, WA 98597

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THURSTON COUNTY

**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$669.00** for a Request for Reconsideration or **\$890.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
 on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance \_\_\_\_\_
2. Platting and Subdivision Ordinance \_\_\_\_\_
3. Comprehensive Plan \_\_\_\_\_
4. Critical Areas Ordinance \_\_\_\_\_
5. Shoreline Master Program \_\_\_\_\_
6. Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
 APPELLANT NAME PRINTED

\_\_\_\_\_  
 SIGNATURE OF APPELLANT

Address \_\_\_\_\_

\_\_\_\_\_  
 Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.