

BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

DECISION

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CITY OF SAMMAMISH

FILE NUMBER: PSUB2015-00104
APPLICANT: CR Home Builders, LLC
14410 Bel-Red Road
Bellevue, WA 98007
TYPE OF CASE: Preliminary subdivision (*Gabrielle's Place*)
STAFF RECOMMENDATION: Approve subject to conditions
EXAMINER DECISION: Return to the applicant for modification or correction
DATE OF DECISION: March 21, 2016

INTRODUCTION ¹

CR Home Builders, LLC (CR Builders), a member of the Murray Franklin family of companies, seeks preliminary approval of *Gabrielle's Place*, a 14-lot single-family residential subdivision of a 4.0 acre assemblage of three parcels zoned R-4.

CR Builders filed a Base Land Use Application on May 26, 2015. (Exhibit 8c ²) The Sammamish Department of Community Development (the Department) deemed the application to be complete when filed. ³ (Testimony)

The subject property is located on the west side of 244th Avenue NE abutting the south side of NE 26th Court.

The Sammamish Hearing Examiner (Examiner) viewed the subject property on March 14, 2016.

The Examiner held an open record hearing on March 14, 2016. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC). (Exhibit 8a)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² 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.
³ Exhibits 8c and 8d imply that the application was deemed complete on July 1, 2015. The Department testified that such an implication is incorrect.

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivision applications be issued within 120 net review days after the application is found to be complete. The open record hearing was held on or about net review day 254. 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(3)]. The Department provided written notice to CR Builders. (Exhibit 1, pp. 5 and 6, Finding 30)

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

- Exhibit 1: Departmental Staff Report
- Exhibits 2 – 18: As enumerated in Exhibit 1 ⁴
- Exhibit 19: Revised preliminary plat
- Exhibit 20: “Storm water exhibit” (map depicting relationship of *Gabrielle's Place* to *Bradford Place*)
- Exhibit 21: Memorandum, TENW to Levitt, March 11, 2016 (sight distance)
- Exhibit 22: Memorandum, Levitt to Hearing Examiner, March 14, 2016 (request for changes to conditions of approval)
- Exhibit 23: PowerPoint slides from Homeowners of NE 26th Court
- Exhibit 24: Collective Response to *Gabrielle's Place* by Homeowners of NE 26th Court, March 14, 2016
- Exhibit 25: Boundary Line Adjustment BLA 2015-XXXX ⁵
- Exhibit 26: *Cedar Hill* proposed preliminary plat configurations

The Examiner held the hearing record open for up to two days for receipt of readable copies of Exhibits 25 and 26. The copies were received and the record closed on March 15, 2016.

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.

⁴ Identification of Exhibits 5 and 5a in Exhibit 1 is reversed; Exhibit 9i actually contains two separate documents, both labelled 9i and both with page numbers starting with 1. Before entering the exhibits, the Examiner orally corrected the reversal of Exhibits 5 and 5a and separated 9i into 9i and 9j with 9i being the applicant's response letter to City comments and 9j being the applicant's response letter to citizen comments.

⁵ The hearing record indicates that the file number for this document is BLA2015-00105. (Exhibit 9i, p. 2)

FINDINGS OF FACT

1. The *Gabrielle's Place* site (the subject property) is a rectilinear assemblage of parcels located on the west side of 244th Avenue NE abutting the south side of NE 26th Court.⁶ It has approximately 300 feet of frontage on the west side of 244th Avenue NE and abuts the south side of NE 26th Court for approximately 370 feet. The north half of the subject property extends west from 244th Avenue NE some 690 feet; the south half of the subject property extends west from 244th Avenue NE some 390 feet. (Exhibit 3)
2. The subject property currently does not legally exist in the configuration depicted by Exhibit 3. The subject property is an assemblage of three parcels, one of which requires approval of a Boundary Line Adjustment (BLA) before it will exist as portrayed on the preliminary plat.⁷
 - A. Tax Parcel 2225069016 (Parcel 9016) is a 160' x 240' unplatted parcel in the northeast corner of the site.⁸ It has frontage on both NE 26th Court and 244th Avenue NE. It contains a single-family residence. (Exhibit 3, Sheet P02)
 - B. Tax Parcel 2225069030 (Parcel 9030) is a 140' x 390' unplatted parcel which abuts Parcel 9016 on the north and 244th Avenue NE on the east. It is undeveloped. (Exhibit 3, Sheet P02)
 - C. Tax Parcel 225069037 (Parcel 9037) is a 160' x 315' parcel which abuts the west side of Parcel 9016. It is Lot 1 in Sammamish short subdivision SHP002001. It contains a large single-family residence. Parcel 9037 is bordered on its west by Tax Parcel 225069098 (Parcel 9098). Parcel 9098 is a 160' x roughly 360' parcel which contains a large single-family residence. The current owner of Parcel 9037 (Sigler) and the owner of Parcel 9098 (Backstrom) are currently in the process of seeking BLA approval to shift their common boundary west 172 feet, thus enlarging Parcel 9037's dimensions to 160' x 487'. That application is under review by the Department under file number BLA2015-00105. (Exhibits 3, Sheet P02; 25) The subject property will not exist in the configuration depicted on the preliminary plat until BLA2015-00105 is approved by the Department.⁹
3. The subject property is located in the northeast portion of the City, fronting on 244th Avenue NE, a designated minor arterial. 244th Avenue NE is a two-lane street except for a two-way-left-turn-lane

⁶ The Examiner has prepared a roughly-to-scale drawing of the area, compiled from eight of the hearing record exhibits, which is attached hereto as an Addendum. The reader may wish to refer to the Addendum to better understand the relationship among area features.

⁷ Some documents in the record describe/depict the *Gabrielle's Place* site as composed of four parcels. (E.g.: Exhibits 1, 3, and 15) Such descriptions/depictions are incorrect. There are only three parcels in the assemblage.

⁸ The statement in Exhibit 1 that the lots in the assemblage are "from a previously recorded subdivision" is not completely correct.

⁹ BLAs are Type 1 applications subject to administrative review and action by the Department; there is no right to administrative appeal of Type 1 decisions. [SMC 20.05.020, Exhibit A] The Examiner has no jurisdiction over BLAs.

which extends from just north of NE 27th Place to a short distance south of NE 26th Court. (Exhibits 1, p. 5, Finding 23; 3; and testimony)

4. The subject property is located near the north edge of the Sammamish Plateau: While the grade in the immediate vicinity is predominantly downward rather gently towards the west, the grade drops off significantly towards the north beginning a few hundred feet north of the site. In addition, a steep-walled, deep ravine begins about 350 feet west of the subject property. The ravine runs generally north-south in this area. An unnamed creek in the bottom of the ravine flows north to join Evans Creek. (Exhibits 3; 7b; 15)
5. The subject property has some overstory vegetation, but is mostly characterized by cultural vegetation around the on-site residences and scrub vegetation on Parcel 9030. There are no regulated environmentally sensitive areas on the subject property. (Exhibits 3, 4, and 15)
6. The easterly 500 feet of the subject property is bordered to the north by *Montecino Estates*, a seven-lot, single-family residential short subdivision. ¹⁰ *Montecino Estates* was recorded in October, 2012. The developer of record was Montecino-Greenbank Development, LLC, which is not part of the Murray Franklin family of companies. *Montecino Estates* contains seven lots plus a combination storm water vault/recreation tract (Tract A), all served by a public cul-de-sac which abuts the south boundary of the short plat for some 385 feet. There is no homeowners association (HOA) in *Montecino Estates*; Tract A is owned in common by the lot owners. (Exhibits 3, 17; and testimony)
7. Wrapping around the north and west sides of *Montecino Estates* and abutting the western end of the north boundary of *Gabrielle's Place* is *Bradford Place*. *Bradford Place* is being developed by one of the Murray Franklin family of companies. It is a 16-lot single-family residential subdivision which includes two recreation tracts (Tracts A and C) and a stormwater pond tract (Tract B). All of the lots and tracts are served by NE 27th Place, a dedicated city street. NE 27th Place was approved and constructed as a full-width street for its first 300± feet, after which it exhibits a half-street section. The public street terminates in a north-south stub against Tract B along the west edge of the subdivision. Three homes on acreage tracts to the west and two homes on acreage tracts to the north of *Bradford Place* access their residences via NE 27th Place. (Exhibits 3 and 20; and testimony)
8. To the west of the north half of the subject property are (the future residual of) Parcel 9098 and one additional parcel, both of which are accessed via a private road which runs along the south edge of the north half of the subject property westerly from 244th Avenue NE. Each of those lots contains a substantial residence. (Exhibits 3; 15)

¹⁰ A "short subdivision" is a division of land into nine or fewer lots. [SMC 19A.04.310] A "subdivision," sometimes called a "long subdivision," is, for all common situations, a division of land into ten or more lots. [SMC 19A.04.330] A short subdivision is a Type 2 application subject to administrative review and action by the Department; a right to administrative appeal of Type 2 decisions is available. [SMC 20.05.020, Exhibit A]

9. The south side of the subject property is bordered by four of the approximately 12 lots accessed via NE 25th Street. NE 25th Street is a public right-of-way, but the street section is far from standard: It withers away the further west one goes. The two parcels south of Parcel 9030 are of modest size and contain modest residences. The two parcels south of Parcel 9037 (as expanded pursuant to the pending BLA) are significantly larger and contain significant residences. (Exhibits 3; 15; and testimony)
10. One lot south of NE 25th Street is the proposed preliminary subdivision of *Cedar Hill*. The developer of record is Amalani, LLC (not one of the Murray Franklin family of companies). *Cedar Hill* proposes to subdivide an approximate 9 acre assemblage of five parcels into 25 single-family lots.

The record of this proceeding contains two very different designs for *Cedar Hill*. One has a public street enter the site in alignment with NE 24th Street, travel west for about 425 feet and then make a right angle turn to the north to stub out at the north property line, centered on the common boundary between the second and third lots west of 244th Avenue NE on NE 25th Street. Several private roads off that public street provide access to most of the proposed lots.

The second version has a public cul-de-sac enter the site in alignment with NE 24th Street and terminate some 500 feet west of 244th Avenue NE. Several private roads off that cul-de-sac provide access to about half of the proposed lots.

Both versions have a large sensitive areas tract along the south edge of the site, presumably protecting the ravine. Both versions rely on a lift station to pump sewage rom the southern, lower elevation portion of the site.¹¹ (Exhibit 26)

11. The subject property is designated on the City's adopted comprehensive plan R-4 and zoned R-4, residential development at a maximum density of four dwelling units per acre. The area on the west side of 244th Avenue NE from just north of *Bradford Place* to at least south of NE 24th Street is all zoned R-4. The area farther north as well as the area on the east side of 244th Avenue NE is zoned R-1, one dwelling unit per acre maximum density. (Exhibits 1 and 16)
12. The maximum permissible lot yield under the subject property's R-4 zoning, given the proposed plat design and calculated in accordance with procedures spelled out in the SMC, is 13.8, which rounds up to 14, the number of lots proposed by CR Builders.
13. The lynchpin of the proposed plat design is the construction of a public street (Road A) within a 60 foot wide right-of-way, entering into the subject property from the north at the edge of the NE 26th Court cul-de-sac bubble. Road A would go south for about 110 feet and then make a 90° turn to the west, at the end of which it would become a half-street (30 foot wide right-of-way) and continue west for about 220 feet along the south boundary of the north half of the subject property. The

¹¹ The exhibits in this hearing record do not depict utility lines so it is impossible to say to where the sewage would be pumped or how much of the site would depend upon the lift station.

primary recreation space would be Tract B, a 20 foot wide strip along the property's frontage on 244th Avenue NE containing 5,770 square feet (SF). Four lots (Proposed Lots 1 – 4) would be placed along the south side of NE 26th Court between Tract B and Road A. A 26 foot wide private road/access easement (Tract E) would provide access to four lots along the south edge of the site (Proposed Lots 5 – 8). Proposed Lots 9 – 12 would have access onto the full-width portion of Road A; Proposed Lots 13 and 14 would access onto the half-street portion of Road A. (In addition, the residual of Parcel 9098 and the lot to its west would continue to use their existing easement which would be an extension of the half-street.) A 1,311 SF play area would be provided on the outside of the 90° bend (Tract D) and a 10 foot wide trail tract (Tract C) would connect Tracts B and D. Stormwater runoff would be collected and transported to Tract A; the existing *Bradford Place* stormwater pond in Tract B of that subdivision would be expanded somewhat into *Gabrielle's Place* Tract A to accommodate flows from both developments. At the hearing, CR Builders submitted a slightly revised plat which moves the temporary turnaround for Road A from the outside of the 90° bend to the west end of Road A in Tract A.¹² (Exhibits 3 and 19)

The proposed density is 3.5 dwelling units per acre. (Exhibit 3, Sheet P01) All proposed lots meet applicable zoning standards. (Exhibit 1)

14. The record contains evidence that appropriate provisions have been made for drainage (Exhibits 1, 3, and 7b); potable water supply (Exhibit 12); sanitary wastes (Exhibit 13); and safe walking conditions for children who walk to school (Exhibits 1, 3, and 10). "Open space" is not required in this subdivision; properly located recreation space can provide benefits of open space. The proposed design does not employ alleys. There is no record of any need for other public ways. The record contains no request for transit stops or schools and schoolgrounds.
15. The current proposal is opposed by virtually all (if not all) residents in *Montecino Estates* (the 26th Court Residents). (Exhibits 9a – 9h; 23; 24; and testimony) The major concern of the 26th Court Residents is CR Builders' plan to take all vehicular access from the west end of NE 26th Court. They contend that NE 26th Court was designed, constructed, and marketed as a cul-de-sac. They point out that not one of the approximately 100 cul-de-sacs in Sammamish which are named "Court" has a through connection. Making NE 26th Court a through street violates a compact that the City has with those who bought expecting it to be a cul-de-sac in their view. (The 26th Court Residents do not object to a row of lots being developed along the south side of NE 26th Court.) One of the 26th Court Residents families stated that their "understanding from the builder [CR Builders] is that they have another plan that doesn't involve removing our dead end street and we ask that this plan be considered". (Exhibit 9d, ¶ 1) (No such plan was presented at the open record hearing.) The 26th Court Residents are also concerned that, as designed, Road A could extend beyond *Gabrielle's Place* to provide access for redevelopment of other large parcels in the area, thus adding even more traffic onto NE 26th Court.

¹² The temporary turnaround was moved to satisfy Public Works and Eastside Fire. (Exhibits 1; 11; and testimony) Had it not been relocated, it would have encumbered nearly 75% of Tract D, rendering that portion unusable for recreation.

The 26th Court Residents also contend that making NE 26th Court a through street would conflict with several Comprehensive Plan policies regarding “neighborhood character.”

The 26th Court Residents also point out that the proposal will likely create conflicts regarding use of their recreation facilities on *Montecino Estates* Tract A. They suggest that the residents in *Gabrielle's Place* Lots 1 – 4 (at a minimum) will perceive *Montecino Estates'* Tract A recreation facility as available to them because they live on the same street. But the *Gabrielle's Place* residents will not be part owners of that facility nor will they be obligated to share in any of its costs; in short, the *Gabrielle's Place* residents will have no more right to use the *Montecino Estates* recreation facilities than will *Montecino Estates* residents have the right to use the *Gabrielle's Place* recreation facilities. The 26th Court Residents fear liability problems should any of the *Gabrielle's Place* residents become injured playing on *Montecino Estates'* recreation facilities.

The 26th Court Residents also question the safety/sight distance at the 244th Avenue NE/NE 26th Court intersection. They note that the intersection occurs just south of the crest of a vertical curve in 244th Avenue NE, limiting sight distance to the north. Another safety concern of the Residents is that they believe that when NE 26th Court becomes a through street, speeds will inevitably increase, thus reducing the safety of their children.

16. The 26th Court Residents propose two access options which they believe would solve at least some of their concerns. (Exhibits 23; 24; and testimony) Their preferred alternative is the creation of a new street located approximately 300 feet south of NE 26th Court. (The 26th Court Residents are aware of the requirement in the adopted Interim Public Works Standards (PWS) that intersections along minor arterials “should” have a “minimum centerline offset” of 300 feet. [PWS.15.160.C] The 26th Court Residents believe that the separation between NE 26th Court and NE 25th Street is about 560 to 570 feet. The Residents would support approval of a PWS Variation to allow for a slightly reduced centerline separation.) With that option the 26th Court Residents believe that a row of lots could be placed along the south side of NE 26th Court, with the rest of the lots accessed via the new street.

The 26th Court Residents' second option is to shift the Road A/NE 26th Court intersection easterly to a point as close to NE 244th Street as allowed by City standards. (They understand that distance to be 150 feet.) While the Residents do not believe that this option would solve all their concerns, they do believe it would reduce traffic volumes on much of NE 26th Court, would reduce traffic speed on NE 26th Court, and would keep the additional traffic away from their recreation area.

17. In response, CR Builders' first notes that as a local access street NE 26th Court is expected to be able to handle an average of 300 to 1,000 daily vehicular trips (ADT) pursuant to PWS.15.050.B.4. At a typical 10 ADT per single-family residence, the existing seven *Montecino Estates* residences generate 70 ADT and the 14 proposed *Gabrielle's Place* residences would generate an additional 140 ADT, for a combined total of 210 ADT, well below the contemplated maximum. (Exhibit 21) CR Builders argues that any future extension of Road A would have to prove that it would not over-tax NE 26th Court. (Argument of counsel)

CR Builders' traffic engineer asserts, without supporting discussion or evidence, that sight distance at the 244th Avenue NE/NE 26th Court intersection "meets minimum City road standards, and is also not a concern." (Exhibit 21, p. 1, ¶ 4)

CR Builders states that the subject property's "frontage along 244th is less than 300 feet" thus making it impossible to meet City intersection separation standards. In addition, CR Builders' engineer testified that an alternative street system was not possible because gravity sewers had to be provided and they could not if the street entered the site from the south. (Exhibit 21, p. 1, ¶ 5; and testimony)

CR Builders argues that neighborhood character is not a basis upon which to deny a proposed preliminary subdivision. (Argument of counsel)

18. Sammamish's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Gabrielle's Place* on January 29, 2016.¹³ (Exhibit 5) The DNS was not appealed. (Exhibit 1, p. 2)
19. The Department recommends approval of *Gabrielle's Place* subject to 47 conditions. (Exhibit 1, pp. 9 – 13)

CR Builders requests changes to four of the Department's recommended conditions. (Exhibit 22; and testimony)

The Department has no objection to any of the requested changes. (Testimony)

20. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK¹⁴

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A preliminary subdivision is a Type 3 land use application. [SMC 20.05.020, Exhibit A] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on

¹³ The DNS itself is dated February 29, 2016. However: The DNS states that its appeal period ends on February 19, 2016; the Affidavit of Posting states that the DNS was posted on January 29, 2016; the Affidavit of Mailing states that the DNS was mailed on January 29, 2016; and the Department testified that the DNS was issued on January 29, 2016. (Exhibit 5; and testimony) The Examiner concludes that the issue date on the DNS is a scrivener's error.

¹⁴ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

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.

Additional review criteria for preliminary subdivisions are set forth at SMC 20.10.220:

When the examiner makes a decision regarding an application for a proposed preliminary plat, the decision shall include additional findings as to whether:

- (1) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- (2) The public use and interest will be served by the platting of such subdivision and dedication.

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 May 26, 2015.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [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. *Gabrielle's Place* as currently presented does not comply with SMC requirements for recreation space. In addition, the available evidence does not indicate that Public Works has fulfilled its review obligations under the SMC regarding road networks. Therefore, the current application cannot be approved.

As noted in the Legal Framework, Authority section, above, the SMC authorizes the Examiner to "grant or deny the application". [SMC 20.10.070(2)] The State Subdivision Act, Chapter 58.17 RCW, provides a third alternative where preliminary subdivisions are concerned: "Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction" [RCW 58.17.140(1)]

The Examiner has only that authority "conferred either expressly or by necessary implication." [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 636, 689 P.2d 1084 (1984)] The Examiner has the authority to return a preliminary subdivision application for modification or correction under either or both of two different lines of reasoning. First, the State Subdivision Act expressly authorizes such an action. Second, since the SMC authorizes the Examiner to deny a preliminary subdivision application, the authority to take an action with less finality in order to allow an applicant to correct deficiencies is necessarily implied.

The Conclusions of Law which follow will focus on those issues which require that the application be returned for modification or correction. Since a modified or corrected proposal may have different impacts from those presented by the current proposal, in-depth analysis of all preliminary subdivision review criteria would not be beneficial.

2. The SMC requires recreation space, not open space in most subdivisions.¹⁵ Recreation space is required in *Gabrielle's Place*. Recreation space requirements are contained in SMC 21A.30.140 - .170.¹⁶ All land divisions of more than four lots must provide recreation space “for leisure, play or sport activities”. [SMC 21A.30.140(1)] Developments at eight or less dwelling units per acre must provide 390 SF of recreation space per unit. [SMC 21A.30.140(1)(a)] Outdoor recreation space must “[b]e of a grade and surface suitable for recreation” and “[h]ave no dimensions less than 20 feet (except trail segments)”. [SMC 21A.30.140(2)(a) and (c)]
3. *Gabrielle's Place* must provide 5,460 SF of recreation space. (390 SF x 14 lots = 5,460 SF) Because more than 5,000 SF of recreation space is required,

- (i) The space shall have a street roadway or parking area frontage along 10 percent or more of the recreation space perimeter (except trail segments);
- (ii) A minimum of 60 percent of the required open space shall be located in a single area or tract;
- (iii) At least one area or tract shall contain a minimum of 5,000 square feet;

[SMC 21A.30.140(2)(e)(i) – (iii)] In addition the recreation space must

- (f) Be accessible and convenient to all residents within the development; and
- (g) Be accessible by trail or walkway to any existing or planned community park, public open space or trail system, which may be located on adjoining property.

[SMC 21A.30.140(2)(e) & (f)]

4. CR Builders' representative was incorrect when he testified that the SMC requires that 60% of the “open space” must front on public right-of-way.¹⁷ The SMC has no such requirement. The code requirement is that at least 10% of the perimeter of the recreation space must front on a right-of-way

¹⁵ “Open space” is required by the SMC in all subdivisions located within the R-1 zone. [SMC 21A.25.030(A), Note 13; SMC 21A.30.030(2)] “Open space” is also required where “lot clustering” is employed in subdivision design. [SMC 21A.30.030(1)] *Gabrielle's Place* is not on property zoned R-1; no lot clustering is proposed. Therefore, open space is not required.

¹⁶ The use of the term “open space” in SMC 21A.30.140(2)(d) and (e) is an obvious scrivener's error: Subsection (2) begins with the statement “Any recreation space located outdoors shall”; every other subsection within SMC 21A.30.140 uses the term “recreation space.”

¹⁷ “So Tract B, C, and D ... are open space tracts. ... The main reason for us [to “chop up the open space tracts”] is there is a requirement within code that requires 60% of your open space to be adjacent to ... right-of-way ... a minimum 20 foot in width”. (The representative may have said “50%” rather than “60%”; the recording is unclear in that regard.)

or parking area and that at least 60% of the recreation space must be in one tract. To the extent that the current arrangement of recreation space was based upon this misunderstanding of the code, CR Builders should have the opportunity to redesign its subdivision.

5. Tract B is the primary recreation tract, the one which supposedly fulfills SMC 21A.30.140(2)(e)(iii). But it is virtually unusable for recreation: It is only 20 feet wide and abuts a minor arterial. What parent would allow their child to play on a narrow strip of land abutting an arterial street? What realistic recreational use could be made of such a strip? Tract B is next to worthless for recreation. To the extent that CR Builders placed Tract B as it did because it thought 60% of the tract's perimeter had to abut a right-of-way, it was misguided. CR Builders should have the opportunity to redesign its subdivision.
6. Tract B does not provide meaningful recreation space. Tract B does not meet the spirit or intent of SMC 21A.30.140(1), (2)(a), (2)(e)(i), or (2)(f). The plat needs to be redesigned to provide a meaningful, usable recreation space (or spaces) meeting SMC requirements.
7. *Gabrielle's Place* is an "in-fill development." An in-fill development is a higher density redevelopment of an area previously developed at a lower density. In-fill developments are encouraged under the Growth Management Act (GMA), Chapter 36.70A RCW, as a way to provide increased density to accommodate an increasing population without expanding the portion of our region devoted to urban density development. An in-fill development presents the opportunity to increase density without causing "urban sprawl."

But in-fill developments are not without their challenges, of which a major one is working the higher density development into the fabric of the existing area while preserving the possibility of additional in-fill development in the area. (*Montecino Estates* and *Bradford Place* are themselves in-fill developments in this neighborhood.) In-fill developments are typically proposed for assemblages of under-developed parcels (in the sense that their density is usually far lower than allowed by current zoning). The configuration of the assemblage seems to often be determined more by who is willing to sell to the developer at a particular point in time than by what would constitute a desirable parcel for development. That reality makes designing functional lot layouts and street networks difficult. It also makes the process of reviewing such proposals more critical and more demanding.

8. The City Engineer has the authority to require dedication of right-of-way for street purposes in a proposed subdivision for a number of reasons. Three such reasons are:
 - (2) Where necessary to extend or to complete the existing or future neighborhood street pattern, including connection to existing adjacent right-of-way stubs; or
 - (3) Where necessary to provide additional or new right-of-way to existing City right-of-way network; or

...

(5) Where necessary to provide a public transportation system that supports future development of abutting property consistent with the City of Sammamish Comprehensive Plan or Title 21A SMC; provided, that the right-of-way shall:

- (a) Provide for vehicular and pedestrian circulation within and between neighborhoods; or
- (b) Provide local traffic alternatives to the use of arterial streets.

[SMC 19A.08.100(2), (3), & (5)] Each of those reasons requires analysis of the area's street network needs. Given the testimony in the record from Public Works,¹⁸ the only conclusion that can be drawn is that Public Works did not critically evaluate the City's street network needs in this area before recommending approval of *Gabrielle's Place*.

9. The neighborhood on the west side of 244th Avenue NE between roughly NE 27th Place and NE 22nd Street is constrained by the creek and its steep-walled, deep ravine on the west. Historical development has been mostly on large lots (one acre or so) created through short subdivisions and old lot segregations. In the Examiner's experience, few applicants take a holistic road network approach when designing their subdivisions: Maximizing yield and providing necessary utility services are generally the developers' driving forces. It falls to the City to be the watchdog for the future needs of the City.
10. Where is Road A going to go? Finishing the south half of its westward leg depends upon obtaining right-of-way from the acreage lots to the south – which contain large houses with frontage on an existing public street (NE 25th Street). Is it realistic to think that Road A will ever go anywhere? If it doesn't, it just becomes a long cul-de-sac, essentially starting at 244th Avenue NE.¹⁹

The southerly-pointing half-street stub in *Bradford Place* appears to have little likelihood of ever going anywhere. The three lots west of *Bradford Place* are significantly impacted by the ravine; it does not seem likely that they will be further subdivided. If the stub were extended to the south across *Bradford Place* Tract B, it would pass right through the large house on the residual of Parcel 9098. That does not seem particularly likely, either, at least not in the foreseeable future.

CR Builders' engineer's statements to the effect that an alternative design for *Gabrielle's Place* is not possible because they must have gravity sewer service is not convincing in view of the *Cedar Hill* plat design alternatives depicted in Exhibit 26, both of which rely on a sewer lift station.

From the evidence in this hearing record, it would seem that all future in-fill development in this area will be served by a series of awkward cul-de-sacs, creating less than ideal neighborhoods and neighborhood street systems, unless a network analysis is performed which identifies a preferred, plausible street pattern.

¹⁸ "Well, we usually don't design, but we assess designs and then validate if they are to our standards."

¹⁹ If Road A were to be a permanent cul-de-sac, it would be about 780 feet long, measured from 244th Avenue NE, thus violating the 600 foot maximum cul-de-sac length established by PWS.15.120.

The Examiner concludes that the public deserves the thorough evaluation by Public Works contemplated under its SMC 19A.08.100 authority before *Gabrielle's Place* is considered for approval.

11. A word or two about the 26th Court Residents Option 1 is appropriate at this time. First, the intersection spacing standard in the PWS is expressed as a “should,” not a “shall” requirement. By definition, a “should” requirement is not mandatory.²⁰ Rather, “should” requirements confer discretion upon the deciding entity: You ought to do something, but you don’t have to. Thus, the intersection spacing distances in PWS.15.160.C are recommendations, not mandatory requirements. A PWS Variation would not be required were Public Works to decide that conditions warranted a lesser spacing in a particular circumstance. It simply would apply sound engineering judgment to make a decision.

Second, the intersection spacing standard is expressed as a centerline-to-centerline spacing requirement, not as an edge of right-of-way to edge of right-of-way requirement. The distance from the centerline of NE 26th Court to the south boundary of the subject property is 330 feet. (Exhibit 3) CR Builders’ traffic engineer and representative were both incorrect in stating (in Exhibit 21 and testimony) that a new access street could not be provided along the subject property’s frontage because the frontage was too short to meet the separation requirement. Whether such an access would better serve the neighborhood is a question that Public Works needs to consider when it fulfills its SMC 19.08.100 obligations.

12. Lastly, the role of a comprehensive plan in development review is different now than it was before enactment of the GMA in 1990 and the Local Project Review Act, Chapter 36.70B RCW, in 1995. The Local Project Review Act establishes a mandatory “consistency” review for “project permits”, a term defined by the Act to include subdivisions. [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

²⁰ CR Builders’ traffic engineer is incorrect when he states that the PWS “require a minimum 300 feet [*sic*] separation distance”. (Exhibit 21, p. 1, ¶ 2) The verb would have to be “shall” in order for the spacing distance to be a mandatory requirement.

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and
- (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030, emphasis added] Thus, state law holds that a comprehensive plan is applicable during project review only where development regulations have not been adopted to address a particular topic. The regulatory assumption is that plans set a framework for subsequent regulations which serve to control development actions.

13. The state Supreme Court has also addressed this issue. In *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] the Court ruled that “[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise.” [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code’s favor.

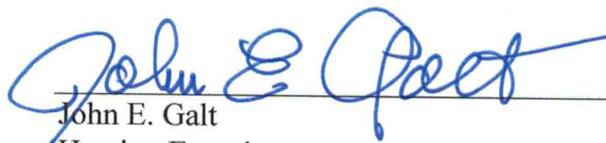
[*Mount Vernon* at 873-74, citations omitted]

14. 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 **RETURNS *Gabrielle's Place* TO THE APPLICANT FOR MODIFICATION OR CORRECTION** in accordance with the above Conclusions of Law.

Decision issued March 21, 2016.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ²¹

Todd Levitt
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Jeff Schramm

Emily Arteche
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James Olsen
Marcee Williams

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 228th 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 JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

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."

²¹ The official Parties of Record register is maintained by the City's Hearing Clerk.

ADDENDUM

