CITY OF SAMMAMISH
WASHINGTON

ORDINANCE NO. O2011-306

AN ORDINANCE OF THE CITY OF SAMMAMISH, WASHINGTON AUTHORIZING APPROVAL OF SHORT PLAT

WHEREAS, the City Council of the City of Sammamish recognizes the following facts:

1. Bernard J. and Kirsten Olshausen (Applicants) made an application for a two-lot short plat for property located at 21529 SE 28th Lane on approximately April 18, 2003 under Application No. SHP003002,

2. The short plat application was denied by City staff.

3. The applicants appealed the Staff denial to the City Hearing Examiner who upheld the Staff denial in a decision dated August 2, 2004.

4. The applicants filed a petition pursuant to the Land Use Petition Act ("LUPA") under King County Superior Court cause no. 04-2-22038-6.

5. The LUPA petition was dismissed by the Superior Court without prejudice on February 14, 2006.

6. The Applicants requested a variation from road standards on approximately January 28, 2006.

7. City staff granted the variation on February 6, 2006.

8. City staff approved short plat application SHP003002 on approximately February 27, 2006.

9. Citizens appealed the staff approval to the City Hearing Examiner under appeal no. APP006002.

10. The Hearing Examiner reversed the approval of the short plat by order dated May 15, 2006.

11. The Applicants filed a second LUPA petition under King County Superior Court cause no. 06-2-18479-3.

12. By order dated November 21, 2006, the Superior Court upheld the decision of the Hearing Examiner and remanded the short plat to the City Council for final action.

13. By action taken on February 6, 2007, the City Council voted to delegate the disposition of the short plat application to the Hearing Examiner.

14. By order dated May 8, 2007, the Hearing Examiner adhered to his previous reversal of the Staff approval of the short plat.

15. On May 5, 2009, the Applicants brought a motion in the 2006 LUPA case seeking to reverse the May 8, 2007 order of the Hearing Examiner and seeking to find the City in contempt for its delegation of the short plat to the Hearing Examiner following the Superior Court order of November 21, 2006.

16. By its order dated July 31, 2009, the Superior Court denied the Applicants' motion to reverse the May 8, 2007 order of the Hearing Examiner and denied the Applicants' motion to find the City in contempt for delegating the short plat to the Hearing Examiner after the November 21, 2006 Superior Court order.

17. On approximately May 7, 2010, the Applicants filed a lawsuit against the City under cause no. CV10-779TSZ in U.S. District Court for the Western District of Washington.

18. By its order dated February 17, 2011, the Federal District Court held that the Superior Court order of November 21, 2006 was "not heeded by the City."

19. At this point in the course of litigation over this short plat, the City is faced with, on one hand, the Superior Court order of July 31, 2009 holding that the City had complied with the Superior Court order of November 21, 2006, and on the other hand, with the Federal District Court order of February 17, 2011, holding that the City had not complied with the Superior Court order of November 21, 2006; and

WHEREAS, the City's established procedures for processing short plat applications consists of staff review and decision-making followed by possible appeal to the Hearing Examiner, followed by possible Superior Court review under RCW 36.70C ("LUPA"); and

WHEREAS, during the multi-year pendency of this short plat application it has undergone multiple phases of staff review, multiple instances of review before the Hearing Examiner, and two LUPA proceedings; and

WHEREAS, the proposed short plat would create impacts on neighboring property that can reasonably be mitigated; and

WHEREAS, the unique and special circumstances of this application warrant a variation from the established procedures for processing short plat applications and a variation from some aspects of the ordinances and regulations applicable to the application; and

WHEREAS, the parties have executed a settlement agreement to the litigation; and

WHEREAS, the City Council desires to eliminate its exposure to liability and desires to follow the rulings of the courts;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Given the unique and special circumstances, as set forth above, the City Manager, or his designee, is directed to approve short plat SHP003002 with the conditions and requirements approved by the City staff in the staff report of February 27, 2006; provided that the applicants shall not be required to construct a paved walkway to SE 28th Street across the property located at 21553 S.E. 28th Lane or to reserve a frontage tract for future right-of-way dedication. The application is vested under the regulations existing at the time of the original application except for those that conflict with this ordinance. The issuance of the short plat approval by the City Manager shall not be appealable to the Hearing Examiner and shall constitute a final decision of the City for purposes of proceedings under the Land Use Petition Act, RCW 36.70C.

Section 2. The execution of the settlement agreement is hereby ratified.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 7th DAY OF JUNE, 2011.

CITY OF SAMMAMISH

Donald J. Gerend, Mayor

ATTEST/AUTHENTICATED:

Melonie Anderson, City Clerk

Approved as to form:

Bruce L. Disend, City Attorney

Filed with the City Clerk:	April 13, 2011
First Reading:	April 18, 2011
Second Reading:	June 7, 2011
Passed by the City Council:	June 7, 2011
Date of Publication:	June 10, 2011
Effective Date:	June 15, 2011