



**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: PLN2011-00026

APPLICANT: PNW Holdings, LLC
9725 SE 36th Street, Suite 214
Mercer Island, WA 98040

TYPE OF CASE: Preliminary subdivision (*Brauerwood Estates*¹)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: April 4, 2012

INTRODUCTION²

PNW Holdings, LLC (PNW Holdings) seeks preliminary approval of *Brauerwood Estates*, a 33 lot single-family residential subdivision of a 7.2 acre site zoned R-6.³

PNW Holdings filed a Base Land Use Application on July 28, 2011. (Exhibit 1C⁴) The Sammamish Department of Community Development (the Department) deemed the application to be complete on August 15, 2011. (Exhibit 1F)

¹ This Decision uses the project name as set forth by the applicant on the proposed preliminary plat (Exhibit 1A), notwithstanding that other documents in the record refer to the project as simply *Brauerwood*.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ *Brauerwood Estates* is a “re-work” of the 2007 *Sammamish Heights* (western half) and *The View at Ridgecrest* proposals, both of which expired without coming to hearing. (Exhibit 4, p. 1)

⁴ 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.

The subject property is located at 222 214th Avenue SE and 231 218th Avenue SE, Sammamish, WA 98075 (Tax Parcels 1240700045 and 1240700074).

The Sammamish Hearing Examiner (Examiner) viewed the subject property on March 29, 2012.

The Examiner held an open record hearing on March 29, 2012. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC).⁵ (Exhibit 1T)

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivisions 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 176.⁶ 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 a letter from the Department explaining why the deadline was not met [SMC 20.05.100(3)]. PNW Holdings chose to extend the deadline. (Testimony)

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

- Exhibit 1: Departmental Staff Report
- Exhibit 1A – 1U: As enumerated in Exhibit 1
- Exhibit 2: PNW Holdings' requested changes to Recommended Conditions of Approval
- Exhibit 3: Letter, PNW Holdings' engineer to Rob Garwood, City Senior Planner, December 28, 2011 (Response to Exhibit 1N)
- Exhibit 4: Brauerwood Estates Traffic Impact Analysis, June 29, 2011
- Exhibit 5: Brauerwood Estates Technical Memorandum (traffic), November 7, 2011

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.

⁵ Because of technical production "glitches," the hearing notice contains three errors in the "Project Description" section: The text says the site is 16.64 acres zoned a mix of R-4 and R-6 to be divided into 75 lots. In fact, the proposal is to subdivide 7.2 acres zoned R-6 into 33 lots. The proposal is described as a 33 lot subdivision in two other places on the notice. The notice correctly identifies the two Tax Parcels involved in the application. A reduced scale copy of the 33 lot proposed preliminary plat, which includes a small vicinity map depicting the size and location of the subject property, was included with each mailed notice. (Exhibit 1T and testimony)

The Examiner ruled near the end of the hearing that the errors on the hearing notice were not fatal: The errors described a site that was larger than the proposal site and a number of proposed lots that was greater than what is actually proposed; the notice correctly stated the Tax Parcels; the notice correctly stated the number of lots in two places; and a copy of the proposed plat was attached to the notice. Had the notice stated a smaller site and development proposal than what is actually being proposed, the Examiner likely would have found the notice to be unacceptably mis-leading and would have required new notice.

⁶ Net review days as stated in Exhibit 1 is incorrect. The net review days calculation was discussed during the hearing.

ISSUES

Does the application meet the criteria for preliminary subdivision approval as established within the SMC? Issues of concern to hearing participants are extension of SE 2nd Street, handling of stormwater, tree removal, loss of rural character, and traffic growth on 214th Avenue SE.

FINDINGS OF FACT

1. The subject property is a more or less rectangular tract comprised of two legal lots, one containing a single-family residence with accessory dwelling accessed off 214th Avenue SE, the other containing a single-family residence accessed off 218th Avenue SE via an easement. The subject property fronts the east side of 214th Avenue SE for about 332 feet; its east-west dimension is about 956 feet. The east boundary of the subject property lies about 300 feet west of 218th Avenue SE. The subject property contains 7.19 (about 7.2) acres. (Exhibit 1A)
2. Except for in the immediate vicinity of the on-site residences, the subject property is rather densely wooded. The site contains 372 trees that meet the SMC's definition of a "significant" tree. Of those, 241 are coniferous and 131 are deciduous; 244 are viable and 128 are non-viable. (Exhibits 1I and 1P)

The subject property contains no environmentally sensitive areas. Wetlands exist along 218th Avenue SE approximately 200 – 300 feet to the east of the property. (Exhibits 1, 1J, 1R, and 1S)

The subject property slopes downward from a high, relatively flat area near the center of the north boundary. Elevation drop from that point is about six (6) feet to the northwest corner of the site, about 22 feet to the southwest corner of the site, about four (4) feet to the center of the south boundary, and about 30 feet to the east boundary. (Exhibit 1A, Sheet C2)

3. The subject property is bordered by a variety of land uses:
 - A. Approximately the western two-thirds of the north edge of the subject property abuts the half-street section of SE 2nd Street, the primary access street for the *Asbery Place* subdivision. *Asbery Place* is a 25 lot, single-family residential subdivision with two stormwater detention facilities (one on the west; one on the east) and a small play area. A looped street within the subdivision has two connections to SE 2nd Street; all lots take access from SE 2nd Street and/or the loop street. (Exhibits 1A and 1I and testimony) The SE 2nd Street half-street consists of a 20 foot wide paved surface with a sidewalk along the north (*Asbery Place*) side within a 30 foot wide right-of-way. (Exhibit 1A, Sheet C2)
 - B. The eastern third of the north edge of the subject property abuts a wooded, unplatted, acreage parcel (Parcel 1240700070) owned by Patricia Flynn (Flynn). The SE 2nd Street 30 foot wide

right-of-way terminates against the southwest corner of Parcel 1240700070; the current half-street improvement terminates about 70 feet west of Parcel 1240700070. (Exhibits 1A {Sheet C2}, 1I, and 1N)

- C. The east edge of the subject property abuts an acreage tract which fronts on 218th Avenue SE and which contains a single-family residence. (Exhibit 1I)
 - D. The east third of the south boundary abuts an acreage tract which appears to contain a single-family residence which appears to take access from 218th Avenue SE. (Exhibit 1I) The remainder of the south boundary abuts the rear yards of nine (9) lots in the *Palermo* subdivision. *Palermo* is a 19 lot single-family subdivision with one stormwater control facility (along its 214th Avenue SE frontage) and a small play area. (Exhibit 1I and testimony)
 - E. Two acreage tracts lie across 214th Avenue SE from the subject property. (Exhibit 1I)
4. The subject property is designated R-6 on the adopted Sammamish Comprehensive Plan (Comprehensive Plan). (Exhibit 1, p. 1) The R-6 designated area of which the subject property is a part stretches from 214th Avenue SE on the west to the 220th Avenue alignment on the east and from E Main Street on the north to SE 8th Street on the south (with a small block in the northwest corner of that area designated R-4). This R-6 area is among the largest R-6 designated areas in the city. [Comprehensive Plan, Fig. III-2, following p. III-26]

The maximum desired density in the R-6 designated areas is six (6) dwelling units per acre. [Comprehensive Plan, p. III-6, LUP-1.3a]

Among the goals of the Comprehensive Plan is maintenance of Sammamish's "small-town atmosphere". [Comprehensive Plan, p. III-5, LUG-1] The Comprehensive Plan encourages growth to be directed first "to areas with existing infrastructure capacity". [Comprehensive Plan, p. III-10, LUP-3.2]

The Comprehensive Plan states that adopted development standards are to set allowable densities, lot sizes and areas, building heights, etc. [Comprehensive Plan, p. III-17, LUP-8.1]

- 5. Land use development standards are contained in Title 21A SMC, Development Code. The subject property is zoned R-6. (Exhibit 1, p. 1) The R-6 zone is considered an "Urban Residential" zone, as are all other residential zones within Sammamish. [SMC 21A.20.030(A)] The maximum permissible density within the R-6 zone is 6 dwelling units per acre; minimum lot width is 30 feet; maximum permissible impervious surface coverage is 70% of the lot area. [SMC 21A.25.030(A)]
- 6. PNW Holdings proposes a subdivision which is nearly a mirror image of *Asbery Place*. SE 2nd Street will be widened to a full street and a loop road will provide access to most of the proposed lots. The west end of the loop will align with the corresponding loop end in *Asbery Place*; the east end will be

further to the east than its counterpart to the north because the subject property is approximately 50% deeper than the *Asbery Place* site. Two tracts will front 214th Avenue SE: A stormwater control tract (Tract B) in the southwest corner of the site and a passive recreation tract (Tract D) containing approximately 12,000 square feet (SF) to the north of Tract B. Right-of-way will be dedicated along the north edge of the site for widening of SE 2nd Street. The right-of-way will pass through a mild chicane to the south as it reaches Parcel 1240700070. Tracts C and D, along the east edge of the subject property, will initially be used for stormwater control and recreation. Tract C, to the north of Tract D, will temporarily be owned by a homeowners association (HOA), but will be subject to dedication upon demand by the City at no cost to the City at such time as SE 2nd Street needs to be further extended to the east. Lots will range in size from 4,768 SF (Proposed Lots 17 and 18) to 8,553 SF (Proposed Lot 15). (Exhibit 1A and testimony) The proposed density is 5.9 dwelling units per net acre (using the formulas required by SMC 21A.25.070 and .080) or 4.6 dwelling units per gross acre. (Exhibit 1, p. 5)

7. The Department of Public Works has applied the adopted Public Works Standards (PWS) to the *Brauerwood Estates* proposal. Frontage improvements will be required on 214th Avenue SE and SE 2nd Street. Tract C is reserved for future extension of SE 2nd Street. The city Engineer has granted three PWS variations as authorized by PWS.10.170. (Exhibit 1D)
 - A. To provide an acceptable road cross section for the area adjacent to the *Asbery Place* improvements, Public Works will allow the following variation from frontage improvements: 20-foot right-of-way dedication such that SE 2nd Street has a total 50-foot right-of-way width, 28-foot total pavement width from existing face of curb from *Asbery Place* to proposed *Brauerwood Estates* face of curb, road centerline and crown at midway point in pavement, 6-inch vertical curb, 5-foot wide sidewalk, 1-foot wide right-of-way behind back of sidewalk, and planter strip located between back of curb and sidewalk with the width to cover distance between curb and sidewalk. Public Works wants PNW Holdings to consider use of rain gardens in this area.
 - B. To provide an acceptable road cross section for the area adjacent to Tax Parcel 1240700070, Public Works will allow the following variation from frontage improvements: 30-foot right-of-way dedication, 20-feet of pavement sloped to curb, 6-inch vertical curb, 3-foot wide planter strip, 5-foot wide sidewalk, and transition from improvements adjacent to *Asbery Place* using standards approved by Public Works.
 - C. Public Works will allow the following variation on the internal plat road: 50-foot right-of-way dedication, 28-foot total pavement width, road centerline and crown at midway point in pavement, 6-inch vertical curb both sides, 5-foot wide planter strip both sides, 5-foot wide sidewalk both sides, and 6-inch wide right-of-way behind back of sidewalk.
8. 214th Avenue SE is classified as a local street, not an arterial. (Exhibits 1 {p. 8} and 4 {p. 3}) Comparison of 2007 and 2011 traffic counts indicates virtually no growth in peak hour volumes in

those four years. (Exhibit 4, p. 4) The total average daily trips (ADT) on 214th Avenue SE north of SE 8th Street is approximately 1,200; A.M. peak hour volume is approximately 100 trips and P.M. peak hour volume is approximately 80 trips. (Exhibit 4, Fig. 4) *Brauerwood Estates* is projected to generate 288 ADT, with 23 trips in the A.M. peak hour and 30 trips in the P.M. peak hour. (Exhibit 4, Table 2) The recent opening of a connection on 218th Avenue SE from Main Street to SE 4th Street has likely reduced the total traffic volumes on 214th Avenue SE. (Exhibit 5, p. 2)

Sammamish's adopted Level of Service (LOS) standard is "D". (Exhibit 4, p. 4) The LOS on the area's streets, both currently and after addition of *Brauerwood Estates* traffic, is "A" or "B." (Exhibit 4, Table 1)

Sight distance at intersections that would be created by development of *Brauerwood Estates* will meet or better adopted City standards. (Exhibit 5, Table 3R)

9. PNW Holdings applied for and received a Certificate of Concurrence (transportation) on August 25, 2011. (Exhibit 1E) The total concurrency fee for the additional 31 lots (credit is allowed for the two existing primary residences) is \$460,472.75. PNW Holdings paid 10% of the street impact fee on July 12, 2011, as required by the Certificate of Concurrence under TCR2011-00016. Street impact fees do not vest. The platlor will be required to pay an additional 10% of the required fee at the time of submittal of any required construction permits, an additional 10% prior to final plat recording, and the remainder on a per-lot basis when single-family residential building permits are obtained. (Exhibits 1, 1D, and 1E)
10. Sammamish has adopted the 2009 *King County Surface Water Design Manual* (KCSWDM) to regulate drainage facilities in the City. All stormwater control facilities must comply with 2009 KCSWDM requirements. (Exhibits 1 {p. 4} and 1D {p. 3})

Stormwater runoff from footing drains, roofs, driveways, sidewalks, and streets will be collected and transported to one of two on-site control facilities.⁷ (Because of the degree of slope to both the southwest and east, stormwater flows must be directed in both directions.) The preliminary drainage control plan prepared for PNW Holdings depicts an open detention pond/water quality control facility in Tract B and an enclosed detention vault/water quality control facility in Tracts C and D (mostly in Tract D with a slight incursion into the south portion of Tract C). Stormwater flows from those facilities are routed in a pipe conveyance system south along 214th Avenue SE and easterly to 218th Avenue SE, respectively. (Exhibits 1A {Sheet C5} and 1D)

The preliminary drainage plan indicates that the detention vault would extend into both the abutting internal street right-of-way on the west and into Tract C on the north approximately to where the face of the future sidewalk would be located. (Exhibits 1A {Sheet C5} and Exhibit 3) Public Works testified that many such vaults are similarly located throughout the City. Public Works testified that such facilities do not impede construction, operation, or maintenance of the public street system.

⁷ On a case-by-case basis, some lots may be allowed to use an individual lot infiltration system. (Exhibit 1, p. 12)

11. The SMC requires 390 SF of on-site recreation space per lot which equals 12,870 SF for 33 lots. The proposed recreation tracts (Tract A at 12,326 SF and Tract D at 22,274 SF) provide a total of 34,600 SF. (Exhibit 1A, Sheet C3) A children's play structure will be provided within Tract D, mostly located atop the stormwater vault. (Exhibit 1A, Sheet LA-02)
12. Section 21A.35.210 SMC requires that subdivisions retain a minimum of 25% of the significant trees on a development site, but also allows the Department to administratively approve removal of up to 50% of the trees required for retention, if those trees are replaced in accordance with the provisions of SMC 21A.35.240.

PNW Holdings proposes to retain 74 of the site's 372 significant trees (19.9%) and replace the 19-tree retention shortfall by planting 80 trees. (Exhibits 1 {pp. 6 and 7} and 1A {Sheet C6}) The Department has approved this proposal. (Exhibit 1, p. 6)

PNW Holdings is aware of at least one tree on Parcel 1240700070 that is very close to the common property line. PNW Holdings is prepared to take appropriate measures to protect that tree. (Exhibits 1A {Sheet C6} and 3) (Any tree near the common property line would have to be removed in the future if and when SE 2nd Street is extended to the east during development of Parcel 1240700070.)

13. Chapter 19A.08 SMC identifies a number of City codes, standards, and policies with whose requirements a proposed subdivision must comply. The Department and other reviewing agencies have found compliance with applicable requirements. (Exhibits 1 {pp. 2 – 9}, 1D, 1E, and 1H)

The record contains no challenge to the Department's analysis of these requirements. The Department's analysis is incorporated herein by reference as if set forth in full.

14. Public water and sewer services are available to serve *Brauerwood Estates*. (Exhibits 1K – 1M)
15. Public school students living in this area of Sammamish are bussed to their respective schools. The nearest school bus stop for elementary and junior high/middle school students is presently located at the 214th Avenue SE/SE 2nd Street intersection. The nearest school bus stop for high school students is presently located at the 214th Avenue SE/SE 8th Street intersection. (Exhibit 1G)

All interior *Brauerwood Estates* streets will have sidewalks as will its frontage on 214th Avenue SE. (Exhibit 1A, Sheet C1) *Palermo* and the subdivision to its immediate south also have sidewalks along their 214th Avenue SE frontages. (Exhibit 1I) The approximate ¼ mile between those subdivisions and SE 8th Street is undeveloped and lacks sidewalks: A modest shoulder exists on the east side of 214th Avenue SE. A wider shoulder exists along the west side of 214th Avenue SE from SE 8th Street north past the subject property. (Exhibit 4 {Figure 3} and testimony) The school district annually reevaluates its bus routes and bus stop locations. Given sufficient development along 214th

Avenue SE, it could decide that its high school bus route should include 214th Avenue SE.
(Testimony)

16. Sammamish's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Brauerwood Estates* on January 30, 2012. (Exhibit 1U) No appeals were filed in response to issuance of the DNS. (Exhibit 1, p. 2)
17. The Department recommends approval of *Brauerwood Estates* subject to 30 Recommended Conditions. (Exhibit 1, pp. 10 – 13)
18. PNW Holdings agrees to all but three of the Department's Recommended Conditions:
 - A. Recommended Condition 5.b: PNW Holdings notes that the parcel number in this condition contains a typographical error which should be corrected. (Exhibit 2 and testimony) The Department concurs in this correction. (Testimony)
 - B. Recommended Condition 14: PNW Holdings notes that there are no "joint use driveways" proposed in *Brauerwood Estates*. (Exhibit 2 and testimony) The Department agrees that there are no joint use driveways in the proposal. (Testimony)
 - C. Recommended Condition 22: PNW Holdings notes that since Tract D will be owned by the *Brauerwood Estates* HOA, the City will need a stormwater easement over the detention vault that will be built within that tract. (Exhibit 2 and testimony) Public Works agrees that such an easement will be needed. (Testimony)
19. Three neighboring property owners participated in the review/hearing process:
 - A. Flynn, owner of Parcel 1240700070, seeks assurance that nothing done in the development of *Brauerwood Estates* will impede or thwart the future easterly extension of SE 2nd Street. In particular, she is concerned with the intrusion of the stormwater detention vault into Tract C. She is also concerned about safety of trees that lie along the common boundary between the properties. (Exhibit 1N and testimony)
 - B. Travis Daniel and Adam Heck live in the two northwest corner lots in *Palermo*. They are concerned with traffic increases on 214th Avenue SE, the loss of rural character/wildlife in the area, and how stormwater runoff might adversely affect their lots. With respect to the latter, they state that their back yards are already wet during the rainy season. (Testimony)
20. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK⁸

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 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

⁸ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 August 15, 2011.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

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. The primary, if not sole, appropriate criteria for the review of land development applications are a municipality's adopted development regulations. The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory "consistency" review for "project permits", a term defined by the Act to include "building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan". [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:

- (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 tells us that review against comprehensive plan content comes into play only in the absence of a topical development regulation.

This concept was reinforced by the state Supreme Court's *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] case in which 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]

2. Even though compliance with the adopted Comprehensive Plan is thus arguably not an appropriate consideration, the evidence in this case demonstrates that *Brauerwood Estates* is consistent with the intent and theme of the Comprehensive Plan.

There can be no doubt but that urban development displaces wildlife: Dense human settlement and large-animal habitat are, for all intents and purposes, mutually exclusive. The City's adopted policy is to have the entire area around the *Brauerwood Estates* site develop at a density of six dwellings per acre. Retention of significant wildlife at such a density is not realistic. The City's policies and

regulations do encourage and require preservation of environmentally sensitive areas, thus protecting wildlife habitat in those portions of the city. This site contains no such areas.

3. Subsection 20.10.220(1) SMC (quoted above) requires that the Examiner determine if “appropriate provisions” are present in the subdivision application for a whole host of topical areas. The courts, generally speaking, do not allow a municipality unbridled discretion in determining what is “appropriate”. Rather, courts generally hold that in order to preserve the substantive due process rights of all the parties, decisions must be based upon officially adopted ordinances. Application of that concept to the items enumerated in SMC 20.10.220(1) leads to the position that “appropriate provisions” are present in any given topical area if the proposal meets the requirements of adopted regulations, or in the absence of regulations, policy relating to that area. Common sense must be used where there are no guiding adopted regulations or policies.

The preponderance of the evidence demonstrates that *Brauerwood Estates* meets the requirements of all applicable City regulations and standards. In particular, the Examiner is convinced by the preponderance of the evidence that City staff will not allow a stormwater vault to be constructed within Tract C in such a fashion as to thwart future eastward extension of SE 2nd Street.

The testimony also indicates that the amount of surface and near-surface runoff (sometimes referred to as “interflow”) from the subject property south into *Palermo* should be less after development of *Brauerwood Estates* than it is currently. The subject property presently has no stormwater control facilities. After development, most all rainwater falling on roofs, sidewalks, driveways, and street surfaces, as well as that intercepted by footing drains, will be collected rather than becoming surface or near-surface flows. That water will be routed through one of the detention facilities and then discharged into the City’s existing stormwater conveyance system. It will no longer flow south into *Palermo*’s lots.

Therefore, appropriate provisions for the listed items are present.

4. Subsection 20.10.220(2) SMC (quoted above) requires that the Examiner determine if “[t]he public use and interest will be served by the platting of such subdivision”. There must be some criteria by which to judge whether a proposed subdivision serves the public health, safety, and welfare. The content of adopted City regulations and policies forms reasonable criteria.

Brauerwood Estates meets all applicable review criteria. Therefore, it must also be concluded that it serves public use and interest while appropriately considering public health, safety, and welfare.⁹

⁹ It would be illogical to conclude that a project which met every established standard of review was nevertheless contrary to public health, safety and welfare. If such were the case, then the adopted standards must be woefully deficient. Even if some believe that the adopted standards are deficient, there is no basis in this case to conclude that compliance with those standards is not sufficient: the application is vested to the standards which existed when it was deemed complete regardless of any subsequent changes. New standards would apply to new applications, but not to applications in process.

5. Traffic volumes on 214th Avenue SE are relatively low and will remain so even after development of *Brauerwood Estates*. The LOS is now and will remain in the “A” to “B” range, significantly better than LOS “D” which is the City’s minimum, threshold standard. Given the Comprehensive Plan’s designation of this area, increasing traffic volumes will be a necessary adjunct to development. Acceptance of such increases is a necessary trade-off for the area’s land use designation as adopted by the City’s legislative officials, the City Council.
6. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. A preliminary subdivision embodies the concept of approval of a specific development proposal: The preliminary plat. A preliminary plat is “a true and approximate drawing of a proposed subdivision showing the general layout ...”. [SMC 19A.04.260] Preliminary subdivision evaluation is based upon the specific preliminary plat submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the preliminary plat which is being approved. The Department’s recommendation as drafted does not do so. Exhibit 1A constitutes the preliminary plat and supporting preliminary plans which should be approved. Reference to that exhibit will be incorporated into a new “General Condition.”
 - B. Recommended Condition 5.b (regarding Parcel 1240700070): The correction to this condition as listed in Exhibit 2 must be made. The same error needs to be corrected in Recommended Condition 10.
 - C. Recommended Condition 14 (regarding joint use driveways): Since *Brauerwood Estates* proposes no joint use driveways, this condition is meaningless at best and confusing at worst. It will be eliminated.
 - D. Recommended Conditions 18 – 30 (conditions to appear on the face of the final plat): All of these conditions are presented in italics; some are enclosed in quotations, while others are not. According to the heading beneath which they appear, these conditions are all “to appear on the face of the final plat”. (Exhibit 1, p. 12) According to Department testimony, those within quotations (Recommended Conditions 18 – 21 and 30) are to be placed verbatim on the face of the final plat; the rest are to appear on the face of the final plat, but the wording is flexible subject to agreement between the plattor and City staff.

A number of changes are required to this section of the Recommended Conditions. First, all italics will be eliminated: Quotations are sufficient notice that verbatim wording is required.

Recommended Condition 22 (regarding ownership of Tracts A and D by the HOA): Recommended Condition 22 is incomplete in its present form. First, it fails to mention Tract C. All parties agree and understand that Tract C is not being dedicated as public right-of-way with recordation of the plat, but that the City may demand dedication at such time in the

future as it is needed for extension of SE 2nd Street as part of the public street network. That means that Tract C will initially be owned by the HOA. That fact needs to appear in this condition. Since whether Tract B is publicly or privately owned depends upon the type of stormwater control facility ultimately constructed within it (See Recommended Condition 12.), and since this is the preliminary subdivision stage with only preliminary drainage plans available, it would be better to make this condition more general to cover all eventualities. Also, as noted by PNW Holdings in Exhibit 2, the plat does need to provide an easement to the City so that maintenance of a stormwater control vault could be performed. Such an easement would need to appear on the face of the final plat. The condition will be revised to so provide.

Recommended Condition 23 (regarding creation of an HOA): The requirement for creation of an HOA is something to be accomplished "Prior to or with ... Recording of [the] Final Plat," the title of the prior group of conditions. The requirement would not logically appear on the face of the final plat as the HOA needs to exist by the time the final plat is recorded; it is not something that happens later. This condition will be moved into the prior group of conditions.

Recommended Condition 24 (regarding tree retention): Like the entirety of Recommended Condition 23, the second sentence in Recommended Condition 24 (requiring marking of trees that are retained) is something to be accomplished "Prior to or with ... Recording of [the] Final Plat," the title of the prior group of conditions. The requirement would not logically appear on the face of the final plat; it is not something that happens later. This sentence will be moved into the prior group of conditions as a stand-alone condition. The rest of recommended Condition 24 except the last sentence serves as a notice to lot owners and should appear verbatim on the face of the final plat. The last sentence requires creation of easements to protect trees retained in groups; the easements need to appear on the face of the final plat, but not the requirement to create them. That sentence can serve as a stand-alone instruction.

Recommended Conditions 26 – 28 (regarding impact fees that are payable when building permits are issued): Recommended Conditions 26 - 28 serve as notices to lot owners and should appear verbatim on the face of the final plat. (Recommended Condition 25 (regarding traffic impact fees) also serves as a notice. But because the plattor has options as to how those fees are paid, the Examiner agrees with the Department that verbatim language is not appropriate: The wording needs to reflect the option(s) eventually chosen by the plattor.)

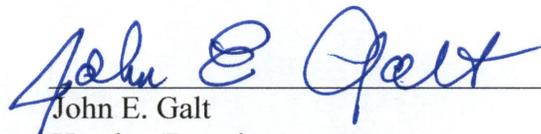
Recommended Condition 29 (regarding expiration of preliminary subdivision approval): This condition specifies when preliminary subdivision approval will expire if the plat is not recorded. As such, it is not a notice that needs to appear on the face of the recorded plat: If the plat has been timely recorded, the notice is meaningless. It will be moved to the "General Conditions" section.

- E. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1 – 3, 5.a – 5.c, 7 – 11, 13, 15 – 19, and 24 - 29 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
7. 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 **GRANTS** preliminary subdivision approval for *Brauerwood Estates* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued April 4, 2012.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁰

Maher Joudi
Travis Daniel
Patricia Flynn

Rob Garwood
Adam Heck
Tawni Dalziel

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 21 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision, nor does filing a request for reconsideration stay the time limit for commencing judicial review. [SMC 20.10.260(3)]

¹⁰ The official Parties of Record register is maintained by the City's Hearing Clerk.

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."

CONDITIONS OF APPROVAL *BRAUERWOOD ESTATES* PLN2011-00026

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following special conditions:

General Conditions:

1. Exhibit 1A is the approved preliminary plat (and supporting preliminary plans). Revisions to approved preliminary subdivisions are subject to the provisions of SMC 19A.12.040.
2. For the purpose of ensuring compliance with all conditions of approval and the standard requirements of the SMC, the plattor shall provide financial guarantees in conformance with SMC Chapter 27A and PWS.10.050(K). All improvements required pursuant to the PWS, SMC, or other applicable regulations must be installed and approved, or bonded as specified for plats in SMC 19.60, Subdividing Procedure.
3. The plattor or subsequent owner(s) shall comply with the payment of traffic impact fees in accordance to City of Sammamish Ordinance No. 2006-208 (Title 14A SMC).
4. This preliminary subdivision approval will expire 84 months after the Hearing Examiner's approval if no final plat has been recorded by that date.

Prior to Final Construction Approval:

5. Half street frontage improvements on 214th Avenue SE shall be provided consistent with a local road standard and in accordance with PWS Table 1, PWS Figure 01-05, and City Ordinance No. 2005-191.

6. The platlor shall endeavor to add additional retained trees through modification of the construction drawings, adjusting to add trees to Tracts A and D.
7. Pursuant to PWS.10.170, the City Engineer has approved the following variations to PWS.15.110 and PWS.15.100. The below variations may be modified during final engineering.
 - a. To provide an acceptable road cross section for the area adjacent to the *Asbery Place* improvements, Public Works will allow the following variation from frontage improvements: 20-foot right-of-way dedication such that SE 2nd Street has a total 50-foot right-of-way width, 28-feet total pavement width from existing face of curb from *Asbery Place* to proposed Brauerwood face of curb, road centerline and crown at midway point in pavement, 6-inch vertical curb, 5-foot wide sidewalk, 1-foot wide right-of-way behind back of sidewalk, planter strip located between back of curb and sidewalk. Width to cover distance between curb and sidewalk. Consider use of rain gardens in this area.
 - b. To provide an acceptable road cross section for the area adjacent to Tax Parcel No 1240700070, Public Works will allow the following variation from frontage improvements: 30-foot right-of-way dedication, 20-feet of pavement sloped to curb, 6-inch vertical curb, 3-foot wide planter strip, 5-foot wide sidewalk, transition from improvements adjacent to *Asbery Place* using standards approved by Public Works.
 - c. Public Works will allow the following variation on the internal plat road: 50-foot right-of-way dedication, 28-feet total pavement width, road centerline and crown at midway point in pavement, 6-inch vertical curb both sides, 5-foot wide planter strip both sides, 5-foot wide sidewalk both sides, 6-inch wide right-of-way behind back of sidewalk.
8. Drainage plans, Technical Information Reports, and analysis shall comply with the 2009 *King County Surface Water Design Manual (KCSWDM)* and the City of Sammamish *Stormwater Management Comprehensive Plan*.
9. Wetland hydrology shall be maintained consistent with the requirements of the 2009 KCSWDM. This may result in modifications to plat layout and the design of the stormwater system for the proposed project.
10. As specified in Section 5.1 of the 2009 KCSWDM manual, stormwater from roof drains shall be infiltrated, dispersed, or connected to the storm system with a perforated stub-out connection or other low impact development methodology approved by Public Works. The feasibility of the selected option shall be evaluated during final engineering/plat construction review. The resulting requirement shall be included on the final plat to ensure compliance. No reduction in flow control facility is given for perforated stub-outs.

Prior to or with Recording of the Final Plat:

11. 20-feet of the development frontage with SE 2nd Street shall be dedicated as public right-of-way to the City along the development frontage with *Asbery Place*.
12. 30-feet of the development frontage with SE 2nd Street shall be dedicated as public right-of-way to the City along the development frontage with Tax Parcel No 1240700070.
13. The 50-foot wide internal plat road shall be dedicated as public right-of-way to the City of Sammamish.
14. All open pond drainage tracts shall be dedicated to the City of Sammamish.
15. Temporary street name signs and no parking signs (if required on final engineering plans) shall be installed. Permanent street designation and traffic control signs, including poles and hardware, shall be installed following sidewalk installation. These items shall be paid for by the platlor but shall be designed, furnished, and installed by the City to establish uniformity unless otherwise indicated by the City. Additional signage not shown on final engineering plans may be required based on site conditions as determined by Public Works. A written request must be submitted to the City Public Works Department when signing is needed and the platlor will be billed upon completion. Street designation signs shall display street name or number.
16. All public and private stormwater facilities shall be constructed and in full operation. These facilities shall include the stormwater conveyance system, detention, water quality, and any required monitoring facilities. The conveyance system shall include all drainage structures, piping, ditching, curb, gutter, and road paving with the exception of the final lift of asphalt.
17. A licensed surveyor shall survey and stake all storm drain facilities and conveyance lines with associated easements and dedications not located within the public right-of-way. The Public Works Inspector shall inspect and approve locations prior to final plat and easement recording.
18. A performance bond shall be posted to the City for all required improvements that remain at the time of final plat, or 30% of the total improvements costs, whichever is greater. A bond quantities worksheet shall be provided by the platlor for City review and approval of performance bond amount. The restoration bond shall be released by the City following final plat approval.
19. A Homeowners Association shall be created to be responsible for maintenance of all common areas. The covenants and restrictions of said homeowners association shall be filed for record at King County at the time of final plat recording.
20. All trees to be retained shall be clearly tagged with numbers corresponding to the tree retention plan on file with the city.

Conditions to Appear on the Face of the Final Plat:

21. "Tract C shall be converted from drainage tract to public right-of-way with the future extension of SE 2nd Street to the east. Tract C is subject to future dedication to the City of Sammamish without

- compensation upon demand for same at such time as it is needed for the eastward extension of SE 2nd Street.”
22. “Maintenance of landscape strips along 214th Avenue SE, SE 2nd Street, and the internal plat roads shall be the responsibility of the Homeowners Association. Under no circumstances shall the City bear any maintenance responsibilities for landscaping strips created by the plat.”
 23. “Maintenance of landscaping strips along the stormwater pond perimeter other than the interior pond embankments shall be the responsibility of the Homeowners Association.”
 24. “All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet via perforated tightline as shown on the approved Construction Drawing on file with the City of Sammamish. This plan shall be submitted with the application for any building permit. All connections of the drains shall be constructed and approved prior to final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be designed and constructed as part of the building permit process and shall comply with the approved Construction Drawings on file with the City of Sammamish.”
 25. All Tracts not containing an open pond drainage facility shall be identified as the property of the Homeowners Association; provided, that Tract C shall be noted as subject to future dedication to the City of Sammamish without compensation upon demand for same at such time as it is needed for the eastward extension of SE 2nd Street. A stormwater easement to the City of Sammamish shall be denoted as encumbering the stormwater vault within Tracts C and D.
 26. “Trees identified on the tree retention plan of the preliminary plat for retention have been retained pursuant to the provisions of SMC 21A.35.210. Removal of these trees is prohibited unless necessary to prevent imminent danger or hazard to persons or property, subject to a clearing and grading permit approved by the City of Sammamish. Trees removed subject to this provision shall be replaced in compliance with SMC 21A.35.240.”
 27. All trees to be retained in groups will be placed in tracts or Tree Retention Easements (T.R.E), except for individual trees on individual lots.
 28. Section 14A.15.020 SMC requires that at the time of final plat a minimum of 30% of the impact fees must have been paid prior to recording. However, the plattor has the option to pay more. The plattor shall indicate on the face of the plat if any additional fees are owed by the lots in the plat. Also the plattor shall indicate that Lots 3-33 are subject to any remaining street impact fees.
 29. “Pursuant to Chapter 21A.105 SMC, fifty percent of the school impact fees were paid at final plat. Fifty percent of the school impact fees, plus an administrative fee, shall be paid prior to building permit issuance for each new residential dwelling unit on Lots 3-33.”
 30. “Pursuant to City of Sammamish Ordinance No. 02002-112, a surface water system development charge shall be paid at the time of building permit issuance for each new residential dwelling unit.”

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31. "Lots 3-33 are subject to park impact fees at the time of building permit issuance for each new residential dwelling unit."
32. "Metal products such as galvanized steel, copper, or zinc shall not be used in all building roofs, flashing, gutters, or downspouts unless they are treated to prevent metal leaching and sealed such that contact with storm water is prevented."