



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

DECISION ¹

FILE NUMBER: PLN2011-00042

APPLICANT: Windward Development, Inc.
335 Park Place Center
Kirkland, WA 98033

TYPE OF CASE: Revision of an approved preliminary subdivision (*Pine Ridge*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: April 2, 2012

INTRODUCTION ²

Windward Development, Inc. (Windward) seeks revision of two conditions on *Pine Ridge*, an approved preliminary 30 lot single-family residential subdivision of a 5.8 acre site zoned R-8.

Windward filed a Base Land Use Application on October 27, 2011. (Exhibit 1C ³) The Sammamish Department of Community Development (the Department) deemed the application to be complete on December 30, 2011. (Exhibit 1D)

The subject property is located at 4631 Issaquah-Pine Lake Road.

¹ This Decision memorializes and expands upon an oral Decision given on the record at the close of the open record hearing.

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 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 Sammamish Hearing Examiner (Examiner) viewed the subject property on March 28, 2012.

The Examiner held an open record hearing on March 28, 2012. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC). (Exhibit 1H)

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

Exhibit 1: Departmental Staff Report
Exhibits 1A – 1H: As enumerated in Exhibit 1

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.

ISSUES

Should the requested revisions to the approved preliminary subdivision be approved?

The requested revisions raise no significant issues. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.

FINDINGS OF FACT

1. *Pine Ridge* was granted preliminary subdivision approval (by the City's previous Hearing Examiner) subject to 82 conditions on April 18, 2008, under Sammamish file number PLN2006-00088. (Exhibit 1B) Windward, the successor in interest to the original applicant, seeks revisions to Conditions 12 and 14: (Requested additions are underlined; requested deletions are marked by ~~strikethrough~~.)
 12. The City Engineer has granted a variation to the local road standard as shown in PWS Table 1, Figure 1-05, and City Ordinance 2005-191. The Public Works Standard for a local road is to provide 60 feet of ROW dedication and 36 feet of asphalt. The variation by the City Engineer allows for 50 feet of ROW dedication and 28 feet of asphalt, with a ~~5-ft planter~~ modified planter 3-ft to 5-ft in width, and 5-ft sidewalk on each side of road. The variation was approved due to the low impact development (LID) techniques proposed for the plat.
 14. Driveway apron onto Road A for tax parcel 1524069023 shall be provided. ~~Issaquah-Pine Lake Road improvements shall include elimination of the existing driveway access onto Issaquah-Pine Lake Road by curbing, vegetation, or other method approved by the City.~~

(Exhibit 1 and testimony)

2. *Pine Ridge* Condition 14 was imposed because Issaquah-Pine Lake Road is an arterial and the current driveway to Tax Parcel 1524069023 is closer than allowed by Public Works Standards to the new intersection that will be created with development of *Pine Ridge*. (Exhibits 1, 1A, and 1G and testimony)
3. The owner of Tax Parcel 1524069023 has refused to change the driveway location to that property and has refused to grant any access to that property for construction of the *Pine Ridge* improvements. (Testimony)

The typical arrangement of planter strips and sidewalks results in the back edge of the sidewalk being essentially on the right-of-way line. (Testimony)
4. Windward seeks the changes to Conditions 12 and 14 so that it may complete development of *Pine Ridge*. Windward cannot comply with Condition 12 because the owner of Tax Parcel 1524069023 will not allow it to work on that property, so grades at the property line/edge of right-of-way cannot be properly handled; Windward cannot comply with the second sentence in Condition 14 because the owner of Tax Parcel 1524069023 refuses to abandon the current driveway access. (Testimony)
5. The City will still be able to condition future development of Tax Parcel 1524069023 such that no direct access would be allowed to Issaquah-Pine Lake Road, thus fulfilling the Public Works Standards for any new development. (Exhibit 1 and testimony)
6. The requested revisions do not change the design of the subdivision in any way. (Exhibit 1G)
7. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁴

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

Authority

Revisions to an approved preliminary subdivision which would result in “substantial changes, as determined by the [D]epartment,” are processed as would be an initial preliminary subdivision application. Any requested changes to preliminary subdivision conditions of approval are “substantial changes” by definition. [SMC 19A.12.040(1)]

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

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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)] Applications to revise an approved preliminary subdivision are treated as new applications for vesting purposes. [SMC 19A.12.040(1)] Therefore, this application is vested to the development regulations as they existed on December 30, 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. Condition 14 requires the developer of *Pine Ridge* to force an abutting property owner, whose property (Tax Parcel 1524069023) is not part of *Pine Ridge*, to take an action: Abandon the current driveway and accept a new access onto the internal *Pine Ridge* street. Frankly, it is doubtful that the undersigned would have imposed that portion of Condition 14 in the first place as it is arguably impermissible to force an adjacent property owner to take an action associated with an adjacent development.

Further, the Public Works Standard relied upon for the condition (PWS 15.170) restricts the creation of a "driveway access" onto an arterial street within a certain distance of the nearest right-of-way line of an intersecting street. (See Exhibit 1, p. 3) Strictly speaking, PWS 15.170 does not restrict the creation of a new street intersection, it restricts the creation of a new driveway within a certain distance of a street intersection. Lastly, the standard is prospective, not retroactive.

2. The change requested to Condition 12 will provide Windward two feet of "shy space" between the back edge of the sidewalk and the edge of Tax Parcel 1524069023. That "shy space" is needed because the owner of Tax Parcel 1524069023 will not allow Windward's workers access to Tax Parcel 1524069023 to construct the sidewalk. The request is the minimum needed to allow development to continue. An abutting owner should not be able to block a permitted development (perhaps except in extremely unusual circumstances, not present here).

3. The requested changes are reasonable under the circumstances and comprise the minimum relief necessary. The changes will not affect any other aspect of the development. (The items of concern to the authors of the letters in Exhibit 1E are not at all affected by the requested changes to Conditions 12 and 14.)
4. The normal review criteria for preliminary subdivisions do not logically apply due to the very limited nature of the requested revisions. The previous Hearing Examiner applied the normal review criteria before granting preliminary subdivision approval in 2008.
5. 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** the following revisions to the preliminary subdivision of *Pine Ridge*:

- A. Condition 12 is revised to read as follows:

The City Engineer has granted a variation to the local road standard as shown in PWS Table 1, Figure 1-05, and City Ordinance 2005-191. The Public Works Standard for a local road is to provide 60 feet of ROW dedication and 36 feet of asphalt. The variation by the City Engineer allows for 50 feet of ROW dedication and 28 feet of asphalt, with a modified planter 3-ft to 5-ft in width, and 5-ft sidewalk on each side of road. The variation was approved due to the low impact development (LID) techniques proposed for the plat.

- B. Condition 14 is revised to read as follows:

Driveway apron onto Road A for tax parcel 1524069023 shall be provided.

- C. In all other respects the preliminary subdivision and its conditions of approval remain unchanged and in full force and effect.

Decision issued April 2, 2012.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS⁵

Greg Krabbe (by telephone)
Mona Davis

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)]

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."

⁵ The official Parties of Record register is maintained by the City's Hearing Clerk.