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CITY OF SAMMAMISH

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

**DECISION**

FILE NUMBER: PLN2012-00020

APPLICANT: William Buchan Homes, Inc.  
2630 116<sup>th</sup> Avenue NE  
Bellevue, WA 98004

TYPE OF CASE: Preliminary subdivision (*Lawson Park*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: February 8, 2013

**INTRODUCTION <sup>1</sup>**

William Buchan Homes, Inc. (Buchan) seeks preliminary approval of *Lawson Park*, a 31 lot single-family residential subdivision of a 10.05 acre site, owned by Mollie McIntosh and Jeanette Aman, which is zoned R-4.

Buchan filed a Base Land Use Application on April 20, 2012. (Exhibit S-1 <sup>2</sup>) The Sammamish Department of Community Development (the Department) deemed the application to be complete when filed. (Exhibit S-2)

The subject property is located at 24400/24403 SE 14<sup>th</sup> Street.

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<sup>1</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.  
<sup>2</sup> 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 January 28, 2013.

The Examiner convened an open record hearing on January 28, 2013, which was continued to and concluded on January 31, 2013. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC). (Exhibits S-7, S-32, and S-35) The Examiner asked the Department to provide answers to three questions and held the record open until 5:00 p.m. on February 4, 2013, to receive the written answers: When was the 2012 Highway Capacity manual (HCM) adopted? Are there any differences between the 2010 and the 2012 HCM in the calculation of Level of Service (LOS)? If so, do those differences affect the LOS calculations made for *Lawson Park*? The Department's response has been entered as Exhibit S-65.

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 convened on or about net review day 210. 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)]. The Department provided an explanatory letter to Buchan. (Exhibit S-9, p. 1)

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

- Exhibits S-1 – S-35: As enumerated on the Exhibit list provided at the start of the hearing
- Exhibit S-36: *Beaverdam Division 1*, Sheet 5 of 11 of the recorded plat
- Exhibit S-37: E-mail, Saylor to Arteche, January 23, 2013
- Exhibit S-38: E-mail, Hartley to Arteche *et al.*, January 28, 2013
- Exhibit S-39: E-mail, McDorman to Arteche *et al.*, January 28, 2013
- Exhibit S-40: Sarao hearing statement
- Exhibit S-41: Saylor hearing statement
- Exhibit S-42: Barooah hearing statement
- Exhibit S-43: Photographs (4) of Noonchester property
- Exhibit S-44: Lider drainage review report, January 24, 2013
- Exhibit S-45: Aramburu hearing statement, January 24, 2013
- Exhibit S-46: Photograph of SE 14<sup>th</sup> Street submitted by Melancon
- Exhibit S-47: E-mail, Brown to Curry, January 28, 2013
- Exhibit S-48: E-mail, Osbekoff to Arteche, January 29, 2013
- Exhibit S-49: E-mails from petition signers (apprx. 49 signators)
- Exhibit S-50: Deed of Easement, May 25, 1959
- Exhibit S-51: Aerial of Sammamish
- Exhibit S-52: Theodore J. Schepper Resume
- Exhibit S-53: Terra Associates, Inc. rebuttal testimony
- Exhibit S-54: Ryan Kahlo Resume
- Exhibit S-55: The Watershed Company response to public comments
- Exhibit S-56: Todd Oberg Resume
- Exhibit S-57: The Blueline Group response to public comments

Exhibit S-58:	E-mail, Geglia to Nelson, January 29, 2013
Exhibit S-59:	Lawson Park Traffic Impact Analysis, April 10, 2012
Exhibit S-60:	Buchan's suggested condition regarding any discovery of Native American artifacts
Exhibit S-61:	Photographs (6) of SE 14 <sup>th</sup> Street
Exhibit S-62:	Location of well and water line to Noonchester property
Exhibit S-63:	Aramburu hearing statement, January 31, 2013
Exhibit S-64:	Koloušková closing argument, January 31, 2013
Exhibit S-65:	E-mail, February 4, 2013 (Department response to examiner questions)

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

Does the application meet the criteria for preliminary subdivision approval as established within the SMC?

## FINDINGS OF FACT

1. The *Lawson Park* site is a rectangular assemblage of three tax parcels whose overall dimensions are approximately 330 feet (east-west) by 1,320 feet (north-south) which encompasses 10.05 acres. The north half of the site consists of Tax Parcels 0224069079 and 0224069108, has a street address of 24400 SE 14<sup>th</sup> Street, contains a single-family residence and associated garage, and is owned by the McIntosh family. The south half of the site consists of Tax Parcel 0224069088, has a street address of 24403 SE 14<sup>th</sup> Street, contains a double-wide mobile home residence, and is owned by the Aman family. (Exhibits S-1, S-3<sup>3</sup>, S-4, and S-9) At the present time the subject property is accessed solely from the east via SE 14<sup>th</sup> Street.

For reference purposes throughout this Decision, the total site will be referred to as the "subject property," the north half will be referred to as the "McIntosh property," and the south half will be referred to as the "Aman property."<sup>4</sup>

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<sup>3</sup> Many of the perimeter dimensions for the subject property as noted on the sheets of Exhibit S-3 are quite erroneous. For example, Sheet 3 indicates that the north property line is only 67.89 feet long while the same sheet indicates that the south property line is 2,661.65 feet long. Neither dimension is even remotely close to being accurate.

<sup>4</sup> The application, Exhibit S-1, lists the owners of the subject property as "Mollie McIntosh/Jeanette Aman." It is clear from numerous exhibits and uncontroverted testimony that the north half of the subject property is owned by the McIntosh family. As best the Examiner can recall, no one mentioned ownership of the south half during the hearing. Based upon those facts, the Examiner has concluded that Aman owns the south half of the subject property. If this conclusion is incorrect, the Examiner apologizes to whomever truly owns the south half.

Buchan proposes to subdivide the 10.05 acres into 31 lots for single-family residences, two stormwater control tracts, one open space tract, and one sensitive area tract. Buchan's proposal will be described in greater detail in Finding of Fact 12, below.

2. The McIntosh and Aman properties are separated by SE 14<sup>th</sup> Street. SE 14<sup>th</sup> Street from the west edge of the subject property easterly to 248<sup>th</sup> Avenue SE is, with but one exception which will be described below, a private street located within a 60 foot wide easement. The easement was created in 1959 by the van den Bogaerts as a "non exclusive easement for pedestrian and vehicular traffic and public utilities for the benefit of abutting lands and adjoining land to the north". (Exhibit S-50) The easement contains a clause that the owners of the property subject to the easement "agree to convey said property by deed to King County at such time as King County is willing to accept such road." (Exhibit S-50) When the area became incorporated as Sammamish, Sammamish became the successor to King County with respect to rights under the van den Bogaert easement.

The van den Bogaert easement is shaped like a cross and is between 30 and 60 feet in width. The north-south leg of the easement is about 0.75 miles long and is now 248<sup>th</sup> Avenue SE, a City street. The east-west leg is about 0.5 miles long, is on the SE 14<sup>th</sup> Street alignment, and is centered on 248<sup>th</sup> Avenue SE. (Exhibit S-50)

The 0.25 miles of SE 14<sup>th</sup> Street from the west edge of the subject property to 248<sup>th</sup> Avenue SE, except for the approximately 500 feet closest to 248<sup>th</sup> Avenue SE, currently exists as a dirt/gravel road whose driving surface is about 12 feet wide. It is gated at the west edge of the subject property to prevent through traffic. It is privately maintained by eight families. The north half of approximately the 500 feet of the easement nearest 248<sup>th</sup> Avenue SE has been dedicated/deeded to the City in conjunction with development of *Windsor Fields*. (See Finding of Fact 4, below.) A "half-street" improvement has been constructed on that portion of SE 14<sup>th</sup> Street. A "half-street" improvement consists of a sidewalk, planter strip, and curb on the development side of the right-of-way (the north side in this case) together with about 22 feet of paving.<sup>5</sup> (Exhibits S-39, S-46, and S-61 and testimony)

3. The subject property is bordered on the west by *Renaissance Division 1* (north of SE 14<sup>th</sup> Street) and *Renaissance Division 2* (south of SE 14<sup>th</sup> Street). (These subdivisions are commonly known as *Renaissance Ridge*.) The *Renaissance* subdivisions were processed and approved under King County regulations prior to incorporation of Sammamish in 1999; they were recorded in 1988 and 1999. The *Woodbridge Creek* subdivision adjoins the south line of *Renaissance Division 2*; it had been recorded before *Renaissance Division 1*. (Exhibits S-26 and S-27)

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<sup>5</sup> A "half-street" improvement is typically employed where a development fronts on only one side of an unopened or substandard street. The concept is to have the developer complete full frontage improvements on its side of the right-of-way and provide a safe, two-lane travel surface, but leave completion of the remainder of the street (curb, gutter, planter strip, and sidewalk) to the future developer of the opposing side of the right-of-way. (Official notice)

- A. *Renaissance Division 1* Lots 166 (southern portion only) through 172 back up to essentially the north half of the west edge of the McIntosh property. Those lots have widths (north-south dimension) between 49.61 feet (Lot 167) and 59.02 feet (Lot 172) and depths of approximately 110 feet. Tract T, to which Lots 173 – 178 back up, abuts the remainder of the west edge of the McIntosh property. Tract T is identified on the plat as “Open Space.” Tract T varies in depth (east-west measurement) from approximately 20 to 40 feet. Lots 173 – 178 vary in width from approximately 36 to 62 feet. (Exhibit S-26, Sheet 14)

*Renaissance Division 1* Lots 166 – 172 are subject to a 20 foot wide (east-west measurement) “TRE,” Tree Retention Easement. The TRE is to be maintained by the *Renaissance* homeowners association (HOA); use of the TRE is subject to a wildlife management plan recorded as part of the development’s covenants, conditions, and restrictions. (Exhibit S-26, Sheet 4, Note 17) Tract T is owned by the HOA and is to be used as open space. Tract T is purportedly subject to a “landscape easement” granted on July 31, 1997, to the then owners of the McIntosh and Aman properties. (Exhibit S-26, Sheet 4, Note 26) The current owners of the subject property have no knowledge of any landscape easement; their title reports do not disclose the existence of any such easement. (Testimony)

- B. *Renaissance Division 2* Tract U abuts the north 170 feet of the west edge of the Aman property. Tract U is identified on the plat as “Open Space.” (Exhibit S-27, Sheet 5) Lots 82 through 84, 88, and 89 back up to the next 230 feet of the west edge of the Aman property. Those lots have widths (north-south dimension) between 45.00 feet (Lots 83, 84, and 89) and 54.39 feet (Lot 82) and depths of approximately 125 to 145 feet. Tract M encumbers the southeast corner of *Renaissance Division 2*. It is a sensitive areas tract which is intended to preserve a wetland which is mapped as extending onto the adjoining properties. (Exhibit S-27, Sheets 4 and 7)

*Renaissance Division 2* Lots 82 through 84, 88, and 89 are subject to a 20 foot wide (east-west measurement) TRE. That TRE is subject to the same restrictions as are associated with the TRE in *Renaissance Division 1*. (Exhibit S-27, Sheet 3, Note 16) Tract U, like Tract T in *Renaissance Division 1*, is owned by the HOA and is to be used as open space. It is also purportedly subject to the same “landscape easement.” (Exhibit S-27, Sheet 3, Note 23) The current owners of the subject property have no knowledge of any landscape easement; their title reports do not disclose the existence of any such easement. (Testimony)

- C. The houses on the *Renaissance* lots listed above appear to have been built with code-minimum, five foot side yards. (Exhibit S-13)
- D. One of the main north-south streets in *Renaissance* is 242<sup>nd</sup> Drive SE which extends generally southerly from SE 8<sup>th</sup> Street, passes through a curve to the east, and terminates at the eastern boundary of *Renaissance* as SE 14<sup>th</sup> Street. The street segment from SE 8<sup>th</sup> Street to the east boundary of *Renaissance* will be referred to herein as 242<sup>nd</sup> Drive SE-SE 14<sup>th</sup>

Street. None of the lots in *Renaissance* take direct access onto 242<sup>nd</sup> Drive SE-SE 14<sup>th</sup> Street. (Exhibit S-13 and testimony)

242<sup>nd</sup> Drive SE-SE 14<sup>th</sup> Street is blocked off by a chain link fence just east of its intersection with SE 14<sup>th</sup> Way. The McIntoshes also have a fence across SE 14<sup>th</sup> Street on their side of the property line. (Testimony) There is, therefore, presently no through traffic on SE 14<sup>th</sup> Street.

- E. A gas transmission pipeline is buried within a 75 foot wide “GAS RIGHT-OF-WAY” which passes from north to south through both *Renaissance* subdivisions and the *Woodbridge Creek* subdivision. For approximately 800 feet within those subdivisions, the gas right-of-way parallels and abuts the west side of the 242<sup>nd</sup> Drive SE right-of-way. SE 8<sup>th</sup> Street, SE 11<sup>th</sup> Place, SE 14<sup>th</sup> Way, and SE 17<sup>th</sup> Place cross the gas pipeline easement. Two of the three subdivisions created parks coterminous with the gas right-of-way: Tract D in *Renaissance Division 1* and Tracts E and F in *Renaissance Division 2*.<sup>6</sup> (Exhibits S-13, S-26, and S-27) A gas transmission pipeline is buried within the gas right-of-way.
- F. No part of *Renaissance Division 1* or *Division 2* intrudes into or otherwise encumbers any portion of the subject property. (Exhibits S-26 and S-27)

4. The subject property is bordered on the east by several acreage tracts which take access from and maintain the private section of SE 14<sup>th</sup> Street. (Exhibit S-13) The abutting property owner to the McIntosh property is Noonchester. The Noonchester property encompasses about five acres divided into two tax account parcels. The Noonchesters reside on their property. The Noonchesters benefit from a “Water Line Easement and Water Use Agreement” executed in 1977 by the McIntosh family members who then owned the north half of the subject property. The easement gives the Noonchesters (and others) access to a well on the McIntosh property for domestic water purposes and to a water line from the well to their property. In the case of the Noonchesters, this right lasts for as long as they own their property and cannot be terminated by the owner of the McIntosh property. (Exhibit S-8, pp. 2, 3, and 5) The well is located near the southeast corner of Proposed Tract D; the water line runs east from the well for about 40 feet and then doglegs to the south to run within the SE 14<sup>th</sup> Street easement to the Noonchesters’ property. The well was drilled in the 1960s. It penetrated “hardpan” to encounter saturated sand and gravel at 28 feet below the surface and was terminated in hardpan at 43 feet below surface. (Exhibits S-3 {Sheet 3} and S-62 and testimony) (See Finding of Fact 14, below, for discussion of the site’s geology.)

The northwest quadrant of the 248<sup>th</sup> Avenue SE/SE 14<sup>th</sup> Street intersection contains the *Windsor Fields* subdivision, an approximate 20 lot single-family residential development. (Exhibit S-13 and testimony)

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<sup>6</sup> Whether there is a park coterminous with the gas pipeline right-of-way in *Woodbridge Creek* cannot be determined from the record.

5. The subject property is bordered on the south by an acreage tract owned by the Louie family. The Louies have recently built a single-family residence on their property approximately 35 feet south of the Aman property. (Exhibits S-13 and S-8 {pp. 38 – 40})
6. The subject property is bordered on the north by the *Windham Court* subdivision. *Windham Court* was also developed under King County jurisdiction. All of five lots and most of a sixth lot in *Windham Court* back up to the north line of the McIntosh property. The five lots are approximately 57 feet wide (east-west dimension); the sixth is approximately 82 feet wide, but abuts the McIntosh property for only about 60 feet. Those six lots appear to be about 100 feet deep (north-south). (Exhibits S-3 {Sheet 3} and S-13 and testimony)

Immediately east of *Windham Court* and, thus, immediately north of the Noonchester property, is Tract F, a large “Sensitive Area & Open Space” tract in *Beaverdam Division 1*.<sup>7</sup> Tract F extends north through the *Beaverdam* subdivision to SE 8<sup>th</sup> Street. *Beaverdam* was also developed under King County jurisdiction.<sup>8</sup> (Exhibits S-13 and S-36)

7. The Hazel Wolf Wetlands Preserve (mentioned in a number of the comment letters) is located about one mile northeast of *Lawson Park*, accessible from Windsor Drive SE, bordered by a golf course on three sides. (Testimony)

Skyline High School (mentioned in comment letters and testimony) is located in the southeast quadrant of the 228<sup>th</sup> Avenue SE/SE 8<sup>th</sup> Street intersection. (Testimony)

Eastside Catholic High School (also mentioned in comment letters and testimony) is located a short distance east of 228<sup>th</sup> Avenue SE, approximately one quarter mile north of SE 8<sup>th</sup> Street. (Testimony)

All three of the above items are visible on Exhibit S-51 but are not specifically labeled.

8. The area’s zoning pattern was established by King County before Sammamish became an incorporated city in 1999. In 2003 the City adopted its own comprehensive plan and implementing regulations under the Growth Management Act of 1990, Chapter 36.70A RCW (GMA). The City has left the zoning of the subject property unchanged through that process. (Official notice)

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<sup>7</sup> *Windham Court* was a further subdivision of *Beaverdam Division 1* Tract R, a “Future Development” tract. (Exhibit S-36)

<sup>8</sup> Although Exhibit S-36 does not include the dedications page of the recorded plat and thus does not include the recording date, it contains three pieces of information that support this statement. First, it indicates that the development had a “D.D.E.S.” file number; “D.D.E.S.” is the acronym for a department within King County government. Second, the date of the engineer’s signature across his seal is either 1986 or 1996, both of which pre-date incorporation of the City. Third, the engineer’s seal states that his registration was to expire in 1997, thus meaning that he signed the plat prior to that date.

In addition, what eventually became *Windham Court* began life as Tract R in *Beaverdam Division 1*. (Exhibit S-36) Sworn testimony stated that *Windham Court* had been developed under King County jurisdiction. In order for that to happen, Tract R also had to have been platted under King County jurisdiction.

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 (4) dwelling units per acre, just as it was under the prior King County jurisdiction. Adjacent properties to the north, east, south, and southwest are also designated/zoned R-4; the 40± acre *Renaissance* subdivisions to the west and the *Wesley Park* area a short distance to the southeast along 248<sup>th</sup> Avenue SE are designated/zoned R-6 (residential with a maximum density of six (6) dwelling units per acre). (Exhibits S-11 and S-12)

9. The maximum permissible lot yield under the subject property's R-4 zoning, calculated in accordance with procedures spelled out in the SMC, is 32.7 dwelling units. (Exhibit S-20) Fractional results "of 0.50 or above shall be rounded up", those "below 0.50 shall be rounded down." [SMC 21A.25.070(4)] Therefore the maximum permissible lot yield is 33 dwelling units.
10. The subject property, although nearly level, does slope ever so gently both northeast and southwest from SE 14<sup>th</sup> Street. The elevation of both the southeast and southwest corners of the McIntosh property is 538 feet. The property is virtually level along its west side: The elevation of the northwest corner is approximately 537 feet. The two lowest elevations occur along the east property line: A small swale midway along the property line has an elevation of approximately 530 feet; the elevation along the property line then rises to approximately 535 feet before dropping to elevation 528 feet at the northeast corner, thus resulting in a drop across the north edge of the property from 537 feet to 528 feet. (Exhibit S-3, Sheet L1.0)

The Aman property drops about six feet along its east boundary from 536 to 530 feet. It drops 10 feet along its west boundary from 538 to 528 feet, matching the drop along the east side of the McIntosh property, thus resulting in a drop across the south edge of the property from 530 feet to 528 feet. (Exhibit S-3, Sheet L1.0)

11. Aquatic features on and off the subject property affect the proposed plat design.
  - A. Pond A and associated features. Pond A is a small, completely artificial pond dug in the north central area of the McIntosh property. Pond A is roughly 20 feet in diameter and located about 60 feet west of the McIntosh/Noonchester property line. Pond A receives runoff from French drains serving the McIntosh residence. During heavy rainfall events Pond A discharges onto the Noonchester property in a shallow, defined swale. Neither Pond A nor the discharge swale are regulated aquatic features under the City's Environmentally Critical Areas regulations, Chapter 21A.50 SMC. (Exhibits S-3 {Sheet 3}, S-15, S-17 and testimony)
  - B. Noonchester ponds. Drainage from Pond A feeds two somewhat larger, artificial ponds on the Noonchester property. The Noonchesters dug those ponds shortly after building their residence in 1978. (The approximate location of one of the Noonchester ponds is shown on Exhibit S-3, Sheet 3. No field work was done to confirm the location or extent of that pond or any features associated with it.) Buchan's wetland consultant believes, based upon

observations made from the McIntosh property, that the Noonchester ponds may have been at least partly dug within a wetland area and, thus, may be regulated under Chapter 21A.50 SMC. The Noonchester ponds apparently drain towards Tract F in *Beaverdam*. (Exhibits S-15, S-17, and S-44 {especially Photos 1 and 2} and testimony)

- C. *Beaverdam* wetland. Tract F in *Beaverdam* contains a large Category II wetland. (Wetland D in Exhibit S-15.) Its regulatory buffer does not encroach on the subject property. (Exhibits S-3 {Sheet 3} and S-15)
  - D. *Renaissance Division 2* and *Woodbridge Creek* wetland. Tract M in *Renaissance Division 2* and Tract A in *Woodbridge Creek* contain a Category II wetland which comes to within a few feet of the western edge of the Aman property. Discharges from that wetland flow westerly through a pipe system within *Woodbridge Creek* into the *Woodbridge Creek* detention pond in the southwest corner of that subdivision. (Exhibits S-3, S-15, S-17, and S-57)
  - E. The Louie property wetlands. Three Category III wetlands exist on the Louie property, south of the Aman property: One in the northwest corner, one through the south central part of the property, and the third in the far southeast corner. (Exhibit S-18, September 19, 2008 Wetland Resources, Inc. report, beginning 9 pages after p. 3-14. (The intervening pages are not numbered; the report's pages are numbered using a different pagination system.)) While both the northwest and central Louie wetlands may at one time have been part of the *Renaissance Division 2* and *Woodbridge Creek* wetland, it appears that the central Louie wetland has since been separated and operates independently of the other. (Exhibits S-3, S-15, S-17, and S-57<sup>9</sup> and testimony)
12. Buchan proposes to subdivide the subject property into 31 lots for single-family residential development, two stormwater control tracts, one open space tract, and one sensitive area tract. All existing buildings on the subject property will be removed. (Exhibit S-3)

The SE 14<sup>th</sup> Street easement will be dedicated across the width of the property and a full width standard local access street section will be built to the east edge of the property. (Exhibit S-3) Buchan takes no position on the question of whether SE 14<sup>th</sup> Street should be opened all the way to 248<sup>th</sup> Avenue SE. (Testimony)

The McIntosh property would be divided into 16 lots, the open space tract, and a stormwater control tract. Tract D, the open space tract, would be located in the southwest corner of the McIntosh

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<sup>9</sup> The consultant who authored Exhibit S-57 has his compass directions reversed in one part of the document. He initially states that the *Renaissance Division 2* and *Woodbridge Creek* wetland "has an overflow path to the east rather than the west." (Exhibit S-57, unnumbered p. 2, Response to other Neighbors comments, ¶ 1) That statement is incorrect. The flow path description which follows that statement clearly describes a path that extends towards the west and south. Further, the revised Technical Information Report page 3-6 which follows in Exhibit S-57 correctly describes the flow as towards the west as do the attached South Basin Downstream Map and associated photographs.

property and would include the well site. Buchan's proposal, as reflected by its submittals, calls for elimination (officially "decommissioning") of the well. Tract G, the stormwater control tract, would extend the full width of the north end of the property. (Exhibit S-3)

The Aman property would be divided into 15 lots, the sensitive area tract, and the other stormwater control tract. Tract E, the sensitive area tract, encumbers the southwest corner of the Aman property, providing a 75 foot buffer from the near edge of the *Renaissance Division 2* and *Woodbridge Creek* wetland. Tract F, the stormwater control tract, extends across the remainder of the south end of the property. (Exhibit S-3)

The proposed average lot size is 8,332 square feet (SF); the smallest lot (Proposed Lot 7) would contain 6,608 SF. For the most part, all proposed lots are 60 feet wide and slightly over 135 feet deep. All proposed lots are wider than adjoining lots in *Renaissance*. (Exhibit S-3) All proposed lots meet applicable zoning standards. (Exhibit 9)

13. Buchan's preliminary grading plan indicates that the subject property will be graded such that all lots, except the seven southernmost lots, would be within a half-foot of elevation 538; the southernmost lots would drop down to elevations of about 534 feet. (Exhibit S-3, Sheet 3)

Pond A will be filled. (Exhibit S-3, Sheet 3) Buchan has received required permits from the U.S. Army Corps of Engineers and the Department of Ecology to fill Pond A. (Exhibit S-55, p. 2)

No fill is proposed along the west side of the McIntosh property: The proposed grades essentially match existing grades. Proposed Lots 10 – 13 on the east half of the McIntosh property would have some fill placed on them. The preliminary grading plan indicates that a rockery ranging up to four (4) feet in height would be placed along the eastern edge of those lots to retain fill. (Exhibit S-3, Sheets 3 and L1.0)

No fill is proposed along the east side of the Aman property: The proposed grades essentially match existing grades. The preliminary grading plan indicates that up to four (4) feet of fill would be placed on Proposed Lot 26 along the western side of the Aman property. The preliminary grading plan indicates that the western edge of that fill would slope down towards the common boundary with *Renaissance*. (Exhibit S-3, Sheets 3 and L1.0) Buchan's engineers are already working on the final engineering plans for the subdivision. In their present version, those plans indicate that a rockery up to four (4) feet in height would be placed along part of the west edge of Proposed Lot 26 to retain the fill.<sup>10</sup> (Exhibit S-10 and testimony)

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<sup>10</sup> The existence of these final engineering working plans created some confusion during the hearing. Those plans are not of record: This is a preliminary subdivision review, not a final subdivision review. However, some hearing participants had access to and used those plans in their testimony. Exhibit S-10 contains a fragment of one sheet of those plans (a fact which the Examiner did not realize until after the hearing). That is the only part of those plans that made it into the record.

14. Ten test pits, varying from seven (7) to 13 feet in depth, were dug scattered across the subject property. Test Pits 1 and 2 are within the north stormwater detention pond; Test Pit 7 is within the south stormwater detention pond. (Exhibit S-28, Figure 2 <sup>11</sup>) Each of the test pits encountered slightly less than one (1) foot of forest duff on the surface, weathered till to a depth of between 1.5 to 4 feet below surface, with dense, consolidated till (“hardpan”) below the weathered till. Moderate groundwater seepage, evidence of “interflow” above the hardpan, was encountered between 1.5 to four (4) feet below surface. (Exhibit S-28 {Appendix A, Figures, A-2 – A-11} and testimony)

Test pits 1 and 2 encountered hardpan at 2.5 and 3 feet below surface, respectively, which would equate to approximate elevations 534.5 and 529, respectively. Groundwater seepage was encountered in each test pit at 2 feet below surface, which would equate to approximate elevations 535 feet and 530 feet, respectively. (Test pit locations from Exhibit S-28, Figure 2; hardpan and groundwater seepage depths from Exhibit S-28, Appendix A, Figures A-2 and A-3; ground elevations from Exhibit S-3, Sheet L1.0)

Test pit 7 encountered hardpan at 3 feet below surface, which would equate to approximate elevation 529. Groundwater seepage was encountered at 2 feet below surface, which would equate to approximate elevation 530 feet. (Test pit location from Exhibit S-28, Figure 2; hardpan and groundwater seepage depth from Exhibit S-28, Appendix A, Figure A-8; ground elevation from Exhibit S-3, Sheet L1.0)

15. The subject property lies within two drainage subbasins, the Inglewood drainage subbasin and Laughing Jacobs drainage subbasin. The McIntosh property lies within the Inglewood subbasin and is subject to Flood Area Flow Control (Level 3) and Sensitive Lake Water Quality Treatment. The Aman property lies within the Laughing Jacobs subbasin and is subject to Conservation Flow control (Level 2) and Sensitive Lake Water Quality Treatment. (Exhibits S-9 {pp. 3 and 4, Finding 16} and S-18 {p. 1-2})
16. The City has adopted the 2009 King County Surface Water Design Manual (2009 KCSWDM) as its surface water design manual. [Chapter 13.20 SMC and Exhibit S-9] The 2009 KCSWDM is a public document which is available on-line at “<http://your.kingcounty.gov/dnrp/library/water-and-land/stormwater/surface-water-design-manual/MainBody-2009.pdf>”. (Official notice)

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<sup>11</sup> The Noonchesters’ counsel used a copy of Figure 2 from the February 9, 2012, version of the Geotechnical Report for demonstrative purposes in the hearing. That Figure had a reversed north arrow and depicted a different version of the proposed plat than that before the Examiner. The demonstrative figure was not entered into the record although the hearing participants commented on the erroneous north arrow. The Geotechnical Report was revised on July 17, 2012. Figure 2 in the revised report has its north arrow pointing in the correct direction and depicts the currently proposed plat design. (Exhibit S-28) The July 17, 2012, version of the report is the document in the record of this hearing, not the earlier version.

17. Buchan has had a preliminary drainage plan prepared for *Lawson Park*. (Exhibit S-18<sup>12</sup>) Basically, the preliminary plan proposes to collect runoff in a pipe conveyance system, transport it to either of two detention ponds, one each at the north and south ends of the subject property, and then discharge the accumulated runoff through level spreaders in the northeast and southwest corners of the subject property. (Exhibits S-3 {Sheet 4} and S-18)

Runoff from much of the interior street surface would flow into 12 “rain gardens” (bioretention swales) located between the sidewalks and travel surfaces of the interior streets before being piped into the detention ponds. The rain gardens provide some water quality treatment of the street runoff. (Exhibit S-3, Sheet 4, and testimony) All or portions of four rain gardens would lie within 100 feet of the domestic water well on the McIntosh property. (Exhibit S-3, Sheet 3)

Foundation drains would also be connected to the stormwater collection system and transported to the detention ponds. (Testimony)

The maximum discharge rate from either pond has been designed to be less than 0.5 cfs (cubic feet per second). Discharge from the north pond would leave the site as sheet flow onto the northwest corner of the Noonchester property. Discharge from the south pond would leave the site as sheet flow into the buffer of the *Renaissance Division 2* and *Woodbridge Creek* wetland. (Exhibits S-3 {Sheet 4} and S-18)

In August, 2012, Buchan offered to pipe the discharge from the north pond across the corner of the Noonchester property into the *Beaverdam* wetland to the north. (Exhibit S-33, p. 2) To date, Noonchester has not accepted that alternative.

The preliminary drainage plan does not propose to replicate the present flows from Pond A onto the Noonchester property. (Exhibits S-3 {Sheet 4} and S-18) Buchan’s engineer testified that the discharge could easily be split to provide flows into the Noonchester ponds. If the north detention pond’s discharge was split, the rate of discharge through the level spreader would be on the order of 0.21 cfs. (Exhibit S-57)

The bottom of both detention ponds will be excavated into the hardpan, below the interflow level. Design parameters in the 2009 KCSWDM consider and account for ground water. (Exhibit S-57)

18. “Streets and highways are most effectively classified by their function, according to the character of the service they are intended to provide.” [Public Works Standards (PWS).15.050.A, ¶ 1] Section PWS.15.050.A lists a number of City arterials “to assist the developer in determining the classification of a particular street. ... If a street or portion of a street is not listed, ... the Public Works Department [shall] determine the correct street classification.” [PWS.15.050.A, ¶ 6]

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<sup>12</sup> The Noonchesters hired a licensed civil engineer (Lider) to review the preliminary drainage plan on their behalf. They provided him with materials to review. It became clear during the hearing that Lider had not received a complete copy of Exhibit S-18.

SE 8<sup>th</sup> Street is a designated collector arterial.<sup>13</sup> (Exhibit S-58, PWS.15.050 excerpt) “Collector arterials distribute trips from principal and minor arterials to the ultimate destination ... Design year ADT [Average Daily Traffic] is approximately 2,500 to 15,000. ...” [PWS.15.050.B.3; included in Exhibit S-58]

Neither 242<sup>nd</sup> Drive SE nor SE 14<sup>th</sup> Street are listed arterials. (Exhibit S-58, PWS.15.050 excerpt) The Department of Public Works (DPW) classifies both as local access streets.<sup>14</sup> (Testimony) “Local feeder streets serve as primary access to the development from the adjacent street system. They distribute traffic from local or minor streets in residential neighborhoods and channel it to the arterial system. ... Typical ADT may range from about 400 to 1,500. Abutting residences are oriented away from the feeder.” [PWS.15.050.B.4.a; included in Exhibit S-58]

19. Sight distance is calculated for a “design speed” which is typically 5 mph over the posted speed limit. Two types of sight distance are used in traffic engineering: Entering sight distance and stopping sight distance. Entering sight distance is the distance required for a vehicle on the side street to safely enter the traffic flow on the major street. Stopping site distance is the distance required to safely stop when a low object is seen in the street ahead.

The City asked Buchan to calculate available sight distance at the 242<sup>nd</sup> Drive SE/SE 11<sup>th</sup> Place intersection (presumably because the chain link barrier blocking 242<sup>nd</sup> Drive SE will be removed to allow access to *Lawson Park* from the west via SE 14<sup>th</sup> Street). The required entering sight distance for a 25 mph design speed is 355 feet. The available entering sight distance at that intersection will exceed 420 feet in both directions. The required stopping sight distance for a 25 mph design speed is 200 feet. Stopping sight distance exceeds 470 feet in both directions. (Exhibit S-25, p. 5)

20. Subsection 14.15.020(6) SMC requires that trip generation rates published by the Institute of Transportation Engineers (ITE) be used in predicting traffic volumes associated with proposed developments. The ITE rates for single-family detached housing are 9.57 trips per house on an average weekday (AWDT), 0.75 trips per house during the average weekday A.M. peak hour, and 1.01 trips per house during the average weekday P.M. peak hour.<sup>15</sup> (Exhibit S-25, p. 3)

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<sup>13</sup> Buchan’s traffic engineer offered corrections to his Traffic Impact Analysis (TIA). One such “correction” is to identify SE 8<sup>th</sup> Street as a “minor arterial” rather than a “collector arterial.” (Exhibit S-58) In fact, PWS.15.050.A, included as part of Exhibit S-58, classifies SE 8<sup>th</sup> Street as a collector arterial, but NE 8<sup>th</sup> Street as a minor arterial. The engineer confused NE with SE 8<sup>th</sup> Street. The “correction” is unwarranted.

<sup>14</sup> At least one City Councilperson believes “that 242<sup>nd</sup> Drive SE is intended to be a connecting arterial, without driveways”. (Exhibit S-8, p. 11 *et al.*) The City does not have a “connecting arterial” street classification. Buchan testified that 242<sup>nd</sup> Drive SE was designed under King County standards as a collector arterial. DPW testified that while 242<sup>nd</sup> Drive SE as built embodies features characteristic of an arterial (for example, no driveway curb cuts), the City does not currently classify it as an arterial.

<sup>15</sup> The A.M. and P.M. peak hours are the single hour in the morning and afternoon, respectively, during which the highest volumes of traffic are traveling on the local street system. (See SMC 14.05.010(20).) The “peak hour” does not represent the entire morning or afternoon “rush hour” unless the rush hour happens to last less than one hour. As everyone who lives in this region knows from personal experience, the morning and afternoon weekday rush hour each lasts much

Given those rates, the trip generation prediction for *Lawson Park* is 297 AWDT, 23 A.M. peak hour, and 31 P.M. peak hour (with credit for traffic associated with the two existing residences). (Exhibit S-25, p. 3)

21. The City has adopted a Transportation Concurrency Management system to implement the transportation level of service policies within its comprehensive plan. [Chapter 14.15 SMC] Under Chapter 14.15 SMC, an applicant prepares and submits a transportation impact analysis (TIA) which is reviewed by (DPW). If the TIA demonstrates compliance with established levels of service (LOS), a concurrency certificate is issued. The City's adopted LOS threshold is LOS D. (Exhibit S-65)
22. An initial TIA was prepared and submitted which presumed that SE 14<sup>th</sup> Street would not be opened for traffic through to 248<sup>th</sup> Avenue SE. (Exhibit S-59) The City asked Buchan to have the TIA redone with calculations assuming that SE 14<sup>th</sup> Street would be opened for traffic.<sup>16</sup> (Exhibit S-25)

The ADT volume on 242<sup>nd</sup> Drive SE in 2012 is 810; the TIA projects that it will increase to 1,220 by 2014 with the project traffic, area growth, and opening of SE 14<sup>th</sup> Street. (Exhibit S-25, Fig. 13) Buchan's consultant believes that opening SE 14<sup>th</sup> Street will add only about 80 ADT to 242<sup>nd</sup> Drive SE. (Testimony) The TIA concludes that resulting LOSs will be in the B and C range. (Exhibits S-25 and S-65)

23. On April 30, 2012, DPW issued a Certificate of Concurrency for *Lawson Park*. (Exhibit S-24)

The developer will be required to pay transportation impact fees under Chapter 14.20 SMC.<sup>17</sup> As of September 13, 2012, the fee was \$14,853.96 per single-family residence. (Exhibit S-25, p. 6)

24. The subject property is generally wooded except where structures and drives have been built. The McIntosh property is dominated by deciduous species, mostly big-leaf maple and red alder; the canopy is rather sparse. The McIntosh property appears to have been logged in or prior to the 1930s. The Aman property is dominated by evergreens, mostly red cedar plus Douglas fir, western hemlock, big-leaf maple, and red alder. (Exhibits S-13, S-14 {unnumbered p. 2}, and S-29 {p. 2})

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longer than one hour. Thus, the "peak hour" represents the single hour with the highest traffic volume within the entire "rush hour." (Official notice)

The SMC mandates use of the ITE rates unless the applicant wants to try to prove that some other rate is more appropriate. [SMC 14.15.020(6)] Staff has no authority to force a different rate on an applicant.

<sup>16</sup> Some project opponents criticized the TIA because it used an out-dated version of the Highway Capacity Manual (HCM). (Exhibit S-8, p. 22, *et al.*) The City's LOS standards are based upon the 4<sup>th</sup> Edition of the HCM, issued in 2000. The 5<sup>th</sup> Edition HCM was issued in 2010. (One witness erroneously stated that it had been adopted in April, 2012, thus leading to the inaccurate year in the Examiner's questions to the City. See Exhibit S-65.) The LOS standards and methods of calculating same are identical in both the 2000 and 2010 editions of the HCM. Both editions would yield identically the same results. (Exhibit S-65) Therefore, this objection lacks substantive import..

<sup>17</sup> Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

25. The City has adopted tree retention requirements. [SMC 21A.35.210 - .240] New subdivisions must retain at least 25% of all “significant” trees<sup>18</sup> located outside of protected sensitive areas [SMC 21A.35.210(2)(a)] and essentially all significant trees located within protected environmentally sensitive areas [SMC 21A.35.210(2)(b)] There is a proviso associated with the retention requirement: “trees retained within environmentally sensitive areas and associated buffers may be counted for up to 50 percent of the tree retention requirement in subsection (2)(a) of this section.” [SMC 21A.35.210(2)(b)] Further, up to 50% of the trees to be retained may be replaced by new trees upon approval by the Department; replacement ratios range from 4:1 to 8:1 depending upon the size of the tree to be replaced. [SMC 21A.35.210(6) and .240(1)(c)]

The regulations include criteria for selecting which trees to retain on a development site:

- (a) Trees located within healthy, vegetated groups and stands rather than as isolated trees scattered throughout the site;
- (b) Trees that have a reasonable chance of survival once the site is developed;
- (c) Trees that will not pose a threat to persons or property;
- (d) Trees that can be incorporated into required landscaping or can be used to screen the site from adjacent properties;
- (e) Trees adjacent to open space, sensitive area buffers or sensitive area tracts;
- (f) Trees having a significant land stability function; or
- (g) Trees that meet the definition of heritage tree.

[SMC 21A.35.210(5)]

26. The subject property contains 518 significant trees of which seven (7) are dead.<sup>19</sup> The number of live significant trees is 511, of which seven (7) are located within Proposed Tract E, the sensitive area tract. (Exhibit S-14) Pursuant to SMC 21A.35.210(2)(a), 126 (25% of 504) significant trees outside of sensitive areas and the seven (7) significant trees within the sensitive area tract must be retained. Pursuant to the proviso in SMC 21A.35.210(2)(b), the 7 trees within the sensitive area may count towards the 126 tree total.

Buchan proposes to retain 121 significant trees outside the environmentally sensitive area plus the 7 trees within Tract E, for a total of 128 significant trees retained. The retained trees: are in clusters along the rear lines of Proposed Lots 1 – 5, 13 – 16, 17 – 20, 22 – 26, 27 and 28, 30, and 31; are within open space Tract D; and are in two corners of drainage Tract G. (Exhibits S-3 {Sheet 3} and S-14)

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<sup>18</sup> The SMC defines a “significant tree” as either a coniferous tree with a diameter at breast height (DBH) of 8” or more or a deciduous tree with a DBH of 12” or more. [SMC 21A.15.1333]

<sup>19</sup> Buchan’s arborist accidentally surveyed 65 additional trees that were later determined to be located off the subject property. This error occurred because the arborist did not have the benefit of a property line survey. (Exhibit S-14)

In addition to the retained trees, Buchan proposes to landscape the area north and south of the two stormwater detention ponds and plant 35 street trees. (Exhibit S-3, Sheet L1.0)

27. The record contains evidence that appropriate provisions have been made for:
- A. Open space. Proposed Tract D will double as open space and recreation area. The tract covers 13,432 SF. The domestic water well is located within this tract. (Exhibit S-3 Sheets 1 and 3)
  - B. Drainage ways. See Findings of Fact 14 – 17, above.
  - C. Streets and roads. DPW has reviewed and approved the proposed public and private streets within *Lawson Park*. (Exhibit S-9)

When the Staff Report was prepared on January 21, 2013, the City's position regarding SE 14<sup>th</sup> Street was set forth in Finding 20:

A 500-ft long public road gap on SE 14th Street will exist after the dedication of roads within the proposed development project. A 60-ft wide easement for road purposes runs with the land that the City may in the future request to be dedicated as public right-of-way. The City may consider future paving and road dedication of SE 14th Street to eliminate the public road gap.

(Exhibit S-9, p. 4, Finding 20)

On the first day of the hearing, the Department stated that all barriers on SE 14<sup>th</sup> Street would be removed after completion of *Lawson Park* allowing full through traffic between *Renaissance* and 248<sup>th</sup> Avenue SE. (Testimony)

On the second day of the hearing, DPW advised that the City intended to invoke the deed-on-demand clause in the van den Bogaert easement (See Finding of Fact 2, above.) and would construct a 22 foot wide paved street section with a separated six (6) foot wide gravel path along its north side to connect SE 14<sup>th</sup> Street in *Lawson Park* to the existing half-street section in front of *Windsor Fields*. Although such a street section is not a standard City street section, it is essentially what presently exists on 248<sup>th</sup> Avenue SE south of SE 14<sup>th</sup> Street. (Testimony) In addition, 22 feet of pavement would equal the width required for the travel lanes on a two-lane collector arterial. [PWS.15.040, Table 1] The City wants Buchan “to consider” including a neighborhood traffic circle at the Road A/SE 14<sup>th</sup> Street intersection in the center of the plat. Under questioning from the Examiner, the City indicated that “to consider” means just what it says: Just think about providing a traffic circle. (Testimony)

- D. Alleys. The proposed design does not utilize alleys. (Exhibit S-3)

- E. Other public ways. No need for other public ways within the subdivision exists. (Exhibit S-3)
- F. Transit stops. The record contains no request for transit stops.
- G. Potable water supply. The Sammamish Plateau Water & Sewer District (SPWSD) issued a Certificate of Water Availability for *Lawson Park* on April 17, 2012. Three days later the preliminary subdivision application was filed, thus fulfilling the Certificate's requirement that an application be filed within one year of issuance of the Certificate. (Exhibit S-21) In addition, Buchan has now entered into a Developer Agreement with SPWSD for water service. (Exhibit S-9, p. 3, Finding 6)
- H. Sanitary wastes. The Sammamish Plateau Water & Sewer District (SPWSD) issued a Certificate of Sewer Availability for *Lawson Park* on April 17, 2012. Three days later the preliminary subdivision application was filed, thus fulfilling the Certificate's requirement that an application be filed within one year of issuance of the Certificate. (Exhibit S-21) In addition, Buchan has now entered into a Developer Agreement with SPWSD for sewer service. (Exhibit S-9, p. 3, Finding 6)
- I. Parks and recreation. The SMC requires that the subdivision include not less than 12,090 SF of active recreation area within the subdivision. The proposal provides 13,432 SF in Proposed Tract D. (Exhibit S-3) In addition, the developer will have to pay a park impact fee pursuant to Chapter 14A.20 SMC.<sup>20</sup> (Exhibit S-9, p. 5, Finding 30)  
  
In addition, Buchan proposes to install a children's play feature in Tract D. (Exhibit S-3, Sheet L1.0) As depicted, the placement of the play feature may conflict with the location of the existing domestic water well.
- J. Playgrounds. See Finding 27.I, above.
- K. Schools and schoolgrounds. Lots within *Lawson Park* are subject to Chapter 21A.105 SMC which imposes school impact fees on new single family dwelling units to fund school system improvements needed to serve new development.<sup>21</sup> (Exhibit S-9, p. 5, Finding 31)
- L. Safe walking conditions for students who only walk to and from school. The subject property is within the attendance areas for Discovery Elementary, Pine Lake Middle, and Skyline High Schools. Students attending all three of those schools will walk to a school bus stop at the 242<sup>nd</sup> Drive SE/SE 11<sup>th</sup> Place intersection in *Renaissance*. (Exhibit S-23)

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<sup>20</sup> Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

<sup>21</sup> Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

Sidewalks will be constructed on all interior streets and will connect to the sidewalks along 242<sup>nd</sup> Drive SE-SE 14<sup>th</sup> Street in *Renaissance*. (Exhibit S-3) There are neither schools nor school bus stops to the east to which public school students would need to walk. (Exhibit S-23)

28. The adopted comprehensive plan contains many policies regarding environmental protection. The City has adopted Chapter 21A.50 SMC, Environmentally Critical Areas, to implement many of those policies. Chapter 21A.50 SMC regulates treatment of erosion hazard areas, frequently flooded areas, landslide hazard areas, seismic hazard areas, critical aquifer recharge areas, wetlands, fish and wildlife habitat conservation areas, wildlife habitat corridors, streams, and lakes/ponds. [SMC 21A.50.220 - .355]
29. The wildlife habitat corridor provisions of SMC 21A.50.327 do not apply to the *Lawson Park* site. Habitat corridor regulations apply “along the designated wildlife habitat network”. [SMC 21A.50.327] The subject property is not part of a designated wildlife corridor. (Exhibit S-31)
30. Sammamish’s State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Lawson Park* on November 19, 2012. (Exhibit S-6) The DNS was not appealed. (Exhibit S-9, p.4, Finding 21)
31. The Department has analyzed the *Lawson Park* proposal, finds it to be in compliance with applicable standards and requirements, and recommends approval subject to a number of conditions. (Exhibit S-9)
32. Buchan agrees to accept the conditions as recommended by the Department. (Testimony)
33. There is significant opposition to *Lawson Park*. Opponents, generally speaking, fall into one or more of four categories: *Renaissance* residents; residents along SE 14<sup>th</sup> Street east of *Lawson Park*; the Noonchesters; and Louie.
  - A. *Renaissance* residents have expressed a variety of reasons to oppose *Lawson Park*. Some believe that they were promised a wooded tract behind their homes when they bought and that the clearing involved in *Lawson Park* goes against that promise. Some decry the loss of wildlife habitat, especially as related to use of the site by pileated woodpeckers. Some believe that the houses that will be built in *Lawson Park* will be too big, closer together than their residences, and incompatible with their houses. Some believe that the additional traffic from *Lawson Park* will make their streets unsafe for children; some mention walkers traveling to the Hazel Wolf Wetland along SE 14<sup>th</sup> Street being in danger from motorists. Some believe that opening SE 14<sup>th</sup> Street through to 248<sup>th</sup> Avenue SE would greatly increase traffic through their neighborhood. They particularly argue that high school students living to the south and east would find the SE 14<sup>th</sup> Street corridor to be the shortest route to drive to both Skyline and Eastside Catholic High Schools. They believe that any opening of SE 14<sup>th</sup>

Street should be coupled with installation of traffic calming devices along the corridor. Some question the safety of allowing construction truck traffic to travel 242<sup>nd</sup> Drive SE which parallels and abuts a gas transmission pipeline easement. Some believe a perimeter greenbelt should be required and the number of dwellings reduced. Some distrust Buchan's wetlands analysis because it was not performed by a City-hired consultant. Some simply object to construction noise (even if compliant with City construction hours regulations) in their neighborhood. (Exhibits S-8, S-38 – S-42, and S-47 and Sarao, Saylor, Barooah, and Voight testimony)

An on-line petition opposing approval of *Lawson Park* contained approximately 50 signatures as of the close of the hearing. (Exhibits S-37 and S-49)

- B. The residents who live along SE 14<sup>th</sup> Street between *Lawson Park* and 248<sup>th</sup> Avenue SE are primarily concerned with the effect of opening SE 14<sup>th</sup> Street to through traffic. They believe that in its current condition the street is completely unsafe for additional traffic. They further object to having to maintain a street used by the general public. They believe the transition between the half-street section in front of *Windsor Fields* and the 12 foot dirt/gravel lane to its west is inherently unsafe for large traffic volumes. They believe the amount of cut-through traffic will be much greater than predicted by Buchan's traffic consultant. They, too, note that the SE 14<sup>th</sup> Street corridor would be the shortest route for students residing in the *Wesley Park* area to the south to reach the two nearby high schools. They point out that high school drivers are not the safest on the highway. They believe it should be paved and lighted and traffic calming devices installed before being opened to through traffic. (Exhibit S-39 and McDorman, Raines, and Melancon testimony)
- C. The Noonchesters believe that stormwater discharge from the level spreader in Tract G will lead to saturated soils in the northwest corner of their property, decreasing its development potential and potentially killing trees in the area.<sup>22</sup> They also believe that the level spreader would concentrate stormwater discharge and thus violate the 2009 KCSWDM requirement to discharge runoff in its natural location. They also believe that development of the plat would violate their water well and water line easement. They further believe that placement of rain gardens within 100 feet of the well would violate 2009 KCSWDM requirements. They also want their common property line with *Lawson Park* to be fenced to prevent trespass by children. They believe that additional details should be required, especially regarding drainage facilities, before preliminary subdivision approval. (Exhibits S-8 {pp. 1 – 7}, S-44, S-45, and S-63 and Noonchester and Lider testimony)
- D. Louie primarily seeks assurance that discharges from the level spreader in Tract F will not harm his property. His concerns appear to have arisen primarily from the original drainage submittals which stated that runoff from Tract F would flow first into the *Renaissance* and

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<sup>22</sup> Most of the trees on that part of the Noonchester property are red alder and black cottonwoods, species which actually thrive in saturated soils. (Testimony)

*Woodbridge Court* wetland and then across his driveway into the wetland in the south central part of his property. Louie also seeks assurance that the perimeter of the detention pond will be landscaped (Exhibit S-3, Sheet L1.0, depicts perimeter pond landscaping meeting code requirements). Finally, he decries the loss of wildlife habitat and corridors. (Exhibit S-8 {pp. 38 – 40} and Louie testimony)

34. One *Renaissance* resident noted seeing a pileated woodpecker in their back yard which abuts the subject property. (Exhibit S-8, p. 12) Pileated woodpeckers are a “candidate” species. Reconnaissance of the site by a wildlife specialist identified indications of recent pileated woodpecker foraging in at least three dead or dying trees on the subject property. On the other hand, large (27 to 40 inch breast height diameter) dead or dying trees required for nesting habitat for pileated woodpeckers are not present on the subject property. The subject property does contain large live trees that if they started to die in the future, could provide nesting habitat. Further limiting the site’s potential as nesting habitat is its small overall size, even if no part of it were ever developed. (Exhibit S-29)

A number of the conifers proposed to be retained under tree retention requirements are of sufficient size to be potential future pileated woodpecker nesting habitat (should they begin to die and decay). In addition, Buchan has proposed to retain eight snags amidst the live trees being retained to serve as foraging sites. (Exhibits S-3 {Sheet 3} and S-29)

35. The Snoqualmie Indian Tribe has asked that any Native American artifacts inadvertently uncovered during site development be protected. (Exhibit S-48) Buchan presented language for an additional condition which would require cessation of site work until such a discovery could be evaluated by the Snoqualmie Tribe. (Exhibit S-60) Buchan also testified that state law requires work stoppage if artifacts are uncovered during site work.
36. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

### LEGAL FRAMEWORK <sup>23</sup>

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]

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<sup>23</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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, *Lawson Park* is vested as of April 20, 2012.

#### 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 neighbors' concerns, with but a couple of exceptions, are not founded on actionable bases. All evidence indicates that *Lawson Park* complies with those regulations enacted by the City against which preliminary subdivision applications are to be evaluated. The Conclusions of Law which follow will demonstrate that compliance.
2. Because of the significant interest in this application and the multiplicity of issues of concern, the Conclusions of Law will be grouped by general topic. A basic exposition of the controlling review framework will be followed by discussion of the major issues of concern to the neighbors. Compliance with the specific criteria for approval will then follow with discussion of conditions of approval concluding the analysis. Neighborhood questions and concerns not addressed herein are beyond the scope of preliminary subdivision review and do not warrant individual consideration.
3. The Conclusions in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.
4. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

#### Review Framework

5. One of the legal premises underlying the land use planning and regulatory system in Washington State is that decisions on individual applications must be based upon adopted ordinances and policies rather than upon the personal preferences or "general fears" of those who may currently live in the neighborhood of the property under consideration. [*Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P.2d 1119 (1997); *Indian Trail Prop. Ass'n. v. Spokane*, 76 Wn. App. 430, 439, 886 P.2d 209 (1994); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d. 985 (1990); *Woodcrest Investments v. Skagit County*, 39 Wn. App. 622, 628, 694 P.2d 705 (1985)] The

evaluation of the *Lawson Park* application must, therefore, be based upon officially adopted City ordinances, plans and policies as well as legally accepted principles.

6. The role of a comprehensive plan in development review is different now than it was before enactment of the Growth Management Act, Chapter 36.70A RCW, 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:

- (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.

7. 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]

8. Another applicable general principal is that a developer cannot be required to correct existing problems. A developer can be required to mitigate impacts caused by a proposed development. A developer may also be required to mitigate those situations where the proposed development will exacerbate an existing problem. To be legally supportable, a mitigation requirement must have a rational nexus to a problem created or exacerbated by the proposed development and the amount of mitigation required must be roughly proportional to the impact caused by the development.
9. The neighbors must understand that state law, as implemented by City ordinances, establishes a two-step process for the review and development of land subdivisions. By definition, a preliminary plat is a "true and approximate drawing of a proposed subdivision showing the general layout of streets, alleys, lots, tracts, and other elements of a subdivision required by" City code. [SMC 19A.04.260; see also RCW 58.17.020(4) which also states that "The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision."] Thus a preliminary plat is "preliminary," "approximate," and "general." Once preliminary approval has been granted, detailed engineering plans are developed and construction occurs, leading to the final plat stage where the subdivision is recorded so that lot sales may occur.

The best analogy for the process would be the design of a building. When a client asks an architect to design a new house, the client does not expect (nor would the client want to pay the cost to have) the architect to initially produce a full-blown set of construction plans for the very first design. Sketches lead to rough drawings which, once the client has agreed on the size, arrangement, style, etc. of the building, lead to a set of extremely detailed working drawings. The client has no need to see piping layouts, wiring diagrams, roof framing plans, materials specifications, etc. when reviewing and approving the house layout. All of that detail comes later after the design has been agreed to.

The same is true with the land subdivision process. The preliminary subdivision process results in the approval of a design and layout for the development. That preliminary plan is then refined through the detailed engineering phase before actual construction begins.

In Washington State, the law provides that only the preliminary phase of the process is subject to public input through an open record hearing process. The subsequent engineering details are reviewed and approved administratively. The final plat is reviewed by the City Council in a closed record proceeding.

Some of the information that the neighbors believe should be available for their review now is quite simply not required at the preliminary subdivision phase.

10. Finally, the neighbors must realize that the subdivision process in general and the preliminary subdivision process in particular do not regulate the size or value of future homes that will be built within the subdivision other than by setting the size of each lot. Zoning regulations control property line setbacks, building height, lot coverage, etc. It is zoning that controls the maximum size of a house. It is the market that controls the value of the house.

#### Specific Neighborhood Concerns

11. Like it or not, the reality is that the subject property has been designated and zoned for residential development at up to four dwelling units per acre since before Sammamish became a city in 1999. The City Council has done nothing in the intervening years to change that zoning. The land owner has a reasonable, legally protected expectation to be able to develop the subject property in accordance with the zoning and other development regulations which apply to the property. It is way too late now to seek to change the zoning to something of lesser density.
12. Zoning a site for development at four dwelling units per acre necessarily implies a conversion of the site from wildlife habitat to human habitat. That trade-off is implicit in urban development. Sammamish is a city and its plans and regulations envision substantial areas of urban density development. The subject property is one such area. Sammamish's policies may speak to preservation of certain natural characteristics of the area, but implementation of those policies depends upon the regulations adopted by the City Council. The adopted tree retention and environmentally critical areas regulations serve to determine which parts of the city's landscape will be preserved from urban development and to what extent they will be preserved.
13. The 31 lots proposed here are two less than the maximum allowed under existing zoning. The lots in *Lawson Park* will be wider and larger than those in *Renaissance*. The "ratio of home to lot size" principle (usually called the Floor Area Ratio) set forth in Exhibit S-41 is not a tool used in the City to regulate the size of houses. Therefore, it has no relevance in this application.

Buchan has chosen to limit the size of the eventual homes in order to meet certain requirements of the 2009 KCSWDM. While zoning regulations would allow up to 55% of each lot to be covered with impervious surfaces (an average of about 4,475 SF per lot), Buchan will be limiting total impervious surface area per lot to 4,000 SF average. (Exhibit S-18, p. 4-9) Total impervious coverage includes not only roofs, but also driveways, patios, etc. – anything that does not allow water to pass through it. This drainage minimization choice will serve to further limit the size of future houses.

14. The City has adopted tree retention regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan tree retention policies is, therefore, not permissible.

15. The adopted tree retention regulations do not require retention of all trees, or even most trees on a development site. The regulations require, “to the extent feasible,” that trees to be retained shall be in groups rather than scattered about a site, be safe and sound trees, be used as screening, be adjacent to critical areas and open space, and be beneficial in land stabilization. [SMC 21A.35.210(5)] Land stabilization is not an important issue here as the site exhibits virtually no slope.

Buchan has followed the requirements in selecting areas in which to preserve trees. The trees to be retained are predominantly in the back yards adjacent to the neighboring properties.

16. The subject property is not a “greenbelt” for the benefit of the neighboring *Renaissance* homeowners. To the extent, if any, that they were led to believe by salespersons that the neighboring forest would always be there for their benefit, they were misled. The City is not responsible if that happened.
17. It is not entirely clear, despite the voluminous nature of the record, whether the 20 foot wide TRE in *Renaissance* was a requirement of King County code when the subdivision went through the preliminary subdivision process in the 1990s or simply something offered by the developer for whatever reason. One witness testified that it was the latter. It is apparent from Exhibits S-26 and S-27 that the TRE was applied only on the perimeter of the subdivision: None of the interior lots have any TRE buffering abutting rows of lots.

If a perimeter TRE was a King County requirement, it is not a requirement which the City continued after incorporation. The City cannot make a developer comply with a former county requirement that has no parallel in City regulations.

18. The City has adopted drainage control regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan drainage policies is, therefore, not permissible.

The evidence demonstrates compliance with the adopted stormwater control regulations with respect to runoff generated on the subject property.

19. Lider correctly reports in Exhibit S-44 that the 2009 KCSWDM allows concentrated discharge if the flow rate is less than 0.5 cfs, but only if the developer can prove that such discharge will have no significant adverse impact upon downstream properties. [2009 KCSWDM § 1.2.1] But Lider is wrong to expect that final engineering proof will be available at the preliminary subdivision stage. The same holds for his concern that emergency spillway details are not shown on the preliminary plans. The same also holds for his concern about possible interflow displacing stormwater runoff in the two detention ponds. This simply is not the place for detailed engineering. When Buchan’s engineers submit their detailed plans to the City for review and construction approval, the Examiner

has every expectation that the City will perform a thorough review and assure itself that such matters are properly accounted for in the plans. That is how the system is supposed to work.

20. The concerns of some *Renaissance* residents that their back yards will be flooded if the subject property is developed are not supported by the preliminary plans. The preliminary plans indicate measurable grading near the common property line in only two places: The northeast side abutting the Noonchester property and on Proposed Lot 26 in the southwest corner abutting *Renaissance* Lots 82 and 83.

In the former case, the preliminary plan indicates that a rockery of up to four feet would be used. As Buchan noted, use of a rockery allows virtually the entire lot to be sloped away from the perimeter lot line.

In the latter case, the preliminary plan depicts up to four feet of fill sloped downward toward the common property line over a distance of about 10 feet. If the slope were built as depicted, rainfall landing on that 10 foot wide band might sheet flow onto the adjoining properties, but only if it weren't absorbed into the soil or used by plants. However, we know from the hearing testimony that Buchan's final grading plan actually contemplates using a rockery in that area. Like the northeast fill, a rockery here would allow the entire lot to be sloped away from the common property line.

The Examiner finds nothing in the preliminary drainage plans that would militate against approval of the preliminary subdivision.

21. The City has adopted traffic impact regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan traffic impact policies is, therefore, not permissible.
22. Whether 242<sup>nd</sup> Drive SE is a collector arterial or a local access street, the evidence clearly shows that the volume of traffic using it is well below the upper limit for either classification. The evidence further shows that even if SE 14<sup>th</sup> Street were to be opened, the resulting volumes would still be below acceptable limits, even if the neighbors are correct about the route's attractiveness for high school students. 242<sup>nd</sup> Drive SE-SE 14<sup>th</sup> Street is a perfectly well designed street with good sight lines. The record contains no evidence to support banning *Lawson Park's* access to 242<sup>nd</sup> Drive SE-SE 14<sup>th</sup> Street to and from the west. It is clear from the design of *Renaissance* that 242<sup>nd</sup> Drive SE-SE 14<sup>th</sup> Street was intended from its inception to eventually provide through-street access further to the east; it was not built as a permanent dead-end street.
23. On the other hand, the record is replete with evidence of the inadequate condition of SE 14<sup>th</sup> Street east of *Lawson Park*. The public use and interest would not be served if *Lawson Park* traffic were allowed to use the eastern segment of SE 14<sup>th</sup> Street without that segment first undergoing substantial improvement.

While the City clearly has the right to demand deeding of the van den Bogaert easement to the City, the City cannot require Buchan to upgrade that eastern segment of SE 14<sup>th</sup> Street for one basic reason: *Lawson Park* does not need it for access. Not only does *Lawson Park* traffic not need to use the eastern segment of SE 14<sup>th</sup> Street, that direction would not be the shortest route to most destinations.

That segment is also not needed to provide safe walking conditions for children who walk to school. The children referred to in the safe walking requirement are those who will live within the proposed development, not neighborhood children living outside the proposed development. The developer's responsibility is to provide safe walking conditions for children within the proposed development as they walk toward the schools they will attend, not as they walk all over the neighborhood. Children who will live within *Lawson Park* will walk westerly to reach their school bus stop, not easterly. A full sidewalk system exists towards the west.

As noted previously, the City may not require a developer to solve an existing problem unless the developer's project will exacerbate the problem.

Therefore, a condition requiring that a barricade be placed at the eastern edge of the plat across SE 14<sup>th</sup> Street until such time as the remainder to the east is brought up to an acceptable standard for its anticipated use is justified. The barricade should be marked to indicate that it is a temporary street end and that opening of the street is anticipated in the future.

It is beyond the scope of this preliminary subdivision proceeding to determine who should improve the segment of SE 14<sup>th</sup> Street east of *Lawson Park* or to what standard it should be improved.

24. The City has adopted wildlife habitat regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan wildlife habitat policies is, therefore, not permissible.
25. The preponderance of the technical evidence supports a conclusion that the pileated woodpecker, a candidate species, does not have a primary association with the wildlife habitat on the subject property. Yes, pileated woodpeckers may have been seen on the subject property. But the trees on the subject property are not prime pileated woodpecker habitat due to their health and size. The site may be used for foraging, but that does not constitute primary association.

The above conclusion then leads to a conclusion that the requirements of SMC 21A.50.325 don't apply. Nevertheless, Buchan commissioned a study to see what could be done to encourage pileated woodpecker use of the subject property. (Exhibit S-29) That study identified a number of steps that could be taken. Those steps are depicted on the preliminary plans. Those steps are compatible with the plat design. Compliance with those steps will be tantamount to compliance with SMC 21A.50.325.

26. The site is not part of a designated wildlife corridor subject to regulation under SMC 21A.50.327. The regulations in that section apply only to officially designated wildlife corridors. As clearly indicated on Exhibit S-31, the subject property is not part of an officially designated wildlife corridor. Therefore, those regulations cannot be applied to *Lawson Park*.
27. Some *Renaissance* residents are trading on fear tactics with respect to the gas pipeline. Their argument is that merely having construction equipment drive over 242<sup>nd</sup> Drive SE will cause vibrations that will potentially weaken the pipeline and cause it to rupture. This argument overlooks several facts.

First, construction of the *Renaissance* development with its streets and houses in close proximity to the gas pipeline was safely completed. That construction would have created much more vibration along the pipeline than would equipment driving to the *Lawson Park* site.

Second, two streets in *Renaissance* and one in *Woodbridge Creek* cross the pipeline. There is no evidence in the record of any load limits or equipment restrictions for any of those crossings.

The Examiner finds this concern to be completely without merit.

28. The Noonchester well and water line easement create a problem for Buchan. But before getting into that, it is appropriate to indicate where the well is not a problem. Lider asserts that “No stormwater infiltration facilities may be located within 100 feet of a drinking water well (Reference KCSWDM Section 5.4, Infiltration Near Water Wells, Page 5-64).” (Exhibit S-44, p. 7) Lider has missed an important word in the 2009 KCSWDM section he cites: “should.” The manual uses the word “should,” not “shall.” “Should” is a discretionary word, it does not mandate. Location of the rain gardens within 100 feet of the well is not a fatal flaw as suggested by Lider.

What the word “should” does is put a burden on the City when reviewing final engineering plans to assure that such placement would not pollute the Noonchester well.

29. Counsel for Noonchester and Buchan hold diametrically opposing views as to whether the water line easement rises to the level of a real property interest. Noonchester’s counsel cites the case of *McPhaden v. Scott* [95 Wn. App. 431, 975 P.2d 1033, review denied, 138 Wn.2d 1017, 989 P.2d 1141 (1999)] for the proposition that “Washington law provides, however, that the easement at issue created an interest in real property.” (Exhibit S-63, p. 2) Noonchester’s counsel presents the preceding quote as a quote from the Court’s decision. The Examiner has read the entirety of the cited page and finds no such quote there. The cited page does contain the following sentence: “Easements are interests in land. *Bakke v. Columbia Valley Lumber Co.*, 49 Wn.2d 165, 170, 298 P.2d 849 (1956) (citation omitted).”

Buchan's counsel cites the case of *MKKI Inc. v. Krueger* [135 Wn. App. 647 (2006)] for the proposition that an easement is a "property right separate from ownership that allows the use of another's land without compensation". [At 654] (Exhibit S-64, p. 3)

The issue before the Court in the *McPhaden* case was whether an easement in a subdivision could be legally created by recording a document a year after recordation of the subdivision. The *MKKI* case involved a well access easement, but the situation in that case differed from the current situation in that the easement at issue had been created through a short subdivision process and the question before the Court was what process was required to extinguish the easement. [*MKKI* at 651]

30. Regardless of whether the existence of the water line easement necessitates obtaining Noonchester signatures on the future final plat, there is a much more immediate, practical concern: How can the subdivision be developed without harming the Noonchester water supply? It seems clear from the easement language (Exhibit S8, pp. 2 and 3) that the McIntoshes or their successors cannot unilaterally shut off the well and remove the water line – at least not so long as the Noonchesters own their abutting property.

Water is obtained from the well presumably by use of an electric pump; the source of power for the pump is presumably the McIntosh residence. Buchan intends to demolish the McIntosh residence. When that happens, how will the pump obtain electricity?

The waterline is located within what will become SE 14<sup>th</sup> Street and "Road A". The record does not disclose how deep the water line is, but common sense suggests that excavation for street sub-grades and utility trenches will be deeper than that water line. How can such work occur without harming the water line?

Once it leaves Tract D the waterline will be entirely within land to be dedicated to the City for public street purposes. Will the City accept dedication of land encumbered by such a unique and restrictive easement?

31. The Examiner concludes that as a practical matter, the water well and water line situation must be resolved before any site work is undertaken. The City shouldn't care how it is resolved, just that the Noonchesters and Buchan (or its successor in interest) have reached an agreement prior to the start of construction to allow decommissioning of the well, removal of the water line, and extinguishment of the easement prior to recordation of the final plat. The public interest requires no less.<sup>24</sup>

#### Required Conclusions

32. Section 20.10.200 SMC sets forth general requirements applicable to all Examiner decisions. The requirement to find compliance with the comprehensive plan is constrained by the legal principles set

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<sup>24</sup> This Examiner generally opposes any permit condition which places a neighboring property owner in a position to veto a development. But where, as here, the neighbor has a legal right over a part of the development site, such a result cannot be avoided.

forth in preceding Conclusions of Law. The preponderance of the evidence indicates compliance with all applicable regulations.

33. Under SMC 20.10.220(1), the City is required to 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 and policies. 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 law and policy relating to that area. Common sense must be used where there are no guiding adopted policies.
34. The preponderance of the evidence demonstrates compliance with all applicable regulations addressing the subjects listed in SMC 20.10.220(1). (See especially Findings of Fact 13 - 29, above.)
35. There must be some criteria by which to judge whether a proposed subdivision serves “the public health, safety, and general welfare” and furthers the “public use and interest”. The content of adopted City policies and regulations form reasonable criteria. *Lawson Park* meets all applicable review criteria. Therefore, it must also be concluded that it serves the public health, safety, and welfare and furthers the public use and interest.<sup>25</sup>
36. Here, again, the preponderance of the evidence demonstrates compliance with all applicable regulations. Thus, it must be concluded that *Lawson Park* would serve the public health, safety, and general welfare and further the public use and interest.

#### Recommended Conditions

37. The recommended conditions of approval as set forth in Exhibit S-9 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
  - A. The Examiner declines to add the inadvertent artifacts discovery condition suggested by Buchan, not because the actions it would call for are not appropriate, but because it is unnecessary. Special conditions on any permit approval should be just that: Special conditions, conditions justified by the unique circumstances of a proposal which would not automatically apply under standard regulations. Special conditions should not restate some of the many mandatory requirements contained in adopted regulations.

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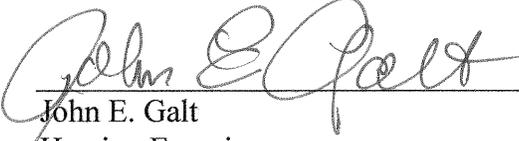
<sup>25</sup> It would be illogical to conclude that a project which met every established standard of review was nevertheless contrary to public health, safety and welfare. If such were the case, then the adopted standards must be woefully deficient. Even if some believe that the adopted standards are 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.

- B. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1, 4, 6, 7, 10 - 12, 25, and 28 - 30 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

### 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 *Lawson Park* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued February 8, 2013.



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John E. Galt  
Hearing Examiner

### HEARING PARTICIPANTS <sup>26</sup>

Greg Nelson  
Emily Arteche  
Eric LaFrance  
Stephanie Raines  
Suzanne Saylor  
Cindy Noonchester  
Kaushik Barooah  
James Louie  
Kathy Curry  
Todd Oberg

Duana Koloušková, unsworn counsel  
Rick Aramburu, unsworn counsel  
Doug McDorman  
Benjamin Sarao  
Olga Barooah  
William Lider  
Ted Melancon  
Leigh-Anne Voight  
Ryan Kahlo  
Stuart Scheuerman

### 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, 801 228<sup>th</sup> 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

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<sup>26</sup> The official Parties of Record register is maintained by the City's Hearing Clerk.

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, 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."

### **CONDITIONS OF APPROVAL *LAWSON PARK* PLN2012-00020**

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 S-3 is the approved preliminary plat (and supporting 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 Chapter 27A of the Sammamish Municipal Code, the developer shall provide financial guarantees in conformance with this Chapter, and Public Works Standards Chapter 10.050(K). All improvements required pursuant to the Public Works Standards, or other applicable regulations must be installed and approved or bonded as specified for plats in Chapter 19A.16 of the Sammamish Municipal Code.
3. The developer or subsequent owner(s) shall comply with the payment of street impact fees in accordance with Chapter 14A.15.110 traffic impact fee rates of the Sammamish Municipal Code.

***Prior to Final Construction Approval:***

4. The Noonchesters and the Plattor shall have reached an agreement to allow decommissioning of the well, removal of the water line, and extinguishment of the easement prior to recordation of the final plat.
5. The internal plat roads serving more than four dwelling units shall be consistent with the local road standards in accordance with PWS Table 1, PWS Figure 01-05, and City Ordinance O2005-191. The City Engineer may modify this standard based on engineering judgment during final engineering review.
6. Illumination shall be provided on the local roads consistent with the City's standards for average foot candles and uniformity for a local road. Luminaires shall be full cut off. Pole type and style shall be approved by Public Works.
7. Cul-de-sacs shall be consistent with PWS.15.120, Figure 01-06, Figure 02-33, and the turnaround requirements of Eastside Fire and Rescue. The more stringent requirements shall take precedence.
8. Road B shall serve as a road connection for future development and as the access road to the south stormwater pond. Right-of-way dedication shall be 30-feet wide with 20-feet of paved width and a 5-foot sidewalk.
9. Joint use driveways shall be consistent with PWS.15.170 and shall serve as access for no more than two lots.
10. 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.
11. The Plattor shall document how the recommendations in the July 18, 2012, Pileated Woodpecker Investigation report prepared by The Watershed Company (Exhibit S-29) are addressed in the tree retention plan for the site.
12. A maximum 4-foot high, split rail or similar type fence shall be installed along the outer boundary of the proposed wetland and buffer tract (currently labeled Tract E). Permanent sensitive/critical area signage shall be placed on this fencing at an interval of one (1) per lot or every 50 feet, whichever is less. Signs shall be a city approved type designed for high durability. Signs and fencing must be maintained by the property owner or homeowners' association in perpetuity.
13. Address/monument signs are required to show addresses on lots being served by common driveways. The sign must be placed to serve Proposed Lots 6, 7, 10, 25, and 26 fronting the street from which the houses are addressed.

14. Addresses may need to be added to signs for lots 8 and 9 if house numbers are not legible from the street. Inspectors will field verify.
15. No parking is allowed in cul-de-sacs. "No Parking-Fire Lane" signs are required to be installed.
16. No Parking is allowed on Road B. Signage is required.
17. Parking is allowed only on one side of Road A. Coordinate the non-parking side of the road with the side of the road fire hydrant may be installed on. "No Parking-Fire Lane" signs are required to be installed.

***Conditions prior to final plat:***

18. A barricade to prevent vehicular passage (of a design, specifications, and location acceptable to the City) shall be placed across SE 14<sup>th</sup> Street somewhere between the east side of the Road A/SE 14<sup>th</sup> Street intersection and the east line of the plat until such time as the SE 14<sup>th</sup> Street right-of-way between the east line of the plat and 248<sup>th</sup> Avenue SE has been deeded to the City and a public street has been constructed within that right-of-way to a standard determined by the City to provide safe vehicular and pedestrian passage along its length. (This condition does not require this Plator to construct such street improvements.) The barricade shall be marked to indicate that it is a temporary street end and that opening of the street is anticipated in the future.
19. Wetland hydrology function shall be maintained for the offsite wetland that is located immediately southwest of the subject development and also the off-site wetland located east of proposed lots 10, 11, and 12. Documentation shall be provided at final plat that demonstrates that the hydrologic function will be maintained for these off-site wetlands.
20. At a minimum, all stormwater facilities shall be constructed and online and operational. This includes construction of road ATB, curb, gutter, rain gardens, stormwater conveyance system, water quality treatment systems, and infiltration pond. Final lift of asphalt within the internal plat roads may be bonded except as indicated.
21. All new signs required in the public right-of-way must be installed by the City of Sammamish Public Works Department or at the direction of the City of Sammamish Traffic Engineer. Procurement and installation shall be paid for by the Developer. Contractor shall contact the Public Works Inspector to initiate signage installation a minimum of 6 weeks prior to final plat. Temporary street signs may be required for internal plat roads for emergency vehicle access. No parking signs shall be installed prior to final plat. No parking signs shall be required on all proposed street and private roads with clear widths of 20-foot or less.

22. 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. Public Works Inspector shall inspect and approve locations.
23. The storm drain system shall be jetted, cleaned, and vactored and the system shall be televised for inspection.
24. All critical areas signs shall be installed.
25. A Public Works performance bond shall be posted consistent with the 2009 King County Surface Water Design Manual.
26. Trees identified on the tree retention plan of the preliminary plat have been retained pursuant to the provisions of SMC 21A.35.210. All trees shall be clearly tagged with numbers corresponding to the tree retention plan on file with the City. 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.

***Conditions to appear on the face of the final plat:***

27. *“Tract D and portions of Lots 1-5, 13-31 are designated as tree retention areas. Retained trees are subject to the tree protection standards of Section 21A.35.230 of the Sammamish Municipal Code. Trees may not be removed from these tracts without approval from the City of Sammamish. Removal of these trees is prohibited unless the tree is removed to prevent imminent danger or hazard to persons or property. Contact the City of Sammamish to determine permit requirements. Trees removed subject to this provision shall be replaced in compliance with SMC 21A.35.240.”*
28. *“No lot or portion of a lot shall be subdivided and sold, or resold, or its ownership changed or transferred in violation of applicable city, county, state, or federal standards, rules, regulations or laws.”*
29. The developer shall comply with RCW 58.17.280, providing the appropriate “addressing note” with address ranges being on the final plat.
30. *“The proposed subdivision is subject to school impact fees for the Issaquah School District, consistent with Chapter 21A.105 of the Sammamish Municipal Code. At the time of building permit, the developer shall pay one half of the required school impact fee, together with an administrative fee.”*
31. *“The proposed subdivision is subject to parks impact fees, consistent with Chapter 14A.20 of the Sammamish Municipal Code which shall be paid at the time of building permit issuance together with an administrative fee.”*

32. *A surface water system development charge shall be paid at the time of building permit issuance, for each new residential dwelling unit.*
33. The developer shall include a note regarding the payment of all traffic impact fees on the subject site consistent with the provisions of the Chapter 14A.15 of the Sammamish Municipal Code.
34. Surface Water Management Facilities required for this subdivision shall be contained within a separate tract of land and shall be dedicated to the City of Sammamish for maintenance and operation. Language to this effect as approved by the city shall be shown on the face of the final plat.
35. *“Maintenance of all landscape strips including the rain gardens along 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.”*
36. *“Maintenance of landscaping strips along the stormwater pond perimeter other than the interior pond embankments shall be the responsibility of the Homeowners Association.”*
37. Covenant and easement language pertaining to individual lot and tracts with flow control BMPs shall be shown on the face of the final plat. Public Works shall approve the specific language.
38. *“Maintenance of illumination along all local and private roads shall be the responsibility of the Homeowners Association or jointly shared by the owners of the development.”*
39. *“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.”*
40. *“For all lots which contain or are adjacent to infiltration or dispersion trenches, these lots shall be graded such that top of trench is below bottom of foundation.”*
41. Unless otherwise directed by the Public Works Department, the following note shall be shown on the final plat, *“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways that are not directed to an approved low impact development facility shall be connected to the permanent storm drain system as shown on the approved plat Clear and Grade permit on file with the City of Sammamish. The connection to the storm system shall be through a perforated stub-out per the 2009 King County Surface Water Design Manual.”*
42. *“All landscaped areas of the plat and individual lots shall include a minimum of 8-inches of composted soil amendment per the 2009 King County Surface Water Design Manual.”*