



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

DECISION

FILE NUMBER: PLN2011

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

TYPE OF CASE: Preliminary subdivision (*Plateau Landing*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: October 17, 2012

INTRODUCTION ¹

PNW Holdings, LLC (PNW) seeks preliminary approval of *Plateau Landing*, a 35 lot single-family residential subdivision of a 14.34 acre site zoned R-4.

PNW filed a Base Land Use Application on October 18, 2011. (Exhibit 1 ²) The Sammamish Department of Community Development (the Department) deemed the application to be complete when filed. (Exhibit 19, p. 7)

The subject property is located in the 600 block of the west side of 234th Avenue SE, approximately 350 feet north of SE 8th Street. (Exhibits 2 and 15)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

The Sammamish Hearing Examiner (Examiner) viewed the subject property on October 11, 2012.

The Examiner held an open record hearing on October 11, 2012. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC). (Exhibit 9A)

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivision applications be issued within 120 net review days after the application is found to be complete. The open record hearing was held beyond the 120 net review day limit. 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 testified that it had provided the required letter to PNW prior to the end of the 120 day net review period. (Testimony)

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

Exhibits 1 - 19: As listed on the Pre-filed Exhibit List prepared by the Department

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?

No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.

FINDINGS OF FACT

1. The subject 14.34 acres consists of Lots A-2 – A-4 of a 1979 short plat together with a non-exclusive easement for ingress and egress, commonly referred to as 234th Avenue SE. Lots A-2 – A-4 lie on the west side of 234th Avenue SE north of Lot A-1, which also fronts directly on SE 8th Street. To the east of 234th Avenue SE lies a similar four-lot short subdivision whose lots share the 234th Avenue SE ingress and egress easement. (Exhibits 1 and 3A {Restated Easement Exhibit})
2. A single-family residence is located on both Lot A-2 and A-4; the remainder of the subject property is a mix of forested and pasture land. The topography is essentially a knoll with undulating terrain falling off in all directions. (Exhibits 2 {Sheet C2}, 4A {p. 2}, 6, and 15)

A portion of a large Category 1 wetland encumbers the southwest corner of the subject property. A portion of a Category 3 wetland encumbers the northeast corner of the subject property. Both wetlands have been disturbed by historic activities on the site and the surrounding area. (Exhibit 4A)

3. The subject property is zoned R-4 and lies immediately east of the TC B portion of the Town Center zone. (Exhibits 16 and 17) The maximum allowed yield under the R-4 zoning is 35 dwelling units. (Exhibit 1, Density Calculations Worksheet)
4. PNW proposes to divide the subject property into 35 lots for single-family residential development. The lots will be served by a public street passing through the site, connecting to 234th Avenue SE on the east and to the presently unopened 232nd Avenue SE right-of-way near the northwest corner of the subject property. Proposed lot sizes range from 4,931 square feet (SF) to 17,791 SF. Two sensitive areas tracts (Tracts A and D), a recreation tract (Tract B), a tree retention tract (Tract C), an open space tract (Tract E), and a storm water detention tract (Tract F) are included in the design. (Exhibit 2)

Documents that will allow dedication of that portion of 234th Avenue SE necessary to provide access to the proposed *Plateau Landing* interior street have been executed by the appropriate parties. (Exhibit 3B)

5. The Department's Staff Report (Exhibit 19) provides a detailed exposition of facts related to all criteria for preliminary subdivision approval. PNW concurred in full in the Findings, Conclusions, and Recommended Conditions set forth in that report. (Testimony) The record contains no challenge to the content of that report. Therefore, the Findings and Conclusions/Analysis within the Staff Report are incorporated herein as if set forth in full with the following exceptions:
 - A. Finding 19: The statement that a red-tail hawk nest is located in the southwestern wetland approximately 240 feet from one of the proposed lots needs to be modified to indicate that the nest is possibly inactive. (Exhibit 4B)
 - B. Finding 24: The statement regarding Eastside Fire and Rescue's (Eastside's) review comments is incorrect. Eastside did give its approval to the proposal on November 28, 2011, but its review comments did not mention street naming or addressing. Rather, its comments stated that the diameter of the cul-de-sac at the northwest end of the interior street did not appear to meet Eastside's 96 foot standard requirement. (Exhibit 11, reverse side of sheet)

The Department testified that Eastside, subsequent to its preparation of comments in this case, had changed its cul-de-sac diameter standard to 90 feet. (Testimony) The proposed preliminary plat depicts a 90 foot diameter cul-de-sac. (Exhibit 2)

Therefore, the record should indicate that the proposed cul-de-sac meets Eastside's current standard requirement.

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

LEGAL FRAMEWORK³

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

Authority

A preliminary subdivision is a Type 3 land use application. [SMC 20.05.020, Exhibit A] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision ..., he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision ... is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

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

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

³ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on October 18, 2011.

Standard of Review

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

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. Extensive, detailed conclusions regarding conformance with the criteria for approval are unnecessary since *Plateau Landing* is an uncontested case.
2. Based upon all the evidence in the record, the Examiner concludes that *Plateau Landing* meets the considerations within SMC 20.10.200. All evidence demonstrates compliance with Comprehensive Plan policies and zoning code, subdivision code, and Environmentally Sensitive Areas regulations.
3. Given all the evidence in the record, the Examiner concludes that *Plateau Landing* complies with the review criteria of SMC 20.10.220. The proposed subdivision allows development at the density

expected under the Comprehensive Plan, does not thwart future development of surrounding properties, makes appropriate provision for all items listed in that code section, and will serve the public use and interest.

4. The recommended conditions of approval as set forth in Exhibit 19 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 3 will be moved to become the first condition and will be slightly modified. It is appropriate that it be the first condition as it specifically identifies that which is being given preliminary plat approval. It will be modified to indicate that Exhibit 2 represents not only the approved preliminary plat but also supporting plans (such as tree retention, drainage, clearing and grading, etc.). Finally, a sentence will be added to remind the reader that preliminary plats may be revised if certain procedures are followed as spelled out in the SMC.
 - B. A very pertinent question was asked during the 2009 *Cornerstone* (PLN2007-00066) hearing: Since water and sewer commitment certificates are by their own terms valid for only one year and since an approved preliminary plat is valid for seven years, what assurance is there that adequate water and sewer service will be available if the plat is developed and recorded after the current certificates expire? ⁴

The Examiner addressed that question as follows in the *Cornerstone* Decision:

At the time [of the *Cornerstone* hearing], the Examiner had no answer for the question. Upon reflection, the Examiner remembered that other jurisdictions have addressed the issue. One city for which the Examiner provides hearing services asks the Examiner to impose the following condition on every preliminary subdivision approval: "The Plator shall submit a new certificate for the availability of water (sewer) if the current certificate, dated X, expires prior to the issuance of any construction permits, or shall provide proof of an executed Developer Extension Agreement."

That type of condition recognizes that the current certificates show that at present the system purveyors have capability to provide both water and sewer services to the proposed development, but requires that they be updated before actual development commences if they have expired in the interim. That type of condition would be an appropriate addition to this (and future) preliminary subdivision approval decisions.

⁴ This is a paraphrasing of the question, updated to reflect current preliminary subdivision approval time limits.

(Official Notice: PLN2007-00066, March 6, 2009, Decision, Conclusion of Law 5.C, underlining added) Appropriate conditions will be added to this Decision in keeping with that prior Conclusion of Law.

- C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1, 2, 4, 5, 7, 9, 11, 14, 18, and 20 - 23 will improve parallel construction, clarity, and flow within the conditions.⁵ Such changes will be made.
- 5. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** preliminary subdivision approval for *Plateau Landing* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued October 17, 2012.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS⁶

Maher Joudi
Tawni Dalziel

Evan Maxim

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

⁵ The ending punctuation mark for many of the Recommended Conditions is a semi-colon. Those will all be replaced with periods although not individually listed in this sentence.

⁶ The official Parties of Record register is maintained by the City's Hearing Clerk.

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

Plateau Landing **PLN2011-00041**

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, the Specific Design Requirements as set forth in hearing Exhibit 18, and the following special conditions:

1. Exhibit 2 is the approved preliminary plat (and supporting plans). Revisions to approved preliminary subdivisions are subject to the provisions of SMC 19A.12.040.
2. Pursuant to RCW 58.17.170 the Plator shall comply with all county, state, and federal rules and regulations in effect on October 18, 2011, the vesting date of the subject application. However, if the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision, future development may be subject to updated construction codes, including but not limited to the International Building Code and the International Fire Code, as amended.
3. Pursuant to Chapter 19A.12 SMC, preliminary plat approval shall be null and void if any condition is not satisfied and the final plat is not recorded within the approval period of eighty-four (84) months; provided the Plator may file for an extension as permitted by code.
4. The Plator shall submit a new certificate for the availability of water if the current certificate, dated October 5, 2011, expires prior to the issuance of any construction permits, or shall provide proof of an executed Developer Extension Agreement.

5. The Plator shall submit a new certificate for the availability of sewer if the current certificate, dated October 5, 2011, expires prior to the issuance of any construction permits, or shall provide proof of an executed Developer Extension Agreement.
6. For the purpose of ensuring compliance with all conditions of approval and the standard requirements of the SMC, the Plator shall provide financial guarantees in conformance with Chapter 27A SMC and PWS Section 10.050(K). All improvements required pursuant to the PWS, SMC, or other applicable regulations must be installed and approved, or bonded, as specified for plats in Chapter 19A.16 SMC.
7. The Plator or subsequent owner(s) shall comply with the payment of park, traffic, and school impact fees required pursuant to Chapters 14A.20, 14A.15, and 21A.105 SMC.
8. Proposed environmental critical area mitigation shall be maintained and monitored annually for 5 years after the mitigation installation and as-built report has been reviewed and accepted by the City.
9. Proposed street improvements and public right-of-way dedication shall conform to the provisions of the approved variation to the Public Works Standards. (Exhibit 8)

Conditions to appear on the face of the final plat:

10. Any 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. Facilities located entirely underground within a vault or tank may be located in a tract owned by an HOA with easements granted to the City for maintenance, operation, inspection, and repair of stormwater facilities. Language to this effect shall be shown on the face of the final plat
11. *“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.”*
12. *“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet via perforated pipe tightline as shown on the approved Construction Drawing on file with the City of Sammamish. This plan shall be submitted with the application for any building permit. All connections of the drains shall be constructed and approved prior to final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be designed and constructed as part of the building permit process and shall comply with the approved Construction Drawings on file with the City of Sammamish.”*

13. If plat construction approves the installation of infiltration or dispersion trenches, the following note shall be required: *“Lot(s) _____, which contain or are adjacent to infiltration or dispersion trenches, shall be graded such that top of trench is below bottom of foundation.”*
14. *“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.”*
15. The Plator shall comply with RCW 58.17.280, providing the appropriate *“addressing note”* with address ranges being on the final plat.
16. *“Maintenance of all landscape strips along the internal plat roads and 234th Avenue SE 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.”*
17. *“Maintenance of landscaping strips along the stormwater pond perimeter other than the interior pond embankments shall be the responsibility of the Homeowners Association.”*
18. *“All landscaped areas of the plat and individual lots shall include a minimum of 8-inches of composted soil amendment.”*
19. *“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.”*
20. Covenant and easement language pertaining to individual lots and tracts with flow control BMPs shall be shown on the face of the final plat. Public Works shall approve the specific language prior to final plat.
21. *“Trees identified on the face of this plat have been retained pursuant to the provisions of SMC 21A.35.210. Retained trees are subject to the tree protection standards of SMC 21A.35.230. Removal of these trees is prohibited unless the tree is removed to prevent imminent danger or hazard to persons or property, subject to a clearing and grading permit approved by the City of Sammamish. Trees removed subject to this provision shall be replaced in compliance with SMC 21A.35.240.”*
22. The Plator shall include a note regarding the payment of traffic impact fees in accordance with City of Sammamish Ordinance No. 2006-208. Specific language related to the payment of the traffic impact fees shall be reviewed and approved by the City prior to final plat approval.
23. *“The proposed subdivision is subject to school impact fees for the Lake Washington School District, consistent with Chapter 21A.105 SMC. At the time of building permit, the applicant shall pay one half of the required school impact fee, together with an administrative fee.”*

24. *“The proposed subdivision is subject to parks impact fees, consistent with Chapter 14A.20 SMC, which shall be paid at the time of building permit issuance together with an administrative fee.”*

25. *“Pursuant to City of Sammamish Ordinance No. O2002-112, a surface water system development charge shall be paid at the time of building permit issuance for each new residential dwelling unit.”*