

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

<b>DECISION</b>
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FILE NUMBER: PSUB2016-00512

APPLICANT: Brixton Homes, LLC  
14410 Bel-Red Road  
Bellevue, WA 98007

TYPE OF CASE: Preliminary subdivision (*Stratmoor*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: July 26, 2017

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

Brixton Homes, LLC (“Brixton”), one of the Murray Franklyn Family of Companies (Exhibit 10; and testimony), seeks preliminary approval of *Stratmoor*, a 21-lot single-family residential subdivision of a 9.75 acre site which is zoned R-6.

Brixton filed a Base Land Use Application on December 2, 2016. (Exhibit 2 <sup>2</sup>) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Exhibit 3) The Department issued a Notice of Application on December 7, 2016. (Exhibit 4)

The subject property occupies the southwest quadrant of the 218<sup>th</sup> Avenue SE/E Main Street intersection.

The Sammamish Hearing Examiner (“Examiner”) viewed the subject property on July 25, 2017.

The Examiner held an open record hearing on July 25, 2017. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 40)

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivisions be issued within 120 net review days after the application is found to be complete. The Department’s recommendation was issued

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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.

prior to the 120<sup>th</sup> net review day; the Examiner's open record hearing most likely was held after the 120<sup>th</sup> net review day. 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 written notice from the Department explaining why the deadline was not met [SMC 20.05.100(4)]. Brixton did not question the application processing timeline.

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

- Exhibits 1 - 40: As enumerated in Exhibit 1, the Departmental Staff Report
- Exhibit 41: Copy of Brixton's PowerPoint presentation
- Exhibit 42: E-mail exchange, Brixton – Lake Washington School District, July 21, 2017
- Exhibit 43A: Singh Short Subdivision Preliminary Approval (PSHP2015-00235), April 28, 2017
- Exhibit 43B: Approved Singh Short Plat

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.

### FINDINGS OF FACT

1. Brixton proposes to subdivide the subject property into 21 lots for single-family residential development.<sup>3</sup> The subject property is a near square parcel (approximately 624 feet east-west by approximately 665 feet north-south) which occupies the southwest quadrant of the 218<sup>th</sup> Avenue SE/E Main Street intersection. The subject property contains approximately 9.75 acres. (Exhibit 7)
2. A large, linear Category II wetland encumbers much of the eastern third of the subject property, extending from the edge of the E Main Street pavement within the public right-of-way on the north to beyond the south property line. When the code-required 100-foot buffer is factored in, the wetland encumbers essentially the eastern 40% of the subject property. The subject property slopes gently from the southwest corner northeasterly to the wetland area. The subject property is a wooded, undeveloped parcel; a significant number of the trees on the subject property are diseased, dying, or dead. (Exhibits 7; 17; 19; 20; 22; 23)
3. The subject property is zoned R-6, residential development at a maximum density of six dwelling units per acre. The subject property is located where three different zoning designations meet: Properties to the north which are east of 216<sup>th</sup> Avenue SE are zoned R-1 (residential with a maximum density of one dwelling unit per acre); properties to the north which are west of 216<sup>th</sup> Avenue SE are zoned R-4 (residential with a maximum density of four dwelling units per acre), as

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<sup>3</sup> The original proposal was named *Flynn* and proposed 17 lots. (Exhibit 16, unnumbered sheet following p. 16; and testimony)



are those lots bordering the north half of the west side of the subject property and those lots east of the subject property across 218<sup>th</sup> Avenue SE; properties bordering the south half of the west side of the subject property and those south of the subject property are zoned R-6. (Exhibit 5 <sup>4</sup>)

4. The maximum permissible lot yield under the subject property's R-6 zoning, calculated in accordance with procedures spelled out in the SMC, is 29. (Exhibit 6)
5. Brixton proposes to divide the western portion of the site into 21 single-family residential lots, a tree retention/recreation tract along the southern edge of the subdivision (Tract A), a storm water facilities tract between the eastern tier of lots and the wetland area (Tract B), and a small tract to provide access to Tract B (Tract C, between Proposed Lots 19 and 20). The eastern portion of the subject property will be a large critical area/open space tract (Tract D). (Exhibit 7) Approximately 43% of the subject property will remain in its native condition to protect the Category II wetland. (Exhibit 41, Slide 6) A modest amount of wetland buffer averaging, as allowed by the SMC, is proposed along the east edge of Tract B. (Exhibits 7; 18 – 20; 22; 23)

The lots will be served by a public cul-de-sac extending south from E Main Street into the subject property. A five-foot wide pedestrian path will connect the south end of the cul-de-sac to SE 2<sup>nd</sup> Street. (Exhibit 7, Sheets P01 and P03)

6. All proposed lots meet applicable zoning standards. (Exhibit 1)
7. The subject property is bordered by a variety of land uses. The area to the north is characterized by large-lot single-family residential development. (Exhibit 19, Fig. 4)

The area to the northwest includes two single-family residential subdivisions under development by the Murray Franklyn Family of Companies: *Morningside* and *Barrington*. (Exhibit 41, Slide 2; and testimony)

Two single-family residential subdivisions border the subject property to the west: *Stanton Wood* abuts the north half of the property and *Asbery Place* abuts the south half of the property. (Exhibits 7, Sheet P01; 19, Fig. 1)

To the south and southwest (and south of *Asbery Place*) lies the *Brauerwood Estates* single-family residential subdivision. SE 2<sup>nd</sup> Street in *Brauerwood* extends easterly abutting the south property line to about the mid-point of the subject property. (Exhibits 7, Sheet P01; 19, Fig. 4.)

The 2.5 acre parcel between *Brauerwood* and 218<sup>th</sup> Avenue SE currently contains one single-family residence. On April 28, 2017, the Department approved a preliminary short subdivision of that parcel

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<sup>4</sup> Exhibit 5 states that the properties to the north which are east of 216<sup>th</sup> Avenue SE are zoned "TC C," a "Town Center" zoning designation. The Examiner reviewed the on-line Comprehensive Plan map to determine that that area is actually zoned R-1. The "Town Center" area is further to the east. [Official notice]

(PSHP2015-00235, Singh) into four lots and an open space tract along 218<sup>th</sup> Avenue SE to protect the portion of the wetland that extends onto the east side of that property. The short subdivision as approved will access its four lots via a private road running north-south along the west edge of the parcel from the current end of SE 2<sup>nd</sup> Street.<sup>5</sup> (Exhibits 43A; 43B)

Across 218<sup>th</sup> Avenue SE to the east is the new *Brixton* subdivision for which Brixton is also the developer. Between *Brixton* and SE 4<sup>th</sup> Street is the *Pine Meadows* subdivision. *Pine Meadows* has a large open space tract along 218<sup>th</sup> Avenue SE to protect a wetland area located along the east side of 218<sup>th</sup> Avenue SE. (Exhibit 41, Slide 2; and testimony) That wetland may have at one time in the distant past been part of the wetland that encumbers the subject property and the Singh property. (Exhibit 9.4, p. 2)

8. The record contains evidence that appropriate provisions have been made for open space (Exhibits 1; 7); drainage (Exhibits 1; 7; 26); streets and roads (Exhibits 1; 7; 28; 32; 35; 36; 38); potable water supply (Exhibits 1; 7; 25; 33; 34); sanitary wastes (Exhibits 1; 7; 25); parks and recreation (Exhibits 1; 28); playgrounds (Exhibits 1; 7); schools and schoolgrounds (Exhibits 1; 28); and safe walking conditions for children who walk to school (Exhibits 1; 7; 14; 42; and testimony). The plat design does not require alleys or other public ways (Exhibit 7); transit stops have not been requested.
9. Sammamish first enacted tree retention/preservation regulations in or around 2005. [Ordinance No. O2005-175] Those regulations were contained in former SMC 21A.35.210 - .240. In 2014 the City enacted emergency, interim revisions to those code sections. The interim regulations were in effect from October 14, 2014 to October 14, 2015. [Ordinance Nos. O2014-375 and O2015-390] Those interim regulations were repealed and replaced by Chapter 21A.37 SMC, Development Standards – Trees, effective October 14, 2015. [Ordinance No. O2015-395]

The subject application is vested to the current tree regulations.

10. Significant tree<sup>6</sup> density is greater near the south end of the subject property. (Exhibit 7) Therefore, Brixton has focused tree retention (outside of the Tract D critical area tract all of whose trees will be preserved) on the southern portion of the property. A tree retention tract (Tract A) will encumber approximately the southern 70 – 100 feet of the subject property, together with a 40± foot wide link to the cul-de-sac. In addition, two conifers outside Tract A will be preserved adjacent to *Asbery Place's* Tract C. (Exhibits 7, Sheets P04 – P07)

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<sup>5</sup> The short plat depicted on page 4 of Exhibit 43A, the Department's decision document, differs from that depicted on Exhibit 43B: The private road configuration is quite different. The Department represented in testimony that Exhibit 43B was the version of the Singh short plat that it had approved. The Examiner's description of the Singh short plat is based upon Exhibit 43B.

<sup>6</sup> A "significant tree" is "a tree that is in a healthy condition and is a noninvasive species, including those trees defined as a heritage tree and landmark tree, that" has a breast height diameter (DBH) of at least 8" if a conifer or at least 12" if deciduous. [SMC 21A.15.1333]



218 significant trees, of which 34 are heritage trees and three are landmark trees, are located outside of the wetland and its buffer. Chapter 21A.37 SMC requires retention of 35%, 76, of those trees. Brixton's preliminary tree retention plan indicates that 67 of those trees will be preserved. However, because of "incentive credits" provisions in Chapter 21A.37 SMC, those 67 trees have a retention value of 76.75 (77) trees. The preliminary tree plan indicates that 151 significant trees will be removed for which the code requires that 176 replacement trees be planted. A total of 177 replacement tree credits are proposed. (Exhibit 37)

The preliminary tree retention plans demonstrate compliance with Chapter 21A.37 SMC requirements.

11. Sammamish's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Stratmoor* on May 22, 2017. (Exhibit 1, pp. 2 and 3) The DNS was not appealed. (Testimony)
12. The Department's Staff Report (Exhibit 1) provides a detailed exposition of facts related to all criteria for preliminary subdivision approval. The Department identified through testimony a number of essentially scrivener's errors in Exhibit 1, most the result of a computer system malfunction:
  - A. Page 12, Finding 2.7. The text "anopen" in the second line should be "an open".
  - B. Page 16, Finding 2.41. The text "generaly" should be "generally".
  - C. Page 17, Finding 2.49. The beginning of the second sentence should read "Under SEPA the proposal was reviewed by the King County ...".
  - D. Page 19, Conclusion 3.3, second bullet. The period is missing at the end of this paragraph.
  - E. Page 22, Conclusion 3.8, seventh bullet, fourth paragraph, first line. The text "existing1" should be "existing".
  - F. Page 23, Conclusion 3.8, ninth bullet (first bullet on page 23). The second sentence in this bullet should read "Pedestrians have access to the sidewalks from East Main Street and along the east side of 218<sup>th</sup> Avenue SE to SE 1<sup>st</sup> Street, and a pedestrian path from SE 2<sup>nd</sup> Street."
  - G. Page 23, Conclusion 3.8, tenth bullet (second bullet on page 23) should be deleted in its entirety.
  - H. Page 23, Conclusion 3.8, eleventh bullet (third bullet on page 23). Beginning at the middle of the second sentence the text should read "... completed pursuant to SMC 21A.50.090. A Critical Areas Affidavit was submitted with the application. See Exhibit 19."

- I. Page 23, Conclusion 3.8, twelfth bullet (fourth bullet on page 23) should be deleted in its entirety.
13. The Department recommends approval of *Stratmoor* subject to 27 conditions. (Exhibit 1, pp. 28 - 30) Recommended Conditions 4 and 5 were discussed during the hearing. The Department agreed that Recommended Condition 5 is essentially a duplicate of the third sentence in Recommended Condition 4. The Department suggested deleting the third sentence in Recommended Condition 4. Brixton, on the other hand, believes that the reference in the third sentence to the path being five feet wide is important to preserve. (Testimony)
14. Brixton concurred in full in the Findings, Conclusions, and Recommended Conditions set forth in Exhibit 1 except as discussed above. (Testimony) The record contains no challenge to the content of that report. Therefore, the Findings and Conclusions/Analysis within the Staff Report, as amended by the Department during the hearing, are incorporated herein as if set forth in full.
15. The Lake Washington School District ("LWSD") currently has school bus stops at the intersections of E Main with both 214<sup>th</sup> and 218<sup>th</sup> Avenues SE. (Exhibit 42) The LWSD indicates that the subject property lies within the attendance areas of Smith Elementary, Inglewood Middle, and Eastlake High Schools. The LWSD states that elementary and middle school students are bussed. (Exhibit 14) Brixton said that Eastlake High School is more than one mile from the subject property and that, therefore, its students should also be eligible for bussing. (Testimony)

Sidewalks will be constructed on the interior cul-de-sac. A sidewalk will also be constructed along the subject property's frontage on E Main Street. (Exhibit 7, Sheet P03) There is a sidewalk on the east side of 218<sup>th</sup> Avenue SE from E Main Street south to SE 4<sup>th</sup> Street. (Exhibit 1, p. 17) The City is in the final stages of permit acquisition for its SE 4<sup>th</sup> Street Upgrade Project which will completely reconstruct SE 4<sup>th</sup> Street between 218<sup>th</sup> and 228<sup>th</sup> Avenues; sidewalks are part of the plan. After acquisition of the permits, the City intends to move forward with the project as quickly as possible. (Exhibit 1, p. 19; and testimony)

16. No testimony was entered into the record by the general public either in support of or in opposition to the application.
17. The record contains comment letters from three persons. The concerns presented in those three letters will be discussed in this and the following two Findings of Fact.

Alex Gong ("Gong") lives in *Asbery Place* near or adjacent to the west boundary of the subject property. Gong is concerned about tree preservation between the two developments. (Exhibits 9.2; 9.3)

*Asbery Place* does not include a perimeter buffer/greenbelt between its lots and the subject property. (Exhibit 7, Sheet P01) The westerly 15 feet of the subject property is encumbered by a drainage



easement which was created in or around 2001.<sup>7</sup> (Exhibit 7, Sheet P02) Brixton must preserve that easement in *Stratmoor*. (Exhibit 7, Sheet P01) Brixton proposes to construct a shallow swale within that easement to intercept surface flows from upslope (west) of the subject property. (Exhibit 7, Sheet P03) Brixton proposes to preserve two of three significant conifers in the area highlighted by Gong on Exhibit 9.3. (Exhibit 7, Sheet P04)

18. Steve Tyzzer (“Tyzzer”) raises many concerns in his letter. (Exhibit 9.4)

- A. Tyzzer is concerned by the nature and rate of development occurring within the City. (Exhibit 9.4, p. 1)

Density and development standards are established by the City Council through adoption of development regulations. Legislative choices are not debatable in the context of this (or any other quasi-judicial) application.

- B. Tyzzer refers to wetlands which he believes to be on the south side of the subject property and which he believes should be preserved as part of a larger wetland system in the area. (Exhibit 9.4, pp. 1 and 2)

As previously noted, most of the eastern third of the subject property is a Category II wetland; its extension off-site to the south is relatively minor in comparison to the area of the subject property encumbered by the wetland. No work within the on-site wetland is proposed. Slight buffer averaging is proposed (as allowed by code), but the total buffer area will be larger after the averaging has been employed. Wetland hydrology will be assured by dispersion of some collected storm water into the wetland buffer. Approximately 43% of the subject property will be retained in its natural condition. (Exhibits 7; 18; 19; 22; 23; 41, Slide 6)

- C. Tyzzer is concerned about the effect of storm water runoff on George Davis Creek. (Exhibit 9.4, pp. 3 and 4)

The site naturally drains toward George Davis Creek which is located about 1,500 feet north of the subject property. (Exhibit 10, p. 4; 26) The preliminary drainage plan has been designed according to the guidelines and requirements of the 2009 King County Surface Water Design Manual (2009 KCSWDM) as adopted by the City of Sammamish, and the City of Sammamish Surface Water Design Manual Addendum and Chapter 13.20 SMC. The subject property lies within the Inglewood Subbasin. Therefore, pursuant to SMC 13.20.030(1)(c) and the City of Sammamish Flow Control and Water Quality Maps, Level 3 flow control and Sensitive Lake Water Quality Treatment are required. After treatment and

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<sup>7</sup> Date of easement creation derived from the easement’s recording number: 20010629000614. That number indicates that the easement was the 614<sup>th</sup> document recorded on June 29, 2001. [Official notice]

detention on-site, runoff will enter the City's stormwater conveyance system on its way to George Davis Creek. (Exhibits 1; 7; 26)

- D. Tyzzer is concerned about wildlife habitat loss. (Exhibit 9.4, pp. 4 and 5)

Approximately 43% of the subject property will be preserved in its natural condition. (Exhibits 7; 41, Slide 6) Wildlife presently living on the portions of the site which will be converted into streets and house lots will, most likely, be lost. That loss is a direct result of the legislative decision to urbanize this area. Urbanization is, generally speaking, incompatible with most wildlife species habitat, especially for animals such as deer, bear, coyote, etc. The legislative decision to designate and zone the area for urbanization amounts to a conscious choice of human habitat over wildlife habitat. Some enacted regulations (tree retention and critical areas, for example) serve to protect natural habitat in certain areas and to a certain extent. Those legislative choices are not debatable in the context of this (or any other quasi-judicial) application.

- E. Tyzzer is concerned about light pollution. (Exhibit 9.4, pp. 5 and 6)

Brixton will provide street lights as required by City code. (Exhibit 10, p. 7) Legislative choices are not debatable in the context of this (or any other quasi-judicial) application.

- F. Tyzzer is concerned that the subject property may contain culturally significant artifacts. (Exhibit 9.4, pp. 6 and 7)

A Cultural Resources Assessment was conducted for the subject property. (Exhibit 24) That Assessment found no cultural resources on the subject property and concluded that the site "retains a low potential for as-yet undiscovered archaeological resources." (Exhibit 24, p. 10) The Department's recommended conditions includes an "inadvertent discovery" condition. (Exhibit 1, p. 29, Recommended Condition 7)

19. Ben Wright wants Brixton to comply with adopted tree retention requirements. He also posits that City residents are angry about the nature of new development in the City. (Exhibit 9.5)

All evidence indicates that Brixton's preliminary tree retention plan complies with the City's adopted tree retention requirements. (Exhibits 7; 17; 37) Legislative choices are not debatable in the context of this (or any other quasi-judicial) application.

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

## LEGAL FRAMEWORK <sup>8</sup>

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<sup>8</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 is legally required to decide this case within the framework created by the following principles:

Authority

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

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

[SMC 20.10.070(2)]

Review Criteria

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

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

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

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

(1) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other 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 December 2, 2016.

#### Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

#### 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 *Stratmoor* is largely an uncontested case. Findings of Fact 17 – 19 address the public comments that are part of the record. Those Findings demonstrate that in each area of concern, the *Stratmoor* proposal is in compliance with applicable regulations. The comments do not contain any basis to impose additional conditions or to deny the proposal.
2. Section 20.10.200 SMC requires the Examiner to consider a number of items, including “the interim comprehensive plan”. The Examiner’s ability to use the comprehensive plan in project review is constrained by state law which states that the comprehensive plan is applicable only where specific development regulations have not been adopted: “The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan ....” [RCW 36.70B.030(1)]



The state Supreme Court addressed that provision in *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] in which it 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]

3. Based upon all the evidence in the record, the Examiner concludes that *Stratmoor* meets the considerations within SMC 20.10.200. All evidence demonstrates compliance with Comprehensive Plan policies, to the extent they can be considered, and zoning code, subdivision code, and Environmentally Sensitive Areas regulations. It should be noted that *Stratmoor* will not alter the on-site category II wetland; only a small portion of its buffer will be altered.
4. Given all the evidence in the record, the Examiner concludes that *Stratmoor* complies with the review criteria of SMC 20.10.220(1). The proposed subdivision allows development at the density expected under the Comprehensive Plan, does not thwart future development of surrounding properties, and makes appropriate provision for all items listed in that code section.
5. Given all the evidence in the record, the Examiner concludes that *Stratmoor* will serve the public use and interest and will thus comply with the review criteria of SMC 20.10.220(2).
6. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
  - A. Recommended Condition 1. The Examiner will “tweak” the wording of this condition slightly; the reference to the approval being subject to conditions imposed by the Examiner is superfluous in a Decision issued by the Examiner and will be omitted.
  - B. Recommended Conditions 4 and 5. The reference to “218<sup>th</sup> Street” in Recommended Condition 4 needs to be corrected to “218<sup>th</sup> Avenue SE.”

There is duplication between Recommended Conditions 4 and 5 as recognized during the hearing. The portion of Recommended Condition 4 relating to the pedestrian easement would be better as a separate condition. That sentence is better than its counterpart in

Recommended Condition 5 because it specifies the width of the required path. Appropriate changes will be made to Recommended Conditions 4 and 5.

- C. Recommended Condition 25 is a verbatim duplicate of the first sentence in Recommended Condition 24. Recommended Condition 25 will be deleted.
- D. A spelling error in Recommended Condition 7 needs correction: “recumen” should be “resume”. A minor, non-substantive punctuation revision to Recommended Condition 27 (a period at the end) will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

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

### DECISION

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

Decision issued July 26, 2017.

  
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John E. Galt  
Hearing Examiner

### HEARING PARTICIPANTS<sup>9</sup>

Ryan Harriman

Todd Levitt

### 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>9</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. [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** ***STRATMOOR*** **PSUB2016-00512**

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:

1. Exhibit 7 is the approved preliminary plat (and supporting plans). Revisions to approved preliminary subdivisions are subject to the provisions of SMC 19A.12.040.
2. The Plator or subsequent owner(s) shall comply with the payment of street impact fees, impact fees for park and recreational facilities, and school impact fees in accordance with Chapters 14A.15, 14A.20, and 21A.105 SMC, respectively.
3. The Plator shall comply with the City of Sammamish Public Works General Standard Plan Notes attached hereto as Exhibit 39.
4. The Plator shall dedicate a five-foot wide easement for a pedestrian connection along the eastern boundary of the project site paralleling 218<sup>th</sup> Avenue SE. The public trail easement shall be dedicated on the face of the plat.

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5. A five-foot public pedestrian access shall be provided through the plat to connect the sidewalk on the cul-de-sac to the subdivision's southerly boundary consistent with the cul-de-sac standard. The Plattor shall dedicate a five-foot wide easement on the plat for that access.
6. No structure or obstruction including, without limitation, fences and rockeries shall be erected over, upon or within the District's Water and Sewer Easement, and no trees, bushes or other shrubbery shall be planted or maintained within the District's Water and Sewer Easement.
7. In the event that ground-disturbing construction activities result in the inadvertent discovery of archaeological materials, work shall immediately cease and desist at that location and a professional archaeologist shall document and assess the discovery. DAHP shall be contacted for any issues involving archaeological materials, including Native American cultural resources. In the unlikely event that human remains, either in the form of burials, isolated bones or teeth, or other mortuary items are discovered during construction, work in the area of discovery shall be stopped immediately and the discovery area should be secured. Local law enforcement, DAHP, and affected Tribes shall be contacted immediately. No additional excavation shall be undertaken until a process has been agreed upon by these parties. No exposed human remains should be left unattended. Works shall not resume until appropriate approvals are received and the City of Sammamish has authorized development to resume.
8. Half-street frontage improvements shall be installed along the southern half of East Main Street, consistent with PWS and the approved variation. Frontage improvements are not required along 218<sup>th</sup> Avenue SE.
9. East Main Street is classified as a local road with 30-feet of existing right-of-way on the north side of the roadway. 35-feet of right-of-way dedication and half-street frontage improvements including a bike lane along East Main Street, are required consistent with Interim PWS.15.110, Table 1, and Interim PWS Figure 01-05 along the parcel.
10. Drainage plans, Technical Information Reports, and analysis shall comply with the *2009 King County Surface Water Design Manual* (KCSWDM), the City of Sammamish Addendum to the 2009 KCSWDM, the City of Sammamish *Stormwater Management Comprehensive Plan*, and the East Lake Sammamish Basin Plan.

***Site Development Permit Special Conditions:***

11. Illumination shall be provided in the plat 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.
12. Private roads, driveways, half-street frontage improvements along East Main Street, and off-site improvements shall be constructed as required by the site development permit and/or right-of-way permit.



***Prior to or Concurrent with Final Plat:***

13. Local roads shall be dedicated as public right-of-way.
14. A public stormwater easement shall be provided for access, inspection, maintenance, repair, and replacement of the detention and water quality facilities.
15. Any offsite stormwater easements required by the stormwater design shall be recorded.

***Conditions to appear on the face of the final plat (italicized words verbatim):***

16. The plat shall include a note regarding the payment of all street, park, and school impact fees consistent with the provisions of Chapters 14A.15, 14A. 20, 14A.25, and 21A.105 SMC as the same exist at the time the final plat is being approved. The note shall indicate whether fees have already been fully paid, partially paid, or deferred. Specific language shall be reviewed and approved by the City prior to final plat approval.
17. Trees retained in accordance with Chapter 21A.37 SMC shall be identified on the face of the final plat for retention. Trees shall be tagged in the field and referenced on the face of the final plat with the applicable tag number.
18. *“Trees identified on the face of this plat have been retained pursuant to the provisions of Chapter 21A.37 SMC. Retained trees are subject to the tree protection standards of Chapter 21A.37 SMC. Removal of these trees is prohibited unless the tree is removed to prevent imminent danger or hazard to persons or property, and may be 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 Chapter 21A.37 SMC.”*
19. 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 prior to final plat.
20. Unless located within a recreation tract and public easements provided, all 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 inspection, maintenance, operation, repair, and replacement. Language to this effect shall be shown on the face of the final plat.
21. 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 inspection, maintenance, operation, repair, and replacement. Language to this effect shall be shown on the face of the final plat.

22. *"Maintenance of all landscape strips along the plat roads shall be the responsibility of the Homeowners Association or adjacent property owners. Maintenance of landscape strips along the stormwater pond perimeter other than the interior pond embankments shall be the responsibility of the Homeowners Association. Under no circumstances shall the City bear any maintenance responsibilities for landscaping strips created by the plat."*
23. *"Maintenance of illumination along all local and private roads shall be the responsibility of the Homeowners Association or jointly shared by the owners of the development."*
24. *"Individual lot flow control BMPs in accordance to the 2009 King County Surface Water Design Manual shall be provided with each single-family residential building permit unless otherwise incorporated into the subdivision site development plans. Unless directed to individual lot flow control BMPs, all building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain system as shown on the approved plat Site Development permit on file with the City of Sammamish. The connection to the storm system shall be through a perforated tightline in accordance to the 2009 King County Surface Water Design Manual. All connections of the drains shall be constructed and approved prior to final building inspection approval."*
25. *"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."*

***Prior to City Acceptance of Improvements:***

26. Prior to acceptance into the Maintenance and Defect period, project close-out documents including the final acceptance construction punch list, as-builts, and final corrected TIR shall be submitted to Public Works for approval.