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

# DECISION

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| FILE NUMBER: | PSHP2014-00280 |
| APPELLANT: | Dhyan Lal & Erin Vosti-Lal<br>C/o J. Richard Aramburu<br>720 Third Avenue, Suite 2000<br>Seattle, WA 98104 |
| RESPONDENT: | City of Sammamish Department of Community Development<br>C/o Charlotte Archer/Kim Adams Pratt<br>Kenyon Disend, PLLC<br>11 Front Street S<br>Issaquah, WA 98027-3820 |
| APPLICANT: | Halcyon Development, LLC<br>Duana Kolouškovᡠ<br>C/o Johns Monroe Mitsunaga Kolouškovᡠ PLLC<br>11201 SE 8th Street, Suite 120<br>Bellevue, WA 98004 |
| TYPE OF CASE: | Appeal from preliminary approval of a two-lot short subdivision |
| EXAMINER DECISION: | Appeal Issue 2.1 DISMISSED; Appeal Issues 2.2, 2.3, and 2.5 DISMISSED IN PART and DENIED IN PART; Appeal Issue 2.4 DENIED |
| DATE OF DECISION: | April 14, 2016 |

## INTRODUCTION [1]

Dhyan Lal & Erin Vosti-Lal (collectively the Lals or Appellants Lal) appeal from the preliminary approval of a two-lot short subdivision issued by the Sammamish Department of Community Development (the Department) on February 2, 2016. (Exhibits 9001.1 *et seq.* and 1, respectively [2]) The short subdivision applicant is Halcyon Development, LLC (Halcyon). (Exhibit 1.A)

[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 Lals filed the subject appeal on February 24, 2016. (Exhibit 9001.1) The appeal was timely filed in accordance with Sammamish Municipal Code (SMC) 20.10.080(1).

The subject property is located on the west side of 204th Avenue SE, roughly in the 2700 block.

The Examiner held an open record hearing on April 7, 2016. The City gave notice of the hearing as required by SMC 20.10.180(2).

Pursuant to City of Sammamish Hearing Examiner Rule of Procedure (RoP) 224(c) and Exhibit 9003, the Examiner entered the following administrative exhibits into the hearing record:

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| Exhibit 9001.1: | Appeal of a Decision of an Administrative Official, filed February 24, 2016 |
| Exhibit 9001.2: | Statement of Lal Appeal, filed February 24, 2016, with Appendices A – E (to be cited as Exhibit 9001.2A, etc.) |
| Exhibit 9002: | Letter, Hearing Examiner to Principal Parties, February 25, 2016 (Appeal Guidance) |
| Exhibit 9003: | E-mail, Hearing Examiner to Principal Parties, March 1, 2016 (Procedural Guidance) |
| Exhibit 9004: | Notice of Appearance for Halcyon Development, LLC and Joinder in City's Prehearing Brief, filed April 1, 2016 |

Pursuant to RoP 224(d) and Exhibit 9003, Respondent Department pre-filed Exhibits 1 - 23 and provided an index listing of those exhibits. Respondent Department also filed a Prehearing Brief to which it did not assign an exhibit number. At the outset of the hearing the Examiner assigned Exhibit 24 to that brief. The other principal parties did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from the Department as follows:

Exhibit 25: Corrected Sheet 1 of Exhibit 1.C

Pursuant to RoP 224(e) and Exhibit 9003, Appellants Lal pre-filed Exhibits 1001 - 1004 and provided an index listing of those exhibits. Appellants Lal also filed an Opening Brief to which they did not assign an exhibit number. At the outset of the hearing the Examiner assigned Exhibit 1005 to that brief. The other principal parties did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

The Deputy City Clerk has the record copy of all exhibit index lists and exhibits.

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

A. Overview

A.1. The 2.32 acre parcel which is the subject of this appeal (the subject property) is Lot A in Boundary Line Adjustment (BLA) BLA2014-00183. The subject property is located on the west side of 204th Avenue SE. It has a 48 foot wide by 180 foot long panhandle which provides access to 204th Avenue SE. (Exhibits 4; 18-1; 25)

A.2. The subject property is zoned R-1 as is much of the surrounding area. An R-4 zoned area borders about the easterly 40% of the north boundary of the subject property. (Exhibits 1; 18-2)

The surrounding area is characterized by single-family residences on relatively large, partially wooded lots. A major exception to this characterization is Wetland 30, a large wetland located east of 204th Avenue SE. (Exhibits 10, p. 7; 18-1)

A.3. On or about August 12, 2014, John Richards (Richards) filed a BLA application on behalf of himself and Halcyon Development, LLC (Halcyon) to reconfigure two existing parcels whose combined areas totaled approximately 3.86 acres. Parcel 1 contained 2.72 acres and was rectangular with an 82 foot wide by 180 foot long panhandle providing access to the west side of 204th Avenue SE. Parcel 2 contained 1.14 acres, was rectangular in shape, was located west of Parcel 1, and was landlocked. Parcel 1 contained a single-family residence, a detached garage, and a shed, accessed via a driveway to 204th Avenue SE. (Exhibit 4)

The BLA application proposed to reconfigure the two lots into a northern and a southern lot with an irregular common boundary between them. The result would be Lot A, the northern lot, containing approximately 2.32 acres and Lot B, the southerly lot, containing approximately 1.55 acres, each with a panhandle access to 204th Avenue SE. The house, garage, and driveway were to be on Lot B; the shed was to be on Lot A. (Exhibit 4)

The Department approved the BLA application on September 25, 2014. The BLA was recorded on October 1, 2014. (Exhibit 4)

A.4. Richards is a Member of and representative of Halcyon. (Exhibits 1.A; 4, p. 1)

A.5. Halcyon filed an application to short subdivide BLA Lot A into two lots on December 30, 2014. The proposal was to divide Lot A into two lots for single-family residential development. After two rounds of revisions, the proposal contemplated Lot 1 containing 27,954 square feet (SF) and Lot 2 containing 22,067 SF, surrounded by five open space tracts (Tracts A – E) totaling 50,533 SF. Proposed Lot 2 would access 204th Avenue SE via an easement over Proposed Lot 1, encumbering a shared driveway to be used by both lots. The shared driveway would intersect 204th Avenue SE

approximately 50 feet north of the existing driveway serving BLA Lot B (centerline-to-centerline measure). (Exhibits 1.A and 1.C)

The Department approved Halcyon's short subdivision application on February 2, 2016. (Exhibit 1)

A.6. This appeal followed in timely fashion. The appeal lists five issues, numbered in the appeal letter as sections 2.1 – 2.5. (Exhibit 9001.2) This Decision will refer to those issues as Appeal Issues 2.1 – 2.5.

A.7. The appellants own and reside on Tax Parcel 0824069172 which abuts the central portion of the north boundary of the subject property. (Exhibit 25 and testimony)

A.8. The Findings of Fact and Conclusions of Law in this Decision are grouped for the reader's convenience. Such groupings do not indicate any limitation of applicability to the Decision as a whole.

A.9. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

B. Appeal Issue 2.1

B.1. Appeal Issue 2.1 alleges that the Department misused the BLA process. It asserts that Richards/Halcyon intended to create three lots from the outset and used the BLA process to exempt one half of its total property (BLA Lot B) from open space and clustering requirements associated with short subdivision of R-1 zoned property. The Lals want the Examiner to vacate the short subdivision approval and require the Department "to apply standards for the R-1 zone to the entire property from the BLA." (Exhibit 9001.2, pp. 1 and 2; quote from p. 2)

B.2. The SMC classifies a BLA as a Type I land use application. [SMC 19A.24.020(1) and 20.05.020, Exhibit A] No right exists to an administrative appeal of a Type 1 application decision under the SMC. [SMC 20.05.020, Exhibit A, and 20.05.020(1)(a)]

B.3. "On its own motion or on the motion of a party, the examiner shall dismiss an appeal for untimeliness or lack of jurisdiction." [SMC 20.10.090]

B.4. At the outset of the open record hearing the Examiner moved, *sua sponte*, to dismiss Appeal Issue 2.1 for lack of jurisdiction. After allowing brief oral argument by the principal parties, the Examiner orally dismissed Appeal Issue 2.1 for lack of jurisdiction. (See Conclusions of Law, § B, below.)

C. Appeal Issue 2.2

C.1. Appeal Issue 2.2 alleges that Halcyon's short subdivision fails to cluster its lots as required by SMC 21A.25.030(A), Note 13. [3] The Lals assert that the short subdivision "does not cluster the two lots on

[3] The appeal gives the code citation as "SMC 21A.25.030, Note 13". (Exhibit 9001.2, p. 2) The bulk regulations matrix which precedes the Notes is actually Subsection (A). There is no Subsection B in SMC 21A.25.030, Densities and

the proposed short plat nor does it cluster the three building sites included in the BLA described above." The Lals want the Examiner to vacate the short subdivision approval and require the Department "to require the clustering of the building sites on the short plat and the entire property as it existed prior to the BLA." (Exhibit 9001.2, p. 2)

C.2. Note 13 to the matrix in SMC 21A.25.030(A) relates to the provisions in the R-1 zone column of the matrix. Note 13 reads as follows:

> All subdivisions and short subdivisions in the R-1 zone shall be required to be clustered away from critical areas or the axis of designated corridors such as urban separators or the wildlife habitat network to the extent possible and a permanent open space tract that includes at least 50 percent of the site shall be created. Open space tracts shall meet the provisions of SMC 21A.30.030.

C.3. There are no critical areas on the subject property nor in close proximity thereto. The nearest critical area identified in the record is Wetland 30 which lies more than 230 feet east of 204th Avenue SE. [4] (Exhibits 1, p. 3, Finding 18; 10; 13)

C.4. No evidence of any designated "urban separator" that would affect the subject property was entered into the hearing record.

C.5. No evidence of any designated "wildlife habitat network" that would affect the subject property was entered into the hearing record.

C.6. The short subdivision as approved sets aside 50.25% of the total short subdivision site area as open space, divided into five separate, contiguous tracts. (Exhibit 25)

C.7. Findings of Fact regarding "the provisions of SMC 21A.30.030" will be presented in the next section.

C.8. The Lals presented no expert testimony or evidence on this issue.

D. Appeal Issue 2.3

D.1. Appeal Issue 2.3 alleges that Halcyon's short subdivision does not locate or configure open space as required by SMC 21A.30.030. The Lals also assert "that 50% of the entire site included in the BLA

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Dimensions – Residential zones, although there is a Subsection (B) in SMC 21A.25.040, Densities and Dimensions – Commercial zones which contains notes analogous to those found after the matrix in SMC 21A.25.030(A). It may well be that this is a scrivener's error and that the notes in SMC 21A.25.030 were intended to constitute a Subsection (B). Regardless, there is no question but that all principal parties know what code provisions are at issue in this appeal.

[4] The Lals claim that Wetland 30 is only 180 feet from the nearest edge of the subject property. (Exhibit 9001.2.D, unnumbered p. 2) That claim is based upon scaling from an internet map. (*Ibid.*) Estimation of distance by a layperson from an internet map has less credibility than estimation of distance by a professional wetland scientist as was done in Exhibit 10. (Exhibit 10, pp. 2 and 7)

[must] be set aside for the required 50% open space." The Lals want the Examiner to vacate the short subdivision approval and require the Department "to require that 50% of the entire site be included in open space and that such open space be located and configured to meet the foregoing criteria." (Exhibit 9001.2, p. 2)

D.2. Section 21A.30.030 SMC contains two subsections. Subsection (1) addresses the permanence of, ownership of, and access to open space tracts. Subsection (2) discusses the configuration of open space tracts in the R-1 zone. It is that subsection to which SMC 21A.25.030(A), Note 13, is addressed.

Subsection 21A.30.030(2) reads in full as follows:

> In the R-1 zone, open space tracts created by clustering required by SMC 21A.25.030 shall be located and configured to create urban separators and greenbelts as required by the interim comprehensive plan, to connect and increase protective buffers for environmentally sensitive areas as defined in SMC 21A.15.1065, to connect and protect wildlife habitat corridors designated by the interim comprehensive plan, and to connect existing or planned public parks or trails. The City may require open space tracts created under this subsection to be dedicated to the City, an appropriate managing public agency, or qualifying private entity such as a nature conservancy.

D.3. The several requirements in SMC 21A.30.030(2) are conditional: A specified condition must exist before the requirement applies. The subsection contains two threshold requirements and four substantive requirements. The first threshold is that the requirements apply only to property zoned R-1. The subject property is zoned R-1. Therefore, that threshold requirement is met. The second threshold is that the requirements apply only if clustering is required pursuant to SMC 21A.25.030. Such clustering is required for the subject short subdivision. Therefore, that threshold requirement is also met. We can now consider application of the substantive requirements to the subject short subdivision.

D.4. The first substantive requirement is that "open space tracts created by clustering required by SMC 21A.25.030 shall be located and configured to create urban separators and greenbelts as required by the interim comprehensive plan". The Lals in their Opening Brief cite one Comprehensive Plan policy and highlight only one portion of that policy: "EC.1.4 Protect, where appropriate, the following special areas: … d Land reserved as open space or buffers tracts as part of development, including parcels subject to density averaging". (Exhibit 1005, p. 5, underlining and punctuation as in the exhibit [5])

[5] The Examiner notes that this quote is from the recently adopted (2015) Comprehensive Plan. Whether the same quote was in the prior version of the Comprehensive Plan, the one to which this application would have been vested, is not known to the Examiner.

But that highlighted language does not require urban separators or greenbelts. It merely says to protect open space tracts created through the development process. (The "density averaging" portion of the policy has no applicability to the subject short subdivision as no density averaging is proposed.)

The Lals believe that a greenbelt and urban separator are required around the exterior of Halcyon's short subdivision. (Testimony) The record contains no evidence that urban separators or greenbelts are required anywhere by the adopted Comprehensive Plan, let alone anywhere that would affect the subject property.

D.5. The second substantive requirement is that "open space tracts created by clustering required by SMC 21A.25.030 shall be located and configured … to connect and increase protective buffers for environmentally sensitive areas as defined in SMC 21A.15.1065". The definition of "environmentally sensitive areas" in SMC 21A.15.1065 was repealed by Ordinance 2005-193. This cross-reference is an orphan. The term now in use in the SMC is "environmentally critical areas." [See Chapter 21A.50 SMC.] The SMC contains a definition of "critical areas": "'Critical areas' means those areas in the City that are erosion hazard areas, frequently flooded areas, landslide hazard areas, seismic hazard areas, critical aquifer recharge areas, wetlands, streams, and fish and wildlife habitat conservation areas." [SMC 21A.15.254]

The record contains no evidence that any conditions or areas meeting the definition of critical area exist on the subject property. With respect to fish and wildlife habitat conservation areas, the SMC defines them as "[a]reas with which state or federally designated endangered, threatened, and sensitive species have a primary association", or wetlands streams and lakes, or state-regulated natural preserves, or "[f]ish and wildlife habitat corridors as defined in SMC 21A.15.469." [SMC 21A.15.468] In order to be the latter, a site must contain a Type F or Np stream or a high habitat score wetland, or be within 200 feet of such a feature. [SMC 21A.15.469] None of those conditions exist in association with the subject property.

D.6. The third substantive requirement is that "open space tracts created by clustering required by SMC 21.25.030 shall be located and configured … to connect and protect wildlife habitat corridors designated by the interim comprehensive plan". The record contains no evidence that any designated wildlife habitat corridor affects the subject property.

D.7. The fourth and final substantive requirement is that "open space tracts created by clustering required by SMC 21.25.030 shall be located and configured … to connect existing or planned public parks or trails." The record contains no evidence that any public parks or trails affect the subject property.

D.8. The Lals presented no expert testimony or evidence on this issue.

E. <u>Appeal Issue 2.4</u>

E.1. Appeal Issue 2.4 alleges that Halcyon's short subdivision fails to comply with SMC 21A.50.255 – Erosion hazards near sensitive water bodies overlay (EHNSWB Overlay). The EHNSWB Overlay regulations impose restrictions on the handling of storm water runoff within the Overlay area. The Lals assert that the soils on the subject property are not suitable for infiltration of storm water runoff. They further assert that infiltration of storm water runoff, as proposed, coupled with the use of on-site sewage disposal systems (OSS) "is likely to impact adjacent properties." The Lals want the Examiner to vacate the short subdivision approval and require the Department to force Halcyon to "a) delete the septic systems and drainfields, b) connect to the public sewer system, and c) make provision to fully infiltrate surface water flows." (Exhibit 9001.2, pp. 2 and 3; quotes from p. 3)

E.2. Section 21A.50.225 SMC contains a lengthy collection of regulations that apply to properties within the EHNSWB Overlay (which is sometimes referred to as the "SO-190 Overlay"). The subject property is located within the EHNSWB Overlay. (Exhibit 1, p. 1, Finding 4) The EHNSWB Overlay consists of two parts: The No-Disturbance Area and Properties Draining to the No-Disturbance Area. The No-Disturbance Area essentially consists of the steep slopes overlooking Lake Sammamish. [SMC 21A.15.417]

The March, 2015, comment letter from the Lals' counsel asserts that "it appears" that the subject property drains to a No-Disturbance area within the EHNSWB Overlay. (Exhibit 9001.2.B, p, 3, § 3) Approximately 94% of the subject property drains southwest towards Lake Sammamish. The remaining 6% drains southeast towards a depression at the west end of Wetland 30 which apparently drains via Kanim Creek to Lake Sammamish. (Exhibits 10, p. 7; 14, pp. 29 and 31; 18-1; official notice of Kanim Creek) Given all of the above, the Examiner finds that Lals' counsel's assertion is more likely than not correct.

E.3. EHNSWB Overlay regulations for sites which drain to a No-Disturbance Area are contained in SMC 21A.50.225(4). In summary, developments proposed for such areas must "evaluate the suitability of on-site soils for infiltration. All runoff from newly constructed impervious surfaces shall be retained on site unless this requirement precludes a proposed … short subdivision from achieving 75 percent of the maximum net density as identified in Chapter 21A.25 SMC." [SMC 21A.50.225(4)(a)] Special requirements apply where that standard cannot be met. [SMC 21A.50.225(4)]

E.4. Twelve test pits were dug in June, 2014, by a geotechnical consulting firm retained by the Lals. One of the pits was located on BLA Lot B; the remaining 11 were located within the subject property. The pits were dug to depths of three to 10 feet below surface. The test pits generally encountered 4" – 12" of topsoil over weathered till to the bottom of the pits. The weathered till in the test pit nearest the Lals' property (TP-6) was approximately seven feet thick and was underlain by sandy soil to the bottom of the test pit 10 feet below grade. A lens of sand between two and four feet thick was encountered beneath the topsoil in the panhandle (TP-1 and TP-2). No groundwater was encountered, but the geotechnical engineers expect that perched groundwater may be encountered during wet times of the year. (Exhibit 14, pp. 71 – 73 and 85 – 98)

The geotechnical consultant dug two additional test pits in June, 2015. One of those pits was just west of TP-6; the other was in the panhandle where the shared driveway will be located. The test pit near TP-6 (TP-101) encountered one foot of topsoil, over about three feet of weathered till which transitioned to unweathered till at about five feet below grade, and then to sand at about seven feet below grade. The other test pit (TP-102) encountered one foot of topsoil over sand to the limit of the pit at eight feet below grade. (Exhibit 15, pp. 3 and 7 – 22)

E.5. The consultant performed infiltration tests in TP-101 and TP-102.

> At TP-101, where testing is representative of infiltration capacity within the glacial till, the slowest measured infiltration rate was 3.4 inches per hour. At TP-102, where testing is representative of infiltration capacity within localized outwash-type deposits, the slowest measured infiltration rate was 45 inches per hour.

(Exhibit 15, p. 4) After applying correction factors to determine a design infiltration rate, the consultant concluded that the glacial till soils can handle infiltration at a rate of 0.5 inches per hour and that the outwash-type soils can handle infiltration at a rate of 12.5 inches per hour. The consultant recommended that the more conservative number be used to design drainage infiltration facilities. (Exhibit 15, p. 4)

Public Works will require *in situ* infiltration tests before final short subdivision approval is granted. The time of year of those tests is immaterial as the test involves fully saturating the soil around the test pit before performing the test. Nevertheless, Public Works will likely require that those tests be done during the wet season. More analysis has been done on this application than is typically done before preliminary short subdivision approval. During final short subdivision review, Public Works may employ its own consultant to provide an independent peer review of the applicant's consultant's work. (Testimony)

E.6. The proposed short subdivision must comply with the 2009 King County Surface Water Design Manual (2009 KCSWDM). (Exhibits 1, p. 2, Finding 5; 14, p. 7 *et al.*; 23, p. 3 *et al.*) Halcyon's consulting engineers prepared a preliminary drainage plan which meets the requirements of the 2009 KCSWDM and also meets the "requirements of the EHNSWB by infiltrating 100 percent of the onsite Stormwater runoff. This will be implemented by Pervious Pavements and utilizing gravel beds under the Pervious Asphalt." (Exhibit 14, , pp. 35 – 62; quote from p. 35)

E.7. The nearest sewer line is some 2,800 feet (0.53 miles) distant. Acquisition of numerous easements over private property would be required to extend a sewer line to the subject property. (Exhibit 19, p. 5)

E.8. A licensed OSS designer has begun the process of designing an OSS for the proposed lots. The agency with responsibility and authority to review and approve OSS plans is Public Health – Seattle King County. (Exhibits 19, pp. 2 and 3; 20)

E.9. The subject property is located within the jurisdiction of the Sammamish Plateau Water District (SPWD) which provides both domestic water and sewer services within its jurisdiction. Through an agreement with Public Health – Seattle King County, SPWD allows OSS when the nearest sewer line is more than 200 feet from a development site. (Exhibit 1, p. 7; testimony)

E.10. The Lals presented no expert testimony or evidence on this issue.

F. Appeal Issue 2.5

F.1. Appeal Issue 2.5 alleges that "there is an existing driveway on site that can be used for access to the new lots. Construction of another long access driveway creates unnecessary new impervious surface and visual impact." The Lals want the Examiner to vacate the short subdivision approval and require the Department to force Halcyon to "use [] the existing driveway to access all homes on the property." (Exhibit 9001.2, p. 3) The terms "driveway on site" and "on the property" in the above quotes means the entire property subject to the BLA; the term "existing driveway" means the driveway on BLA Lot B.

F.2. The house on BLA Lot B is served by a private driveway which accesses 204th Avenue SE over its panhandle. (Exhibits 4, p. 2; 18-1)

The two proposed short subdivision lots will share a combined driveway to 204th Avenue SE over BLA Lot A's panhandle. (Exhibit 25)

The two driveways will be approximately 50 feet apart (centerline-to-centerline measure). (Estimated from Exhibit 25)

F.3. 204th Avenue SE is classified as a local access street. (Exhibit 1, p. 2, Finding 11)

F.4. The Lals did not cite any adopted regulation or standard in support of their proposition that the combined driveway for the Halcyon short subdivision must be further consolidated with the existing driveway serving Lot B of BLA2014-00183.

The Examiner is unaware of any adopted regulation or standard that would require such consolidation. The Interim Public Works Standards (PWS) encourage but do not require joint-use driveways. [PWS.15.170]

F.5. The Lals presented no expert testimony or evidence on this issue.

G. Other Matters

G.1. In an August, 2015, pre-decision comment letter, the Lals asserted that the arborist report submitted to the Department as a supporting document for the short subdivision application was inadequate. They objected to certain statements within that report and with its proposal to remove trees within

the 204th Avenue SE right-of-way to facilitate construction of the shared driveway for the two proposed lots. (Exhibit 9001.2.C)

Although this concern was not raised as an issue in the Lals' appeal, Respondent's Prehearing Brief addressed it. (Exhibit 24, pp. 18 and 19)

G.2. "The scope of an appeal shall be based principally on matters or issues raised in the appeal." [SMC 20.10.080(2)(b)]

## LEGAL FRAMEWORK [6]

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

Authority
A short subdivision is a Type 2 land use application. [SMC 20.05.020, Exhibit A] An appeal from the Department's action on a Type 2 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the appeal 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

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> recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

The code provisions which are at issue in this appeal have been set forth in the various Findings of Fact, above.

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, the Type 2 application involved in this appeal is vested to the development regulations as they existed on January 12, 2015, the date the application was deemed complete. (Exhibit 1, p. 2, Finding 9)

Standard of Review

The standard of review is preponderance of the evidence. The appellant has the burden of proof. [RoP 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

A. Overview

A.1. The Lals have not proven by a preponderance of the evidence that the Department erred in its approval of Halcyon's short subdivision application. They presented no expert evidence or analysis to challenge the expert work and opinions provided by Halcyon and approved by the City. Their interpretation of the code provisions they cite is not consistent with a proper reading of the code. But even more fundamentally, most of their appeal is predicated upon the erroneous belief that the Examiner can undo BLA2014-00183 and apply applicable code provisions to the entire property that was involved in the BLA application. As the Examiner stated during the hearing and as is repeated below in Section B of these Conclusions of Law, the Examiner has no jurisdiction over BLA

decisions because adopted City code specifies that no right of administrative appeal exists for BLAs (and all other Type 1 applications).

A.2. The Conclusions of Law which follow address each of the issues on appeal and explain why the Lals' assertions are not supportable.

A.3. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

B. Appeal Issue 2.1

B.1. The Examiner has express authority to dismiss, on his own initiative, an appeal over which he lacks jurisdiction. [SMC 20.10.090, quoted in Finding of Fact B.3, above]

B.2. The SMC is crystal clear: A BLA is a Type 1 application; no right to an administrative appeal exists from Type 1 application decisions. Therefore, the Examiner has absolutely no jurisdiction over any Type 1 administrative decision. [7]

B.3. Appeal Issue 2.1 is a direct challenge to the Department's action on BLA2014-00183. Given that there is no right to an administrative appeal from a Type 1 decision and that a BLA is a Type 1 application, this appeal issue had to be dismissed for lack of jurisdiction.

B.4. The Examiner realized during the course of deliberation that Appeal Issues 2.2, 2.3, and 2.5 include collateral attacks on the BLA: They ask the Examiner to essentially pretend that the BLA had never been approved when calculating open space compliance and driveway location. The Examiner cannot pretend that an approval which occurred did not occur. Therefore, those portions of Appeal Issues 2.2, 2.3, and 2.5 which collaterally attack the BLA must also be dismissed for lack of jurisdiction.

C. Appeal Issue 2.2

C.1. The short subdivision as approved reserves over 50% of the subject property as open space, thus complying with the 50% requirement of Note 13.

C.2. The subject property is not impacted by or affected by any identified, designated urban separators or wildlife habitat networks. Therefore, there is nothing listed in SMC 21A.25.030(A), Note 13 to cluster the two lots away from. And even if there were, which there isn't, the requirement is not absolute. The requirement is to cluster away from the two listed items "to the extent possible". The Department would have authority to determine what level of clustering was reasonable under the circumstances.

[7] This Conclusion of Law does not apply where an applicant who needs more than one City land use permit elects to consolidate a Type 1 application with one or more higher typed applications over which the Examiner does have jurisdiction. In such consolidated cases, the procedure for the highest numbered application type applies to the consolidated applications. [SMC 20.05.020(2)]

C.3. Compliance with the imbedded "provisions of SMC 21A.30.030" will be addressed in Section D, below.

C.4. The Lals failed to meet their required burden of proof on this issue. Therefore, this issue must be denied.

D. Appeal Issue 2.3

D.1. None of the substantive requirements within SMC 21A.30.030 apply to the proposed short subdivision. Therefore, the 50% open space does not have any special locational requirements.

D.2. The Lals' belief that the SMC requires a greenbelt or urban separator around the perimeter of the Halcyon short subdivision is without foundation or merit. Nothing in the SMC requires a greenbelt around the perimeter of every subdivision/short subdivision. The SMC requires landscape buffers (some might call them greenbelts) around the perimeter of commercial, industrial, institutional, and "attached/group residential" development where such uses abut single-family residential areas. [SMC 21A.35.050] But nothing requires a greenbelt to separate one single-family residential development from another single-family residential development.

D.3. The short subdivision as approved places the greatest amount of the open space along the north property line. In fact, the deepest (widest) segment of the open space as approved lies directly south of the Lals' property. The open space tract in that area ranges from about 40 to 90 feet deep.

D.4. The Lals failed to meet their required burden of proof on this issue. Therefore, this issue must be denied.

E. Appeal Issue 2.4

E.1. All credible, expert evidence in this record indicates that infiltration of surface water runoff is technically feasible. The Lals presented anecdotal stories of muddy site conditions, but those stories do not outweigh the tests and analyses performed by expert engineers. [8]

E.2. Short subdivisions, like "long" subdivisions, undergo a two step approval process: preliminary approval followed by final approval. The Examiner often uses an architectural analogy to explain the difference between the two stages of the process. Preliminary approval is analogous to having an architect develop sketches and rough drawings of a proposed house. The architect does not generate the detailed construction plans for the house until the client has approved the preliminary sketches: The cost of preparing detailed plans for framing, siding, wiring, plumbing, heating, interior finishes, etc. before knowing if the underlying design was acceptable would be unbearable.

[8] The Examiner fully understands that the Lals most likely could not have gained access to the subject property to have an engineer of their choosing dig additional test pits. But an engineer of their choosing could have evaluated/critiqued the data and analyses performed by Halcyon's engineers. That they did not do so means that they had no expert information to present.

The same is true with short subdivisions. The work done to date is all preliminary. Before any final approval is given, the applicant must present to the City very detailed plans to meet all technical requirements. If it were to turn out that the preliminary design would not work, then the project would be dead in the water.

E.3. It is true as pointed out by the Lals that the test pits dug thus far are, with but a few exceptions involving the access panhandle, not in areas where infiltration galleries will likely be located. But the test pits depict a fairly consistent soil profile across the site (except for those few locations where a highly pervious outwash lens exists beneath the surface). The currently available general characterization is sufficient for preliminary review. Had the current tests shown widely differing characteristics with many areas unsuitable for storm water infiltration, further testing would have been appropriate before preliminary approval. But that was not the case here.

Further, except for the panhandle and the driveway easement across the south edge of Proposed Lot 1 where driveway location is relatively fixed, the location of driveways, parking areas, and houses is not fixed in any way by preliminary short subdivision approval. Each proposed house must meet boundary line setbacks and lot coverage limitations. In addition, development on each lot must be configured to provide the necessary spaces for OSSs. A collaborative process will be required between the drainage engineer, the OSS designer, the home designer, Public Health – Seattle King County, and the City to find an acceptable way to place all required elements associated with residential development on each lot. That work is not required nor appropriate before preliminary short subdivision approval.

E.4. The preponderance of the evidence in this record demonstrates that the requirements of the EHNSWB Overlay should be able to be met (100% infiltration of runoff) and that OSSs should be able to be employed.

E.5. The Lals failed to meet their required burden of proof on this issue. Therefore, this issue must be denied.

F. Appeal Issue 2.5

F.1. This allegation hangs entirely on the false notion that the entire BLA property is subject to the current short subdivision review process. The fact is that there is no existing driveway on the subject property. There is a driveway on abutting Lot B in BLA2014-00183, but Lot B is not part of the subject property.

F.2. The Lals cited no code or standard that would prevent construction of the proposed shared driveway for Lots 1 and 2. The fact that they may not want to see another driveway is not a basis to deny an applicant a right otherwise allowed by applicable code and standards.

F.3. This appeal issue lacks a basis in code, standard, or reality. It must be denied.

G. Other Matters

G.1. The Examiner declines to rule on matters outside the scope of the appeal as filed. Matters mentioned in comment letters but not carried forth into an actual appeal are not appeal issues.

G.2. If the objection regarding tree retention were before the Examiner (which it is not), it would be denied. The preponderance of the evidence demonstrates that the number of trees proposed to be retained far exceeds that which is required by the version of the City's tree retention regulations to which this application is vested.

## 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: **DISMISSES** Appeal Issue 2.1; **DISMISSES IN PART** and **DENIES IN PART** Appeal Issues 2.2, 2.3, and 2.5; and **DENIES** Appeal Issue 2.4.

Decision issued April 14, 2016.

\s\ John E. Galt (Signed original in official file)
John E. Galt
Hearing Examiner

## HEARING PARTICIPANTS [9]

Richard Aramburu, unsworn counsel
Kim Adams Pratt, unsworn counsel
Mona Davis
Erin Vosti-Lal
Charlotte Archer, unsworn counsel
Duana Koloušková, unsworn counsel
Haim Strasbourger

## 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.

[9] 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. [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."