

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

DECISION

FILE NUMBER: PSUB2016-00553

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

TYPE OF CASE: Preliminary subdivision (*Irongate*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: October23, 2017

INTRODUCTION ¹

Brixton Homes, LLC (“Brixton”), one of the Murray Franklyn Family of Companies (Exhibits 17, p. I; 27; and testimony) seeks preliminary approval of *Irongate*, a 17-lot single-family residential subdivision of a 5.05 acre site which is zoned R-4.

Brixton filed a Base Land Use Application on December 27, 2016. (Exhibit 2 ²) The Sammamish Department of Community Development (“Department”) deemed the application to be complete as of December 30, 2016. (Exhibit 3) The Department issued a Notice of Application on January 26, 2017. (Exhibit 4)

The subject property is located at 26004, 26014, and 26022 SE 36th Street.

The Sammamish Hearing Examiner (“Examiner”) viewed the subject property on October 10, 2017.

The Examiner held an open record hearing on October 10, 2017. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 38)

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 open record hearing was held beyond the 120th

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.

net review day. (Exhibit 1, p. 7³) 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 chose to extend the deadline. (Exhibit 36)

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

- Exhibits 1 - 38: As enumerated in Exhibit 1, the Departmental Staff Report, at pp. 23 and 24
- Exhibit 39: Corrections to Exhibit 1, submitted by the Department
- Exhibit 40: Brixton's PowerPoint hearing presentation
- Exhibit 41: Letter, Clifford Bechtel to Hearing Examiner, October 9, 2017

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. The subject property is an assemblage of four parcels forming a near square. Three of the parcels contain single-family residences and accessory uses. Three of the property's four corners touch public rights-of-way. The southwest corner abuts the northeast side of Issaquah/Beaver Lake Road for a distance of about 90 feet. The northeast corner abuts the southwest side of 262nd Avenue SE for a distance of about 20 feet. And the southeast corner of the property abuts the cul-de-sac bulb of SE 36th Court for about 20 feet. (Exhibit 7, Sheet P02)
2. Brixton proposes to subdivide the subject property into 17 lots for single-family residential development, a combination drainage and tree retention tract (Tract A), three tree retention tracts (Tracts B, C, and G), a pedestrian access tract (Tract D), and a private road tract (Tract F). All existing structures will be removed. Proposed lot sizes range from 5,249 square feet ("SF") to 8,154 SF. The lots will be served by a public cul-de-sac, whose right-of-way will cover 34,541 SF, and the aforementioned private road, whose area is 2,344 SF. Collectively, 36,885 SF or 0.85 acres (17% of the site) will be devoted to access. Tracts A, B, C, D, and G collectively total 63,426 SF or 1.46 acres (29% of the total site area). (Exhibits 7, Sheet P01; 11)

The current plat design is dated May 18, 2017. (Exhibit 7) Exhibit 40, Slide 8, depicts the design which Brixton showed City staff during the preapplication meeting. Exhibit 40, Slide 9, depicts the

³ The Department issued its recommendation on July 25, 2017, the 104th net review day. (Exhibit 1, p. 7, ¶ II.2.7) The pre-decision open record hearing was held on October 10, 2017, some 77 calendar (54 business) days later. The SMC requires that the City's "Final decisions" be issued within 120 net review days. [SMC 20.10.100(1)] The Department recommendation is not the "final decision," thus, the review clock continued to run after July 25, 2017. The Examiner's hearing was held after the 120th net review day.

plat design when the application was initially submitted. The major difference is reconfiguration of Proposed Lots 14 – 17, with Lots 14 and 15 being relocated substantially further from the south property line.⁴

3. Brixton requested two variations from the Interim Public Works Standards (“PWS”).⁵ Public Works granted one and denied the other. Those actions were not appealed.

Brixton first asked that the pavement width for the interior cul-de-sac street be reduced from 36 to 28 feet, providing two travel lanes and one parking lane. (Exhibit 21) Public Works approved that variation on March 21, 2017.⁶ (Exhibit 22)

Brixton’s second variation request sought to eliminate about 200 feet of required sidewalk on one side of the interior cul-de-sac street. (Exhibit 23) Public Works denied that variation on March 21, 2017. (Exhibit 24)

4. The maximum permissible lot yield under the subject property’s R-4 zoning, calculated in accordance with procedures spelled out in the SMC, is 17: 5.05 acres gross site area – 0.85 acres in future right-of-way = 4.20 net acres x 4 dwelling units per net acre = 16.8 dwelling units. (Exhibit 6) Pursuant to SMC 21A.25.070(5)(a), fractions of .5 or above are to be rounded up. Therefore, the allowed number of dwelling units is 17.
5. All proposed lots meet applicable zoning standards.⁷ (Exhibit 1)
6. The subject property is located on a relatively flat hilltop and slopes downward primarily towards the northeast and southwest. (Exhibits 7, Sheet P02; 26) It is wooded primarily around the perimeters of the three major parcels. (Exhibit 17, Figures 4 and 5) No regulated environmentally critical areas (wetlands, streams, steep slopes, erosion hazard areas) are found on the subject property. There is no on-site evidence of use by priority wildlife species. (Exhibit 17) The subject property is located within a Critical Aquifer Recharge Area (“CARA”). (Exhibit 1, p. 8, § II.2.12) Soils in the northwest portion of the subject property are recessional outwash and are suitable for some stormwater infiltration. The remainder of the site’s soils are characteristic of glacial till and are not suitable for stormwater infiltration. (Exhibits 27; 28)

⁴ There may have been other design changes not apparent on the site plan in Exhibit 4. For example, the authors of Exhibits 9.1 and 9.15/16 oppose retaining walls along property lines. But no retaining walls at all are proposed in Exhibit 7. There may have been retaining walls proposed in an earlier version of the plat.

⁵ The City adopted Interim Public Works Standards in or around 2000 which were in effect through the end of 2016. New standards, adopted in 2016, came into effect as of January 1, 2017. Historically, both City staff and the Examiner used the acronym “PWS” to refer to the Interim Public Works Standards. The Examiner is using the acronym “2016 PWS” to refer to the current standards. Those naming conventions are used herein.

⁶ It is worth noting that the standard pavement width for the interior cul-de-sac street under the 2016 PWS where the affected property is zoned R-4 is 28 feet, exactly the same as approved under the variation. [2016 PWS, Table 9.2]

⁷ The SMC contains no minimum lot size requirements for its single-family residential zones. Development yield is regulated through density limitations, not lot sizes. [SMC 21A.25.030]

7. The subject property is surrounded on all sides where not touching a public right-of-way by lots in the *Tibbett's Station* subdivision: Lots 25 – 27 in *Tibbett's Station No. 1* and Lot 16 in *Tibbett's Station No. 2* border the north property line; Lots 22 – 24 in *Tibbett's Station No. 3* border the east property line; Lot 1 in *Tibbett's Station No. 1* borders the south property line; and Lots 14, 15, and Tract A in *Tibbett's Station No. 2* border the west property line. (Exhibit 7, Sheet P02) The lots in *Tibbett's Station* are reported to exceed 10,000 SF. (Exhibit 9.1, p. 1, numbered ¶ 1)
8. The subject property is designated on the City's adopted comprehensive plan R-4 and zoned R-4, residential development at a maximum density of four dwelling units per acre. All nearby properties north of Issaquah/Beaver Lake Road are similarly designated and zoned. Nearby properties south of Issaquah/Beaver Lake Road are designated and zoned R-6, six dwelling units per acre. (Exhibit 5)
9. The record contains evidence that appropriate provisions have been made for open space (Exhibits 1; 7, Sheets P01 and P07 – P09); drainage (Exhibits 1; 7, Sheet P04; 26 - 28); streets and roads (Exhibits 1; 7, Sheet P04; 21 – 24; 29; 32 - 34); potable water supply (Exhibits 1; 7, Sheet P04; 25); sanitary wastes (Exhibits 1; 7, Sheet P04; 25); parks and recreation (Exhibit 1); playgrounds (Exhibits 1; 7, Sheets P01 and P07 – P09); schools and schoolgrounds (Exhibit 1); and safe walking conditions for children who walk to school (Exhibits 1; 7, Sheet P04; 14). The proposed design does not require alleys or other public ways (Exhibit 7, Sheet P01); the record contains no request for transit stops.
10. 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.

11. Significant tree⁸ density is greater in the southwest quarter and around the perimeter of the subject property. Therefore, Brixton has focused tree retention around the perimeter of the property in Tracts A, B, C, and G. (Exhibits 7, Sheet P05; 18)

363 significant trees, of which 67 are heritage trees and 25 are landmark trees, are located on the subject property. Chapter 21A.37 SMC requires retention of at least 35%, 127, of those trees. Brixton's preliminary tree retention plan indicates that 108 of those trees, including 19 heritage and 5 landmark trees, will be preserved. However, because of "incentive credits" provisions in Chapter

⁸ 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]

21A.37 SMC, those 108 trees have a retention value of 127.25 (127) trees. The preliminary tree plan indicates that 255 significant trees will be removed for which the code requires that 343 replacement trees be planted. (Exhibits 7, Sheet P05; 18)

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

Chapter 21A.37 SMC contains detailed specifications for tree protection and tree replacement. [SMC 21A.37.270 and .280, respectively]

12. Sammamish's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Irongate* on July 25, 2017. (Exhibit 37) The DNS was not appealed. (Testimony)
13. The Department's Staff Report (Exhibit 1) provides a detailed exposition of facts related to all criteria for preliminary subdivision approval. The Department presented five scrivener's error corrections to the Staff Report. (Exhibit 39)
14. The Department recommends approval of *Irongate* subject to 30 conditions. (Exhibit 1, pp. 20 - 23)
15. Brixton has no objection to any of the recommended conditions. (Testimony)
16. The record contains 18 written review comments, all from residents within *Tibbett's Station* and all prepared before the end of February, 2017. (Exhibits 9.1 – 9.18) A couple of the comments are from the same person or are duplicates. Many of the comments are essentially a personalized "form" letter. Other commenters have taken the form letter and reworded or re-ordered items in it. All of the comments oppose one or more aspects of *Irongate*. Appendix I hereto lists (in summary form) the concerns raised in those comments and the exhibits raising those concerns.

Brixton submitted responses to each issue raised by the comments in Exhibit 9. In most cases, Brixton asserted that it is complying with City regulations and that, therefore, the objection is essentially without merit. In some cases, Brixton asserted that it would consider the stated concerns as its plans progress. (Exhibit 10)

17. One of the commenters (Bechtel) testified during the hearing to report on his recent meeting with representatives from Brixton and the City. Bechtel reported that Brixton agreed to try to retain trees 8035 and 8036, located at the east end of Tract A in the southeast corner of the subject property. (Exhibit 41; and testimony) Those two trees are among a number of trees slated for removal under the preliminary tree retention plan which are located within Tract A but well outside of the stormwater detention facility area or the utility corridor along the south edge of the tract. (Exhibit 7, Sheet P05)

Bechtel also reiterated his concern about the lack of “building pad” elevation data. (Exhibit 41; and testimony)

Finally, Bechtel again asked for perimeter wood fencing before site development begins. (Exhibit 41; and testimony) Brixton testified that it would discuss perimeter fencing with individual abutting property owners. (Testimony)

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

LEGAL FRAMEWORK⁹

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

⁹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 30, 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 *Irongate* is largely an uncontested case at this point in its history.
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. One of the legal premises underlying the land use planning and regulatory system in Washington State is that decisions on individual development applications must be based upon applicable statutes, ordinances, and facts contained within the record of the open record hearing. Neighborhood opposition alone may not justify denial of an application. [*Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P.2d 1119 (1997); *Sunderland Services v. Pasco*, 127 Wn.2d 782, 797, 903 P.2d 986 (1995); *Indian Trail Prop. Ass’n. v. Spokane*, 76 Wn. App. 430, 439, 886 P.2d 209 (1994); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d. 985 (1990); *Woodcrest Investments v. Skagit County*, 39 Wn. App. 622, 628, 694 P.2d 705 (1985)]
4. Land division in Washington State is a two-step process. With respect to subdivisions,¹⁰ the process requires a pre-decision open record hearing before approval of a “preliminary plat,” which is then followed by administrative review of development plans and construction, leading to a closed record approval of a “final plat” by the City Council when the development has been fully constructed (or, under certain circumstances, bonded for completion of construction). A preliminary plat, by definition, is only an “approximate drawing of a proposed subdivision” which forms “the basis for for the approval or disapproval of the general layout of a subdivision.” [SMC 19A.04.260] Detailed

¹⁰ As opposed to “short subdivisions” which are entirely administrative in nature.

engineering plans, which would depict “building pad” elevations among a myriad of other details, are not a required component of a preliminary plat. Seeking detailed engineering specifications during the preliminary subdivision stage is simply looking for the right information in the wrong place at the wrong time.

5. The objections/concerns presented in Exhibit 9 by the *Tibbett’s Station* residents have either been rendered moot by subsequent changes in the proposal or do not provide a legal basis to deny or condition *Irongate*. The Examiner has addressed each in Appendix II hereto.
6. The tree retention plan in Exhibit 7 (Sheet P05) is only a preliminary plan, as required by the SMC. Chapter 21A.37 SMC does not set a maximum tree retention standard, it sets a minimum tree retention standard for new development: “A minimum of 35 percent” shall be retained. [SMC 21A.37.250(1)(c)] The SMC also requires replacement of every significant tree lawfully removed. [SMC 21A.37.280] Thus, it makes economic sense to retain as many significant trees as possible, because otherwise the developer has to buy and plant replacement trees. It would appear from Exhibit 7, Sheet P05, that a number of significant trees currently slated for removal could likely be retained without adversely affecting required construction within the subdivision, especially in the eastern portion of Tract A. The Examiner will add a condition encouraging the developer to retain as many trees within the “open space” tracts as is safely and feasibly possible when the final tree retention plan is developed.
7. Based upon all the evidence in the record, the Examiner concludes that *Irongate* 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.
8. Given all the evidence in the record, the Examiner concludes that *Irongate* 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.
9. Given all the evidence in the record, the Examiner concludes that *Irongate* will serve the public use and interest, if properly conditioned, and will thus comply with the review criteria of SMC 20.10.220(2).
10. 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 29 could create a legal problem in the future. It basically freezes stormwater control regulations for residential construction to the 2009 King County Surface Water Design Manual (“KCSWDM”) in perpetuity. That position appears to conflict with our Supreme Court’s holding in *Snohomish Cty. et al. v. PCHB et al.*, 187 Wn.2d 346, 374,

386 P.3d 106 (2016). That case dealt with the question of whether vested rights statutes protected developments from compliance with stormwater regulations implemented under the requirements of the 2013 Phase I NPDES Permit issued by the State Department of Ecology. The Court held that state-mandated stormwater regulations are not protected by vested rights statutes:

Accordingly, we reverse the Court of Appeals and reinstate the Board's order finding that the storm water regulations permittees must implement as part of the larger NPDES permitting program are not "land use control ordinances" under the vesting statutes.

[At 362] The Phase I NPDES Permit requires compliance with its terms for "all applications submitted after July 1, 2015 and shall apply to application(s) submitted prior [to] July 1, 2015, which have not started construction by June 30, 2020."

Since the *Irongate* application was filed in a complete fashion after July 1, 2015, it must comply with Phase I NPDES Permit requirements. But perhaps more importantly, Condition 29 purports to freeze drainage regulations for all future building permits. Not only is that contrary to SMC 20.05.070(3),¹¹ but it would also appear to be contrary to the Court's holding in *Snohomish County*, *supra*. Simply put, drainage requirements for future building permits are not subject to vested rights and cannot be frozen through a condition on the face of a final plat.¹² Recommended Condition 29 will be eliminated.

- C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1, 3, 6, 7, 11, 12, 16, 27, and 30 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

11. 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 *Irongate* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued October 23, 2017.

¹¹ "Vesting of an application does not vest any subsequently required permits, nor does it affect the requirements for vesting of subsequent permits or approvals."

¹² This issue has not arisen in prior preliminary subdivision applications. It may well be that similar conditions have been imposed in past cases decided since the *Snohomish County* case was decided by the Supreme Court. If they have, the Examiner apologizes for not bringing the issue to light during those hearings.


John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹³

Ryan Harriman
Haim Strasbourger
Jami Balint, unsworn counsel

Todd Levitt
Jeff Schramm
Clifford Bechtel

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.

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 *IRONGATE*

¹³ The official Parties of Record register is maintained by the City's Hearing Clerk.

PSUB2016-00553

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto and the following special conditions:

General Conditions:

1. Exhibit 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 Interim Public Works General Standard Plan Notes. (Hearing Exhibit 34)
4. No structure or obstruction including, without limitation, fences and rockeries shall be erected over, upon or within the District's Water and Sewer Easements, and no trees, bushes or other shrubbery shall be planted or maintained within the District's Water and Sewer Easement.
5. 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. The Department of Archeology and Historic Preservation (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.
6. The Plator shall retain as many significant trees within the "open space" tracts (Tracts A, B, C, D, and G) as is safely and feasibly possible when the final tree retention plan is developed.

Site Development Permit Special Conditions:

7. Half-street frontage improvements along the extent of the project frontage are required consistent with Minor Arterial Road standards on SE Issaquah Beaver Lake Road.
8. The plat access road shall be constructed consistent with a Local Road standard and as approved in a roadway variation by the City Engineer.
9. Illumination shall be provided on the proposed plat road consistent with the PWS standards for average foot candle and uniformity for a local road. Public Works shall approve the street light design.

10. Individual lot flow control BMPs shall be required consistent with the *2009 King County Surface Water Design Manual* (KCSWDM).
11. Drainage plans, Technical Information Reports, and analysis shall comply with the 2009 King County Surface Water Design Manual (KCSWDM), the City of Sammamish Surface Water Design Manual Addendum, the City of Sammamish Stormwater Management Comprehensive Plan, and the East Lake Sammamish Basin Plan.
12. The intersection Sight Distance (ISD) at the site access/SE Issaquah Beaver Lake Road intersection looking easterly currently does not meet the standard requirement. This project shall clear vegetation and trees on the north side of SE Issaquah Beaver Lake Road east of the site access intersection to provide ISD that meets applicable AASHTO standards as shown in Hearing Exhibit 33. This development or its HOA shall be responsible for future maintenance of this clearing area to ensure there is sufficient ISD to maintain AASHTO standards.

Prior to or Concurrent with Final Plat:

13. Right-of-way dedication on SE Issaquah Beaver Lake Road shall provide a 33.5-foot width on the NE half of the road.
14. All frontage improvements along the extent of the project frontage on SE Issaquah Beaver Lake Road shall be fully installed and approved.
15. Driveway aprons shall be completed prior to final plat. Any joint use driveways shall be bonded for or constructed under the Site Development permit.
16. A public stormwater easement shall be provided for access, inspection, maintenance, repair, and replacement of the detention and water quality facilities within Tract A.
17. At a minimum, all stormwater facilities shall be constructed, online, and operational. This includes, but is not limited to, construction of road ATB, curb, gutter, and sidewalk. Final lift of asphalt and sidewalks may be financially guaranteed pursuant to Chapter 27A.05 SMC.
18. Offsite improvements shall be fully constructed or financially guaranteed as approved by the City Engineer.
19. Illumination shall be fully installed or bonded as approved by the City Engineer.

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

20. The Plator 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.
21. 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.

22. *"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."*
23. 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.
24. 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.
25. *"Maintenance of all landscape strips along the plat roads shall be the responsibility of the Homeowners Association or adjacent property owners. Under no circumstances shall the City bear any maintenance responsibilities for landscaping strips created by the plat."*
26. *"Individual lot flow control BMP's 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."*
27. *"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."*
28. *"The Homeowners Association or, if there be no Homeowners Association, the individual lot owners of the plat collectively shall be responsible for maintenance of all recreation elements located on the plat, including, but not limited to, landscaping around stormwater facilities, trails, fences, and signage."*
29. *"The City of Sammamish is granted a public easement for the stormwater elements located within Tract A, to inspect, repair, maintain, and improve stormwater infrastructure."*

Prior to City Acceptance of Improvements:

30. 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.

APPENDIX I:

EXHIBIT 9 PUBLIC COMMENTS SUMMARY

Item	Concern	Exhibits Raising Concern
1	Perimeter fence must match <i>Tibbetts Station</i> Guidelines	9.3*, 9.4*, 9.5*, 9.7*, 9.8*, 9.9*, 9.10*, 9.11#, 9.12*, 9.13* %,
2	Security during construction	9.3*, 9.4*, 9.5*, 9.6#, 9.7*, 9.8*, 9.9*, 9.10*, 9.12*, 9.13*, 9.18#
3	Perimeter fence before construction begins	9.3*, 9.4*, 9.5*, 9.6#, 9.7*, 9.8*, 9.9*, 9.10*, 9.12*, 9.13*, 9.18#
4	Try to retain more trees	9.2*, 9.3*, 9.4*, 9.7*, 9.8*, 9.9*, 9.10*, 9.11#, 9.12*, 9.18*
5	Oppose pedestrian connection to <i>Tibbetts Station</i>	9.2*, 9.3*, 9.4*, 9.5*, 9.6#, 9.7*, 9.8*, 9.9*, 9.10*, 9.11#, 9.12*, 9.17#, 9.18#
6	Require 15' perimeter treed buffer	9.1*, 9.2*, 9.3*, 9.4*, 9.6#, 9.7*, 9.8*, 9.9*, 9.10*, 9.11#, 9.12*, 9.18*
7	Must preserve trees where path connects to <i>Tibbetts Station</i>	9.2*, 9.3*, 9.4*, 9.5*, 9.7*, 9.8*, 9.9*, 9.10*, 9.11#, 9.12*, 9.17#
8	Proposed site grade is too high to meet drainage requirements	9.2*, 9.3*, 9.4*, 9.5*, 9.6#, 9.7*, 9.8*, 9.10*, 9.12*, 9.13*, 9.17#
9	Need tight, limited construction hours	9.1*, 9.3*, 9.4*, 9.5*, 9.6#, 9.7*, 9.8*, 9.9*, 9.10*, 9.12*, 9.13*, 9.17*, 9.18#
10	Preserve trees in Tract D	9.6
11	Opposed to any street lights and noise	9.7
12	Specific requirements for replacement trees proposed	9.9, 9.11#
13	Challenges accuracy of SEPA checklist items 5a, 10b, 11b	9.9
14	No maximum building height stated; maximum building height should be limited to 35'	9.9, 9.11#
15	Technical suggestions: More detailed survey information, building pad elevations suggested, reconfigure Lots 8 & 9, relocate proposed sewer manhole at SE corner of development, require different tree protection measure, prohibit clearing or grubbing within tree protection zones	9.9, 9.13 (sewer manhole only)
16	Covenant to prevent location of sheds in rear yard setbacks	9.11

17	If Item 6 is not required, then existing 20' NGPE around <i>Tibbetts Station</i> should be removed	9.12
18	Opposes retaining wall and fence along portion of south property line	9.15/9.16 19
19	Concern re: impact on septic systems in <i>Tibbetts Station</i>	9.1#, 9.17#, 9.18#
20	Possibility of sewer for <i>Tibbetts Station</i> should be preserved	9.17
21	20' perimeter NGPE should be required	9.18
22	Redesign cul-de-sac bulb to allow larger lots in that area	9.18
23	Density is excessive, lots sizes too small, not compatible with <i>Tibbetts Station</i>	9.1
24	Opposes any utility trenching in <i>Tibbetts Station</i>	9.1
25	Opposes any retaining wall along his property line	9.1

* Concerns are stated identically in each comment; sequence of paragraphs may be different, but text is identical.

Same substance, but different wording.

% Exhibit 9.13 and 9.14 are duplicate copies of the same letter.

APPENDIX II:

CONCLUSIONS REGARDING EXHIBIT 9 ISSUES

(The issues are referenced here using the Item numbering contained in Appendix I.)

Items 1 and 3: Perimeter fence must match *Tibbetts Station* Guidelines; Perimeter fence before construction begins. The *Tibbett's Station* residents want the City to require Brixton to fence the entire perimeter of the *Irongate* site with a fence matching the fence standards imposed by the *Tibbett's Station* covenants, conditions, or restrictions before any site development work begins.

Conclusion: The SMC does not require that the perimeter of residential developments be fenced. Historically, the undersigned Examiner has only required perimeter fencing where a proposed use is shown to create a hazard to adjoining uses or to constitute an attractive nuisance. Neither of those conditions exist here where two single-family residential developments abut.

Irongate is not within *Tibbett's Station* and, therefore, is not subject to any of the covenants, conditions, or restrictions which apply to *Tibbett's Station*. Even if the code required perimeter fencing, which it does not, the Examiner could not force Brixton to comply with *Tibbett's Station* covenants, conditions, or restrictions.

The SMC contains regulations regarding the size and placement of fences. [SMC 21A.30.190] Subject to compliance with those regulations, fencing is a private matter which the City's legislative officials have left to the discretion of the property owner.

Item 2: Security during construction. The *Tibbett's Station* residents fear that persons will enter the development site during construction and then jump existing *Tibbett's Station* perimeter fences to access neighboring homes. They want the property's frontage along Issaquah/Beaver Lake Road fenced, security cameras installed during construction, and a security service employed by Brixton until all homes have been sold.

Conclusion: There is absolutely no evidence in the record to support any of these requests. This is a case of unsubstantiated neighborhood fear.

Items 4, 7, 10, and 12: Try to retain more trees; Must preserve trees where path connects to *Tibbetts Station*; Preserve trees in Tract D; Specific requirements for replacement trees proposed.

Conclusion: The City's legislative officials have enacted complex tree retention and replacement standards after substantial consideration.¹⁴ Those standards represent the legislative officials'

¹⁴

As stated in Finding of Fact 10, above, the City had tree retention regulations for some nine years before amending them in 2014 with emergency interim regulations, which ultimately led to adoption of an entirely new set of tree retention regulations.

considered choice of how to regulate tree retention and replacement. No basis exists in the law or facts of this case to require more or to create a wholly different set of requirements for replacement trees.

Brixton is not required under adopted code to retain trees such that neighboring property owners will not see the new residences.

Item 5: Oppose pedestrian connection to *Tibbetts Station*. The residents oppose the pedestrian connection through Tract D between the cul-de-sac in *Irongate* and 262nd Avenue SE in *Tibbett's Station* on two grounds: Construction of the pathway will require removal of trees within Tract D and the pathway “would ultimately be a safety concern”. (Exhibit 9.2, Comment 2)

Conclusion: The preliminary tree retention plan indicates that there are 11 or 12 significant trees within Proposed Tract D, all of which are proposed for removal. (Exhibit 7, Sheet P05) According to Exhibit 7, the north-south segment of Tract D will be 25 feet wide and the path within it will be five feet wide. The westerly 15 feet of that segment will be encumbered by an easement to Sammamish Plateau Water to allow a water main to connect with the water main in 262nd Avenue SE. (Exhibit 7, Sheet P04) The water main connection is required for public safety. Trees necessarily have to be removed. Those trees would be removed even if no path were provided.

The “safety concern” is an unsubstantiated neighborhood fear and provides no basis to prevent construction of the pathway. The nearest school bus stop is on 262nd Avenue SE at SE 36th Court. The shortest and safest route for children living within *Irongate* to reach that bus stop is via the proposed path through Tract D. The *Irongate* property has 20 feet of frontage along 262nd Avenue SE. Absent a demonstrated hazard (of which none has been shown), Brixton is entitled to use that access to the public right-of-way system for a legitimate, reasonable purpose. The proposed path is such a purpose.

Items 6, 17, and 21: Require 15' perimeter treed buffer; ¹⁵ Require 20' perimeter NGPE [Native Growth Protection Easement]; If a perimeter buffer is not required, then the existing 20' NGPE around *Tibbetts Station* should be eliminated.

Conclusion: There is no code requirement for a perimeter buffer or “greenbelt” around new residential subdivisions. The evidence presents no basis upon which to single out this new development for such a requirement. There are no regulated environmentally sensitive areas on the *Irongate* site that need protection by an NGPE. Chapter 21A.37 SMC contains regulations designed to protect retained trees.

¹⁵ The residents want a 15 foot wide buffer easement around “all three sides, which are currently developed.” (Exhibit 9.2, Comment 3) The Examiner believes the reference to three sides is a perceptual error on the part of the letter writers. In fact, *Irongate* is surrounded on all four sides by *Tibbett's Station*, except for the three relatively small points of contact with adjacent public street rights-of-way. (Exhibit 7)

The City has no authority to unilaterally remove an established “greenbelt” in an existing subdivision – especially where that subdivision is not the subject of the current land use hearing.

Items 8, 18, 19, and 25: Proposed site grade is too high to meet drainage requirements; Opposes retaining wall and fence along portion of south property line; Concern re: impact on septic systems in *Tibbetts Station*; Opposes any retaining wall along his property line. The residents suggest that the maximum elevation in the area of the cul-de-sac bulb should be ± 432 feet to allow lot drainage to flow into the stormwater control system. They also oppose perimeter retaining walls.

Conclusion: Grading plans at the preliminary subdivision stage of the process are preliminary, just as the process’ name implies. The highest natural elevation is about 440 feet. (Exhibit 7, Sheet P02) The preliminary design elevation of the proposed cul-de-sac bulb is 436 feet – four feet lower than the existing grade in that area. Current preliminary grading plans indicate that there will be no retaining walls employed. Applicable drainage regulations require developers to capture runoff from impervious surfaces.

Item 9: Need tight, limited construction hours. The residents want specific hour and day-of-week limitations on construction work.

Conclusion: The City’s legislative officials have enacted construction hours limits. [SMC 16.05.030] Those limits represent the legislative officials’ considered choice of how to regulate construction hours within the City. No basis exists in the law or facts of this case to require more or to create a wholly different set of requirements for this development.

Item 13: Challenges accuracy of SEPA checklist items 5a, 10b, 11b.

Conclusion: Challenges to the accuracy of a SEPA checklist are not allowed under state law and regulation. [RCW 43.21C.075; WAC 197-11-680(3)(a)(ii) and (iii)] The SEPA Responsible Official considers all evidence available to him/her before rendering a threshold determination, not just the contents of the SEPA checklist.

Item 14: No maximum building height stated; maximum building height should be limited to 35’.

Conclusion: The base building height in the R-4 zone is 35 feet. [SMC 21A.25.030(A)] The code allows that height limit to be exceeded under certain circumstances. [SMC 21A.25.030(A)(3) and (15)] No basis exists in the law or facts of this case to create a wholly different set of building height requirements for this development.

Item 15: Technical suggestions: More detailed survey information, building pad elevations suggested, reconfigure Lots 8 & 9, relocate proposed sewer manhole at SE corner of development, require different tree protection measure, prohibit clearing or grubbing within tree protection zones.

Conclusion: Plans at the preliminary subdivision stage of the process are preliminary, just as the process' name implies. Neighbors do not have design control over proposed subdivisions. If a proposed design does not comport with adopted regulations, then an applicant will be required to make changes. But if a design comports with adopted requirements, the City has no basis upon which to require design changes.

Item 16: Covenant to prevent location of sheds in rear yard setbacks.

Conclusion: Setbacks for structures are contained in the SMC. No basis for special setbacks for this subdivision have been presented.

Items 20 and 24: Possibility of sewer for *Tibbetts Station* should be preserved; Opposes any utility trenching in *Tibbetts Station*.

Conclusion: The alignment and possible extension of sewer and water mains is within the jurisdiction of the Sammamish Plateau Water and Sewer District ("Sammamish Plateau Water"). Sammamish Plateau Water has required Brixton to extend its sewer line to the southeast corner of the development where it could be extended to the SE 36th Court right-of-way to serve at least a portion of *Tibbetts Station*. Sammamish Plateau Water has also required Brixton to provide a "looped" water main through the development, connecting the water main to the existing main in 262nd Avenue SE. If the location of the main in 262nd Avenue SE requires trenching to reach it, then trenching will occur. The City controls the nature and quality of the street repair after trenching, (Exhibits 7, Sheet P04; 25)

Items 22 and 23: Redesign cul-de-sac bulb to allow larger lots in that area; Density is excessive, lots sizes too small, not compatible with *Tibbetts Station*.

Conclusion: While the proposed lots do appear to be generally smaller than those in *Tibbetts Station*, all proposed lots meet SMC lot size requirements; the density of the proposed subdivision is within the limits established by the SMC. No basis exists in the code to require Brixton to reduce the number of proposed lots. The City does not have the right to redesign or require redesign of an applicant's proposal unless it fails to comply with city regulations. *Irongate* does not fail to comply with City regulations.