City of Duvall

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April 18, 2016

Scott Borgeson, Land Project Manager - PNW Div.
Pulte Group, Inc.
3535 Factoria BLVD SE #110
Bellevue, WA 98006
425.216.3400

RE: **Notice of Decision:** North Hill Preliminary Plat Extension Request (SU07-006 and VAR09-001)

Dear Mr. Borgeson:

On April 11, 2016, the Hearing Examiner held a public hearing regarding the approval extension request for the above referenced preliminary long plat application (SU07-006) and associated variance (VAR09-001). The Hearing Examiner has APPROVED the Preliminary Plat one-year extension request. I have attached the final decision to this letter.

After issuance of a final decision, any party of record may file a motion for reconsideration. Such motion must be filed within ten (10) days of the date the decision is mailed to the parties. You can contact the planning department for details. The City's final decision on an application may be appealed by a party of record with standing to file a land use petition in King County Court. Such petition must be filed within 21 days of issuance of the decision, as provided in Chapter 36.70C RCW.

If you have any further questions please contact me at 425-788-2779 or email me at lara.thomas@duvallwa.gov

Sincerely,

Lara Thomas
Planning Director

Cc: City Council and Mayor
Planning Commission
Department Heads
Parties of Record
File

For appeal procedures see DMC 14.08.060, appeals or contact the Planning Department at (425) 788-2779 for information.

BEFORE the LAND USE HEARING EXAMINER for the CITY of DUVALL

DECISION

FILE NUMBER:	SU07-006
APPLICANT:	Pulte Group, dba Centex Homes 3535 Factoria Boulevard SE, #10 Bellevue, WA 98006
TYPE OF CASE:	Preliminary long subdivision extension (*North Hill*)
STAFF RECOMMENDATION:	Approve subject to conditions
EXAMINER DECISION:	APPROVE
DATE OF DECISION:	April 18, 2016

INTRODUCTION [1]

Pulte Group, dba Centex Homes (Centex Homes), seeks a one year extension of the term of preliminary long subdivision approval for *North Hill*, a 112 lot single-family residential subdivision of a 38.3 acre site which is zoned R4. [2] (Exhibits E2; E5; E15 [3])

Centex Homes filed a request for a one year extension of the term of preliminary long subdivision approval on February 16, 2016. (Exhibit E5)

The subject property is located immediately north of *Legacy Ridge* and the Cedarcrest High School site, accessed from the northern termini of 286th and 287th Avenues NE. (Exhibits E10; E24B, p. 6, Figure 4)

The Duvall Hearing Examiner (Examiner) viewed the subject property on June 16, 2009, prior to hearing the preliminary subdivision application.

The Examiner held an open record hearing on April 8, 2016. Planning gave notice of the hearing as would be required for a preliminary subdivision application by the Duvall Municipal Code (DMC). (Exhibit E9)

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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 The original approval was for 113 lots. (Exhibit E2) The plat submitted by Centex during the hearing depicts 112 lots. (Exhibit E15) The Examiner is relying on that current submittal for the number of proposed lots stated here.

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

Exhibits E1 – E12:	As enumerated in Exhibit E1, the Departmental Staff Report [4]
Exhibit E13:	E-mail, Meg & Mike Town to City, April 7, 2016
Exhibit E14:	Revised Departmental Staff Report, submitted April 8, 2016
Exhibit E15:	*North Hill* Open Space & Trail Plan, submitted April 8, 2016
Exhibit E16:	*North Hill* Overall Site Plan – Aerial Exhibit, submitted April 8, 2016
Exhibit E17:	*North Hill* Overall Site Plan, submitted April 8, 2016
Exhibit E18:	Resume, Michael A. Moody, P.E., submitted April 8, 2016
Exhibit E19:	E-mail thread, Caldwell-Bethel-Benson, March 22 – 24, 2016, submitted April 8, 2016
Exhibit E20:	Hearing Statement, Brandon Caldwell, submitted April 8, 2016
Exhibit E21:	Hearing Statement, Amy Schoener, submitted April 8, 2016
Exhibit E22:	Hearing Statement, Harley Donnel & Dixie Montgomery, submitted April 8, 2016
Exhibit E23A:	King County Landslide Hazard Drainage Areas Map, submitted April 8, 2016
Exhibit E23B:	Enlargement of Duvall area on Exhibit E23A, submitted April 8, 2016
Exhibit E24A:	Letter, David Laird to Hearing Examiner, dated and submitted April 8, 2016
Exhibit E24B:	Attachment to Exhibit E24A: Letter, SRN Company to Laird, dated and submitted April 8, 2016
Exhibit E25A:	Letter, Allan B. Bakalian, on behalf of Cherry Valley Ranch Water Association (CVRWA), to City, dated and submitted April 8, 2016
Exhibit E25B:	Attachment to Exhibit E25A: Letter, CVRWA to King County DPER, dated March 26, 2014, submitted April 8, 2016
Exhibit E26:	Letter, Ann M. Gygi, on behalf of Centex Homes, to Hearing Examiner, dated and submitted April 8, 2016

During the hearing Bakalian stated that Exhibit E25A had been hastily prepared and that he was aware of several clerical errors within it. He requested leave to provide a corrected copy after the close of the hearing. Gygi requested leave to submit a written response to Exhibits E13 and E19 – E25B.

The Examiner agreed to hold the hearing record open through close of business on April 11, 2016, for submittal of the the Bakalian correction and the Gygi response. On April 11, 2016, Gygi submitted her response and Bakalian submitted his corrected letter. On April 12, 2016, Planning forwarded to the Examiner an E-mail from J. P. May which had been received by the City while the hearing was on-going, but which, because the person to whom the E-mail was sent was attending the hearing, had not been submitted at the hearing. Later on April 12, 2016, Gygi submitted an E-mail objecting to alleged other-than-clerical changes in the corrected version of the Bakalian letter; Bakalian submitted a response E-mail the next

[4] The Departmental Staff Report numbers the exhibits 1 – 12. Since that numbering system would result in duplicate exhibit numbers with those entered during the 2009 preliminary subdivision hearing, the Examiner added the "E" (Extension) prefix to prevent duplication.

morning. In order that the record fully disclose all correspondence in the case, and recognizing that the May E-mail was received by the City before the hearing closed even though it didn't get to the hearing room, each of those items is herewith added to the record:

Exhibit E27:	E-mail, J.P. May to Millard, forwarded to the City at 11:04 A.M. April 8, 2016, submitted April 12, 2016
Exhibit E28A:	Letter, Gygi to Hearing Examiner, dated and submitted April 11, 2016
Exhibit E28B:	Attachment to Exhibit E28A: Skagit County Hearing Examiner Decision *in re* Steichen/McRae preliminary plat extension request, Skagit County File Number PL96-0295, September 15, 2008, submitted April 11, 2016
Exhibit E29A:	Letter, Allan B. Bakalian, on behalf of CVRWA, to City, corrected and submitted April 11, 2016
Exhibit E29B:	Attachment to Exhibit E29A: Duplicate of Exhibit E25B, submitted April 11, 2016
Exhibit E30:	E-mail, Gygi to Hearing Examiner, April 12, 2016, at 3:51 P.M.
Exhibit E31:	E-mail, Bakalian to Hearing Examiner, April 13, 2016, at 9:31 A.M.

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. TNR, LLC (TNR) filed a complete application for preliminary subdivision approval of *North Hill* on July 19, 2007. TNR's application came on for hearing on June 16, 2009, and was continued to and concluded on July 7, 2009. *North Hill* received preliminary long subdivision approval on July 16, 2009. When originally approved, the term of preliminary approval was five years. (Exhibit E2, pp. 2 and 23)

2. In 2010 the Washington State Legislature amended RCW 58.17.140 to extend the term of approval for preliminary subdivisions from five years to seven years. The Legislature made further changes to RCW 58.17.140 in 2012 and 2013. [5] Under state law, the term of preliminary subdivision approval for *North Hill* is valid until July 16, 2016.

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[5] Section 58.17.140 RCW contains, *inter alia*, state requirements relating to the term of approval of a preliminary plat and the conditions under which that term may be extended. Prior to 2010, the term of preliminary plat approval was five years; local jurisdictions had authority to extend the term by local ordinance.

The 2010 Legislature amended the portion of former RCW 58.17.140 relating to the term of approval of a preliminary plat to read as follows:

> A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval. Nothing contained in this

3. Section 14.66.060(D) DMC expressly allows for the extension of the term of preliminary subdivision approval. In light of the state's changes to RCW 58.17.140, [6] DMC 14.66.060(D), as it applies to a preliminary plat approved in 2009, effectively states that

> Final approval must be acquired within seven years of preliminary approval, after which time the preliminary subdivision approval is void. The decision maker may grant an extension for one year if the applicant has attempted in good faith to submit the final subdivision within the seven-year time period; provided, however, the

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section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.

[Chapter 79, § 1, Laws of 2010]

The 2012 Legislature substantially restructured and further revised RCW 58.17.140. The portion of the section relating to the term of preliminary plat approval became subsections (3) and (4) and read as follows:

(3)(a) Except as provided by (b) of this subsection, a final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(b) A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within nine years of the date of preliminary plat approval if the project is within city limits, not subject to requirements adopted under chapter 90.58 RCW, and the date of preliminary plat approval is on or before December 31, 2007.

(4) Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.

[Chapter 92, § 1, Laws of 2012]

The 2013 Legislature again revisited RCW 58.17.140 and again changed the statute relating to the term and approval of preliminary plats. Subsections (3) and (4) after that amendment now read as follows:

(3)(a) Except as provided by (b) of this subsection, a final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(b) A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within ten years of the date of preliminary plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007.

(4) Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.

[6] Projects do not vest to procedural rules and requirements.

> applicant must file a written request with the original decision maker requesting the extension at least thirty (30) days before expiration of the seven-year period.

Centex, the successor in interest to TNR, filed a request for a one-year extension of the term of preliminary long subdivision approval on February 16, 2016, more than 30 days prior to the expiration of the term of preliminary long subdivision approval. (Exhibit E5)

4. The Examiner described the *North Hill* site in his 2009 Decision:

> 4. The subject property is an east-west parallelogram containing approximately 38 acres located along the north edge of the Duvall city limits. The site measures approximately 680 feet in north-south dimension and approximately 1,250 feet in east-west dimension. The west half of the south property line abuts the northern edge of the *Legacy Ridge* subdivision which provides the sole public street access to the site: The stub ends of 286th and 287th Avenues NE. The east half of the south property line abuts the Cedarcrest High School site, specifically an area which will soon be improved with a new baseball field and associated parking and drainage facilities. The acreage to the west is open space owned by the City. The acreage to the east is undeveloped land owned by the Riverview School District. The undeveloped acreage parcels to the north are located in unincorporated King County.
>
> 5. The western portion of the site has steep slopes up to 40 percent; the middle portion of the site has some moderate slopes; and the eastern portion of the site has gentle slopes. The site also slopes moderately from south to north. The property is undeveloped and undisturbed other than historic logging.

(Exhibit E 2, Findings of Fact 4 and 5; citations omitted) The subject property is located near the top edge of an incised slope leading down to Cherry Valley Road and the Cherry Valley beyond. (Exhibit E24B)

5. State Environmental Policy Act (SEPA) review was conducted on the *North Hill* application:

> 8. Duvall's State Environmental Policy Act (SEPA) Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) on December 18, 2008, and a Modified MDNS on May 14, 2009. The record contains no indication that any party intends to appeal the MDNS in Superior Court. The mitigation measures within the MDNS have been carried forward by Planning as a recommended condition of approval.

12. Hallum and Laird, residents along NE Cherry Valley Road to the northeast of the *North Hill* site, expressed concern during the SEPA process regarding the impact of stormwater runoff on their downhill property. The Hallum/Laird property is King County Assessor's parcels 9060 and 9061, both of which are visible on Fig. III.1 in Plat Exhibit 9. The water course which passes through the Hallum/Laird property is denoted as "5" on that figure.

    Stormwater from *North Hill* will not be discharged into water course "5" or its contributory ravine area.

(Exhibit E2, pp. 4 and 6, Findings of Fact 8 and 12; citations and footnote omitted)

6. TNR acquired the *North Hill* property and/or the right to develop it in 2005 and 2006. TNR then sought to annex the property into Duvall; the property was annexed in early 2007. TNR filed the *North Hill* preliminary subdivision application in July, 2007. By the time the application made it to hearing and approval in the Summer of 2009, the United States was in the midst of a deep recession. (Exhibit E2; Wieneke testimony [7])

7. The following actions have been taken towards final subdivision approval since preliminary long subdivision approval was granted on July 16, 2009:

   A. Because of the deep recession and the associated collapse of the real estate market, TNR could do nothing with the property for several years. A 5-year option/purchase & sale agreement (P&SA) with the owner of part of the subject property expired. TNR "repurchased" and closed on that parcel in 2012. (Wieneke testimony)

   B. TNR entered into a P&SA to sell the property to a party named Lennar (Sp?). That agreement fell through. (Wieneke testimony)

   C. In April, 2013, TNR entered into a P&SA with Centex; Centex began a feasibility review. A major issue in that review was determining the exact method of handling the discharge of drainage from the subdivision's drainage control facility. Centex began a design effort for retrofitting the existing drainage ponds in *Legacy Ridge* to also handle *North Hill's* runoff. The proposed drainage plan would require a Drainage Adjustment Waiver (Waiver) from King County (since the majority of the project's stormwater outfall is located in unincorporated King County north of the subdivision) and an easement across neighboring property. (Exhibits E6; E11, p. 2)

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[7] Wieneke is the "R" in TNR. (Wieneke testimony)

D. In or around early September, 2013, TNR (and NORDIC Associates, LLC) applied to the City for a number of minor modifications to the approved preliminary subdivision. [8] (Exhibit E4, p. 10) Minor modifications to approved preliminary subdivisions are classified as Type II applications, subject to administrative review and approval by Planning. [DMC 14.08.010(C)(1) and (C)(2)] The requested modifications requested adjustment of 43 lots, addition of one lot, and grading changes. Planning approved the request on February 3, 2014. (Exhibit E4)

E. In March, 2014, Centex secured the necessary easement for the drainage discharge. (Exhibit E11, p. 2)

F. On April 21, 2014, Centex applied to King County for the Waiver. After four rounds of application review screening, the County officially accepted the application on May 13, 2014. (Exhibit E6)

G. Centex closed on the property in May, 2014. (Borgeson testimony)

H. On June 9, 2014, Centex filed a grading permit application with King County. (Exhibit E6)

I. In the meantime, Centex was working with the City on a Development Agreement that would fix the applicable regulations should Centex decide to develop *North Hill* in two phases rather than all at once. The City approved that agreement on June 26, 2014. (Exhibit E3)

J. In July, 2014, the City approved Centex's grading plans for Phase 1. Centex subsequently cleared the first phase. (Exhibit E11, p. 2)

K. Centex worked with King County personnel on the Waiver from May to late August, 2014. On August 21, 2014, King County denied the requested Waiver. From that date until May 28, 2015, Centex worked with King County to identify an acceptable outfall option.

> At least five separate flow paths in different sub-basins were considered and analyzed. The use of Underground Injection Wells was also studied in an effort to infiltrate all stormwater on-site. Eight different downstream property owners were contacted to establish their willingness to grant easements.

(Exhibits E6; E11, p. 3, source of quote)

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8 The date of application is not contained in the record. However, a notice of complete application was issued on September 9, 2013, and the notice of application, which started the public comment period for the application, was issued on September 12, 2013. (Exhibit 4, p. 10) Therefore, it is more likely than not that the application was filed shortly before the notice of complete application was issued.

L. On May 28, 2015, King County informed Centex that an entirely new Waiver application would be required. Centex filed the application on June 4, 2015; King County did not officially accept it until October 2, 2015. The grading plan previously submitted to the County was revised to match the new drainage plan. (Exhibits E6; E11, p. 3)

M. In October, 2015, King County suspended review of the grading permit application pending approval of the Waiver. (Exhibit E6)

N. On December 17, 2015, King County approved the Waiver. (Exhibits E6; E7)

O. Approval of the Waiver solidified the drainage discharge plan, enabling Centex to pursue a Shoreline Management Act of 1971 Substantial Development Permit exemption from King County, coverage under the U.S. Army Corps of Engineers Nationwide Permit for off-site stormwater, an Hydraulic Project Approval from the Washington State Department of Fish and Wildlife, utility design approval from Puget Sound Energy, and civil construction plans approval from the City. Centex expects to receive those approvals in April or May, 2016. (Exhibit E11, p. 3)

8. The requested extension is vehemently opposed by residents of Cedar Valley living north (down-slope) of *North Hill*. Essentially, the neighbors believe that the development will be hazardous to them and (for CVRWA members) to their domestic water supply well and distribution system. They do not believe that Centex has made a good faith effort to communicate with them or respond to their concerns. They do not like the outfall plan that has been approved by King County. They want the Examiner to deny the extension which would effectively force Centex to start over with a new subdivision application which would be subject to compliance with current regulations. They believe that forcing compliance with new regulations would result in a better stormwater control plan. (Exhibits E12, E13, E19 – E25; Johnson, Farmer, Caldwell, Donnell, Millard, Parsons, Laird, Swoboda, Balser, Stiles testimony)

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

LEGAL FRAMEWORK [9]

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

Authority

[Chapter 16, § 1, Laws of 2013]

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

A preliminary long subdivision is a Type III application which is subject to 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. [DMC 2.30.070(A)(2) and 14.08.010(C), Tables 14.08.010.C.1 and .2] Therefore, the Examiner is the decision maker with authority to consider and grant a one-year extension of the term of preliminary long subdivision approval.

The DMC does not explicitly establish a process for considering preliminary long subdivision extension requests. However, DMC 2.30.070(A) states that the Examiner "shall receive and examine available information, conduct open record public hearings, prepare records and reports thereof, and issue final decisions, including findings and conclusions, based on the issues and evidence in the record" for "[o]ther applications or appeals that the city council may prescribe by ordinance." A preliminary long subdivision term extension request is one such "other application" under DMC 2.30.070. Therefore, the Examiner holds an open record hearing on the extension application and makes a final decision which is subject to the right of reconsideration and appeal to Superior Court.

Review Criteria

The review criterion for preliminary long subdivision term of approval extensions is set forth at DMC 14.66.060(D), quoted above: the Examiner "may grant an extension for one year if the applicant has attempted in good faith to submit the final subdivision within the [seven]-year time period". A threshold requirement is that the application for extension must be filed "at least thirty (30) days before expiration" of the term of approval. [*Id.*]

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications "shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application … has been submitted …." [RCW 58.17.033] Therefore, the preliminary subdivision for which this extension request has been filed remains vested to the land use regulations as they existed on July 19, 2007, the date the preliminary subdivision application vested.

Standard of Review

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

Scope of Consideration

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

CONCLUSIONS OF LAW

1. The issue before the Examiner is quite limited: Has the developer "attempted in good faith to submit the final subdivision within the seven-year time period". [DMC 14.66.060(D), quoted in full above]

Nothing in that language requires an applicant to make a good faith effort to communicate with neighbors; nothing in that language requires an applicant to change its plans because neighbors want it to.

Nothing in that language grants the Examiner authority to impose new or different conditions of approval on the underlying preliminary subdivision; nothing in that language allows the Examiner to require compliance with new development regulations as a *quid pro quo* to approval of an extension. In fact, nothing in that language allows the Examiner to deny a requested extension based upon anything other than a failure to make a good faith attempt to submit the final plat within seven years of preliminary approval.

Subsection 58.17.140(4) RCW, quoted in Footnote 4, above, would allow the City to adopt "ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements." [Emphasis added] While Duvall has opted to enact provisions by ordinance to allow for a one year extension (DMC 14.66.060(D)), it has not opted to allow for changes to the conditions of preliminary subdivision approval as part of that process. In order for the Examiner to be able to consider the concerns of the Cherry Valley residents, the City's ordinance would have to read vastly different than it presently does.

The underlined language in the previous paragraph points out another reality of the extension process: State law neither requires that extensions be allowed nor limits extensions to a single year. Under state law, a local jurisdiction (by adoption of an ordinance) can opt to not allow any extensions, can opt to allow extensions to be longer than one year, or can even opt to allow more than one extension. That is all left up to regulation by locally-adopted ordinances. Essentially, state law establishes a mandatory minimum term of approval for preliminary subdivisions while leaving it to local jurisdictions to decide if they want to allow for longer terms of approval and, if they do, the considerations which would be applied to applications for such extensions. [10] Thus CVRWA's assertion that the requested extension would go "well beyond state law and applicable development vesting time period" (Exhibit 25A or 29A, ¶ 1) is quite simply incorrect.

2. There is a clause in a different part of the state subdivision regulation that some may believe would allow the Examiner to rescind preliminary subdivision approval: "unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision." But that clause is located in a section of the statute which vests development within a subdivision after it has been recorded.

> (3)(a) Except as provided by (b) of this subsection, a subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150(1) and (3) for a period of seven years after final plat approval if the date of final plat approval is on or

[10] But any such considerations would still have to honor the plat's vested rights under RCW 58.17.033: New regulations could not be applied.

> before December 31, 2014, and for a period of five years after final plat approval if the date of final plat approval is on or after January 1, 2015, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.
>
> (b) A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150(1) and (3) for a period of ten years after final plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of final plat approval is on or before December 31, 2007, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

[RCW 58.17.170(3)] Section 58.17.033 RCW vests a subdivision application while it is under review. Subsection 58.17.170(3) RCW vests a subdivision after it has been recorded. The "unless" clause would allow a City Council to rescind that post-recordation vesting if necessary to protect public health or safety. That provision has no bearing on the current proceeding because *North Hill* has not yet been recorded.

3. Centex has fulfilled the threshold requirement for consideration of a one-year extension of the term of approval of *North Hill*: Centex filed the extension request more than 30 days before the end of the term of approval.

4. Centex and TNR before it have made a good faith effort to complete the final subdivision approval process. The massive recession which existed in the United States when the preliminary subdivision was approved and from which the country has made a very slow recovery by most accounts must be considered in determining good faith effort. When the economy started to recover, TNR had to reconstitute its holding before it could move forward. It then actively sought out a developer who could complete the subdivision. Once Centex came into the picture in 2013, it moved forward with due diligence and reasonable speed. Centex cannot be held responsible for the length of time government agencies take to review applications. [11]

5. The request fulfills both the threshold requirement and the established criterion; a one-year extension of the term of preliminary subdivision approval must be granted.

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

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[11] For example, DMC 14.08.020(G)(1) requires that preliminary subdivision applications be reviewed and decided within 90 days of submittal of a complete application. *North Hill* was in review for nearly two years before reaching the Examiner in 2009. (Exhibit E2, p. 2)

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 **APPROVES** the requested one-year extension of the term of approval of the preliminary long subdivision of *North Hill*. The new expiration date for the *North Hill* preliminary long subdivision is July 16, 2017.

Decision issued April 18, 2016.

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

HEARING PARTICIPANTS [12]

Scott Borgeson
Lara Thomas
Josh Farmer
Holly Caldwell
Robert Millard
David laird
Scott Swoboda
LynnD Stiles
Ann Gygi, unsworn counsel
Michael Moody
Jill Johnson
Brandon Caldwell
Harley Donnel
Mathew parsons
Richard Wieneke
Ken Balser
Allan Bakalian, unsworn counsel

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

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file a written motion for reconsideration within 10 calendar days of the date this Decision was mailed to the parties. See DMC 2.30.240 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of DMC 2.30.230 and 14.08.060(E). Any appeal must be filed within 21 days following the issuance of this Decision. See DMC 2.30.230 and 14.08.060(E) for additional information and requirements regarding judicial appeals.

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."