

**BEFORE the LAND USE HEARING EXAMINER of the
CITY of DUVALL**

DECISION

FILE NUMBER: SU06-001

APPLICANT: Ben Magnuson

TYPE OF CASE: Preliminary long subdivision (*Cherry Valley Village*)

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF DECISION: GRANT subject to conditions (revised)

DATE OF DECISION: December 11, 2006

INTRODUCTION

Ben Magnuson (Magnuson), 1627 Vernon Road, Lake Stevens, Washington 98258, seeks preliminary long subdivision approval of *Cherry Valley Village*, an 11 lot single family residential subdivision of a 1.04 acre site.

Magnuson filed the preliminary long subdivision application on March 20, 2006. (Exhibit 4¹) The Duvall Planning Department (Planning) deemed the application to be complete as of April 3, 2006. (Exhibit 6)

The subject property is located at 26519 NE Cherry Valley Road, occupying the inside of the 90° turn in NE Cherry Valley Road opposite the Dougherty Farmstead.

The Duvall Hearing Examiner (Examiner) viewed the subject property on December 5, 2006.

¹ 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 Examiner held an open record hearing on December 5, 2006. Planning gave notice of the hearing as required by the Duvall Municipal Code (DMC). (Exhibit 9) The Examiner held the hearing record open for up to two weeks for City Staff to submit a written copy of the additional conditions it verbally offered during the hearing. The record closed with receipt of Exhibit 16 on December 6, 2006.

Magnuson and the City have mutually agreed to allow an extension of the 90-day review period as permitted by DMC 14.08.020(H)(2). (Exhibit 1)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

ISSUES

Does the application meet the criteria for Preliminary long subdivision approval as established within the DMC?

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

FINDINGS OF FACT

1. The *Cherry Valley Village* site occupies the inside of the 90° turn in NE Cherry Valley Road opposite the Dougherty Farmstead and is, thus, bordered on its west and north by NE Cherry Valley Road. NE Cherry Valley Road is identified as Minor Arterial in the 2004 City of Duvall Comprehensive Plan. (Exhibits 1 and 7)

The property generally slopes from east to west at a maximum slope of 14 percent. The property is vacant (two residences were removed in or around 2003). Vegetation consists of eight significant trees and other native and non-native shrubs and invasive species (Himalayan blackberry). No wetlands exist on the property. (Exhibits 1, 3, 7, and 11 – 14)

2. The *Cherry Valley Village* site is both designated by the Comprehensive Plan and zoned R12 (Residential 12 dwelling units per acre). In accordance with DMC 14.42.090, Density Credits, the *Cherry Valley Village* site is allowed up to 13 lots. (Exhibits 1 and 12)
3. The property to the north across NE Cherry Valley Road is zoned PF (Public Facilities) and contains the Dougherty Farmstead, a historic landmark operated by the City of Duvall and the Duvall Historical Society. The property to the west between NE Cherry Valley Road and SR 203 is zoned UR (Urban Reserve) and is currently vacant and owned by the applicant. The property to the south is

zoned R12 (Residential 12 units per acre), is owned by Dean Sellers (Sellers), contains a single family house, and is the subject of a proposed subdivision which has not yet come on for hearing (*Allen Street Village*, SU06-007). The property to the east, a parcel containing approximately 1.5 acres with approximately 237 feet of frontage on NE Cherry Valley Road, is zoned R12 (Residential 12 units per acre) and contains the “Country Crossing” mobile home park (containing approximately 10 mobile homes). The Cherry Valley Elementary School lies to the east of “Country Crossing” mobile home park. (Exhibits 1, 3, 7, 10, and 14 and testimony)

4. A fence line encroachment affects the common boundary between the *Cherry Valley Village* and “Country Crossing” parcels: The existing fence begins on the north property line on the mobile home park’s side of the surveyed property line, but ends up approximately six feet on the *Cherry Valley Village* side of the surveyed line at the south property line. (Exhibit 3) Magnuson and the “Country Crossing” owner have tentatively agreed to accept the surveyed line as the true property line. (Testimony)
5. Magnuson proposes to develop 11 new single-family house lots, each of which will take vehicular access off a private alley (Tract 999). The lots will range in size from 1,501 square feet (SF) to 3,034 SF. The plan includes construction of a portion of 1st Avenue NE within a 43 foot wide dedicated right-of-way along the east boundary of the site; the remainder of a “standard” right-of-way width would be provided in the future should the “Country Crossing” mobile home park property ever redevelop. Tract 999 will intersect 1st Avenue NE about 100 feet south of NE Cherry Valley Road and terminate at the south property line. A 2,770 SF open space tract is proposed for the southeast corner of the site. A 10 foot wide landscape easement will encumber the westerly edge of Proposed Lots 1 – 7 along NE Cherry Valley Road. A “sight distance visibility triangle” will be preserved across the northerly portion of Proposed Lots 1 – 3 to protect sight distance at the 1st Avenue NE/NE Cherry Valley Road intersection. (Exhibit 3)
6. A 5-foot planter strip with street trees is proposed along the west side of 1st Avenue NE. A 10 foot Type II landscape buffer will be planted with groundcover and trees along NE Cherry Valley Road. Staff proposes to require low-growing groundcover from the property line along NE Cherry Valley Road to the drainage ditch. Grass will be planted in the ditch along the length of the property along NE Cherry Valley Road. Tract 998 is to be planted with trees and grass and will be common open space maintained by the subdivision’s homeowners association. This common open space is in lieu of the 250 square SF of open space required per lot. (Exhibits 1 and 3)
7. The record contains evidence that appropriate provisions have been made for:
 - A. Open space. Tract 998 meets the open space requirement. (Exhibits 1 and 3)
 - B. Drainage ways. The stormwater control system for *Cherry Valley Village* has been designed in coordination with *Allen Street Village*. An underground stormwater detention pipe will be constructed beneath Tract 999, straddling the common boundary with *Allen Street Village*, to

meet specifications required by the City of Duvall Engineering Department. Location of the stormwater vault in Tract 999 has been approved by the City Engineer. The stormwater system would have to be significantly altered if *Allen Street Village* is not developed concurrently with *Cherry Valley Village*. (Exhibits 1 and 14 and testimony)

- C. Streets and roads. 1st Avenue NE will be built as a “half street” improvement consisting of 30 feet of pavement with a 5 foot sidewalk and 5 foot planter strip on the west side of the roadway. The sidewalk will be built from the curb return at the 1st Avenue NE/NE Cherry Valley Road intersection to the southern property line. Tract 999 will be built with 20 feet of drive surface and a 5 foot sidewalk on the west side of the roadway. Due to topographic and site limitations, the City Engineer will not require a planter strip. No road or sidewalk improvements will be required along NE Cherry Valley Road or the east side of Tract 999 due to topographic constraints. (Exhibits 1 and 3)

As has been noted, sight distances at the 1st Avenue NE/NE Cherry Valley Road intersection will be acceptable only if the depicted sight distance triangle is preserved free from visual obstructions. The proposed landscape plan (Exhibit 3, Sheet P2) may have to be modified to preserve sight distance. (Testimony)

The proposed street system is acceptable only if *Allen Street Village* develops concurrently with *Cherry Valley Village*; Tract 999 will then provide a through connection to Allen Street, obviating the need for a loop connection back to 1st Avenue NE within *Cherry Valley Village*. (Testimony)

The City collects impact fees for schools pursuant to Chapter 14.58 DMC.

- D. Alleys. Tract 999 will serve as a private access alley. (Exhibit 3)
- E. Other public ways. No need for other public ways within the subdivision exists. (Exhibit 3)
- F. Transit stops. The record contains no request for transit stops.
- G. Potable water supply. The City is able and prepared to provide potable water to *Cherry Valley Village*. (Testimony)
- H. Sanitary wastes. The City is able and prepared to provide public sewer service to *Cherry Valley Village*. (Testimony)
- I. Parks and recreation. The City collects impact fees for parks pursuant to Chapter 14.58 DMC. Tract 998 will provide a recreation area for subdivision residents.
- J. Playgrounds. See Finding 7.I, above.

- K. Schools and schoolgrounds. The City collects impact fees for schools pursuant to Chapter 14.58 DMC.
 - L. Safe walking conditions for students who only walk to and from school. Children residing in *Cherry Valley Village* will attend Cherry Valley Elementary School (located about 240 feet to the east), middle school in Carnation (several miles distant), and Cedarcrest High School (located more than a mile distant). Only elementary students will walk to school. NE Cherry Valley Road has no walking facilities. Staff has recommended that a pedestrian pathway be provided within the right-of-way in front of "Country Crossing" so that children will have a safe walkway to the school. (Testimony and Exhibit 16)
8. The *Cherry Valley Village* site contains eight significant trees, one of which is in poor condition. Three trees must be retained to meet the 35% tree retention requirement; in the alternative, all significant trees could be removed and replaced with nine new trees. Magnuson does not plan to retain any trees. Instead, he plans to plant a total of 30 trees on the site. (Exhibits 1 and 3, Sheet P2)
9. Duvall's State Environmental Policy Act (SEPA) Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) on June 8, 2006, before the current plat design was prepared. (Exhibit 8 and testimony) The one mitigation measure within the MDNS pertains to a previous design and is moot in view of the current design. (Testimony)
10. Staff recommends approval of *Cherry Valley Village* subject to 28 special conditions and a number of General Conditions.² (Exhibit 1) Staff orally presented revisions to Recommended Conditions 8, 15, 20, and 28. Staff orally recommended that Recommended Condition 6 be deleted as it duplicates the substance of Recommended Condition 28. Staff also orally suggested a revision to Engineering General Condition 13. (Testimony)
- Staff orally offered three additional conditions which are memorialized in Exhibit 16.
11. Magnuson accepts the Recommended Conditions, as revised and clarified during the hearing with but two minor exceptions. Magnuson believes that the wording of Recommended Condition 24 is awkward and, therefore, unclear. Magnuson also believes that the fence height in Recommended Condition 26 should be six feet rather than three feet as its stated purpose is to provide privacy for the mobile home park residents. (Testimony)
12. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

² The Staff Report, Exhibit 1, contains a number of scrivener's errors which were corrected orally during the hearing. Such errors are contained on pages 5, 6, and 7 and affect, *inter alia*, Recommended Conditions 1, 3, and 10. Those errors will not be specified herein. The interested reader is referred to the audio recording of the hearing.

PRINCIPLES OF LAW

Authority

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 2.30.040 and 14.08.010(C)(1) and (C)(2)]

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 DMC, state laws and regulations, including Chapter 43.21C RCW, and the regulations, policies, objectives, and goals of the Duvall comprehensive plan, the unified development regulations, and other official laws, policies and objectives of the city of Duvall.

[DMC 2.30.070(B)]

Review Criteria

The primary review criteria for preliminary long subdivisions are set forth at DMC 14.66.040:

- A. Each proposed subdivision or short subdivision shall be reviewed to ensure that:
1. The proposal conforms to the goals, policies and plans set forth in the Duvall comprehensive plan;
 2. The proposal conforms to the site and design requirements set forth in this title. No final subdivision or short subdivision shall be approved unless the requirements are met;
 3. The proposed street system and pedestrian system conform to the Duvall comprehensive plan, DMC Chapter 14.34, Design Standards--General, and the public works development design standards, and is laid out in such a manner as to provide for the safe, orderly and efficient circulation of vehicular and pedestrian traffic;
 4. The proposed subdivision or short subdivision will be adequately served with city-approved water and sewer, and other utilities appropriate to the nature of the subdivision or short subdivision;
 5. The layout of lots, and their size and dimensions, takes into account topography and vegetation on the site in order that buildings may be reasonably sited, and that the least disruption of the site, topography and vegetation will result from development of the lots;
 6. Identified hazards and limitations to development have been considered in the design of streets and lot layout to assure street and building sites are on geologically stable soil considering the stress and loads to which the soil may be subjected.

B. Lack of compliance with the criteria set forth in subsection A of this section and DMC Section 14.66.050, Subdivision standards, shall be grounds for denial of a proposed

subdivision or short subdivision, or for the issuance of conditions necessary to more fully satisfy the criteria.

In addition, DMC 2.30.210 contains additional requirements for preliminary long subdivisions:

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

A. 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

B. The public use and interest will be served by the platting of such subdivision and dedication.

A “consistency determination” is also required for every project permit application.

During project permit application review, [Duvall] shall determine whether the items listed in this section are defined in [Duvall’s] development regulations applicable to the proposed project and if the proposed project meets the development regulations. In the absence of applicable development regulations, [Duvall] shall determine whether the items listed in this section are defined in [Duvall’s] adopted comprehensive plan and if the proposed project meets the comprehensive plan policies. This determination of consistency shall include, but is not limited to, the following:

- a. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
- b. The level of development, such as units per acre, floor area ratio, lot coverage, etc;
- c. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by chapter 36.70A RCW; and
- d. Character of the development, such as development standards.

[DMC 14.08.040(A)(2)]

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]

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

1. The evidence in the record, summarized within the preceding Findings of Fact, demonstrates compliance with the criteria of DMC 14.66.040 and .050.
2. The evidence in the record, summarized within the preceding Findings of Fact, demonstrates compliance with the criteria of DMC 2.30.210(A), if and only if the changes to the staff-recommended conditions specified below are made.
3. Approval of *Cherry Valley Village*, subject to the conditions as modified below, will serve the public use and interest.
4. *Cherry Valley Village* meets the consistency test: Single family residential is a permitted use in the R12 zone; the proposed density is within the range allowed by the R12 zone; adequate utility services are available; and the proposal complies with those development standards which can be evaluated at the preliminary long subdivision stage of review.
5. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:
 - A. Boundary line encroachments need not be resolved prior to preliminary long plat approval. Once a municipality is aware of a boundary line dispute involving a proposed subdivision, it must have assurance before approving the final plat that the dispute has been resolved. [*Halverson v. Bellevue*, 41 Wn. App. 457, 704 P.2d 1232 (1985)] At the preliminary long plat stage it is sufficient to determine whether resolution of the encroachment in that fashion most adverse to the subdivision would render the proposal unworkable.

In the present case, the plat could still function under an adverse property line resolution. The alignment of 1st Avenue NE would have to be angled slightly, but staff believes that such an adjustment would work.

As a practical matter, the boundary line encroachment issue must be resolved before construction plans are submitted to the City for review since the alignment of 1st Avenue NE depends upon the location of the eastern boundary. Recommended Condition 7 will be revised to so provide.

- B. The changes and clarifications made by Planning during the hearing should be incorporated.
- C. The standard rule is that MDNS mitigation measures must carry forward as conditions of approval on the permit with which the MDNS is associated. [WAC 197-11-350(3)] However, where, as here, the MDNS mitigation measure was imposed on an earlier project design and where design revisions have rendered the measure obsolete, it need not be imposed as a condition. In essence, the mitigation measure is now moot because of project design changes.
- D. The three additional conditions contained in Exhibit 16 are necessary to ensure that the public use and interest and public safety will be served by the proposed subdivision.
- E. Maintenance of the stormwater system will be a joint responsibility of the *Cherry Valley Village* and *Allen Street Village* homeowner's associations. That reality must be clearly and explicitly set forth within the respective legal documents which create the homeowner's associations. How the costs and responsibilities are apportioned between the two associations and their members is not a particular concern of the City. The City's concern is that the responsibility must be accepted and spelled out. The interest of other downstream residents in the City will not be served if no one knows who's responsible for maintenance of the system. An additional condition is necessary.
- F. Recommended Condition 20 (fences along NE Cherry Valley Road must be located on the lot side, not on the road side, of the landscape easement) is a condition of which lot owners must be aware as it applies for the life of the subdivision, not just until the subdivision has been recorded. Therefore, it also needs to appear on the face of the recorded plat as a legal warning to affected lot owners.
- G. Magnuson makes a good point regarding Recommended Condition 26. The stated purpose of the fence is to provide privacy for the mobile home park's residents. Their property will be higher adjoining 1st Avenue NE. A three foot tall fence will not provide any meaningful privacy. A six foot tall fence, as suggested by Magnuson, will provide such privacy. The condition will be revised.
- H. Sight distance preservation at the 1st Avenue NE/NE Cherry Valley Road intersection is critical to public safety. NE Cherry Valley Road serves a residential area, a public elementary school, a church, and an historic farmstead. Further, NE Cherry Valley Road is an arterial, suggesting that its traffic volumes will only increase in years to come. The new intersection will be located as far east on the property as is physically possible, but will still be very close to the 90° bend in the road.

The landscape plan for the easement along NE Cherry Valley Road must preserve the sight distance triangle height limitations. A condition requiring revisions as necessary will be added.

- I. Similarly, the owners of Proposed Lots 1 – 3, across which the sight distance triangle will lie, must be made aware of its existence and their responsibility to keep their vegetation and fencing below the safety level. The easiest way to legally accomplish that objective is to place an encumbrance over those lots on the face of the final plat. Such an encumbrance would then be of public record and, presumably, would be picked up by title companies and reported in title reports. A condition requiring such will be added.
- J. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 2, 4, 5, 7, 8, 11, 16, 17, 20, 21, 23, 25 – 28, and the three additional conditions in Exhibit 16 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

Included in those changes will be replacement of the word “applicant” wherever it appears with the word “developer.” The Examiner prefers “developer” (or “plattor”, meaning the entity subdividing the property) to “applicant”: Preliminary long subdivision approval runs with the land, so it is entirely possible that someone other than the current applicant might ultimately end up developing the site. Since Planning has used “developer” extensively, the Examiner will follow suit and change all “applicant” references to “developer.”

- 6. 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, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner **GRANTS** the requested *Cherry Valley Village* preliminary long subdivision **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued December 11, 2006.

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

John E. Galt
Land Use Hearing Examiner

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."

CONDITIONS OF APPROVAL
SU06-001
Cherry Valley Village

This preliminary long subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Duvall Municipal Code, standards adopted pursuant thereto, the Fire District #45, Public Works and Engineering, and Planning General Conditions as set forth in Exhibit 1, and the following special conditions:

General

1. Exhibit 3 is the approved preliminary plat.

Public Works and Engineering

2. Prior to submittal of construction plans to the City for review and approval, the developer shall provide written evidence to the City that the property line encroachment affecting the eastern property line has been resolved with the adjoining property owner. This includes the ability to place the retaining wall abutting the existing structures to the east (mobile home units). The submitted construction plans shall reflect the resolution.
3. The developer shall be required to comply with the geotechnical engineering report's recommendations (Exhibit 11) and City Engineer recommendations necessary during construction.
4. The waterline shall connect from NE Cherry Valley Road, southerly down 1st Avenue NE to the SE corner of the site and tie into the 4" PVC line at that corner. Tract 999 shall have the water line placed underneath tying in from 1st Avenue NE and running to Tract 999's southerly boundary for continuation in the future.
5. Any identified downstream stormwater drainage mitigation measures and improvements identified in the Preliminary Storm Drainage Narrative (Exhibit 14) shall be completed and approved by the City Engineer prior to Final Plat approval.
6. Any deficient sanitary sewer items such as manholes, side services, or mainlines running through the project or across its development frontage that are specifically identified in the City of Duvall Infiltration and Inflow report performed by EarthTech (April 1999) shall be repaired by the developer.
7. Low impact design standards supported in either the latest version of the King County Surface Water Design Manual or its equivalent used in the state of Washington, and approved by the City Engineer, may be used.

8. 1st Avenue NE shall be built to Collector Arterial street standards with a minimum half street improvement. The improvement shall consist of 30 feet of ACP drive surface, concrete vertical curb and gutter, 5 foot planter strip and 5 foot sidewalk on the west side only. Land use action by the adjacent property owner to the east shall trigger and be responsible for the remainder of the road and landscaping improvements on the east side of 1st Avenue NE.
9. Tract 999 shall be constructed to tract standards as defined in the City of Duvall Development Design Standards. The improvement shall consist of a minimum of 20 feet of ACP drive surface, concrete vertical curb and gutter and 5 foot sidewalk on the west side only. The sidewalk on the east side of Tract 999 has been removed based on topographic issues as well as improvement needs for the 1st Avenue NE corridor to the east.
10. 1st Avenue NE shall be placed in right-of-way to be dedicated to the City of Duvall at time of Final Plat. Tract 999 shall be maintained by the subdivision Homeowners Association.
11. No parking shall be allowed in individual driveways in order to prevent public sidewalks and roadways from being blocked. This requirement shall be recorded and enforced as part of the homeowners association CC&R's.
12. All lots shall be graded and prepared for home construction with grade elevations shown on the construction drawings and grading shall be performed prior to Final Plat acceptance. This includes any earth movement and retaining wall construction. All retaining walls shall be identified and any requested changes made after the Final Plat acceptance will require a separate grading permit.
13. In roadway landscape strips, the soil shall be amended by tilling the top 10" and blending in 6" of 3-way topsoil and then capping that with a minimum of 4" of 3-way topsoil.
14. The retaining wall along the east side of 1st Avenue NE shall be considered temporary and shall be removed at the time of redevelopment of the adjoining property.
15. The retaining wall along 1st Avenue NE shall be limited to rock, keystone-style, or textured/patterned-style. No ecology block-style walls are permitted.
16. The developer shall restore the ditch along NE Cherry Valley Road to a typical section if current condition requires per City Engineer.
17. If the fence line as shown on the preliminary plat (Exhibit 3) is accepted as the true east property line, then the alignment of 1st Avenue NE shall be shifted to the west and the improvements shown shall remain the same in roadway improvement width as well as the curb and gutter, landscape strip, and sidewalk on the west side of 1st Avenue NE and shall be placed in right-of-way of the same width as originally shown on the plat.

18. The developer has proposed utility and roadway designs as well as completing construction plans and activities jointly with the *Allen Street Village* project to the south. If *Allen Street Village* does not develop prior to or concurrently with *Cherry Valley Village*, then the developer of *Cherry Valley Village* shall redesign its utilities as well as the roadway configuration and type for Tract 999 consistent with the Duvall Development Design Standards. If *Allen Street Village* does not develop prior to or concurrently with *Cherry Valley Village*, the minimum roadway improvements requirements for *Cherry Valley Village* shall meet the Minor Access Roadway Standards as well as fire access turnaround requirements presented in Chapter 3 of the Duvall Development Design Standards. Major design changes may require formal revision of the preliminary plat.
19. The developer shall provide for safe access to Cherry Valley Elementary School within the road right-of-way of NE Cherry Valley Road from the project's northeast corner, across the property located at 26525 NE Cherry Valley Road, to the northwest corner of the Cherry Valley Elementary School property. Safe access shall consist of not less than a 5 foot wide asphalt path on 6" of 5/8" crushed rock on a firm and unyielding subgrade. Reconfiguration of the existing ditch will likely be required to fit the 5 foot wide asphalt path within the existing right-of-way across the 26525 NE Cherry Valley Road property. Grading of the ditch and path will need to be approved by the City Engineer. The developer shall provide a cross walk meeting the standards of Chapter 3 of the Duvall Design Standards, with proper sidewalk ramp terminals, across 1st Avenue NE at the NE Cherry Valley Road intersection.
20. Engineering General Condition 13 is revised to read: "Any existing wells on the site shall be identified and decommissioned pursuant to King County Department of Health standards and requirements."

Planning

21. The final landscape plan for the landscape easement along NE Cherry Valley Road shall demonstrate compliance with height limitations associated with the sight distance visibility triangle for the 1st Avenue NE/NE Cherry Valley Road intersection. Vegetation planned for installation within that triangle shall be of a type which, under normal conditions, is not expected to grow higher than allowed within sight distance visibility triangles.
22. The following special notes shall be placed on the face of the final plat:
 - A. An encumbrance shall be placed over that portion of Proposed Lots 1 – 3 lying within the sight distance visibility triangle. An accompanying textual note shall advise of the existence of the sight distance visibility triangle and shall advise that affected owners are responsible to keep their vegetation and fencing below the safety level.

- B. "No fencing is allowed within any portion of the landscape easement along NE Cherry Valley Road."
23. A Homeowners Association shall be established prior to Final Plat and shall be responsible for maintaining the landscaping easement along NE Cherry Valley Road, Tract 998 and all other common area landscaping.
24. The document(s) creating and empowering the Homeowners Association shall explicitly provide for shared maintenance of the stormwater control system with the Homeowners Association of *Allen Street Village*. The manner in which responsibilities and costs of such maintenance are shared shall be up to the respective developers, but the document(s) shall provide a single point of contact should the City need to contact someone regarding stormwater system maintenance issues.
25. The developer shall be required to submit CC&R's which are required to be reviewed and approved by the City prior to recording the Final Plat. The developer shall record the CC&R's and show proof that they have been recorded prior to Final Plat.
26. Fences are not permitted within the landscape easement along NE Cherry Valley Road. Individual homeowner fences, if installed, must be behind the landscaping easement line. Any fences within the sight distance visibility triangle must not be higher than allowed by City standards for such areas.
27. The developer shall install street trees and planter strips with groundcover along 1st Avenue NE and a 10 foot Type II landscape easement along NE Cherry Valley Road. The developer shall extend landscaping between the property line and the ditch along NE Cherry Valley Road. This landscaping area will require low growing shrubs and groundcover. Grass shall be planted along the ditch to edge of pavement along NE Cherry Valley Road.
28. Tract 998 shall be a common open space maintained by the Homeowners Association.
29. If the developer removes all significant trees on site, the developer is required to provide replacement trees at a 3 to 1 ratio. Pursuant to this requirement, the developer would have to provide a minimum of 9 replacement trees. The developer has proposed to plant 30 total trees on site, located along 1st Avenue NE and within the landscaping easement along NE Cherry Valley Road. If sight distance issues arise, the developer shall contact the City to remove those trees within the sight distance triangle.
30. If property line fences are installed on a slope, the supporting posts shall be pressure treated and embedded in concrete.
31. If construction of *Allen Street Village* to the south (SU06-007) does not commence prior to Final Plat approval, a sign shall be posted at the south end of both Tract 999 and 1st Avenue NE which states that these roads are future City of Duvall road connections.

32. The developer shall install a 6-foot tall wood fence placed above the 3-foot retaining wall along 1st Avenue NE to provide additional privacy to the mobile home residents to the east.
33. The developer shall contact King County for all permits required for work located in the right-of-way along NE Cherry Valley Road, including work for tree removal and landscaping improvements.
34. The developer shall document contact with the property owner of the adjacent Country Crossing mobile home park regarding any right-of-way improvements, including but not limited to wall installation and fencing.

Final plat approval must be acquired within five years of preliminary approval, after which time the preliminary subdivision approval is void. The Examiner may grant an extension for one year if the developer has attempted in good faith to submit the final subdivision within the five-year time period; provided, however, the applicant must file a written request with the Examiner requesting the extension at least thirty (30) days before expiration of the five-year period. [DMC 14.66.060(D)]