

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

DECISION ¹

FILE NUMBER: SU06-001

APPLICANT: Cherry Valley Village, LLC ²
ATTN: Jyoti Paul
350 Louis Thompson Road SE
Sammamish, WA 98074

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

STAFF RECOMMENDATION: Approve

EXAMINER DECISION: APPROVE

DATE OF DECISION: November 9, 2016

INTRODUCTION ³

Cherry Valley Village, LLC (Paul) seeks a one year extension of the term of preliminary long subdivision approval for *Cherry Valley Village*, an 11-lot single-family residential subdivision of a 1.04 acre site which is zoned R12.

Paul filed a request for a one year extension of the term of preliminary long subdivision approval on or about October 12, 2016. (Exhibit 20 ⁴)

The subject property is located in the 26500 block of Cherry Valley Road (former address of 26519 NE Cherry Valley Road, Duvall, WA 98019).

¹ This Decision memorializes and expands upon an oral decision rendered at the close of the November 7, 2016, open record pre-decision hearing.

² Applicant's address from Exhibit 20, Master Permit Application, Applicant name and address section. An alternate address (10700 NE 4th Street, Unit 3802, Bellevue, WA 98004) is found in the same document in Authorization to File Application section.

³ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

⁴ 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.

LAND USE HEARING EXAMINER DECISION

RE: SU06-001 (*Cherry Valley Village* preliminary subdivision term of approval extension)

November 9, 2016

Page 2 of 7

The Duvall Hearing Examiner (Examiner) viewed the subject property on December 5, 2006, prior to hearing the preliminary subdivision application.

The Examiner held an open record hearing on November 7, 2016. Planning gave notice of the hearing as would be required for a preliminary subdivision application by the Duvall Municipal Code (DMC). (Exhibit 23)

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

Exhibits 17 - 24: As enumerated in Exhibit 17, the Departmental Staff Report ⁵

Exhibit 25: Paul's PowerPoint hearing presentation

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. *Cherry Valley Village* received preliminary long subdivision approval on December 11, 2006. When originally approved, the term of preliminary approval was five years. (Exhibit 18) 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. ⁶ Under current state law, the term of preliminary subdivision approval for *Cherry Valley Village* will expire on December 11, 2016.

⁵ The Departmental Staff Report numbers the exhibits 1 – 8. Since that numbering system would result in duplicate exhibit numbers with those entered during the 2006 preliminary subdivision hearing, the Examiner re-numbered those eight exhibits as Exhibits 17 - 24 to prevent duplication.

⁶ 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 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:

2. Section 14.66.060(D) expressly allows for the extension of the term of preliminary subdivision approval. In light of the state's changes to RCW 58.17.140,⁷ DMC 14.66.060(D), as it applies to a preliminary plat approved in 2006, effectively states that

Final approval must be acquired within ten 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 ten-year time period; provided, however, the applicant must file a written request with the original decision maker requesting the extension at least thirty (30) days before expiration of the ten-year period.

Paul filed a request for a one-year extension of the term of preliminary long subdivision approval on or about October 12, 2016, more than 30 days prior to the expiration of the term of preliminary long subdivision approval. (Exhibit 20)

(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.

⁷ Projects do not vest to procedural rules and requirements.

3. The following actions have been taken towards final subdivision approval since preliminary long subdivision approval was granted on December 11, 2006:
 - A. In 2007, the applicant of record (Magnuson) made application to the City for construction drawing review and approval. (Exhibit 17, p. 4)
 - B. In 2008, the country experienced a deep recession and the associated collapse of the real estate market.
 - C. In May, 2013, Paul purchased the *Cherry Valley Village* property and development rights from Magnuson. (Exhibits 20; 25)
 - D. In October 2014, a property line encroachment with an abutting property owner was resolved by recordation of a Boundary Line Adjustment. (Exhibits 18, p. 3, Finding of Fact 4 and p. 12, Condition 2; 20; 22)
 - E. In November 14, 2014, construction plan approval was granted by the City. (Exhibit 17, p. 4)
 - F. In June, 2015, infrastructure work began. Installation of “wet” utilities (water, sewer, storm water systems) was completed in May, 2016. Installation of “dry” utilities (power, gas, phone, cable, internet) and curbing were completed in October, 2016. (Exhibits 20; 25)
 - G. Paul hopes “to complete the majority of sidewalk and paving work in October and possibly in early November”, 2016. (Exhibit 20, p. 2, ¶ 8) Paul may actually be in a position to submit the application for final plat approval before December 11, 2016, but that is not a certainty. Therefore, to protect against any unforeseen delays, Paul seeks a one-year extension. (Exhibit 20, p. 2; and testimony)
4. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
5. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁸

[Chapter 16, § 1, Laws of 2013]

⁸ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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

Authority

A preliminary 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 five-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 April 3, 2006, 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

LAND USE HEARING EXAMINER DECISION

RE: SU06-001 (*Cherry Valley Village* preliminary subdivision term of approval extension)

November 9, 2016

Page 6 of 7

1. Paul has fulfilled the threshold requirement for consideration of a one-year extension of the term of approval of *Cherry Valley Village*: Paul filed the extension request more than 30 days before the end of the term of approval.
2. Paul has made a good faith effort to complete the final subdivision approval process. The massive recession which existed in the United States shortly after approval of the preliminary subdivision and from which the country has made a very slow recovery by most accounts must be considered in determining good faith effort. Once Paul came into the picture in 2013, it moved forward with due diligence and reasonable speed.
3. 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.
4. 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 **APPROVES** the requested one-year extension of the term of approval of the preliminary long subdivision of *Cherry Valley Village*. The new expiration date for the *Cherry Valley Village* preliminary long subdivision is December 11, 2017.

Decision issued November 9, 2016.

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

John E. Galt

Land Use Hearing Examiner

HEARING PARTICIPANTS ⁹

Jyoti Paul

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.

⁹ The official Parties of Record register is maintained by the City's Hearing Clerk. Staff chose not to testify during the hearing.

LAND USE HEARING EXAMINER DECISION

RE: SU06-001 (*Cherry Valley Village* preliminary subdivision term of approval extension)

November 9, 2016

Page 7 of 7

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.”