



EXHIBIT 30
PAGE 1 OF 9

DATE: December 10, 2013

TO: James Driscoll, City of Woodinville Hearing Examiner

FROM: SSHI, LLC dba D.R. Horton, Vinterra Applicant

RE: Vinterra Preliminary Subdivision PPA12003/SEP12036
Staff Report Comments/Revision Request

Dear Hearing Examiner Driscoll,

This letter and its enclosures include our comments and corrections to the staff analysis in the Staff Report to Hearing Examiner dated December 4, 2013, for the Vinterra Preliminary Subdivision. It also includes our requests for alteration with respect to Staff's proposed conditions for the Vinterra Subdivision. We are providing this letter to you now for your review in advance of the hearing, but we will continue to discuss with the City in attempt to reach resolution on some of these items prior to the Hearing. We anticipate that we may submit additional documentation at the Hearing. We appreciate your careful consideration of our requests.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tia Heim', is written over a faint, larger signature.

Tia Brotherton Heim
Vice President of Legal and Land Development

FACTUAL CORRECTIONS TO STAFF REPORT:

1. On page 3 of the Staff Report, it is noted in the "Background" section that on August 27, 2013 a revised application was submitted that included an additional 10 lots on Parcel B for a total of 157 lots. The total lot count of 157 lots is accurate, however there are only 8 lots contained on Parcel B.
2. On page 7 of the staff report, Lot 36 is incorrectly noted as a corner lot in the paragraph #14 of the Staff Analysis section of the Staff Report. We request the record to be updated to reflect that Lot 36 is not a corner lot.
3. The "Trees" section of the Staff Report (on pages 8-9) references tree counts and calculations from Shoffner Consulting's Tree Inventory Report for the Vinterra dated as of August 26, 2013. Shoffner consulting is currently preparing an updated tree inventory, which, at the city's direction, we will submit together with construction plans. We request that the record and any condition reflect that the actual tree calculations will be based on the Shoffner Consulting Tree Inventory Report, as amended.
4. On page 9 of the Staff Report, #29 references the Gibson Traffic Consultants' Traffic Impact Analysis for the Vinterra project dated April 2013 (Exhibit 11). The Staff Report incorrectly notes that the 2018 future baseline conditions for three signalized intersections are anticipated to operate at LOS C-D; however the Gibson Report determined that these intersections will remain at LOS C or better (see the last paragraph in section 5.2 of the report). We have not been provided with any information contradicting the Gibson determination. We also note that the record should reflect that the reference in #29 to "NE 114th St." should be to "NE 144th St."
5. On page 11 of the Staff Report, #43 states that traffic impact fees are based off a net trip generation of 482 trips; however, the Traffic Impact Analysis for Vinterra (Exhibit 11) actually concludes that the Vinterra project will generate 1,068 net new average daily trips (1,550 predicted new trips less the 482 average daily trips from existing uses) . See Traffic Impact Analysis for Vinterra (Exhibit 11), Table 4: Traffic Mitigation Fees with Credit for Existing Uses.
6. On page 14 of the Staff Report, in response to public comments regarding "Tree and wildlife displacement" the Staff response indicates that "trees near the wetland will be preserved." However, per the tree survey, there are no significant trees near the wetland. See Exhibit 13 We request that the record be updated to reflect that there are no significant trees near the wetland and therefore no trees in that location required to be retained.

7. On page 15 of the Staff Report in response to public comment regarding “Privacy” the Staff response indicates that the City is including a requirement that the applicant install fencing along property lines abutting other residences as a condition of approval. DR Horton objects to this requirement. There is no code basis for imposing a fencing requirement, nor is there any unique impact resulting from this project that would justify a fencing requirement. We note that no such mitigation was imposed under the DNS. The surrounding properties are residential uses, which are compatible with the proposed residential development. As a result, fencing should be at the option of the Applicant, and subsequently the homeowner association if addressed through CC&Rs, and/or individual lot owners.

REQUESTED CHANGES TO STAFF’S PROPOSED CONDITIONS

1. Proposed Condition #2(c) in the “Final Plat/Site Plan” section of the Staff Report (pages 16-17), should not be imposed as it is not consistent with Washington law on vesting to land use regulations. Please see the enclosed letter submitted by the Applicant’s attorney, Duana Kolouskova.
2. Proposed Condition #10 in the “Site Development” section of the Staff Report (Page 19) should be deleted. As discussed above, there is no basis in the WMC to impose an exterior fencing requirement, nor has any unique impact of this project been identified as a nexus for such requirement.
3. Proposed Condition #12 in the “Site Development” section of the Staff Report (Page 19) should be deleted or revised to simply reference compliance with the appropriate Code section, as set forth below. All utilities internal to the plat will be installed underground. Much of the 124th Avenue NE corridor from NE 160th Street south to NE 132nd Street has been developed and none of it has been required to underground the existing overhead power in connection with the new development. There may be unique site or corridor-specific reasons that the power has not been or cannot be undergrounded along this portion of the 124th Corridor. This is an issue that should be handled between the City and Applicant pursuant to the WMC during the construction approval process. It is worth noting that these PSE power lines and poles, are located within the Seattle City Light Easement, which may impact the ability to move the power underground. This project parcel is the only remaining property along the 124th Avenue NE corridor that has not been developed; therefore it would be the only section that might be required to relocate the power underground. Therefore we request that Staff’s proposed condition # 12 in the “Site Development” section of the Staff Report (page 19) be revised as follows:

12. ~~All new utilities and existing utilities shall be installed and/or relocated underground within the development, including electrical transformers, telephone pedestals, cable splice cabinets, and those in the 124th Avenue NE frontage prior to final plat approval per Development of the property shall comply with WMC 15.39.010.~~

4. The first line of Proposed Condition #16, as set forth in the "Site Development" section of the Staff Report (Page 19) should be deleted. It appears that the first line, which is an incomplete sentence, is a typographical error. We request that the condition be changed to delete the incomplete sentence as noted.
5. Proposed Condition #17 in the "Site Development" section of the Staff Report (Page 19) discusses the installation of a marked crosswalk supplemented with rapid flashing beacons on 124th Ave NE at NE 154th Street. The applicant voluntarily agreed to include a crosswalk with rapid flashing beacons based on discussions with City staff. The planned location was also agreed upon with City staff. The applicant was recently approached by Northshore School District (NSD) officials to discuss the crosswalk and their concerns with the planned location. NSD does not want the crosswalk constructed at the proposed location due to conflicting traffic movements out of the Woodmoor Elementary's exit location onto 124th Ave NE. NSD does support the crosswalk if constructed farther south along 124th Ave NE north of the Tolt Pipeline right of way, which would allow their middle school students to cross 124th to access the Tolt Pipeline trail to Northshore Junior High School. Therefore, we request that Staff's proposed Condition #17 in the "Site Development" section of the Staff Report (Page 19) be revised as follows:

17. ~~The applicant shall be required agrees to install a marked crosswalk supplemented with rapid flashing beacons with a mid-street pedestrian refuge island on 124th Avenue NE at NE 154th Street approximately between stations 5+50 and 6+50 as noted on sheet 10 of the Preliminary Plat Plans (Exhibit 4), or in such other location agreed upon by the Applicant and NSD, as shown on the preliminary plans shown on GP-01 with a mid-street pedestrian refuge island.~~

- ~~• West of the midblock crossing there shall be a 20' x 10' pad.~~
- ~~• The west shoulder of NE 124th Avenue NE adjacent to the crosswalk shall be widened to 10 feet for a length of 20 feet 10 feet on either side of the crosswalk.~~
- ~~• The west shoulder of NE 124th Avenue NE shall be 5-4 feet wide from the crosswalk to the end of the sidewalk, which is located north of the driveway leading to Woodmoor Elementary School~~

6. As noted above, Shoffner Consulting is in process of preparing updated Tree Inventory Report. The City and the Applicant should use the most up to date Tree Inventory Report(s) available at the time of development to make tree credit calculations. Therefore, we request that Staff's proposed Condition #18 in the "Site Development" section of the Staff Report (Page 19-20) be revised as follows:

18. A final tree preservation, maintenance agreement and replanting plan for the individual lots shall be submitted to the City for review and approval prior to final plat approval. The tree plan shall be designed in conformance with the City's Municipal Code and Infrastructure Standards. This project is subject to a Type III tree plan. The site is 33.35 acres and is

required to have 2,001 tree credits, pursuant to Chapter 21.15 WMC. The applicant currently proposes to remove 77 trees, totaling 344 credits, due to site grading and preparation. Based on this, the applicant would be required to replant 1,657 tree credits, or meet another the requirements of 21.15.070(2)(e). If the number of trees proposed to be removed changes the number of tree credits the Applicant is required to replant will also be adjusted. Trees will be planted within Tracts 988, 989, 991, 994, 995, 998, and 999 as part of the landscaping required for this project. Trees will be planted on individual lots at the time of single-family residence construction, based on a plan approved prior to final plat approval and a recommendation from the arborist on the number of trees each lot can support without creating a nuisance. If there are remaining tree credits that are required, the applicant shall comply with the requirements of WMC 21.15 by paying in to the City tree fund for those credits, prior to final plat approval. The final plans shall include the following revisions:

- o The tree credits that will be provided in the landscaping area in the NGPE, recreational and drainage (Tracts 988, 989, 991, 994, 995, 998 and 999) and the remaining number of credits to be provided by the individual lots (or another method per WMC 21.15).
- o Tree protection details shall be shown on the civil plans, per WMC 21.15.080. Tree protection for the trees on neighboring properties shall be called out specifically.
- o Identify those off-site trees on the plans that have the potential to be impacted by construction, as identified in the arborist report. Impacts to these trees during construction shall be evaluated by the arborist, and for those that are determined to no longer be viable, the applicant shall work with the neighbor on an agreeable solution to the impact.
- o The arborist shall provide a specific recommendation on the number of trees each lot can support. The replanting plan shall conform to this recommendation.
- o A final irrigation plan, providing temporary irrigation for all planted trees.

7. Staff's proposed Condition #20 in the "Site Development" section of the Staff Report should not be imposed as written. As written the condition references and attempts to summarize one sub-section of the WMC section on "Tree Protection during Construction" The condition should be revised as follows:

20. Construction of the project shall comply with the provisions of WMC 21.15.080, Tree Protection During Construction

8. Paragraph #22 of the "Site Development" section of the Staff Report discusses remediation and/or disposal of potentially contaminated soil in accordance with the Phase I and Limited Phase II Environmental Site Assessment completed by Tetra Tech dated June 17, 2013 (Exhibit 12). We request that this Condition be revised to be consistent with both Tetra Tech Report and Staff Analysis set forth in #44-45 on page 11 of the

Staff Report. Specifically, the proposed condition must be revised to remove the reference to “hazardous material”, as the Tetra Tech report specifically states on page 6 that the identified affected sediment should be disposed of as non-hazardous waste. We therefore, request that the condition be revised as follows:

22. Remediation and/or disposal of the potentially contaminated soil/sediment must be completed in accordance with the Phase I and Limited Phase II Environmental Site Assessment prepared by Tetra Tech, Inc., as well as state and federal law. The applicant shall ~~provide documentation of the remediation and legal disposal of the contaminated soils or a letter to this effect with a concurrent approval letter from any regulatory agency. This letter shall confirm that all hazardous material and contaminants were removed from the site and disposed of in a legal manner.~~ submit to the City a copy of a report and/or letter from its Environmental Consultant confirming that any removal and disposal of affected soils and sediments was completed in conformance with their recommendations.

9. Proposed Staff Condition #25 of the “Site Development” Section of the Staff Report (page 21) includes a requirement that Applicant, potentially take responsibility for relocation of existing water service line in the east basin ravine. The waterline referenced is on private property, which would require that the owner(s) of such property to consent to the relocation of the line and grant access to such property. If this condition is imposed, we request that the requirement be conditioned on ability of the applicant to obtain the property owner’s consent (i.e., if the property owner will not consent, applicant should not be required to take responsibility for such relocation) or that the City be responsible to obtain that consent in a fashion timely to infrastructure development. We therefore request the condition be revised as follows:

25. The applicant shall submit a supplement to the existing Technical Information Report for approval by the City of Woodinville. This report shall detail the design and construction of but not limited to:

- o Stormwater facilities
- o Outfall locations
- o Erosion control at outfall locations
 - i. East Basin – 24” CMP outlet to channel
- o The relocation of the existing water service line in the east basin ravine
- o Offsite stormwater Integrated Management Practices (IMP’s)
- o Additional requirements that the applicant will need to meet.

The Woodinville Water District is currently planning on moving the water service line, located in the East Basin that regularly is exposed due to erosion. If this water service line is not moved by the time of final plat approval, the applicant will take responsibility for relocating this water service line if affected property owner(s)

cooperate with the relocation efforts and grant all necessary consents and approvals without additional cost to applicant.

10. We request proposed Condition #34 as set forth in the "Site Development" section of the Staff Report (page 22) be revised to reflect the fact that transportation impact fees are to be based on the traffic counts and credits set forth in the Gibson Traffic Report:

34. The applicant shall pay transportation impact mitigation fees for each new average daily trip generated by the proposed development for all lots in accordance with WMC 3.39. Payment of the traffic impact mitigation shall be made to the City of Woodinville at the time of building permit issuance based on the traffic counts and credits in the Gibson Traffic Report (Exhibit 11), as such report may be supplemented. The total fee or mitigation amount shall be based on the mitigation fee established in WMC 3.39 in effect at the time of the fee payment. Impact fee credits will be established based on the requirements in WMC 3.39.110.



Johns Monroe Mitsunaga Koloušková

Robert D. Johns • Michael P. Monroe • Darrell S. Mitsunaga • Duana T. Koloušková

Hearing Examiner Driscoll
City of Woodinville, City Hall
17301 133rd Avenue NE
Woodinville, WA 98072

December 9, 2013

Re: Vinterra Preliminary Subdivision: Staff Recommended Condition 2.c.

Dear Hearing Examiner Driscoll:

We are the attorneys for DR Horton and submit this response regarding the City staff report on Vinterra Preliminary Subdivision, specifically recommended condition 2.c on pages 16-17.

The vested rights doctrine provides a measure of certainty and protects an applicant against fluctuating land use policy. Vesting “fixes” the rules that govern the land development regardless of later changes in zoning or other land use regulations. *Weyerhaeuser v. Pierce County*, 95 Wn. App. 883, 891, 976 P.2d 1279 (1999). The vested rights doctrine is codified for subdivisions in RCW 58.17.033. Vesting is also independently based upon constitutional principles of fairness and due process. *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 733 P.2d 182 (1987); *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d. 782 (1986); *Weyerhaeuser v. Pierce County*, supra, at 891.

A preliminary plat application vests the applicant’s rights to not only subdivide the property in accordance with the subdivision laws in effect at the time of that application, **but also vests the right to actually develop the property under other land use and zoning regulations** which were also in effect at that time of the subdivision application; *i.e.* the related subsequent building permits are also vested to the zoning and land use regulations in effect at the time the subdivision application was filed. *Noble Manor v. Pierce County*, 133 Wn.2d 269, 278, 943 P.2d 1378 (1997). An applicant also has a vested right to have the uses which are disclosed in a short plat application, also be considered under the laws in existence at the time of the initial short plat application. *Noble Manor*, 133 Wn.2d at 283. While building codes do not vest until the building permit application, the zoning and land use regulations do vest at preliminary plat application and carry forward through the building permit process. *Noble Manor* has a

long line of cases relying on it for this vesting rule – citations can be made available at the Examiner's request.

Further, RCW 58.17.195 requires that a plat only be approved after the city makes a finding of fact that it is in conformity with the zoning and land use laws in effect, i.e. those that the plat vested to. Additionally, WMC 20.06.020 requires the preliminary plat be reviewed for consistency with the property's zoning. The property's zoning, R-4 and R-6, addresses those very considerations which staff would otherwise defer until building permit application, i.e. setbacks, building height, building coverage, impervious surface, minimum driveway length. WMC 21.12.030. As a result, this Examiner is required to consider these elements of the project as part of preliminary plat review.

WMC 20.06.040 imposes lot standards which further address many of the considerations listed in staff's recommended condition 2.c. As a result, deferred consideration of these issues until building permit would compound the problem. If these criteria are not reviewed as part of this preliminary plat, this Hearing Examiner would not be able to determine whether the plat is consistent with the zoning and WMC 20.06.040.

Staff appears to recognize that the project's zoning addresses these same considerations. *Staff Report, pages 6-7*, table at Section 10 (comparing zoning requirements to proposed plat). Yet, without explanation, staff would defer review of these zoning elements until after the plat is built out and the final plat recorded. Staff also specifically addresses vesting of impervious surface coverage on page 19 of the Staff Report, which states that "Drainage facilities must be designed for maximum impervious surfaces allowed, or a note shall be placed on the final plat map stating the impervious surface maximums allowed." *Staff Report, page 19 (#19)*.

Staff's request for a final plat note that defers zoning considerations to the time of building permit application is inconsistent *Noble Manor* and its case progeny as well as RCW 58.17.195, WMC 20.06.020 and WMC 20.06.040. As a result, we respectfully request the Hearing Examiner reject this proposed condition and instead review those elements listed under 2.c. under the preliminary plat.

Sincerely,



Duana T. Koloušková

Direct Tel: (425) 467-9966

Email: kolouškova@jmmllaw.com

cc: Client

422-3 Ltr to Woodinville Examiner Driscoll 12-9-13