

**Sandy Guinn**

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**From:** Tia B Heim [TBHeim@drhorton.com]  
**Sent:** Friday, December 20, 2013 11:25 AM  
**To:** jim@driscollhearings.com; Sandy Guinn  
**Cc:** Otak; Thomas Hansen; Jennifer Reiner  
**Subject:** Vinterra Subdivision  
**Attachments:** Vinterra Preliminary Subdivision PPA Response 12.19.13.pdf;  
SKMBT\_C554e13121916500.pdf

Hearing Examiner Driscoll and Ms. Guinn,

As you requested, please find attached the response letters from DR Horton and its attorney, Duana Kolouskova, regarding the Vinterra Subdivision. Please let us know if you need anything else from DR Horton.

Thank you.

**Tia Brotherton Heim**

Vin of Legal and Land Development  
D.R. Horton, Northwest Division  
425-821-3400 ext. 5150 | Fax: (817) 936-2581  
cell 206-793-8337 | Fax: 425-814-2638  
tbheim@drhorton.com

**DATE:** December 19, 2013

**TO:** James Driscoll, City of Woodinville Hearing Examiner

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

**RE:** Vinterra Preliminary Subdivision PPA12003/SEP12036  
 Response to Staff Report Condition Revisions

Dear Hearing Examiner Driscoll:

As you requested, this letter follows up on our previous letter dated December 10, 2013 (Exhibit 30) and responds to the City's proposed revisions set forth in their revised Staff Report dated December 10, 2013 (Exhibit 25) ("Revised Staff Report").

We have also enclosed a copy of the updated sewer availability certificate. The updated water availability certificate is in process but not yet available. We will provide it to the City as soon as it is available. The supplement to the Critical Areas Report, which covers Parcel B, is already a part of the record as Exhibit 8. Exhibit 9 is the original Critical Areas Report for Parcel A.

The following table addresses the Factual Corrections to Staff Report requested in our December 10, 2013 letter.

<b>Factual Correction Requested</b>	<b>Response</b>
#1	City's Revised Staff Report makes this correction.
#2	City's Revised Staff Report makes this correction.
#3	City's Revised Staff Report makes this correction. We would like the record to reflect that we will be submitting a revised Tree Inventory Report with construction plans.
#4	City's Revised Staff Report makes this correction.
#5	City's Revised Staff Report makes this correction.
#6	City's Revised Staff Report makes this correction.
#7	The comments that we provided in our previous letter regarding Factual Correction #7 remain valid. As discussed in our previous letter and at the Hearing, the City has no basis for imposing a perimeter fencing requirement on this project. There is no basis in the Woodinville Municipal Code, nor is there any unique impact resulting from this project that would justify such requirement.

The following table addresses the Requested Changes to the Staff's Proposed Conditions requested in our December 10, 2013 letter.

<b>Requested Change</b>	<b>Response</b>
#1 – Proposed Condition #2(c) in the "Final Plat/Site Plan" section of the Staff Report	This condition should not be imposed as it is not consistent with Washington law regarding vesting to land use regulations. Please see supplemental letter from Applicant's attorney, Duana Kolouskova, in response to City Attorney email from Greg Rubstello to Dave Kuhl (Exhibit 29).
#2 – Proposed Condition #10 in "Site Development" section of the Staff Report	City acknowledged that there is no Code basis for imposing a perimeter fencing requirement. City failed to articulate any unique impact of this project that would serve as a nexus for imposing a perimeter fencing requirement. We continue to object to this proposed condition.
#3 – Proposed Condition #12 in the "Site Development" section of the Staff Report	The comments provided in our December 10, 2013 letter regarding this condition remain valid. The City did not provide explanation as to why it chose to recite only one small portion of the Woodinville Municipal Code section regarding Undergrounding of Utilities (WMC 15.39.010). We are not currently requesting any variance from this WMC section. However, we request that any condition imposed regarding Undergrounding of Utilities make clear that WMC 15.39.010 in its entirety applies to this project, including subsection (4), which allows certain City officials the authority to approve a deviation to waive, limit, or modify the requirement(s) for such improvements in certain limited circumstances. We are early in the process for this project and there may be factors about the site, the existing infrastructure or utilities that are not yet known that would justify such deviation. The WMC as drafted, appropriately allows City officials the authority to address issues with respect to undergrounding of utilities at a later stage of a project. We request only that the Condition clearly indicate that WMC 15.39.010 in its entirety applies to the project, not only the portion thereof that is recited in the proposed condition.
#4 – Proposed Condition #16 in the "Site Development" section of the Staff Report.	The Revised Staff Report makes this correction.
#5 – Proposed Condition #17	The Revised Staff Report revises proposed condition #17 in a manner that is acceptable to the Applicant. However, we would like to make sure that the record properly reflects that the Applicant is not responsible for installation of sidewalks on the West side of 124 <sup>th</sup> in connection with installation of this crosswalk. If the crosswalk

	meets an existing sidewalk on the West side of 124 <sup>th</sup> , the Applicant will install an ADA compliant ramp into such existing sidewalk. The testimony of Mr. Hansen at the Hearing confirmed that the Applicant is only required to install sidewalks on the East side of 124 <sup>th</sup> .
#6 – Proposed Condition #18 in the “Site Development” section of the Staff Report	The Revised Staff Report revises this proposed condition #18 in a manner that is acceptable to the Applicant.
#7 – Proposed Condition #20 in the “Site Development” section of the Staff Report	The comments provided in our previous letter regarding this condition remain valid. The condition should reference compliance with the WMC section on “Tree Protection During Construction” in its entirety. It is unclear why the City has chosen to restate portions of WMC 21.15.080 (2)(c)(i) and (ii) only.
#8 – Proposed Condition #22 in the “Site Development” section of the Staff Report	The Revised Staff Report revises the condition in a manner that is acceptable to the Applicant.
#9 – Proposed Condition #25 in the “Site Development” section of the Staff Report	The comments provided in our December 10, 2013 letter with respect to this proposed condition remain valid. At the Hearing the City agreed that any requirement for the Applicant to take responsibility for relocation of the offsite water service line, should only apply if the Applicant is able to obtain the underlying property owner’s consent to relocate such water service line. The proposed condition should be revised accordingly.
#10 – Proposed Condition #34 in the “Site Development” section of the Staff Report	The Revised Staff Report revises this condition in a manner that is acceptable to the Applicant.

Sincerely,



Tia Brotherton Heim  
Vice President of Legal and Land Development

Cc: Jenny Ngo, Woodinville Planning Consultant  
Thomas E. Hansen, PE, Woodinville Public Works Director

Encl: Letter from Duana Kolouskova  
Sewer Availability Certificate

Rept # 88053

F/2 SE<sup>4</sup> 16-26-5

CITY OF WOODINVILLE  
17301 133 Ave NE  
Woodinville WA 98072  
425-489-2700

This certificate provides the Building and Fire Departments with information necessary for permit approvals

QTR NW 4 of SE 1/4  
SEC 16  
TWP 22N  
RG 5E  
Book  
Pg

**CERTIFICATE OF SEWER AVAILABILITY**

Do not write in this box

Number

Name

- Building Permit
- Short Subdivision
- Preliminary Plat of PUD
- Rezone or other

APPLICANT'S NAME DR HORTON  
PROPOSED USE SUBDIVISION OF 2 PARCELS INTO 15 LOTS  
LOCATION 15025 124TH AVE NE  
P.I.N.# 1626059017/9017

(Attach map & legal description if necessary)

**WATER PURVEYOR INFORMATION**

1. a.  Sewer service will be provided by side sewer connection only to an existing \_\_\_\_\_ Size sewer feet from the site and the sewer system has the capacity to serve the proposed use.
- OR
- b.  Sewer service will require an improvement to the sewer system of
- (1) \_\_\_\_\_ feet of sewer trunk or lateral to reach the site; and/or
  - (2) the construction of a collection system on the site; and/or
  - (3) Other (describe) A developer extension agreement is required for this project that will necessitate an extension or refurbishment of the District's Infrastructure.
2. a.  The sewer system improvement is in conformance with a County or City approved Sewer comprehensive plan.
- OR
- b.  The sewer system improvement will require a sewer comprehensive plan amendment.
3. a.  The proposed project is within the corporate limits of the district, or has been granted Boundary Review Board approval for extension of service outside the district or city.
- OR
- b.  Annexation or BRB approval will be necessary to provide service.
4. Service is subject to the following:
- a.  Connection charge: DUE
  - b.  Easement(s)
  - c.  Other: Agreement for Minimum Sewer Service

I hereby certify that the above sewer agency information is true. This certification shall be valid for one year from the date of signature.

Northshore Utility District  
Agency Name

Marcus M. Fisher  
Signatory Name

Erin Suggs Spec  
Title (C)

M. M. Fisher  
Signatory Date

### Northshore Utility District Conditions for Certificate of Service Availability

Northshore Utility District ("District") has issued this certificate for the sole purpose of facilitating submission to permitting agency for evaluation of development proposals of the property requesting service.

1. This certificate is issued specifically for the following type of  water or  sewer service (check all that applies). In any of the specifications in this section or on any other document submitted to obtain this certificate, if changed, this certificate is void.

- Up to 51 single-family homes in a subdivision
- Up to \_\_\_\_\_ units of multi-family dwelling
- Up to \_\_\_\_\_ units of non-residential structure of approximately \_\_\_\_\_ square feet
- Other, describe \_\_\_\_\_

2. The following system improvement project(s) to be completed by and the expense of the legal owner of the property requesting service, is/are required (for detail specifications - see 5 below):

Project Required

- 3. This certificate is valid only for one year from the date of issuance. Re-issuance or extension may or may not be granted depending on the availability of system capacity and other changing conditions affecting the utility system(s). New certificate, if granted, may be issued with new or additional requirements for service.
- 4. Connection charges and other applicable fees must be paid prior to project acceptance and service. These charges are as set forth in the District's policy in effect at the time of connection. The rates in effect at the time of connection for service will apply. Service to the property will be subject to all District policies and regulations in effect at the time of actual connection for service.
- 5. District cannot determine and describe all conditions and system improvements needed for service to the proposed project without a detail review of the completed set of development plans which is not yet available at this time. Besides any requirements listed in paragraph 2 above, other conditions and/or necessary system improvements (as determined solely by District during project and/or plan review) to be completed by and at the expense of the legal owner of the property requesting service, may be required. The potential costs for these conditions and/or improvements, if any, may be substantial.
- 6. This certificate is void: (a) one year from the date of issuance; (b) if the utility system's capacity or ability to provide service is impacted by natural/man-made disasters or other conditions beyond the District's control; (c) if the current and/or future legal owner(s) of property requesting service cannot accept all conditions herein or to be imposed by the District at the time of plan review; (d) if the undersigned is not authorized to act on behalf of the legal owner of the property requesting service.

As the legal owner of the property requesting service (as described on the reverse side) or the owner's authorized agent, I understand and accept that this certificate of sewer or water service availability is issued subject to all of the above conditions.



Sign Above  
Print Name: MONICA NAUSHAN  
Company Name: THE BUILDING GROUP

Signature of:  Property Owner  
 Owner's Authorized Agent  
Date Signed: 12/3/13  
Phone No: 425 216 4051 ext 226  
Address: 35 Central Hwy Suite 400  
Richmond WA 98033

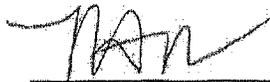
ATTACHMENT TO  
WOODINVILLE CERTIFICATE OF SEWER AVAILABILITY  
WOODINVILLE WATER DISTRICT

The following terms and conditions apply to the Woodinville Certificate of Availability.

1. This Certificate of Sewer Availability is valid only for the real property referenced herein, which is in the District's service area, for the sole purpose of submission to the Woodinville Building and Land Department and/or the Seattle/King County Department of Public Health. This Certificate is between the District and the applicant only, and shall not be assigned or transferred by any party without the prior express written consent of the parties, such consent not to be unreasonably withheld. Further, no third person or party shall have any rights hereunder whether by agency or as a third party beneficiary or otherwise.
2. This District makes no representations, express or implied, that the applicant will be able to obtain the necessary permits, approvals, and authorizations from Woodinville or any other governmental agency necessary before applicant can utilize service which is the subject of this Certificate.
3. As of the date of the issuance of this Certificate, the District has sewer available to provide such utility service to the property which is the subject of this Certificate, and the utility systems exists or may be extended by the applicant to provide service to such property. However, service at a level consistent with the sewer system plan of the District and meeting the District's standards may require improvements to the District's sewer system. The issuance of this Certificate creates no contractual relationship between the District and the applicant, and the issuance of this Certificate may not be relied upon and does not constitute the District's guarantee that sewer will be available at the time the applicant may apply to the District for such service.
4. Application for and the possible provision of District utility service to the property which is the subject of this Certificate shall be subject to and conditioned upon the availability of sewer service to the property at the time of such application, as well as all federal, state, and District laws, ordinances, policies, and regulations in effect at the time of such application for utility service.

12/13/13

Date



Signature acknowledges receipt and understanding of Water Availability Certificate and attachment.





Johns Monroe  
Mitsunaga Koloušková  
P.C.

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

Hearing Examiner Driscoll  
City of Woodinville, City Hall  
17301 133<sup>rd</sup> Avenue NE  
Woodinville, WA 98072

December 19, 2013

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

Dear Hearing Examiner Driscoll:

Thank you for the opportunity to respond to City staff and the City Attorney's comments regarding the vesting issue identified for this project, specifically again staff's recommended condition 2.c on pages 16-17. The City's attempt to limit vesting at the preliminary plat stage to only certain aspects of zoning is not supported by the vested rights doctrine and is not possible to implement in practice.

The vested rights doctrine expressly applies to **all** zoning and land use regulations. *Noble Manor v. Pierce County*, 133 Wn.2d 269, 278, 943 P.2d 1378 (1997).<sup>1</sup> This case law is long established law which the City does not (and cannot) dispute.

The City fails to address the fact that the very considerations addressed in recommended condition 2.c on pages 16-17 are **zoning** considerations, i.e. vested at preliminary plat application. The City also fails to explain why it addresses certain zoning considerations, but not others which it would prefer be deferred to the time of building permit. Apart from having no legal support for its position, the City also fails to provide a meaningful distinction between those aspects of the zoning and bulk regulations that it agrees vest now versus those it prefers to vest later.

The City does not explain why the staff report is internally inconsistent. As we previously noted, the table on pages 6-7 of the Staff Report indicates the requisite building setbacks for each applicable zone. That table shows the specific setbacks which apply to the lots in this preliminary plat. However, in recommended condition 2.c on

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<sup>1</sup> Extensive case law since *Noble Manor* discusses the vested rights doctrine and its freezing of all zoning and land use regulations. The applicant is available to provide the list and description of case law authority if the Examiner so desires.

Hearing Examiner Driscoll  
December 19, 2013  
Page 2

pages 16-17, staff then asserts those very building setbacks should not be established until building permit application. Staff provides no explanation for this inconsistency.

Staff also specifically addressed 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)*. Since building permit applications cannot be submitted until after final plat recording, how can the City determine whether the drainage facilities are adequate at the time of platting **unless impervious surface limitations vest at preliminary plat?**

The City Attorney's comments perpetuate this inconsistency. The City Attorney states that land use regulations for density and dimensions are considered when approving subdivision lot sizes. But the City Attorney argues that those very dimensional regulations do not include setback regulations. If that were the case, how can the Hearing Examiner determine if the preliminary plat is consistent with zoning if he can't know whether the lots created under the subdivision will be consistent with each zone's requisite setbacks? The same holds true for all the other zoning and land use regulations listed in recommended condition 2.c on pages 16-17.

Finally, the City does not address our previous discussion of RCW 58.17.195, requiring 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, the City does not address WMC 20.06.020 and WMC 20.06.040, requiring that preliminary plat be reviewed for consistency with the property's zoning.

The applicant does not dispute that building regulations, such as those regulations addressed under the IBC, as amended by the City, vest at the time of building permit application. However, those regulations are very different from zoning and land use regulations which do vest at preliminary plat application. However, the City's request for a final plat note which would defer the vesting of zoning regulations to the time of building permit application is inconsistent *Noble Manor*, its progeny, RCW 58.17.195, WMC 20.06.020. 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: kolouskova@jmmlaw.com

cc: Client

422-3 Ltr to Woodinville Examiner Driscoll Second 12-18-13