

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: PSUB2019-00561

APPLICANTS: STCA JV, LLC & STC, LLC
5535 Meadows Road, Suite 108
Lake Oswego, OR 97035

TYPE OF CASE: Preliminary subdivision (*Brownstones West*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: May 2, 2022

INTRODUCTION ¹

STCA JV, LLC & STC, LLC (“STCA”) seek preliminary approval of *Brownstones West*, a 38-lot residential subdivision (10 single-family detached dwelling units and 28 townhome units) of a 4.90 acre site which is zoned TC B (2.54 acres) and TC C (2.36 acres). (Exhibit 74, PDF 6 ²)

STCA filed a Subdivision Application on November 4, 2019. (Exhibit 2) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Exhibit 29; and testimony) The Department issued a Notice of Application (“NOA”) on December 2, 2019. (Exhibit 30)

The application subsequently went through three revisions, for each of which the Department issued a supplemental NOA. The first revision was filed on June 22, 2020; the NOA was issued on July 20, 2020. (Exhibits 1, PDF 33, Finding 16; 32) The second revision was filed on March 13, 2021; the NOA was issued on April 8, 2021. (Exhibits 1, PDF 34, Finding 25; 33) The third and final revision was filed on August 24, 2021; the NOA was issued on October 21, 2021. ³ (Exhibits 1, PDF 35, Finding 33; 34)

The subject property consists of three currently vacant parcels (there used to be one house on each) located in the southeast quadrant of the 222nd Place SE/SE 4th Street round-about. Their addresses are 22225, 22245,

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² 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. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. 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.

³ A detailed exposition of the procedural history of this application will be found in Exhibit 1 at PDF 9, 10, & 31 – 35.

and 22251 SE 4th Street. Their Assessor's Parcel Numbers are 3325069044, 3325069102, and 3325069117. (Exhibit 1, PDF 1 & 11)

The Sammamish Hearing Examiner ("Examiner") viewed the subject property via Google Earth imagery: Aerial imagery dated August 14, 2020; street view imagery dated June 2018 & September 2021.

The Examiner held an open record hearing on April 25, 2022. The hearing was conducted remotely using the "Zoom" platform due to assembly restrictions attendant to the current COVID-19 pandemic. The Department gave notice of the hearing as required by the Sammamish Development Code ("SDC").⁴ (Exhibit 72)

Subsection 21.09.010(M)(1) SDC requires that decisions on preliminary subdivisions be issued within 120 net review days after the application is found to be complete. The open record hearing was held well after the 120th net review day. The SDC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SDC 21.09.010(M)(2)] or written notice from the Department explaining why the deadline was not met [SDC 21.09.010(M)(4)]. The Department provided STCA with explanatory letters each time a review deadline would not be met. (Exhibits 32; 54; 62; 63; 70; 71)

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

- Exhibits 1 - 73: As enumerated in Exhibit 1, the Departmental Staff Report, at PDF 3 – 5
- Exhibit 74: STCA's PowerPoint hearing presentation
- Exhibit 75: The Department's PowerPoint hearing presentation

The Hearing Examiner Clerk has the record copy of all exhibits.

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. The subject property occupies the northwest corner of the southwest quarter of Town Center. It is bordered on the east by TC A-1 zoned property, on the south by TC D zoned property (Lower Sammamish Commons Park), and on the west by non-Town Center property zoned R-1. The

⁴ All Sammamish Municipal Code ("SMC") citations are to the most current version of the municipal code unless expressly stated otherwise. Citations to Title 21 SMC, Sammamish Development Code, as adopted by Ordinance No. 2021-540, effective January 1, 2022, will use the citation format promulgated by City Staff: "Title 21 SDC," "Chapter 21.09 SDC," etc. (The exhibits use the pre-SDC citations.)

property across SE 4th Street to the north is within the Town Center and is zoned TC B. (Exhibits 1, PDF 7; 74, PDF 4)

The four TC A zones are the mixed-use cores in the Town Center, with TC A-1 being the primary core area. TC B zones are mixed residential. TC C zones are lower intensity residential to serve as a transition between the Town Center and surrounding development. (Exhibit 1, PDF 6)

2. The subject property exhibits a modest downward slope towards the south. The land use on the west side of 222nd Place SE is residential, large lot. The TC A-1 zone to the east is presently undeveloped. (Exhibit 74, PDF 2)
3. STCA proposes to construct 21 townhomes on the eastern, TC B zoned half of the subject property and 10 single-family and seven townhomes on the western, TC C zoned half of the subject property. (Exhibits 18; 74, PDF 6) The initial application proposed a total of 66 dwelling units. The proposed unit count was reduced to the current 38 during the revision process as STCA and the Department sought to ensure that *Brownstones West* was compliant with all applicable SDC and SMC requirements. (Testimony)
4. All proposed lots and blocks meet applicable zoning and density standards for the TC B and TC C zones. (Exhibit 1)
5. The SDC contains regulations governing the review and approval of land divisions. [SDC 21.02.060] Procedural requirements are contained in Chapter 21.09 SDC. An entire set of additional regulations applies to developments within the Town Center. [Chapter 21.07 SDC]

STCA has provided its evaluation of compliance with applicable regulations. (Exhibit 7) The Department has also provided its analysis. (Exhibit 1) None of the public comments cite lack of compliance with any specific code provision or requirement. (Exhibit 41; and testimony)

6. The record contains evidence that appropriate provisions have been made for:
 - A. Open space. The proposed plat includes 14,671 square feet (“SF”) of private open space (Tracts D, E, I, J, & K) and 10,256 SF of public open space (Tracts G & H) for a total of 24,927 SF or 0.57 acres of open space. The major open space feature is a linear trail along the east edge of the subject property connecting SE 4th Street with Lower Sammamish Commons. (Exhibit 18, PDF 2 & 3)
 - B. Drainage ways. Subsection 21.07.110(B)(1) SDC requires all developments within the Town Center to comply with the Town Center Interim Stormwater Standards. The adopted Town Center Interim Stormwater Standards are “the adopted Surface Water Design Manual and Sammamish Addendum.” [SDC 21.07.110(C)(1)] The City’s currently adopted Surface Water Design Manual is the 2016 King County Surface Water Design Manual (“2016 KCSWDM”). (Exhibit 1, PDF 27)

The preliminary stormwater control plan provides Level 3 Flow Control and Sensitive Lake Water Quality Treatment facilities, the most protective facilities called for by the 2016 KCSWDM and Sammamish Addendum. Three separate flow control and water quality facilities (Vaults A, B, and C) will serve the project area. Each flow control and water quality facility will include a detention vault for flow control and a large sand filter downstream of the detention vault for water quality treatment. (Exhibits 18, PDF 11, 12, & 16 – 19; 20) Stormwater runoff from all paved areas and roof tops will be collected by storm drainage inlets and conveyed to one of the three underground stormwater vaults for detention and water quality treatment. For conservative purposes, no low impact development (“LID”) Best management Practices (“BMP”) modeling credit has been taken for preliminary flow control and water quality sizing as it is anticipated that under-drains will be required where pervious pavement is proposed (in the alleys) due to the glacial till composition of the site’s geology. (Exhibits 12; 20)

The proposed drainage facilities comply with the guidelines and requirements established in the 2016 KCSWDM and the Sammamish Addendum. (Exhibit 1, PDF 29) The analysis and discussion of LID techniques and measures required by SMC 21.07.110(D)(2)(b) is contained in Appendix B of Exhibit 20.

- C. Streets and roads. A Certificate of Concurrency is required for every new subdivision application to confirm “that [there] is adequate vehicular capacity on the City of Sammamish street network to support the traffic forecasted to be generated by the [proposed] development.” [SDC 21.08.020(B)(2); quote from Exhibit 25, PDF 3, § 6] The procedures for evaluating a request for a Certificate of Concurrency are spelled out in SDC 21.08.020.

STCA applied for a Certificate of Concurrency prior to filing its initial *Brownstones West* application. At that time STCA was proposing a subdivision for 10 single-family residences (a net of 7 new single-family residences) and 56 townhomes. On August 14, 2019, Public Works issued a Certificate of Concurrency for 7 new single-family residences and 56 townhomes.⁵ (Exhibit 25)

Town Center regulations contain many requirements regarding streets and related facilities. [SDC 21.07.060, .080, & .130] Public Works and the Department have concluded that STCA’s proposal complies with all street regulations applicable to this stage of the development. (Exhibit 1)

- D. Alleys. All of the proposed dwellings are “alley loaded” on a central, north-south alley. (Exhibit 18)

⁵ Subsection 21.08.020(H) SDC provides that an applicant may appeal denial of a Certificate of Concurrency. No other administrative appeal is provided.

- E. Other public ways. No need for other public ways within the subdivision exists. (Exhibit 18)
- F. Transit stops. The record contains no request for transit stops. Public transit busses run along 228th Avenue SE.
- G. Potable water supply and sanitary wastes. The Sammamish Plateau Water & Sewer District has confirmed its ability to provide public water and sewer service to *Brownstones West*. (Exhibit 27)
- H. Parks and recreation. The SDC requires payment of impact fees for park and recreation facilities. [SDC 21.08.040] The fee amount is determined and paid when building permits are requested unless payment is deferred under SDC 21.08.050. [SDC 21.08.040(B)(8)]
- I. Playgrounds. See Finding of Fact 6.H, above.
- J. Schools and schoolgrounds. The City has adopted school concurrency standards. [SDC 21.06.040(I) – (L)] The City’s school concurrency standards are based on a school district’s adopted capital facilities plan; compliance with those standards is assessed during the State Environmental Policy Act (“SEPA”) threshold determination process. [SDC 21.06.040(J)(1)]

The City has adopted a school impact fee program “for the assessment and collection of impact fees ... pursuant to Chapter 82.02 RCW” to “implement the capital facilities element of the Comprehensive Plan and the Growth Management Act.” [SDC 21.09.090(A) & (B), respectively]

Impact fees will be imposed on a district-by-district basis, on behalf of any school district that provides to the City a capital facilities plan, the district’s standards of service for the various grade spans, estimates of the cost of providing needed facilities and other capital improvements, and the data from the district called for by the formula in SDC 21.09.090D [*sic*].

[SDC 21.09.090(C)(2)]

1. Schools shall be considered to have been provided concurrently with the development that will impact the schools if:
 - a. The permanent and interim improvements necessary to serve the development are planned to be in place at the time the impacts of development are expected to occur; or
 - b. The necessary financial commitments are in place to assure the completion of the needed improvements to meet the district’s standard of service within three years of the time that the impacts of development are expected to occur. Necessary improvements are

- those facilities identified by the district in its capital facilities plan as reviewed and adopted by the City of Sammamish.
2. Any combination of the following shall constitute the “necessary financial commitments” for the purposes of subsection 1. of this section:
... and/or
 - d. The district has other assured funding, including but not limited to, school impact fees that have been paid.

[SDC 21.06.040(L)(1)] Thus, if a school district has a capital facilities plan which has been approved by the City and if a school impact fee has been assessed under the City’s impact fee program, then a proposed development is considered concurrent.

The subject property is located within the Lake Washington School District (“LWSD”). (Exhibit 39, PDF 1) The LWSD has a City-approved capital facilities plan and collects impact fees under the City’s school impact fee program. The Department has recommended assessment of a school impact fee pursuant to that program. (Exhibit 1, PDF 30, 31, & 38, Recommended Condition A.2)

- K. Safe walking conditions for students who only walk to and from school. Elementary, middle, and high school students will be bussed to their respective public schools. The LWSD will establish a school bus stop along SE 4th Street; a specific location has not been selected. All streets within *Brownstones West* will include sidewalks providing safe walking conditions to the bus stop along SE 4th Street. (Exhibits 18; 39)
7. Sammamish first enacted tree retention/preservation regulations in March 2005. [Ordinance No. O2005-175] Those regulations were contained in former SMC 21A.35.210 - .240. In 2014 the City enacted emergency, interim revisions to those code sections. The interim regulations were in effect from October 14, 2014 to October 14, 2015. [Ordinance Nos. O2014-375 and O2015-390] Those interim regulations were repealed and replaced by former Chapter 21A.37 SMC, Development Standards – Trees, effective October 14, 2015. [Ordinance No. O2015-395] When the SDC was created, former Chapter 21A.37 SMC became SDC 21.03.060. [Ordinance No. O2021-540] The Town Center code, Chapter 21.07 SDC, has a few additional tree regulations. [SDC 21.07.070(T) – (V)]⁶

The subject application is vested to the current tree regulations.

8. The Town Center regulations require retention of 25% of the significant trees outside of environmentally critical areas on property zoned TC B, TC C, TC D, and TC E. [SDC 21.07.070(T)(2)(a)] The subject property, as previously noted, is zoned a combination of TC B and TC C. The subject property contains 82 healthy significant trees. Twenty-one healthy significant

⁶ The cross-references in SDC 21.07.070(T) - (V) cite to SDC 21.03.020 and .070, neither of which contain tree retention regulations. The Examiner declines to guess what the intended cross-references are.

trees are required to be retained ($82 \times 25\% = 20.5$). The preliminary tree retention plan shows 21 healthy significant trees to be retained. In addition, the project site plans show approximately 138 new trees to be planted in accordance with the landscape standards of the Town Center zone. (Exhibits 1, PDF 26 & 27; 5; 18, PDF 24 – 26)

9. The Environmentally Critical Areas regulations in SDC 21.03.020 apply within the Town Center. The Critical Areas Report (“CAR”) submitted by STCA identifies two small (one 240 SF; the other 472 SF), emergent, isolated, closed depression wetlands located near the center of the subject property. No other regulated critical areas exist on the subject property. (Exhibit 9 ⁷) Isolated wetlands of less than 1,000 SF may be filled subject to off-setting mitigation. [SDC 21.03.020(M)(1)(a)] There is no opportunity for on-site mitigation as there are no other wetlands on the subject property that could be enhanced. No off-site mitigation areas within the same sub-basin or within the City limits have been identified. Therefore, mitigation for the wetland impacts will be an "in-lieu-fee" through either the Keller Farm Mitigation Bank or King County's Mitigation Reserves Program. (Exhibits 1, PDF 13 & 14; 9, PDF 7, 10, 13, 16, & 19 – 22)
10. STCA submitted the required application (Exhibits 2 – 4; 8; 13; 15; 24; 28), a project narrative (Exhibit 21), a code compliance matrix (Exhibit 7), survey, proposed plat, and preliminary supporting plans (Exhibits 6; 10; 18), technical studies (Exhibits 5; 9; 12; 20; 26; 37; 38), and a PowerPoint hearing presentation (Exhibit 74).
11. Sammamish’s SEPA Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for *Brownstones West* on February 10, 2022. (Exhibit 35) The DNS was not appealed. (Exhibit 74, PDF 6; and testimony)
12. The record contains written comments from seven laypersons, one state agency, and one Indian Tribe. Oral testimony was presented by four citizens, two of whom had also submitted written comments. (Exhibit 41; and testimony) All of the written layperson comments and three of the four oral comments (including the two overlapping commenters) oppose approval of *Brownstones West*.

The Examiner concurs with the Department’s summarization of the opponents’ areas of concern:

Infrastructure

- Lack infrastructure capacity (roads, schools, parks, etc [*sic*]) to support this project.
- Lack of adequate parking and available transit.
- Existing street capacity cannot handle the trips generated from development

⁷ The CAR was prepared for what at the time of the report’s preparation was referred to as “STC-Phase I” and evaluated 16 parcels on the south side of SE 4th Street extending from 222nd Avenue SE on the west to 228th Avenue SE on the east, of which only the westerly three comprise this subdivision application. (Exhibit 9, PDF 1, 4, & 5) The disparity between the areal scope of the CAR and the areal scope of *Brownstones West* unfortunately confused one reviewer. (Exhibit 41, PDF 8 – 11)

proposal.

Environmental

- The development does not implement the goals and polices of the Town Center Plan [“TCP”] where the existing natural environment is required to be retain [*sic*].
- The development proposes to destroy existing old growth native trees.
- Topography and viewpoints are not preserved.
- Mass grading should not be allowed.
- Concerns were identified regarding an off-site stream (east of the project site) and the associated buffer width. The comments question the stream type classification as a Type N instead of a Type F and that the typology did not consider the downstream use by resident fish.

Stormwater Management and LID

- LID measures should be required.
- The development proposal should include a regional stormwater system.
- Concerns that stormwater runoff is detrimental to the trees, wildlife, and humans.

Housing

- More affordable housing is needed.
- More housing choices are needed.

(Exhibit 1, PDF 32; bracketed text inserted) Responses to the written layperson and Tribal comments are contained in Exhibit 41.

13. The Department recommends approval of *Brownstones West* subject to 13 conditions. (Exhibit 1, PDF 38 & 39)
14. STCA has no objection to any of the recommended conditions. (Testimony)
15. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁸

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

Authority

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

A preliminary subdivision is a Type 3 land use application. [SDC 21.09.010(B), Exhibit A] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the appeal which is subject to the right of reconsideration and appeal to Superior Court. [SDC 21.09.010(B), 21.09.020(T) - .020(V)]

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 environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SDC 21.09.020(G)(2)]

Review Criteria

Subsection 21.09.020(T)(1) SDC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Additional review criteria for preliminary subdivisions are set forth at SDC 21.09.020(T)(3):

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

- (1) 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
- (2) The public use and interest will be served by the platting of such subdivision and dedication.

Vested Rights

The SDC contains a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SDC 21.09.010(I)(1)] Therefore, this application is vested to the development regulations as they existed on November 4, 2019.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

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

CONCLUSIONS OF LAW

1. In addition to the areas of concern listed in Finding of Fact 12, above, there is one over-arching concern implicit in many of the written and oral comments: Basic dislike of the Town Center concept as adopted in 2008 and amended in 2020. There is a segment of the citizenry which simply believes that the concept and densities within the approved Town Center regulations (and Plan) are not appropriate for Sammamish in general or in this location within Sammamish. The Examiner encountered this same type of opposition during the UZDP2019-00562 appeal in 2021. The Examiner observed that

at least eight comments oppose the implementation of Town Center, period. Council adopted the TCP, adopted Town Center regulations (Title 21B SMC), and enacted zoning to implement the TCP. All of those were legislative actions. State law prohibits the Examiner from entertaining any challenges to those regulations. They were adopted legislatively, they can only be changed legislatively.⁹ Further, the City has enacted "vesting" regulations:

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and

⁹ Legislative actions are subject to review under the Growth Management Act. Generally speaking, there is only a very short window after a legislative enactment when a challenge to that action may be taken. [See Chapter 36.70C RCW.] With respect to adoption of the TCP, the TCIP, and their implementing regulations, that time has long passed.

procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all of the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1), emphasis added] A UZDP application is classified by the City as Type 2. Therefore, STCA's application must be reviewed against the land use regulations that were in effect when the application was filed in November, 2019. No amendments or repeals enacted after that date would have any effect on this application.

...

[UZDP2019-00562, August 30, 2021, p. 88, Conclusion of Law 19.1.12; footnote in original] That a UZDP is a Type 2 application and a preliminary subdivision is a Type 3 application makes no difference in this context: Both Type 2 and Type 3 applications enjoy vested rights. STCA and all other owners of property within the TC zoning districts have a right to develop their land as allowed by the adopted Town Center regulations that are/were in effect when they file/filed a complete application.

2. Related to that concern is the emphasis that some commenters put on the content of adopted plans, including the TCP. Subsection 21.09.020(T)(1) SDC requires the Examiner to consider a number of items, including "the interim comprehensive plan". The Examiner's ability to use the Comprehensive Plan or the TCP in project review is constrained by state law which states that the comprehensive plan is applicable only where specific development regulations have not been adopted: "The review of a proposed project's consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan" [RCW 36.70B.030(1); emphasis added]

The state Supreme Court addressed that provision in *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] in which it ruled that "[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise." [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code's favor.

[*Mount Vernon* at 873-74, citations omitted]

The City Council adopted the TCP. Then it adopted Town Center regulations, initially codified as Title 21B SMC, now re-codified as Chapter 21.07 SDC, to implement the TCP. Some citizens don't like that a regional stormwater system is not being required. It is not being required because it cannot be required: Stormwater regulations for the Town Center are set out in SDC 21.07.110 and they do not require development of a regional stormwater plan. Some citizens don't like that most of the mature trees on the subject property will be cut.¹⁰ But the tree retention regulations for Town Center developments like *Brownstones West* only require retention of 25% of the healthy significant trees.¹¹

3. As to the opponents' areas of concern listed in Finding of Fact 12, above:

Infrastructure

- Lack infrastructure capacity (roads, schools, parks, etc.) to support this project. *The SDC/SMC require payment of impact mitigation fees to offset development impacts. That is the system approved by the City's legislative officials to address concurrency.*
- Lack of adequate parking and available transit. *The parking proposed within Brownstones West complies with code; transit is available on 228th Avenue SE. No code requirement exists that would bar development approval until a transit provider decided to create new transit routes that were closer to a proposed development.*
- Existing street capacity cannot handle the trips generated from development proposal. *A Certificate of Concurrency was issued for Brownstones West when the proposal was nearly double its currently proposed size.*¹²

Environmental

- The development does not implement the goals and polices of the Town Center Plan where the existing natural environment is required to be retain [*sic*]. *The application must comply with adopted code, which it does.*
- The development proposes to destroy existing old growth native trees. *The proposal is compliant with the applicable tree retention regulations. Further, the reference to "old growth" native trees is misleading as there are no such trees on the subject property.*

¹⁰ A minor point, but contrary to one citizen's assertion, there are no "old growth" trees on the subject property.

¹¹ At the development density envisioned for the Town Center by the adopted regulations, it would be a practical impossibility to preserve all mature trees on a Town Center development site.

¹² The code does not provide a general right to an administrative appeal of concurrency decisions. Even if it did and even if the Examiner had authority to consider a concurrency appeal in the context of a preliminary subdivision proceeding (which, to repeat, he does not), an assertion of fraudulent issuance without any supporting evidence and argument would have no merit.

- Topography and viewpoints are not preserved.
The subject property has a uniform, gentle slope towards the south. That basic characteristic will exist after development. The north-south sidewalks and trail will preserve whatever “viewpoints” of Lower Sammamish Commons that might currently exist.
- Mass grading should not be allowed.
Given the density of allowed and proposed development, extensive grading is to be expected.
- Concerns were identified regarding an off-site stream (east of the project site) and the associated buffer width. The comments question the stream type classification as a Type N instead of a Type F and that the typology did not consider the downstream use by resident fish.
This stated concern is the result of the fact that the CAR covered a much larger area than Brownstones West. The stream of concern to this commenter lies far to the east near 228th Avenue SE.

Stormwater Management and LID

- LID measures should be required.
Geologic conditions underlying a site determine to a large extent which, if any, LID measures can be employed. The underlying geology here is glacial till which renders most LID techniques infeasible.
- The development proposal should include a regional stormwater system.
Brownstones West proposes to meet all required stormwater regulations applicable to developments in the Town Center. No regulation exists requiring establishment of a regional stormwater system. The City and Town center landowners could enter into a voluntary agreement to establish a regional system to serve the Town Center, but absent a regulation or such an agreement, no authority exists to require such a system.
- Concerns that stormwater runoff is detrimental to the trees, wildlife, and humans.
The preliminary stormwater plan has been developed to comply with all applicable regulations.

Housing

- More affordable housing is needed.
STCA is meeting Town Center regulations for provision of affordable housing.
- More housing choices are needed.
This site is just shy of five acres. The proposal includes two different housing types: single-family detached and townhome. The TC B and TC C zones include maximum density provisions to create a transition between the Town Center core development and surrounding lands outside the Town Center. Trying to cram more housing types on the subject property would be illogical given the site’s size and the code’s density limitations. The TC A-1 zone, abutting on the east, allows for higher density and, likely, will include more housing types.

4. The Department's Staff Report (Exhibit 1) is a well expressed, extremely thorough discussion of the regulations against which *Brownstones West* must be evaluated. It would serve no useful purpose to repeat the detailed analysis and conclusions contained in Exhibit 1. Therefore, Exhibit 1, PDF 1 – 37, is incorporated herein by reference as if set forth in full.
5. Based upon all the evidence in the record, the Examiner concludes that *Brownstones West* meets the considerations within SDC 21.09.020(T)(1). All evidence demonstrates compliance with Comprehensive Plan policies, to the extent they can be considered, and zoning code, subdivision code, and Environmentally Sensitive Areas regulations.
6. Given all the evidence in the record, the Examiner concludes that *Brownstones West* complies with the review criteria of SDC 21.09.020(T)(3)(a). The proposed subdivision allows development at the density expected under the Comprehensive Plan, does not thwart future development of surrounding properties, and makes appropriate provision for all items listed in that code section.
7. Given all the evidence in the record, the Examiner concludes that *Brownstones West* will serve the public use and interest and will thus comply with the review criteria of SDC 21.09.020(T)(3)(b).
8. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Code citations will be updated to the new SDC codification system. Applications which enjoy vested rights vest to substantive regulations, not to the numbering system used to reference them. Therefore, use of the new codification system is appropriate.
 - C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions A.1, A.3, and B.9 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
9. 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 **GRANTS** preliminary subdivision approval for *Brownstones West* **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued May 2, 2022.

\s\ *John E. Galt*

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS¹³

Lafe Hermansen
James Jordan
Joseph Coopriider
Holli Heavrin

Chris Hankins
Miki Mullor
Kara Hobbs

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Cynthia Schaff, Hearing Examiner Clerk, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SDC 21.09.020(V) and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SDC 21.09.020(V) and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SDC 21.09.020(V)(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act.. See Chapter 36.70C RCW and SDC 21.09.020(U) for additional information and requirements regarding judicial review.

<p>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.”</p>

¹³ The official Parties of Record register is maintained by the City’s Hearing Clerk.

CONDITIONS OF APPROVAL
BROWNSTONES WEST
PSUB2019-00561

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following special conditions:

A. General

1. The plat shall be developed in substantial conformance with Exhibit 18 and subject to applicable conditions of approval set forth herein. Revisions to approved preliminary subdivisions are subject to the provisions of SDC 21.02.060(D)(4).
2. The Plator or subsequent owner(s) shall comply with the payment of street impact fees, impact fees for park and recreational facilities, and school impact fees for 7 new single-family lots and 28 multi-family lots in accordance with SDC 21.08.030, 21.08.040, and 21.09.090 respectively, prior to building permit issuance.
3. The Plator shall work with the Lake Washington School District to determine the location of the school bus stop. The Plator shall provide a safe walking route to the school bus stop. The Plator shall provide the City with documentation from the School District authorizing the bus stop location change.

B. Prior to Site Development Permit Issuance

4. Before the City issues any construction authorization for the project, an agreement in a form approved by the Director that addresses location and mix of affordable units; price restrictions; homebuyer qualifications; phasing of construction; duration and monitoring of affordability; and any other topics applicable to the affordable housing units must be recorded as a covenant on the land (SDC 21.07.100(E)(3)).
5. Plator shall provide the City and ARCH a site plan showing the location of the proposed affordable units. The City and ARCH will review and approve the location of the affordable housing units to ensure that their locations are intermingled with all other dwelling units in the development.
6. Wetland mitigation and associated purchase of credits through either the mitigation bank or the in-lieu fee program shall be completed prior to or concurrent with the Final Plat as identified in the Critical Areas Report. The Plator shall submit proof of purchase of In-Lieu Fee or Mitigation Bank credits prior to impacting aquatic resources.
7. In accordance with the Project Arborist recommendations, a pre-construction meeting shall be held prior to land disturbing activities to review the placement of tree protection measures

including fencing, flagging, and/or other means to establish tree protection zones as required. Discuss the tree protection plan and measures with the contractor to ensure adherence to the approved plan so that no retained trees are removed or damaged during construction activities.

8. If the time between the completion of the final Project Arborist report (September 23, 2021) and the beginning of site clearing is greater than 3 years, a follow-up assessment of the trees identified for retention shall be provided by the Plator to confirm their health is consistent with the revised report.
9. If an underdrain is utilized for the bio-retention swale and rain garden, a drainage adjustment pursuant to KCSWDM C.2.6.1.5 and SDC 21.09.010(B) is required.

C. Prior or Concurrent with Final Plat

10. Prior to final plat recording, the Plator shall provide TDR credits (certificates) from a rural sending site pursuant to an Interlocal Agreement for the Implementation of a Regional Program to Transfer Development Rights from Rural Unincorporated King County to the Town Center Subarea in the City of Sammamish (King County Record No: 20110725001179). The Plator shall deliver the TDR certificates issued in the Plator's name for the number of development rights being used and a copy of the TDR extinguishment document submitted to King County. If the TDR certificate cannot be obtained, the Plator shall redesign the number of lots based upon the allowable density. This will result in the reconfiguration and loss of lots.
11. The Final Plat map for the subdivision shall show all flow control and water quality facilities along with tracts dedicated to the City of Sammamish for ownership of said facilities. The Plator shall provide easements as necessary across the City-owned drainage tract(s) establishing the Plator and future Homeowner's Association the ability to own and operate a private alley, and to allow the lots within the subdivision to access to the alley. The Plator shall also grant a 10-foot wide maintenance and access easement to the City of Sammamish across any property adjacent to the City-owned drainage tract(s) for the maintenance, operation, repair, and reconstruction of said drainage facilities.

D. Prior to Building Permit Issuance

12. Plator shall provide the City and ARCH with unit floor plans showing unit square footage, number of bedrooms, and bedroom dimensions of the affordable housing units; and a list summarizing the bedroom mix of the entire development. The City and ARCH will review and approve the mix of the affordable housing units to ensure the mix of affordable units is comparable to the overall project and to ensure that affordable units are designated properly for the number of bedrooms.

E. Prior to City Acceptance of Improvements

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13. Prior to acceptance into the Maintenance and Defect period, project close-out documents including, but not limited to, letter summarizing field changes and other considerations to be aware in the record drawings, updated bond quantity worksheet, stormwater facility information form, the final acceptance construction punch list, record drawings, final geotechnical report, special inspection reports if applicable, CCTV pipe inspection videos, proof receipt of jetting/cleaning, receipt of all revised financial guarantee(s), stormwater BMP and facility certification letter of certificate (if applicable) and final corrected Technical Information Report shall be submitted to Public Works for approval.