

Denis Law
Mayor

City of
Renton



City Clerk - Jason A. Seth, CMC

November 17, 2014

Brent Carson
Van Ness Feldman
719 Second Avenue, Suite 1150
Seattle, WA 98104

Re: Final Decision upon Reconsideration for Vuecrest Estates Preliminary Plat
LUA-13-000642, ECF, PP, MOD

Dear Mr. Carson:

Attached is your copy of the Hearing Examiner's Final Decision upon Reconsideration, dated November 15, 2014, in the above-referenced matter.

If I can provide further information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason A. Seth".

Jason A. Seth
City Clerk

Enc.: Hearing Examiner's Decision

cc: Hearing Examiner
Elizabeth Higgins, Planner
Jennifer Henning, Planning Director
Vanessa Dolbee, Current Planning Manager
Steve Lee, Development Engineering Manager
Craig Burnell, Building Official
Sabrina Mirante, Secretary, Planning Division
Ed Prince, City Councilmember
Julia Medzegian, City Council Liaison
Parties of Record (47)

1 The issues raised in the applicant's reconsideration request are individually addressed below:

2 1. Applicable Variance/Waiver Criteria. The street waiver standards of RMC 4-9-250(C) apply
3 to the applicant's request to waive the secondary access requirement of RMC 4-6-060(H)(2). The
4 applicant argues that the variance criteria of RMC 4-9-250(B)(5) apply because RMC 4-7-240(A)
5 provides that RMC 4-9-250(B) applies to the requirements "of this Chapter". The applicant argues
6 that since RMC 4-7-150(D) requires compliance with RMC 4-7-060, that this transforms RMC 4-7-
7 060 into a part "of this Chapter", specifically Chapter 4-7 RMC. Reasonable minds could certainly
8 disagree as to whether the RMC 4-7-150(D) mandate for compliance with RMC 4-7-060 makes that
9 provision a part "of this Chapter". Indeed, the fact that RMC 4-7-0-060 is not expressly incorporated
10 by reference into Chapter 4-7 RMC would lead most people to conclude that RMC 4-7-060 is not a
11 part of Chapter 4-7 RMC and is simply a requirement in another chapter of the RMC that applies to
12 subdivisions. For the reasons identified in the Order Authorizing Reconsideration, Ex. 39, it is
13 concluded as a matter of law that the street waiver criteria of RMC 4-9-250(C) apply to the
14 applicant's request to waive the secondary access requirement of RMC 4-6-060(H)(2).

15 2. Failure to Provide Secondary Access Significantly Unsafe. As a finding of fact, it is
16 determined that the failure to provide secondary access to the proposed subdivision creates a
17 significantly unsafe condition. The applicant focuses upon the inconsistencies in the City staff
18 position to argue that the secondary access is unnecessary. As noted in the Final Decision on this
19 matter, the inconsistencies in the staff position are troubling. However, there is nothing in the record
20 to suggest or explain why City fire personnel had any reason to overstate the dangers of waiving
21 secondary fire access. In several prior examiner decisions, City staff have often taken highly
22 unpopular positions counter to extensive public opposition in order provide objective
23 recommendations on the application of development standards. There is nothing to suggest in this
24 administrative record that City staff have succumbed to public pressure to require a secondary
25 access.

26 Despite the odd sounding comments made by Ms. Higgins, it appears likely that staff's vacillation on
the secondary road issue arises from the difficulties of balancing past permitting decisions, public
safety, recent safety problems (e.g. the wildfires identified by the fire chief) and the applicant's
constitutional nexus/proportionality rights. All these factors pose very complex and challenging legal
and policy issues. Given these multiple factors, it is not surprising that staff remained open minded
about the secondary access issue until late in the permitting process.

In focusing all of its reconsideration attention on the testimony of City staff, the applicant glosses
over the fact that its own fire expert was unable to opine that there would be no safety problems with
waiver of the secondary access requirement. As discussed in the Final Decision of this case, Mr.
Anderson was unable to provide any assurance that a secondary fire access was unnecessary for safe
and adequate fire response, despite a direct request from the Examiner to provide that assurance. If
the City's fire chief takes the position that secondary access is necessary for safe fire response and
the applicant's own fire expert can't dispute that position, it is difficult to see how the applicant can
seriously question why a finding is ultimately made that secondary access is necessary for safe fire

1 response.

2 3. Unsafe Fire Response is Materially Detrimental to Public; Unsafe Access Not Consistent
3 with Waiver, Modification or Variance Criteria. Unsafe fire access is unquestionably counter to the
4 public welfare. The applicant takes the remarkable position that unsafe fire access is not materially
5 detrimental to the public welfare, and therefore there is no consistency issue with the materially
6 detrimental criterion for variances, RMC 4-9-250(B)(5)(b). The applicant asserts that the examiner
7 erred by requiring the applicant to demonstrate that the proposed single access was safe under the
8 materially detrimental standard. See Ex. 39, p. 5. Under the applicant's reasoning, the public
9 welfare is not adversely affected if the residents of Vuecrest are left with a street system that prevents
10 fire apparatus from reaching them within the time necessary to safely respond to emergencies. The
11 applicants are essentially arguing that variances to fire access standards should be approved even
12 when such variances would endanger City residents. This is a patently absurd construction of the
13 "public welfare" term and the City's variance standards. If the single access does not provide for
14 safe fire access as determined by the hearing examiner, there is no question under any reasonable
15 interpretation that as a conclusion of law the applicant's proposal fails to qualify for a variance under
16 the material detrimental criterion of RMC 4-9-250(B)(5)(b), fails to qualify for a street waiver under
17 the "no detrimental effect" standard of RMC 4-9-250(C)(5)(e) and fails to qualify for a modification
18 under the "safety" criterion (the most obvious, other criteria are unmet as well) of RMC 4-9-
19 250(D)(2)(b).

20 4. Record Does not Establish that Improved Secondary Access Necessary for Resident Egress.
21 The applicant correctly argues that it shouldn't be responsible for providing for a fully developed
22 secondary access route and that there should be some flexibility in where the route is located. This
23 position is reasonable. The City's fire chief did not focus his testimony on problems associated with
24 resident egress from the subdivision during emergencies. It is determined as a finding of fact that
25 there is nothing in the record to suggest that pavement and curb, gutter and sidewalk is necessary to
26 provide safe egress to residents during times of emergency. If the primary access route becomes
unusable during an emergency and residents must leave to protect themselves, it doesn't appear that
they will hesitate to use a dirt road to do so. Given the nexus/proportionality issues associated
with requiring the applicant to provide for secondary access beyond its subdivision borders, any
secondary access requirement should be designed to be the minimum necessary to assure for public
safety.

21 DECISION

22 The Final Decision of the above-captioned matter dated 10/13/14 is supplemented with the
23 additional findings of fact and conclusions of law made above. Condition No. 13 is also revised to
24 provide as follows:

- 25 13. Prior to the recording of the final plat, a secondary fire access shall be constructed that
26 extends Smithers Ave S to the east to directly connect to Main Ave S (102nd Ave SE). The
extent of street improvements necessary to effectuate this connection shall be determined by

1 the City of Renton Fire Department in accordance with applicable fire code standards and
2 shall be the minimum necessary to provide for safe and effective secondary access for fire
3 trucks and emergency vehicles.

4 DATED this 15th day of November, 2014.

5 
6 Phil A. Olbrechts

7 City of Renton Hearing Examiner

8 **Appeal Right and Valuation Notices**

9 RMC 4-8-080 provides that the final decision of the hearing examiner is subject to appeal to the
10 Renton City Council. RMC 4-8-110(E)(14) requires appeals of the hearing examiner's decision
11 to be filed within fourteen (14) calendar days from the date of the hearing examiner's decision.
12 Additional information regarding the appeal process may be obtained from the City Clerk's
Office, Renton City Hall – 7th floor, (425) 430-6510.

13 Affected property owners may request a change in valuation for property tax purposes
14 notwithstanding any program of revaluation.