



NOTICE OF DECISION

Project Name: Sunset Court SPR18-003

Project Location: 26600 Block of NE 143rd Place, Duvall, WA 98019 (TPN 2129500290)

To all parties of record: The Hearing Examiner issued a Decision on **October 4, 2021** granting:

A. Approval subject to conditions.

This approval is based upon the Hearing Examiner's Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing (held September 30, 2021).

This decision will become final and effective: **October 25, 2021**, unless an appeal is filed.

The Hearing Examiner's decision is appealable to King County Superior Court by the applicant or any Party of Record and must be submitted within 21 calendar days after the decision. Appeals are subject to DMC 14.08.

Appeal Closing Deadline: October 25, 2021

Application Submittal Date: May 6, 2021

Notice of Complete Application: June 3, 2021

Days to Hearing: 119

Days to Decision: 123

Threshold Determination: August 6, 2018

Date of this Notice: October 4, 2021

Attachments:

- Hearing Examiner Findings of Fact, Conclusions of Law, and Decision – October 4, 2021.

Notice: Per RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

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

DECISION

FILE NUMBER: SPR18-003

APPLICANT: John Day Homes, Inc.
C/o Michelle Randall
P.O. Box 2930
North Bend, WA 98045

TYPE OF CASE: Preliminary Site Plan Approval for *Sunset Court* (Renewal of expired approval)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: October 4, 2021

INTRODUCTION¹

John Day Homes, Inc. (“John Day”) seeks renewal of Preliminary Site Plan Approval (“SPA”) for *Sunset Court*. (The situation which gives rise to this application is explained in Finding of Fact 1, below.)

John Day filed a Master Permit Application for Preliminary SPA on May 6, 2021. (Exhibits 47; 48²) The Duvall Planning Department (“Planning”) deemed the application to be complete when filed. (Testimony)

The subject property is located in the 26600 block of NE 143rd Place. Its Assessor’s Parcel Number is 2129500290 (“Parcel 0290”). (Exhibits 46; 47)

The Duvall Land Use Hearing Examiner (“Examiner”) viewed the subject property on September 24, 2021 via Google Earth.

The Examiner held an open record hearing on September 30, 2021. Planning gave notice of the hearing as required by the Duvall Municipal Code (“DMC”). (Exhibits 59 - 61)

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.

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

Exhibits 1 - 61: As enumerated in Exhibit 46, the Departmental Staff Report

Section 14.08.020(G) DMC generally requires that decisions on preliminary subdivisions be issued within 90 days of application completeness and that decisions on all other applications which require a quasi-judicial hearing be issued within 120 days of application completeness. The Examiner's hearing was held within the 120 day period. (Exhibit 46, PDF 7)

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. On November 26, 2018, the undersigned approved the preliminary subdivision and preliminary SPA for *Sunset Court*. Under state law and local regulation a preliminary subdivision approval has a term of five years while a preliminary SPA is only valid for a two-year period. The original developer, Duvall 143, LLC, did not pursue development of the project and instead marketed the property. (Exhibit 46, PDF 2 & 3) John Day entered into a purchase agreement for the property in December, 2020. Engineering plan approval for construction of the project's infrastructure was approved in January, 2021. (Exhibit 46, PDF 3) On the day the sale closed in April, 2021, John Day learned that the SPA had expired. Because the preliminary subdivision approval was still valid, John Day started construction of the infrastructure in May, 2021. Infrastructure work is substantially complete; John Day expects full completion within a month or two, partly dependent upon material and labor availability. (Testimony)

John Day now seeks renewal of the expired SPA so that *Sunset Court* may be completed.

2. The project now before the Examiner is identical to that approved in 2018 with but two small differences:
 - a) One on-street parking stall will be eliminated on NE 143rd Place (farthest stall to the west); and
 - b) A hemlock tree (previously, but erroneously classified as an Exceptional Tree) will be removed.³

No code provisions that would affect the proposed SPA application have occurred since the original approval in 2018.

³ It turned out upon closer inspection that the tree was growing out of an old stump and, thus, was actually a hazard. (Testimony)

3. Planning Commission (“Commission”) review of preliminary site plans for sites greater than 0.5 acres is required by DMC 14.08.010(C)(2), Footnote 1, under certain circumstances. The DMC is somewhat unclear regarding the circumstances under which Commission review is required. Planning has consistently interpreted the code provision to require Commission review only of SPA applications involving construction of buildings. Aside from the Examiner’s own analysis, the Examiner accords considerable deference, absent clear error, to the professional opinions and interpretation of regulations rendered by the agencies charged with administering them. [*Mall, Inc. v. Seattle*, 108 Wn.2d 369, 739 P.2d 668 (1987)] Planning’s interpretation has not been challenged and does not appear to be clearly erroneous.

The Commission reviewed and recommended approval of *Sunset Court* in October, 2018. (Exhibits 40 – 42) The Commission again reviewed *Sunset Court* at its July 28, 2021, meeting. The Commission voted to recommend approval subject to seven conditions that Planning had recommended to it. (Exhibits 58; 57, PDF 12; respectively) All seven of the Commission’s recommended conditions have been incorporated by Planning into its currently recommended conditions to the Examiner:

Commission’s Recommended Condition (Exhibit 57, PDF 12)	Planning’s Recommended Condition (Exhibit 46, PDF 17)
1	Implicit in 1 – 3
2	8
3	9
4	10
5	11
6	7
7	6

4. Duvall’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for *Sunset Court* on August 16, 2018. (Exhibit 32) The DNS was not appealed.⁴ (Exhibit 45, PDF 3, Finding of Fact 6)
5. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
6. Planning recommends approval subject to essentially the same conditions as were imposed in 2018. (Exhibit 46, PDF 17 – 21) The only differences are omission of conditions which have already been met with the development that has occurred. (Testimony)
7. John Day concurs with Planning’s Staff Report and its recommended conditions. (Testimony)

⁴ The right to an administrative appeal of SEPA threshold determinations is optional at local government discretion. [WAC 197-11-680(3)(a)] Duvall has legislatively elected to provide for local administrative appeal of threshold determinations associated with Type I and II applications, but not those associated with Type III – VI applications. [DMC 14.08.060(C)]

8. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁵

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

Authority

SPA is a two step process. Preliminary SPA for a site greater than 0.5 acres is a Type III process which is subject to an open record hearing before the Examiner. ⁶ The Examiner makes a final decision on the preliminary SPA application which is subject to the right of reconsideration and appeal to Superior Court. [DMC 2.30.070(A)(2) and 14.08.010(C), Tables 14.08.010.C.1 and .2]

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 DMC, state laws and regulations, including Chapter 43.21C RCW, and the regulations, policies, objectives, and goals of the Duvall comprehensive plan, the unified development regulations, and other official laws, policies and objectives of the city of Duvall.

[DMC 2.30.070(B)] The Final Site Plan Permit is an administrative Type I process. [DMC 14.08.010(C), Table 14.08.010.C.1]

Review Criteria

The review criteria for SPA applications are set forth at DMC 14.62.030. The criteria include standards regarding Consistency [Subsection A], Lot and Block Layouts [Subsection C], Road and Street Access Elements [Subsection D], and Site Plan Elements [Subsection E].

The “consistency determination” required by DMC 14.08.040(A)(2) duplicates the criteria within DMC 14.62.030(A). Therefore, in the case of Preliminary SPA reviews, compliance with DMC 14.62.030(A) suffices for compliance with DMC 14.08.040(A)(2).

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

In 2014 the State Supreme Court flatly declared: “While it originated at common law, the vested rights doctrine is now statutory.” [*Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 173, 322 P.3d 1219

⁵ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

⁶ Preliminary site plan review for sites up to 0.5 acres is a Type II administrative process. [DMC 14.08.010(C)(1)]

(2014)] The *Potala* court rejected a contention that the filing of a complete shoreline substantial development permit application vested development rights because no statutory provision established vested rights for shoreline permits. [*Supra*, at 196-206]

SPAs are not the subject of any state vesting statute. If Duvall had a local vesting ordinance applicable to land use applications, the Examiner would be obliged to follow it as enacted. [*Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994); *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009)] But the City has no such local ordinance. Thus, the Examiner must follow the most current case law.

Under the most current case law, there is no vesting for SPA applications because there is no statutory provision providing vesting for such applications.⁷

Vesting is not particularly important in this case as the City has made no development regulations changes between the time the application was filed and this date. (Testimony)

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [DMC 14.62.030(B)]

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. This same project was approved in 2018 and is well on its way to being constructed. There have been no changes to applicable law or regulations since that approval. There is no evidence of any site changes that would affect renewal of the SPA (other than those resulting from the project development work that is underway). There having been no appreciable changes, the decision reached today should be the same as the decision reached in 2018.
2. The Examiner incorporates by reference as if set forth in full Conclusions of Law 1 – 6 from the 2018 Decision. (Exhibit 45, PDF 6 & 7)
3. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

⁷ If an SPA application were inextricably intertwined with a preliminary subdivision application, it would enjoy the subdivision application's statutory vested rights.

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **GRANTS** Preliminary Site Plan Approval for *Sunset Court* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued October 4, 2021.

/s/ *John E. Galt*

John E. Galt
Land Use Hearing Examiner

HEARING PARTICIPANTS⁸

John Day

Troy Davis

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file a written motion for reconsideration within 10 calendar days of the date this Decision was mailed to the parties. See DMC 2.30.240 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of DMC 2.30.230 and 14.08.060(E). Any appeal must be filed within 21 days following the issuance of this Decision. See DMC 2.30.230 and 14.08.060(E) for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."
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CONDITIONS OF APPROVAL SPA18-003 (RENEWAL) *SUNSET COURT*

⁸ The official Parties of Record register is maintained by the City's Hearing Clerk.

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

FROM PLANNING

General

1. Construction drawings and associated applications for building permit shall comply with all applicable requirements of Duvall Municipal Code Title 14, City of Duvall Comprehensive Plan, and City of Duvall Development Design Standards.
2. Exhibit 11 is the approved preliminary plat and preliminary site development plan together with supporting preliminary civil plans. Modification of an approved preliminary site plan is governed by DMC 14.62.060.
3. Exhibits 12-15 are the approved architectural and site design plans.
4. Provide documentation from Waste Management for acceptable refuse service.

Design Guidelines

5. The Developer shall submit design details for the proposed mailbox prior to final plat submittal for verification of compliance with the requirements of 14.34.060.
6. Driveways shall be stamped with “No Parking” in accordance with PW Design Standards for fire lanes.
7. Additional color schemes shall be provided to the satisfaction of the Community Development Director.
8. Building modulations shall have a minimum depth of 18 inches.
9. Porches on end units shall have a minimum depth of six feet.
10. Wrap around porches on end units shall be extended another 12 inches on the front façades.
11. A mailbox shelter in compliance with DMC 14.34.061.J.7 shall be provided.

Landscaping Standards

12. All landscaping within Tract C, Tract D, and Tract E shall be installed or bonded for prior to final plat.
13. Until a Homeowners Association is formed and operational, the Developer shall be responsible for monitoring the retained trees in accordance with DMC 14.40.090.

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14. The Developer shall submit to the City an acceptable irrigation plan prior to installation of landscape improvements. All irrigation within Tract C, Tract D, and Tract E shall be installed prior to final plat unless bonded for.

Tree Protection

15. The retained Significant Tree, Supplemental Trees, and Yard Trees shall be identified on the final plat and in the Covenants, Conditions and Restrictions of the plat.
16. Tree protection measures shall be taken to protect retained trees on-site and trees adjacent to the site. Tree protection measures shall be included in the grading and construction drawing plans and shall conform to the tree protection requirements of DMC 14.40.080.
17. Twenty-three tree credits shall be provided either on-site or by payment of a fee-in-lieu, or a combination both options in order to meet the total 36-tree credit requirement for the site. The fee-in-lieu amount shall be \$525 per tree.

Additional Development Standards

18. Correct building height measurements in accordance with DMC 14.64.130.A shall be provided with building permit submittal.

FROM PUBLIC WORKS/ENGINEERING

General

19. The developer shall submit construction plans and supporting documentation for Public Works review and approval. Construction drawing review shall address comments within the August 30, 2018 comment letter (see Exhibit 34).
20. All utility connections shall be located below ground and be brought to the plat underground. All overhead utilities and utility poles along the frontage shall be removed and replaced with underground utilities to the nearest off-site pole consistent with DMC 14.66.050(J) and the Public Works Development Design Standards (PWDDS).
21. Final Plat shall be developed using the City of Duvall Final Plat Submittal Checklist.
22. As-builts shall be provided, reviewed, and approved prior to final plat or Performance Bond release.
23. Streetlights shall be installed on all frontages as part of the project. An Intolight (PSE) Street Lighting design shall be provided to the City for review and approval during the Construction Drawing review process.
24. Cluster box units (CBUs) mailboxes shall be installed as part of the project. Coordinate with the Post Office and Public Works on CBU placement.

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25. Moisture sensitive soils are present at the site. Soil admixtures, such as kiln dust, fly ash, or cement will not be allowed without a City-approved application and monitoring plan along with any other associated NPDES/Department of Ecology requirements.

Roads

26. Frontage improvements include widening along the NE 143rd Place project frontage consisting of a 5-foot climbing bike line (not striped), 7-foot wide parallel parking, curb/gutter, 5-foot sidewalk, 5-foot landscape strip, and minimum two 11-foot wide travel lanes.
27. Private access tract roads shall be constructed to include a minimum 30-foot wide tract, maximum 150-foot long street improvement with curb and gutter, 0.5 dedicated guest parking stalls per unit in dedicated pull-out in accordance with Standards 3-2.06.E. Unobstructed 18-foot wide total travel way and a 4-foot wide at grade sidewalk in accordance with the preliminary plans. Reverse-slope road surface crowns are not allowed within the tracts. Tracts shall be posted "No Parking" except at dedicated parking areas.
28. A channelization and signage plan shall be submitted as part of the construction drawing review process. All areas lacking dedicated parking, shall be signed "No Parking Anytime".
29. All new or repaired road sections shall be designed and installed with ½" HMA type asphalt concrete pavement with section thickness in accordance with PWDDS Section 3.4. A full width 1.5-inch thick grind and ½" HMA type asphalt concrete pavement overlay shall be completed along all frontage improvements and roadway excavations in accordance with PWDDS Section 1-1.07 unless otherwise approved by the City Engineer because of existing good pavement condition.
30. Driveways shall be clustered within the development as much as possible in accordance with PWDDS 1-1.07.
31. All damaged or removed curb/gutter and sidewalk shall be removed and replaced joint to joint.
32. Seepage barriers shall be installed in utility trenches for all utilities in all roadways inclined at greater than 7 percent in accordance with PWDDS 2-1.05.

Water

33. Existing water well(s) shall be identified as part of construction drawing review and shall be abandoned in accordance with Department of Ecology requirements.
34. The developer shall install a new 12-inch diameter ductile iron water main along the NE 143rd Place frontage to replace the existing undersized 6-inch diameter water main (if not completed by others).
35. The water system for the development shall be constructed of ductile iron pipe and shall include valves, air-vac, blow-off, and other appurtenances as required by the Public Works Department.

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36. The number of water service and fire sprinkler taps to the main line shall be minimized by branching services as possible.
37. All homes requiring fire sprinklers shall be identified during construction drawing review and include additional required tap size evaluation prior to Construction Drawing approval. Based on the preliminary plat, fire sprinklers shall be required at all lots.

Sewer

38. All existing sanitary system drainfield(s) shall be identified as part of construction drawing review and shall be abandoned in accordance with Department of Ecology requirements.
39. A gravity sewer system shall be constructed to the project limits of the site prior to any final plat at the site. The system shall include the internal tract network, connect to the relocated sewer system on NE 143rd Place and include sewer main extension on NE 143rd Place from the project to the eastern property alignment unless otherwise installed by others.
40. The sewer system shall be video inspected prior to Performance Bond and Maintenance Bond Release inspections. Identified repairs or maintenance identified by the Public Works Superintendent shall be completed prior to bond release.

Storm Drainage

41. A final Technical Information Report (TIR) shall be submitted for the development during construction drawing review. The final TIR shall consider existing comments, address any downstream drainage issues or required improvements.
42. The final TIR shall identify and address downstream conveyance and other stormwater concerns. Deficient conveyances, including ditches, shall be removed and replaced with new piped conveyance to accommodate proposed flow from the development and properties adjacent to the conveyance.
43. Stormwater facilities shall be constructed to accommodate residential and public stormwater generated by development. The stormwater facilities shall be designed in accordance with the 2016 KCSWDM and city requirements. Residential stormwater facilities shall be located within an individual tract or right-of-way in accordance with the KCSWDM and dedicated to the City upon Final Plat.
44. Certification of as-built detention/water quality systems for the stormwater facility shall be provided and shall identify lots and other impervious areas served.
45. The operation and maintenance of stormwater facilities shall be the sole responsibility of the developer for the first two years of operation following the Performance Bond release or until the stormwater facility maintenance bond is released, whichever is longer.
46. The stormwater facilities shall successfully operate and shall remain free of defects in workmanship, materials, and design during the maintenance and performance bond periods. The developer shall

clean the stormwater system prior to the City's final inspection and before the bonds are released. The City, at its sole discretion, has the right to demand prompt maintenance at the end of the bond periods to correct defects.

FROM KING COUNTY FIRE DISTRICT #45

General

47. New hydrants shall be installed by the developer at locations to meet the City of Duvall Design Standards. A fire hydrant shall be required at the Road A/Tract C unless otherwise approved.
48. Required Fire Access Roads shall be constructed to a minimum of 20 feet wide with 13 feet 6 inches height clearance. They shall have a load capacity of 25 tons and be marked as a "Fire Lane" pursuant to City of Duvall standards. All turn radii shall be adequate for access by a ladder truck.
49. Any building that is in part, or totally, located greater than 150 feet from right-of-way, measured by hose-length distance from the front property line, shall include an approved automatic sprinkler. Based on the preliminary site plans, proposed residences at Lots 9, 10, and 11 require automatic sprinkler systems.
50. Any buildings that fall under the townhome definition (IRC Rf202) shall include an approved automatic sprinkler.
51. Combined or flow through sprinkler systems shall be utilized at homes requiring automatic sprinklers unless otherwise approved by the City. Sprinkler system testing shall be required and provided for per Duvall Design Standards.
52. When fire protection, including fire apparatus access roads and water supplies for fire protection, is required to be installed, such protection shall be installed and made serviceable prior to and during the time of residential and/or commercial building construction. (2003 International Fire Code DMC 501.4).

Approval or approval with conditions of a site plan shall be effective for a period not to exceed two years from the date of the preliminary approval; provided, however, that an applicant who files a written request with the Planning Director for final site plan approval at least thirty (30) days before the expiration of this two-year period shall be granted a one-year extension upon a showing that the applicant has attempted in good faith to submit final plans for the issuance of a building permit within the two-year period. [DMC 14.62.050]