

**BEFORE the HEARING EXAMINER for the
CITY of GOLD BAR**

DECISION

FILE NUMBER: LS-006-20

APPLICANT: DLC Investment Property, LLC
ATTN: Don Crowley
P.O. Box 824
Snohomish, WA 98291

TYPE OF CASE: Preliminary subdivision (*Wallace Falls Court*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: July 30, 2020

INTRODUCTION ¹

DLC Investment Property, LLC (“DLC”) seeks preliminary approval of *Wallace Falls Court*, a 7-lot single-family residential subdivision of a 2.5 acre site which is zoned R 12,500 with Recreation Oriented Overlay.

DLC filed a Land Use Application for subdivision approval on April 3, 2020. (Exhibits A; C; D ²) The Gold Bar Public Works Director (“Director”) deemed the application to be complete on or about April 5, 2020. ³ (Testimony) The City issued a Notice of Application on April 20, 2020. (Exhibits F; G)

The subject property is located at 40721 May Creek Road. Its Assessor’s Parcel Number is 27090500201000 (“Parcel 010”). (Exhibit A)

The Gold Bar Hearing Examiner (“Examiner”) viewed the subject property on July 14, 2020.

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. 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 The Director has the lead City staff responsibility for processing land use applications. [Gold Bar Municipal Code (GBMC) 19.05.020]

The Examiner held an open record hearing on July 16, 2020. The hearing was conducted remotely using the “Zoom” program due to assembly restrictions attendant to the current COVID-19 pandemic. The City gave notice of the hearing as required by the Gold Bar Municipal Code (“GBMC”). (Exhibits K; L)

Pre-filed Exhibits A - Q, as enumerated on an Exhibit List prepared by the City, were entered into the hearing record at the outset of the hearing.

Subsection 16.10.020(G) GBMC requires that preliminary subdivisions “shall be approved, disapproved or returned to the applicant for modification or correction within ninety (90) days from the date of filing thereof unless the applicant consents to an extension of such time period”. Time spent preparing an environmental impact statement, if required, is not counted. The open record hearing was held after the 90th day. DLC chose to extend the deadline. (Testimony)

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. This is the second *Wallace Falls Court* preliminary subdivision to be proposed for Parcel 010. On August 13, 2007, Georgia and Mark Hopkins (“Hopkins”), as GMH Investors LLC, received preliminary subdivision approval for the first *Wallace Falls Court*. Like the present application, the Hopkins’ application was for a 7-lot subdivision. The term of approval of preliminary subdivisions at the time was 10 years. Shortly after its approval the national economy went into recession. Hopkins unsuccessfully sought financing during the recession to build the subdivision. Just before the original term of approval was to expire on August 13, 2017, Hopkins filed a request for a one year extension (the maximum allowed). On September 14, 2017, the undersigned granted the requested one-year extension. Hopkins was not able to develop the property within the extension period; preliminary subdivision approval lapsed on August 13, 2018. (Testimony; and Official notice: *Wallace Falls Court* preliminary subdivision extension Decision, September 14, 2017)
2. Parcel 010 is a nearly flat, truncated rectangle located on a sweeping inside bend along May Creek Road near its intersection with Ley Road. The property was logged years ago and is currently covered primarily with grasses and brush. There are no wetlands or other critical areas on or in close proximity to Parcel 010. (Exhibit D.5) The on-site soils consist of shallow topsoil overlying glacial outwash deposits. The soils are porous and qualify for stormwater infiltration. The immediate vicinity of the site is sparsely developed. Parcel 010 is not located within any FEMA flood zone. (Exhibits D.4; D.6)
3. Parcel 010 is zoned R 12,500 with Recreation Oriented Overlay. (Exhibit D.9, Zoning Map) Single-family residences are a permitted use in the R 12,500 zone. [GBMC 17.24.020, cross-referencing GBMC 17.16.020] The minimum lot size for a single-family residence in the R 12,500 zone is

12,500 square feet (“SF”). [GBMC 17.24.040] Minimum lot width is 75 feet (except for lots fronting a cul-de-sac). [GBMC 17.24.050]

The Recreation Oriented Overlay applies to a large R 12,500 zoned area on the north side of May Creek Road. It’s purpose is “to provide for outdoor recreation oriented retail and commercial uses in the vicinity of Wallace Falls State Park.” [GBMC 17.50.010] The Recreation Oriented Overlay allows certain uses that would not be allowed in the R 12,500 zone without the overlay; it does not restrict any uses allowed in the basic R 12,500 zone. [Chapter 17.50 GBMC] Therefore, the overlay has no effect on the proposed preliminary subdivision application.

4. DLC proposes to build a short cul-de-sac that will provide access for all seven lots. Sidewalks will be provided both on the cul-de-sac and as part of the required frontage improvements on May Creek Road. Each lot will be served by an on-site sewage disposal system (“OSS”). An application for OSS approval has been submitted to the Snohomish Health District (“SHD”). SHD OSS approval for each lot will be required before the final plat may be recorded. Public water service will be provided by the City of Gold Bar. (Exhibits D.7; N, Sheets C-1 – C-3)
5. All proposed lots meet applicable zoning standards. (Exhibits N, Sheets C-1 – C-3; Q)
6. DLC submitted required applications, a project narrative, survey, proposed plat, and preliminary supporting plans, and technical studies. (Exhibit D) DLC revised the proposed plat as requested by the City. (Exhibit N)
7. The record contains evidence that appropriate provisions have been made for open space (Exhibit N, Sheet C-1: Each lot will contain about ¼ acre, thus providing open space on each lot); drainage (Exhibits D.4; N, Sheet C-3); streets and roads (Exhibit N, Sheet C-3); potable water supply (Exhibit N, Sheet C-3; and testimony); sanitary wastes (Exhibits D.7; N, Sheet C-3); parks and recreation (Exhibit N, Sheet C-3: Each lot will contain about ¼ acre, thus providing recreation space on each lot); playgrounds (Exhibit N, Sheet C-3: Each lot will contain about ¼ acre, thus providing play area on each lot); schools and schoolgrounds (Testimony: The City has a school impact mitigation fee which is payable to the school district when building permits are obtained); and safe walking conditions for children who walk to school (Exhibit N, Sheet C-3; and Testimony: All public school children will be bussed to their schools; school buses can stop along the subdivision’s frontage improvements on May Creek Road). The plat design does not require alleys or other public ways. (Exhibit N, Sheet C-3) Transit stops were not requested.
8. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
9. Gold Bar’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for *Wallace Falls Court* on April 20, 2020. (Exhibit H) The DNS was not appealed. (Exhibit Q, p. 2)

10. The record contains no challenge to the Staff Report (Exhibit Q). The analysis and conclusions contained in the Staff Report are incorporated herein by reference as if set forth in full.
11. The Department recommends approval of *Wallace Falls Court* subject to 22 conditions. (Exhibit Q, pp. 6 - 8)
12. DLC has no objection to any of the recommended conditions. (Testimony)
13. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁴

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

Authority

A preliminary subdivision is a Type III application which is subject to an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [GBMC 2.26.120, .125, and .140; GBMC 19.01.030; and GBMC 19.06.060]

The examiner's decision may

grant, deny, or grant with such conditions, modifications, and restrictions as the examiner finds reasonable to make the application or appeal compatible with its environment, the Gold Bar Municipal Code, the Gold Bar Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications, and restrictions that may be imposed include, but are not limited to, additional setbacks, screenings in the form of fencing or landscaping, easements, dedications, or additional right-of-way and performance bonds[.]

[GBMC 2.26.120(B)]

Review Criteria

The review criteria for preliminary subdivisions are set forth at GBMC 16.12.040:

- A. Public Use and Interest. The decision maker shall inquire into the public use and interest proposed to be served by the establishment of the subdivision or short subdivision. The decision maker shall make written findings that appropriate provisions are made in the subdivision or short subdivision for, but not limited to, public health, safety and general

⁴ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary waste, 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 shall consider all relevant facts to determine whether the public use and interest will be served by the subdivision or short subdivision and any dedication. Dedication of land to any public agency shall be clearly shown on the final plat or final short plat.

- B. Consistency with Comprehensive Plan and Planning Standards and Specifications. All preliminary plats and short plats shall comply with the general purposes of the Gold Bar comprehensive plan and to all adopted planning standards and specifications, including the Gold Bar zoning code.

A “consistency determination” is also required for every project permit application.

During project permit application review, [Gold Bar] shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project. In the absence of applicable development regulations, [Gold Bar] shall determine whether the items listed in this subsection are defined in [Gold Bar’s] adopted comprehensive plan. This determination of consistency shall include the following:

1. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
2. The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density; and
3. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by RCW Chapter 36.70A; and
4. Character of the development, such as development standards.

[GBMC 19.04.010(B)]

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications “shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted” [RCW 58.17.033] The proposed preliminary subdivision is thus vested to regulations as they existed on !.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [City of Gold Bar 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. Extensive, detailed conclusions regarding conformance with the criteria for approval are unnecessary since *Wallace Falls Court* is an uncontested case. The Director's conclusions have been incorporated herein by reference through Finding of Fact 10, above. The Director concluded that the preliminary subdivision met all applicable criteria for approval set forth in Title 16 GBMC. The Examiner concurs. There is no need to belabor the point.
2. Section 16.12.040(B) GBMC requires the Examiner to consider "the general purposes of the Gold Bar comprehensive plan". The Examiner's ability to use the comprehensive plan 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)]

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] Consideration of "general purposes" is permissible so long as it does not devolve into an item-by-item evaluation.

3. Based upon all the evidence in the record, the Examiner concludes that *Wallace Falls Court* makes appropriate provisions for the items listed in GBMC 16.12.040(A).
4. Based upon all the evidence in the record, the Examiner concludes that *Wallace Falls Court* meets the considerations within GBMC 16.12.040(B). All evidence demonstrates compliance with the general purposes of the Comprehensive Plan, to the extent they can be considered, and zoning code, subdivision code, and Critical Areas regulations.

5. Given all the evidence in the record, the Examiner concludes that *Wallace Falls Court* will serve the public use and interest and will thus comply with GBMC 16.12.040(A).
6. *Wallace Falls Court* passes the consistency test: Single-family residential is a permitted land use in the R 12,500 zone; the proposed density is within the range contemplated by the Comprehensive Plan and allowed by the R 12,500 zone; adequate public utilities are available to serve the proposed lots; and the development's character is consistent with the surrounding land uses.
7. The recommended conditions of approval as set forth in Exhibit Q are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. A preliminary subdivision embodies the concept of approval of a specific development proposal: the preliminary plat. A preliminary subdivision evaluation is based upon the specific preliminary plat submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the preliminary plat which are being approved. The recommendation as drafted does not do so. Exhibit N, Sheets C-1 – C-3, constitutes the most recent version of the proposed preliminary plat, the version which was reviewed and which which should be approved. An additional condition will be added to specifically call out the approved preliminary plat.
 - B. A minor, non-substantive revision to Recommended Condition 22 will improve clarity. Such change will be made.
8. 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 *Wallace Falls Court* **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued July 30, 2020.

\\s\ John E. Galt (Signed original in official file)

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁵

Neil Latta

Richard Norris

⁵ The official Parties of Record register is maintained by the City's Hearing Clerk.

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file a written request for reconsideration within seven (7) calendar days of the date this Decision was mailed to the parties. See GBMC 2.26.125 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 GBMC 2.26.140 and 19.06.060. Any appeal must be filed within 21 days following the issuance of this Decision unless reconsideration has been requested. See GBMC 2.26.140 and 19.06.060 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.”

CONDITIONS OF APPROVAL *WALLACE FALLS COURT* LS-006-20

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

Preliminary Plat and General Subdivision Design –

1. Exhibit N, Sheets C-1 – C-3, is the approved preliminary plat and supporting plans.
2. The applicant/developer shall adhere to all applicable codes, standards and regulations in effect at the time of development, including, but not limited to, the Gold Bar Municipal Code, the Stormwater Management Manual, the Building Code, and Uniform Fire Code, as adopted by the City.
3. In accordance with GBMC, the City Council may require the subdivider to enter into a developer/subdivision agreement to memorialize the preliminary plat conditions of approval, requirements for the construction of all infrastructure improvements including plan submittals, inspections, bonding, including private improvements and facilities associated with the subdivision.

Septic Systems -

4. The applicant/developer shall design the plat and septic systems to be consistent with adopted Snohomish Health District standards and regulations.

Transportation –

5. The developer shall construct street improvements throughout the development including curb, gutter, sidewalks, landscaping strip, street trees, street lighting in accordance with GBMC street standards. The applicant/developer shall install street trees consistent with the City's tree standards. The sidewalks shall be separated from the street with a minimum three (3) foot landscaping strip along arterials. No rolled curbs are allowed. The applicant shall submit a final street design per City standards.
6. May Creek Road shall be rebuilt to match existing design, and include full-width repaving.

Surface Water/Stormwater –

7. During grading and construction activities, the developer shall retain and manage on-site surface and stormwater within the site in accordance with an approved temporary erosion control plan.
8. The temporary stormwater management facilities shall be constructed before any significant amount of site grading commences.
9. During construction, the developer shall inspect weekly, maintain and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure.
10. During construction, the developer shall ensure that trucks are cleaned before leaving the site. The applicant shall provide street cleaning of May Creek Road during site clearing, grading, and filling and shall promptly clean-up any dirt, mud, or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by construction.
11. Prior to issuance of any construction or clearing and grading permit, the applicant shall secure a right-of-way permit from the City Engineer which may include:
 - Designated truck-haul routes
 - Truck loading/unloading activities
 - Location of construction and hauling
 - Hours of construction and hauling
 - Provisions for street sweeping, excavation and construction
12. All proposed water and sewer lines and facilities which are not located within the public right-of-way shall be located in appropriate easements. Easements shall be recorded at final plat recording.

Utilities –

13. All utilities, pipelines and cables are to be placed underground.

Water –

14. To ensure that new lots are not created if they cannot be served with water, state law (RCW 58.17.110) requires the City to determine if appropriate provisions are made for water supplies before approving a new subdivision. The City of Gold Bar shall issue a letter certifying water availability for the proposed plat. connection to the City's water system must be completed within one year of the date of the letter, or a new availability notification letter must be obtained.

Sewer –

15. A requirement to connect to the future City sewer system within twelve (12) months of availability shall be recorded on the title of all lots and the developer shall notify future home purchasers of this requirement.

Fire –

16. The developer shall provide adequate fire protection through the placement of fire hydrants and through proof of required fire flow as prescribed by the Snohomish County Fire District #26, and the Unified Building Code, as adopted by the City.

Other -

17. The applicant/developer shall be required to pay school impact fees, transportation impact fees, administrative impact fees, and park impact fees consistent with GBMC. The amount of the mitigation impact fees will be determined and paid to the designated City of Gold Bar official at the time of issuance of the building permit for the development.
18. The applicant/developer shall be required to pay any transportation impact/mitigation fees consistent with the reciprocal agreement between the City of Gold Bar and Snohomish County.
19. The developer shall maintain landscaping within the right-of-way for a two-year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the two-year period, maintenance responsibility shall be passed to the homeowner's association.
20. All import fill material shall be clean and free of environmental hazards and contaminants. Proof of clean import soils may be required by the City Engineer.
21. The applicant/developer shall submit an up-to-date title report prior to recording of final plat that demonstrates that all taxes, penalties, and interest have been paid.

22. All site improvements, including streets, sidewalks, bicycle lanes, frontage improvements, drainage improvements, and landscaping shall be completed prior to Final Plat, with the exception of the final paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.
23. The applicant/developer shall adhere to the recommendations as outlined in the memorandum from the City's Consultant, Nick Razor, PE (The Blueline Group), items 1 to 7. (Exhibit O)