

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF BELLEVUE**

In the Matter of the )  
)  
**Hazelwood Preliminary Plat** )  
**Application** )  
)  
• *Owner:* Mark Wittman )  
)  
• *Proponent:* Jim Merritt, JR Merritt )  
Construction LLC )  
)  
• *Location:* 6018 Lake Washington )  
Boulevard SE in the City of Bellevue, )  
Washington )

**DSD File No. 16-131396-LL**

**FINDINGS, CONCLUSIONS AND  
DECISION APPROVING THE  
HAZELWOOD PRELIMINARY PLAT**

**I. SUMMARY**

The pending application is **APPROVED**. The applicant and owner of the subject property, Mark Wittman, seeks preliminary plat approval of the Hazelwood Preliminary Plat with review under SEPA to divide 4.98 acres covering 4 existing parcels into 22 single family lots, with a tract for stormwater detention purposes. The site is zoned R-5, a single-family zoning district, and is located within the city’s Newport Hills Subarea. Currently, the site includes one single-family home, a detached barn, garage and sheds. All of the existing structures will be removed as part of the proposal. The entire plat will obtain access via new internal streets that will connect at a single point with Lake Washington Boulevard SE. (*Staff Report*).

**II. CONTENTS OF RECORD**

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by the City of Bellevue, and may be examined or reviewed by contacting the Clerk in the Hearing Examiner’s Office. Below is a summary of the Record, noting that due to its size, some items may be numbered differently than on final Indexes for records included in the project file for this matter.

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1 **Exhibits:** “Staff Report” – City of Bellevue Development Services Department Land  
2 Use Staff Report and recommendation (of APPROVAL) to  
3 the Hearing Examiner regarding the Hazelwood Preliminary  
4 Plat, File No. 16-131396-LL, dated March 16, 2017;

5 A1 – A13. Application submittal records, project narrative, and routing  
6 forms, as described and indexed in the pre-hearing materials  
7 provided to the Examiner;

8 B1 – B59. SEPA Determination of Non-Significance, Staff Report,  
9 Project Plans, SEPA Checklist, Critical Areas Study, as  
10 described and indexed in the pre-hearing materials provided  
11 to the Examiner;

12 C1, C1A – C200. Notices, SEPA Checklist and DNS, Critical Areas  
13 Study, Permit Bulletins, as described and indexed in the pre-  
14 hearing materials provided to the Examiner;

15 D1 – D79. Email correspondence between reviewing staff and interested  
16 parties, as described and indexed in the pre-hearing materials  
17 provided to the Examiner;

18 DA1 – DA10. Additional email communications, as described and indexed  
19 in the pre-hearing materials provided to the Examiner;

20 E1 – E118. Environmental records, including Tree Assessment and  
21 Reassessment materials, Critical Areas Study, and SEPA  
22 checklist;

23 F1 – F191. Miscellaneous materials, drainage, traffic, easement, title,  
24 geotechnical, and historical documents, as described and  
25 indexed in the pre-hearing materials provided to the  
26 Examiner;

Day of Hearing and Post-hearing Exhibits:

H1. PowerPoint presentation slides used by Mr. Folsom during the project  
summary and staff recommendation portion of the public hearing;

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1 H2. Emails dated April 6, 2017, between applicant engineer, Mr. Schroeder,  
2 and city staff, Mr. Folsom, clarifying 5-foot instead of 6-foot sidewalk  
requirements for internal roads in the plat;

3 H3. Sign in Sheet for public hearing;

4 PH1. Collection of emails transmitted to the Examiner on April 11, 2017,  
5 addressing Municipal Stormwater Permits and a recent State Supreme Court  
6 ruling on the topic, which was discussed during the public hearing, including  
guidance provided by the Department of Ecology.

7  
8 **Testimony/Comments:** The following persons were sworn and provided testimony under  
oath at the open-record public hearing:

- 9
1. Drew Folsom, Land Use Planner for the City of Bellevue;
  - 10 2. Ryan Miller, Transportation Engineer for the City of Bellevue;
  - 11 3. Jamie Schroeder, PE, with DP/H Consultants, for the applicant;
  - 12 4. Long Lee, lives on 113<sup>th</sup> Place SE, yard borders on east side of plat;
  5. Patti Pearson, lives on 113<sup>th</sup> Place SE, yard borders on east side of plat; and
  6. Sanya Lee, lives on 113<sup>th</sup> Place SE, yard borders on east side of plat.

13 The applicant, Mark Wittman, and Chris Wittman, as well as Jim Merritt, the project  
14 proponent, attended the public hearing but did not provide any substantive testimony. (*See*  
*sign-in sheet*).

15  
16 **III. APPLICABLE LAW**

17 The City's decision criteria for preliminary plat approval are substantially similar to state  
18 subdivision mandates found in RCW 58.17.110(2)<sup>1</sup> and reads as follows:

19 ***LUC 20.45A.130 – Preliminary plat – Decision criteria.***

20 *The City may approve or approve with modifications a preliminary plat if:*

21  
22 <sup>1</sup> "A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings  
23 that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways,  
24 streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds,  
schools and schoolgrounds 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 (b) the public use and interest will be served by the platting of such  
subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public  
use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. []" RCW 58.17.110(2).

25 **FINDINGS, CONCLUSIONS AND DECISION**  
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- 1           A. *The preliminary plat makes appropriate provisions for, but not limited to, the public health,*  
2           *safety and general welfare; for open spaces, drainage ways, streets, sidewalks, alleys, other public*  
3           *ways, water supplies, sanitary waste, parks, playgrounds, sites for schools and school grounds; and*
- 4           B. *The public use and interest is served by the platting of the subdivision; and*
- 5           C. *The preliminary plat appropriately considers the physical characteristics of the proposed*  
6           *subdivision site; and*
- 7           D. *The proposal complies with all applicable provisions of the Land Use Code, BCC Title 20, the*  
8           *Utility Codes, BCC Title 24, the City of Bellevue Development Standards and Chapter 58.17 RCW;*  
9           *and*
- 10          E. *The proposal is in accord with the Comprehensive Plan, BCC Title 21; and*
- 11          F. *Each lot in the proposal can reasonably be developed in conformance with current Land Use*  
12          *Code requirements without requiring a variance; however, requests for modifications to the*  
13          *requirements of Part 20.25H LUC, where allowed under the provisions of that part, may be*  
14          *considered together with an application for preliminary plat so long as the resulting lots may each*  
15          *be developed without individually requiring a variance; and*
- 16          G. *All necessary utilities, streets or access, drainage and improvements are planned to*  
17          *accommodate the potential use of the entire property.*

18           As explained in LUC 20.35.015(B) and (C), a Preliminary Subdivision/Plat  
19           application is considered a Process I decision made by the Hearing Examiner, and a SEPA  
20           threshold determination is deemed a Process II administrative land use decision. Under  
21           LUC 20.35.080, Process I and II decisions shall be merged into a consolidated staff report.  
22           In this matter, there was no appeal of the City’s SEPA DNS issued for the proposed plat.  
23           Therefore, the DNS stands unchallenged, and is fully supported by evidence, professional  
24           reports, staff findings, and analyses provided in the Record.

25           LUC 20.35.140.A mandates that the Hearing Examiner *shall approve* a project or  
26           approve with modifications if the applicant has demonstrated that the proposal complies  
          with the applicable decision criteria of the Bellevue City Code. The same code provision  
          explains that the applicant carries the burden of proof and must demonstrate that a  
          preponderance of the evidence supports the conclusion that the application merits approval  
          or approval with modifications.

          Finally, LUC 20.35.100.C provides that any *“decision of the Hearing Examiner on*  
*a Process I application is appealable to the City Council. The City Council action deciding*  
*the appeal and approving, approving with modifications, or denying a project is the final*  
*City decision on a Process I application”*.

25           **FINDINGS, CONCLUSIONS AND DECISION**  
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**IV. ISSUE PRESENTED**

Whether a preponderance of evidence demonstrates that the applicant has satisfied his burden of proof to meet the criteria for preliminary plat approval?

**Short Answer:** Yes.

**V. FINDINGS of FACT**

Upon consideration of all the evidence, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Hazelwood Preliminary Plat as set forth below.

1. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such, including without limitation the Summary provided above.

***Application, Notice, and Review.***

2. On or about May 2, 2016, the applicant’s consultants submitted preliminary plat application materials, including a Critical Areas Study, to the City of Bellevue, noting that records show the applicant began exploring site-development options for the subject property at some point before that time. (*Submittal Documents, A1- A13; and C109-C196, Crit. Areas Study*). The City deemed the application complete on or about May 30, 2016, and on June 16, 2016 it provided Notice of the application and a public meeting regarding the proposal to occur on June 29, 2016. (*Ex. C88-89, portions of the City’s Weekly Permit Bulletin for June 16, 2016*). Comments submitted by interested parties and/or at the public meeting were all considered by City staff, with summaries and a discussion of the most significant comments provided on pages 8-9 of the Staff Report. (*Testimony of Mr. Folsom*).

3. After considering the application materials, public comments, a critical areas study, a tree assessment, the applicant’s SEPA Checklist submitted for the project, applicable city

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1 codes, and other relevant environmental documents, the City's Environmental Coordinator  
2 issued a SEPA Determination of Nonsignificance for the Hazelwood subdivision project  
3 and the City provided public notice regarding the DNS in accord with applicable notice  
4 procedures on or about March 16, 2017. (*B1, DNS; B2, Staff Report*). The SEPA appeal  
5 deadline was March 30<sup>th</sup>, and the City received no appeals by such time. The open-record  
6 public hearing for the application was duly noticed in accord with law, as early as March  
7 16, 2017. (*C1 – C76, notice materials, permit bulletins, affidavit of publication, certificate  
8 of mailing*).

9  
10  
11 4. Prior to the open record public hearing, the Hearing Examiner received copies of the  
12 Staff Report, the DNS, and project file materials indexed and identified as set forth above.

13  
14 5. The public hearing occurred on April 6, 2017, wherein the undersigned Examiner  
15 presided, and all persons wishing to provide comments were heard, providing testimony  
16 under oath. The Examiner visited the site of the proposed project on the day of the hearing,  
17 and reviewed aerial maps available on Google Maps to better understand the area  
18 surrounding the proposed plat. After the hearing, city staff worked with the applicant to  
19 provide follow-up materials on issues raised by the Examiner, generally regarding  
20 Department of Ecology guidance on a recent Supreme Court ruling addressing storm water  
21 permit requirements. Those materials were received by the Examiner on April 11<sup>th</sup>, and are  
22 included in the Record as Exhibit PH1. In the following week, the Examiner researched the  
23 court decision and relevant Shorelines Board rulings, and determined that there was no need  
24 to reopen the record for additional briefing on the subject. The Record is therefore closed,  
25 and this Decision is now in order.

26 6. The Department's Staff Report and recommendation of approval includes a number  
of specific findings and conditions that establish how the pending preliminary plat  
application satisfies provisions of applicable law, is consistent with the city's  
Comprehensive Plan and is designed or conditioned to comply with applicable Land Use  
codes, development standards and guidelines.

### ***Summary of Public Hearing.***

7. At the hearing, Mr. Folsom summarized the Staff Report, his recommendation of  
approval, and topics covered in the recommended conditions of approval. He made a  
PowerPoint presentation, summarizing the proposed plat, the surrounding area, and key  
issues discussed in the Staff Report. (*Ex. H1; Testimony of Mr. Folsom*). Mr. Folsom  
highlighted the fact that no one appealed the SEPA DNS issued for the project; that the site  
is surrounded by existing, built-out single family subdivisions; that a man-made ditch runs  
through the property and the site slopes from east to west; that lot sizes conform with city  
requirements, using averaging permitted by the code; that 31% of trees are to be preserved;

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1 and that the stormwater tract in the northwest portion of the proposed plat will feature an  
2 underground vault with recreational/open space above.

3 8. Mr. Miller spoke briefly and directed attention to a typo in the recommended  
4 conditions of approval, where internal sidewalks were noted as “six-feet” instead of “five-  
5 feet”. He explained that City codes only require 5-foot sidewalks for internal streets like  
6 those depicted on the plat site plans, which already depict sidewalks just 5-feet in width  
7 along internal streets. Exhibit H2 was offered into the record to confirm discussions with  
8 the applicant on the topic. Condition of Approval C2 has been amended and is marked with  
9 \*’s where the sidewalk widths have been adjusted to conform with the proposed site plans.

10 9. The applicant’s Engineer, Jamie Schroeder, testified briefly to confirm on the record  
11 that the applicant has no objections to the Staff Report and recommended conditions of  
12 approval, noting agreement to correct the internal sidewalk width requirement from six to  
13 five-feet.

14 10. Three neighboring residents, all of whom live in homes with backyards that abut the  
15 east/southeast boundary of the proposed plat, testified at the public hearing and expressed  
16 concerns that a retaining wall is not being required as a condition of approval along their  
17 property line. (*Testimony of Mr. Lee, Ms. Pearson, and Ms. Lee*). There appeared to be  
18 some confusion as to whether a rockery-wall was discussed at various points in the review  
19 process, and how the condition was no longer on the table.

20 11. Mr. Schroeder provided follow-up testimony to address some of the neighbors’  
21 concerns. He explained that initially, the applicant sought approval for a “mass-grading”  
22 plan, generally meaning the entire site would be cleared first, and then all streets and homes  
23 would be built. City reviewers rejected the mass-grading proposal, in favor  
24 grading/elevation determinations that will be made at the time of building permits for each  
25 lot. Mr. Schroeder observed that a rockery wall will likely be requested on some lots in the  
26 vicinity of the neighbors who testified at the hearing.

12. Mr. Folsom credibly explained the pros and cons associated with mass-grading vs.  
grading and elevation options explored with applicants at the time building permits are  
reviewed for each lot. He noted that some homebuilders may choose to make the most of  
site conditions, and design homes that do not require retaining walls; others might prefer  
rockery walls, or other options.

13. In the end, the Examiner concurs with City staff, and believes that it is prudent to  
await the building permit process to determine whether rockery walls or other retaining  
features should be required as conditions associated with issuance of such permits. Grading  
for plat infrastructure improvements should be limited to grading needed for such features,  
without the “one-size-fits-all” approach that mass-grading would produce. Those who

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1 provided public comments during the hearing should not lose heart – because the specific  
2 treatments, i.e. support-strategies (if needed), that may be used to retain or support uphill  
3 properties to the east along a portion of the plat’s boundary will be addressed later, as  
4 building permits for each lot are issued.

5 14. The site of the proposed project currently includes a single-family home with  
6 multiple detached structures, several significant trees, but mostly open lawn, grasses, and  
7 less maintained blackberries and other low brush within the eastern parcel. Over the years,  
8 much of the site has been used as horse and llama pasturage. A storm-drainage ditch now  
9 flows from south to north near the center of the site, and an unregulated, relatively small  
10 Category IV wetland is located along the northern portion of the ditch. The most  
11 significant grade changes exist within and along portions of the eastern edge of the site  
12 (about 20%), though none of the slopes on the site or where it touches upon neighboring  
13 properties meet the definition of a geological hazard. The property is zoned R-5 and is  
14 designated for high density single family housing in the City’s Comprehensive Plan. The  
15 area is entirely within the Newport Hills Subarea of the Comprehensive Plan. The site will  
16 obtain access from a single point of ingress/egress along Lake Washington Boulevard,  
17 which forms the plat’s western boundary. *(Staff Report, pages 4-5).*

18 15. Upon consideration of public comments, city codes and policies applied by the  
19 city’s professional review team, the plat design has been modified from the original  
20 submittal. These changes include, but are not limited to: increased lot sizes to meet  
21 minimum zoning requirements; the stormwater detention tract will now also provide for  
22 recreational open space on the surface, with a vault below ground; street frontage  
23 improvements now include required landscaping including street trees; and, as noted above,  
24 mass-grading will not be permitted, but clearing and grading will be limited to the extent  
25 necessary to provide necessary plat infrastructure. *(Staff Report, page 14; Testimony of Mr.*  
26 *Folsom).*

16 16. The Staff Report includes a number of specific, proposed conditions that should be  
17 included, to ensure that the proposed plat will be developed in a manner that is fully  
18 consistent with applicable city codes and policies. These include, but are not limited to,  
19 conditions addressing: utilities and transportation infrastructure construction; permit  
20 requirements; tree protection; parking limitations; street frontage improvements;  
21 recreational open space; and final plat requirements. *(See Staff Report, recommended*  
22 *conditions of approval, on pages 18-26).*

23 17. As requested by the Examiner, City staff submitted a post-hearing exhibit that was  
24 referenced during the public hearing on the subject of a recent Washington Supreme Court  
25 ruling and a “guidance” bulletin issued by the Washington Department of Ecology, that  
26 may affect which set of stormwater regulations will apply to the plat, or lots developed

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1 within the plat, depending on when it moves forward. (Ex. PH1, emails exchanged by the  
2 applicant team and city staff on the topic, and a “Guidance” bulletin issued by Department  
3 of Ecology staff re: WA Supreme Court decision, Cause No. 92805-3, issued on December  
4 29, 2016).

5 18. The Examiner takes official notice that the City of Bellevue is covered by the state’s  
6 “Phase II” permit for stormwater regulations. Ex. PH1 touches upon issues raised by the  
7 slip opinion issued by the Washington Supreme Court on December 29, 2016, upholding a  
8 Pollution Control Hearings Board Order, which included language laying out a timeline  
9 when updated Phase II permit provisions will apply to development projects in this state.  
10 For informational purposes, the PCHB Order that is the subject of the Supreme Court ruling  
11 reads in relevant part:

12 *“The Phase II Permit provides that no later than December 31, 2016,*  
13 *municipalities must —Implement an ordinance or other enforceable mechanism*  
14 *that addresses runoff from new development, redevelopment, and construction site*  
15 *projects. . . . The local program adopted to meet the requirements of S5.C.5.a(i)*  
16 *through (iii)...shall apply to all applications submitted on or after January 1, 2017*  
17 *and shall apply to projects approved prior to January 1, 2017, which have not*  
18 *started construction by January 1, 2022. Phase II Permit, Condition S5.C.4.a*  
19 *(footnotes omitted).” (Pollution Control Hearings Board, ORDER ON*  
20 *SUMMARY JUDGMENT, PCHB Cause Nos. 12-093c and 12-097c, Phase I Issues*  
21 *Nos. 3, 17(a) and 20; and Phase II Issues Nos. 2(a) and 3(a), issued on October 2,*  
22 *2013, at page 12).*

23 19. The “guidance” bulletin issued by the Department of Ecology is included in the  
24 Record as part of Exhibit PH1, and reads in relevant part as follows:

25 *“Under the municipal stormwater permits the only place that the recent Supreme*  
26 *Court decision comes into play is if the developer does not start construction on*  
*the subdivision/plat until after June 30, 2020 (PH I) or January 1, 2022 (PH II).”*

20. Having noted the issue, this Decision recognizes that all participants – the applicant  
and the City – are legally required to comply with stormwater regulations and NPDES  
permits issued by the State of Washington. The applicable set of regulations or version of a  
stormwater manual that should apply (if any) must be determined by the City at the time  
any application for various aspects of the project might be submitted, including engineering  
review for the plat and other permits sought to develop components of the new plat, like  
individual building permits to construct homes on individual lots.

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1 21. After carefully reviewing the Supreme Court’s opinion, the language in the Phase II  
2 permit, and other relevant legal authority, the Examiner finds that he is without express  
3 authority to bestow “vesting rights” upon any applicant for stormwater regulations, without  
4 delegation of powers to do so. The hearing examiner's authority is limited to that granted  
5 by the creating body. *Durland v. San Juan County*, 174 Wn. App. 1 (2012), citing *Chaussee*  
6 *v. Snohomish County Council*, 38 Wn. App. 630, 636 (1984). A Hearing Examiner does  
7 not have discretion to exempt an applicant from new stormwater requirements imposed by  
8 the Department of Ecology or other regulatory agency based on what he or she might deem  
9 equitable. See discussion in *Chaussee*. And, until or unless the Supreme Court’s decision  
10 is modified, by a subsequent judicial ruling or legislation, the decision included in the  
11 Record clearly holds that: “storm water regulations [that] permittees must implement as  
12 part of the larger NPDES permitting program are not “land use control ordinances” under  
13 [Washington’s] vesting statutes”. (*Snohomish County, et al. v. PCHB, et al.*, WA Supreme  
14 Court Slip Opinion, Cause No. 92805-3, Dec. 29, 2016, at page 12).

15 22. During the review process, and through the public hearing, no one presented  
16 credible or convincing evidence or testimony sufficient to rebut the City’s determination  
17 that the proposed plat, as conditioned, meets applicable development standards and  
18 comprehensive plan policies.

19 23. Except as modified in this Decision, all Findings, and statements of fact contained  
20 in the Staff Report are incorporated herein by reference as Findings of the undersigned  
21 hearing examiner.<sup>2</sup>

22 24. The record demonstrates that the City satisfied its SEPA review process through  
23 compliance with applicable review and notice procedures. The thorough discussion and  
24 materials referenced in the DNS issued for the project fully support the Environmental  
25 Coordinator’s determination that the proposed plat, as conditioned, will not result in  
26 probable, significant, adverse environmental impacts. The DNS was not appealed, and  
serves as substantial evidence supporting the findings and conclusions reached herein.

27 25. The record contains credible and substantial evidence to demonstrate that:

*A. The preliminary plat makes appropriate provisions for, but not limited to, the public health,  
safety and general welfare; for open spaces, drainage ways, streets, sidewalks, alleys, other  
public ways, water supplies, sanitary waste, parks, playgrounds, sites for schools and school  
grounds; and*

<sup>2</sup> For purposes of brevity, only certain Findings from the Staff Report are highlighted for discussion in this Decision, and others are summarized, but any mention or omission of particular findings should not be viewed to diminish their full meaning and effect, except as modified herein.

1 See discussion in Staff Report, proposed findings therein, and attached Conditions of Approval;  
2 the new plat provides for drainage, streets, pedestrian access, utilities, and recreational open  
3 space. By satisfying and fulfilling the intent and purpose of various city development  
4 regulations, the plat makes appropriate provision for the public health, safety, and general  
5 welfare.

6 *B. The public use and interest is served by the platting of the subdivision; and*

7 See above. The Hazelwood plat serves the public interest by increasing the supply of homes in  
8 accord with the City's Comprehensive Plan, by ensuring compliance with Land Use Code  
9 requirements and conformance with applicable Comprehensive Plan policies referenced in the  
10 Staff Report.

11 *C. The preliminary plat appropriately considers the physical characteristics of the proposed*  
12 *subdivision site; and*

13 The preliminary plat is appropriately designed in consideration of the physical characteristics  
14 presented by the site. Because it is relatively flat, it minimizes cut and fill work and retains  
15 significant trees that are healthy enough to survive development. It also takes advantage of the  
16 stormwater tract, using the surface for recreational open space. See Conditions of Approval.

17 *D. The proposal complies with all applicable provisions of the Land Use Code, BCC Title 20,*  
18 *the Utility Codes, BCC Title 24, the City of Bellevue Development Standards and Chapter 58.17*  
19 *RCW; and*

20 See Conditions of Approval. As conditioned, the new plat will comply with all applicable LUC  
21 requirements for R-5 zoning as well as Utility Code and Bellevue Development Standards.

22 *E. The proposal is in accord with the Comprehensive Plan, BCC Title 21; and*

23 See discussion on pages 15 and 16 of the Staff Report.

24 *F. Each lot in the proposal can reasonably be developed in conformance with current Land*  
25 *Use Code requirements without requiring a variance; however, requests for modifications to the*  
26 *requirements of Part 20.25H LUC, where allowed under the provisions of that part, may be*  
*considered together with an application for preliminary plat so long as the resulting lots may*  
*each be developed without individually requiring a variance; and*

Each lot in the new plat can be developed in compliance with the site development plans  
approved by this Decision, and none will require a variance. Also see Condition of Approval  
restricting future variances within the plat.

*G. All necessary utilities, streets or access, drainage and improvements are planned to*  
*accommodate the potential use of the entire property*

All necessary utilities and access are available to the property. All other utilities are connecting  
to public services. Utility construction will require permits and engineering to satisfy  
requirements of applicable codes.

1 26. Based on all evidence, exhibits and testimony in the record, the undersigned Examiner  
2 specifically finds that the proposed plat, as conditioned below, makes appropriate provision  
3 for the considerations detailed in applicable law, and that the public use and interest will be  
4 served by the proposed plat and associated dedications and improvements.

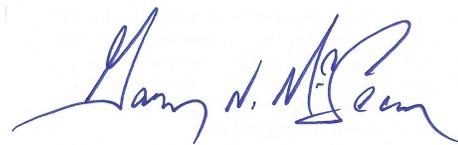
5  
6 **VI. CONCLUSIONS of LAW**

- 7 1. Based on the Findings as summarized above, the undersigned examiner concludes  
8 that the proposed plat conforms to all applicable zoning and land use requirements  
9 and appropriately avoids or mitigates potential adverse environmental impacts, as  
10 noted in the unchallenged SEPA DNS for the project. Upon reaching such findings  
11 and conclusions as noted above, the preliminary plat meets the standards necessary to  
12 obtain approval by the City.
- 13 2. The Department's recommended conditions of approval are reasonable, supported by  
14 the evidence, and capable of accomplishment. Each and every condition is adopted  
15 and incorporated herein by reference.
- 16 3. Any Finding or other statements in previous or following sections of this document  
17 that are deemed Conclusions are hereby adopted as such.

18 **VII. DECISION**

19 Based upon the preceding Findings of Fact and Conclusions of Law, evidence  
20 presented through the course of the open record hearing, all materials contained in the  
21 contents of the record, and the Examiner's site visit, the undersigned Examiner  
22 APPROVES the Hazelwood preliminary plat, subject to the attached Conditions of  
23 Approval as recommended by the City's professional review team and adopted herein.

24 Decision issued: May 4, 2017.

25 

26 Gary N. McLean  
Hearing Examiner for the City of Bellevue

**CONDITIONS OF APPROVAL**  
***Hazelwood Preliminary Plat***  
***DSD File No. 16-131396-LL***

**CODES AND ORDINANCES:**

The applicant shall comply with all applicable Bellevue City Codes and development regulations, including but not limited to:

- Clearing and Grading Code – BCC 23.76
- Construction Codes – BCC Title 23
- Fire Code – BCC 23.11
- Land Use Code – BCC Title 20

**A. GENERAL CONDITIONS:**

**The following conditions apply to all phases of development.**

**1. Variance Restriction**

Approval by the City of this plat is a determination that each lot can be reasonably developed in conformance with the Land Use Code in effect at the time of this approval without requiring a variance. No future variance application will be accepted. *See LUC 20.45A.130.F.*

**2. Construction Hours**

Noise related to construction is allowed from 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday. Exceptions to the construction noise hours limitation contained in the Noise Control Code MAY be granted pursuant to BCC 9.18.020.C.1 when necessary to accommodate construction that cannot be undertaken during exempt hours. Prolonged exposure to noise created by extended hour construction activity is likely to have a significant impact on inhabitants of surrounding residential properties during the proposed timeline for construction. In order to minimize detriment on residential uses in the immediate vicinity of the project, the Contractor shall not rely on City issuance of a blanket exemption from the Noise Control Code during the construction period. Allowances for short-term work outside of normal construction hours shall be limited and will be reviewed on a case-by-case basis to verify necessity and ensure appropriate noise mitigation is utilized to protect surrounding uses and properties. Written requests for exemption from the Noise Control Code must be submitted two weeks prior to the scheduled onset of extended hour construction activity. Such request shall include a noise analysis prepared by a noise consultant, including recommendations for achieving the noise limitations of the Noise Ordinance for new residential construction. Authority: Bellevue City Code 9.18.040.

**3. Tree Protection Requirements**

To mitigate adverse impacts to nondisturbed areas and trees to be retained during construction, conformance with BMP T101 for tree protection is required which includes:

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- Clearing limits shall be established at the limit of nondisturbed areas and for retained trees within the developed portion of the site, outside of drip lines. Six-foot chain link fencing with driven posts, or an alternative approved by the Clear and Grade Inspector, shall be installed at the clearing limits prior to initiation of clearing and grading. Additional measures will be employed to protect roots where the radius was modified, such as the temporary placement of hog fuel.
- The applicant shall provide a certified arborist to monitor the grading and construction activities to protect the root zones of all the trees to be preserved, to ensure that the health of the retained trees is not endangered, and to identify trees that may constitute a hazard. No excavation or clearing should be performed within drip lines of retained trees, except as specifically approved on plans. All such work shall be done by hand to avoid damage to roots and shall be done under the supervision of an arborist approved by the city.

Authority: Land Use Code 20.20.520, Bellevue City Code 23.76.060

#### **4. Utilities Conceptual Approval**

Utility Department approval of the design review application is based on the final conceptual design submitted with this application. Small changes to the site layout may be required to accommodate the utilities after utility engineering is approved. The water, sewer, and storm drainage systems shall be designed per the current City of Bellevue Utility Codes and Utility Engineering Standards. Utilities Department design review, plan approval, and field inspection is performed under the Utility Developer Extension Agreement (DEA) and Utilities Permit Processes. A water, sewer and storm Developer Extension Agreement will be required for the project. All connection charges will be due with the Developer Extension Agreement prior to issuance of the permit.

Authority: BCC 24.02, 24.04, and 24.06.

### **B. CONDITIONS PRIOR TO ISSUANCE OF ANY PLAT ENGINEERING AND/OR CLEAR AND GRADE PERMIT:**

#### **1. Right-of-Way Use Permit**

The applicant is required to apply for a Right of Way Use Permit before the issuance of any clearing and grading, building, foundation, or demolition permit. In some cases, more than one Right of Way Use Permit may be required, such as one for hauling and one for construction work within the right of way. A Right of Way Use Permit regulates activity within the city right of way, including but not limited to the following:

- a) Designated truck hauling routes.
- b) Truck loading and unloading activities.
- c) Hours of construction and hauling.
- d) Continuity of pedestrian facilities.
- e) Temporary traffic control and pedestrian detour routing for construction activities.
- f) Street sweeping and maintenance during excavation and construction.
- g) Location of construction fences.
- h) Parking for construction workers.
- i) Construction vehicles, equipment, and materials in the right of way.
- j) All other construction activities as they affect the public street system.

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1 In addition, the applicant shall submit for review and approval a plan for providing pedestrian access during  
2 construction of this project. Access shall be provided at all times during the construction process, except when  
specific construction activities such as shoring, foundation work, and construction of frontage improvements  
prevents access. General materials storage and contractor convenience are not reasons for preventing access.

3 Authority: Bellevue City Code 14.30

4 **2. Site (Civil Engineering) Plans**

5 A street lighting plan and site (civil engineering) plan produced by a qualified engineer must be approved by  
6 the City prior to clear and grading permit approval. The design of all street frontage improvements must be in  
7 conformance with the requirements of the Americans with Disabilities Act and the Transportation  
Development Code, and the provisions of the Transportation Department Design Manual. Construction of all  
street and street frontage improvements must be completed prior to closing the clear and grade permit and  
right of way use permit for this project. Authority: Bellevue City Code 14.60; Transportation Department  
Design Manual; Americans with Disabilities Act.

8 **3. No Parking**

9 The following condition shall be noted on the Clear & Grade plans before permit issuance:

10 All roadways that are 24 foot wide shall have parking on one side only;  
11 The other side shall be posted and marked "Fire Lane-No Parking" per Bellevue Standards.

12 Authority: IFC 503.3, and 503.2.7

13 **C. CONDITIONS PRIOR TO FINAL PLAT APPROVAL:**

14 **1. Infrastructure Improvements**

15 All street frontage and infrastructure improvements shown in the final engineering plans or required by city  
16 codes and standards must be either completed prior to approval of the final short plat or provided for with a  
financial assurance device. Completion of the top lift and all other transportation infrastructure items prior to  
completion of the homes associated with the development is allowed.

17 Transportation Development Code Section 14.60.260 provides for a developer to obtain final short plat  
18 approval prior to finishing improvements with provision of an acceptable financial assurance device  
equivalent to 150% of the cost of unfinished infrastructure improvements. Provision of such an assurance  
19 device requires completion of the improvements by the developer within two years of final short plat  
approval. Installation of improvements that would negatively affect safety if left unfinished may not be  
20 delayed through use of a financial assurance device. Partial reductions of the financial assurance device will  
not be approved except in special circumstances, determined in advance, such as phased projects.

21 Improvements must be approved by the Transportation Department inspector before they are deemed  
22 complete. At completion of all transportation infrastructure items, the developer must provide a one year  
maintenance assurance device equivalent to 20% of the value of the transportation infrastructure  
improvements, dating from the acceptance of the improvements.

23 Authority: Bellevue City Code 14.60.100, 110, 130, 150, 170, 190, 210, 240, 241, 260  
24 Transportation Department Design Manual Sections 3, 4, 5, 7, 11, 14, 19

25 **FINDINGS, CONCLUSIONS AND DECISION**  
26 **APPROVING THE HAZELWOOD PRELIMINARY**  
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2. **Street Frontage Improvements**

All street frontage improvements and other required transportation elements including street lighting must be constructed by the applicant and accepted by the Transportation Department prior to final plat approval, except as provided for in BCC 14.60.260. Specific requirements are detailed below:

1. Frontage improvements on Lake Washington Boulevard SE will include the following half street section:
  - a. Pavement widening to accommodate a northbound travel lane.
  - b. Bicycle lane.
  - c. Concrete curb and gutter.
  - d. Minimum 4-foot wide planter strip.
  - e. Street trees spaced an average of 20-25 feet on center within the planter strip.
  - f. Minimum 8-foot wide concrete sidewalk.
  - g. Landscaping, irrigation from a private metered water source, and root barrier within the planter strip and behind the portions of the sidewalk that are within right of way.
  - h. Street lighting to Bellevue Standards.
  - i. ADA-compliant curb ramps shall be installed where needed, consistent with City and WSDOT standard drawings.
  - j. The sidewalk shall be located to allow for a planter strip wider than the minimum of 4 feet, where additional right of way is present.
  - k. The project shall provide sufficient tapers for the new bicycle lane and pedestrian facilities.
  
2. To access the proposed 22-lot plat, a new public road will be required with the following design elements:
  - a. A cul-de-sac turnaround per DEV-01.
  - b. Right of way dedication; 50-foot wide for the road and a 100-foot diameter circle for the cul-de-sac at the end of the public road.
  - c. Public access easements for any portion of the sidewalk that extends into private property.
  - d. A minimum pavement width of 28-feet.
  - e. Street trees spaced an average of 20-25 feet on center within the planter strip.
  - f. Concrete curb and gutter.
  - g. Minimum 4-foot wide planter strip.
  - h. No parking signage as needed.
  - i. Minimum 5-foot wide concrete sidewalk.\* *(Corrected from 6-foot stated in Staff Report, contrary to approved preliminary plat plans. See Ex. H2).*
  - j. Spray irrigation from a private metered water source, landscaping, and root barrier within the planter strip.
  - k. A landscape island in the middle of the cul-de-sac with irrigation from a private metered water source and landscaping.
  - l. Public road monuments.
  - m. The concrete sidewalk shall be continued across the Tract A road entrance to provide demarcation between the public road and the private road on Tract A.
  - n. All overhead facilities in the plat shall be relocated and installed underground.
  - o. Street lighting to Bellevue Standards.
  
3. To provide access to Lots 15, 16, 17, 18, 19, and 20 a private road will be built within Tract A. This road shall have a minimum pavement width of 24 feet to accommodate parking on

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1                   one wide. A 5-foot wide sidewalk shall be installed on one side of the private road and  
2                   extend along the full length of the private road.\* (Corrected from 6-foot stated in Staff  
3                   Report, contrary to approved preliminary plat plans. See Ex. H2). The private road and  
4                   pedestrian facilities shall be located fully within a tract or easement.

- 5                   4. Landings on sloping approaches are not to exceed a 10% slope for a distance of 20 feet  
6                   approaching the back edge of sidewalks. Driveway grades must be designed to prevent  
7                   vehicles from bottoming out due to abrupt changes in grade.
- 8                   5. Vehicle and pedestrian sight distance must be provided per BCC 14.60.240 and 14.60.241.
- 9                   6. The private road shall not be gated or obstructed and must remain open at all times for  
10                  emergency and public service vehicles. A note to this effect shall be placed on the face of  
11                  the final Subdivision map.
- 12                  7. The maintenance responsibility for the private road shall be included in a note on the face of  
13                  the final Subdivision map.

14                  Authority: Bellevue City Code 14.60.100, 110, 130, 150, 170, 190, 210, 230, 240, 241;  
15                  Transportation Department Design Manual Sections 3, 4, 5, 7, 11, 14, 19

16                  **3. Pavement Restoration**

17                  Pavement restoration associated with street frontage improvements or to repair damaged street surfaces shall  
18                  be provided as follows:

19                  Lake Washington Boulevard SE: This street was recently overlaid and a five year no-street cut moratorium is  
20                  currently in effect. Should street cuts prove unavoidable or if the street surface is damaged in the construction  
21                  process, a half-street or full-street (depending on the extent of street cuts or damage) grind and overlay will be  
22                  required for a minimum length of 50 feet.

23                  Authority: BCC 14.60. 250; Design Manual Design Standard #23

24                  **4. Pipe Monuments**

25                  Permanent pipe monuments shall be set along the street centerline at all intersections, curve tangent points,  
26                  and cul-de-sac radius points. Said pipe monuments shall be a Bertsen A130 Aluminum Standard Monument  
(30" long), or equivalent, together with standard iron casting case and cover. These materials and  
specifications are shown in City of Bellevue Standard Drawing DEV-12 (Cap Detail B).

Authority: LUC 20.45A.030; RCW 58.17.240

**5. Tree Preservation Plan**

A Tree Preservation Plan that portrays the drip-line, the diameter size, and common name of each significant  
tree to be retained must be recorded with the final plat Mylar. The Tree Preservation Plan must contain the  
following note:

***Tree Preservation Plan***

*Designation of trees on the Tree Preservation Plan establishes a covenant by the owner to  
leave undisturbed all trees as shown on the Tree Preservation Plan. This covenant shall  
run with the land and shall be binding upon all future owners. No tree topping, tree cutting  
or tree removal shall occur unless required or approved by the City. Except for ordinary*

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1 *landscape maintenance, no construction, clearing or land alteration activities shall occur*  
2 *within the drip-line of trees shown on the Tree Preservation Plan, unless required or*  
3 *approved by the City. Activities in violation of this covenant are subject to penalty,*  
4 *including without limitation, fines and mitigation requirements. The City of Bellevue shall*  
5 *have the right, but not the obligation, to enforce the requirements, terms and conditions of*  
6 *this covenant by any method available under law. It is the obligation of the owner to*  
7 *comply with the terms of the Tree Preservation Plan and this covenant.*

8 Authority: Land Use Code 20.20.900.D.3

9 **6. Recreational Open Space**

10 The storm tract shall be labeled as providing private open and recreational space on the final plat. Authority:  
11 LUC 20.45A.130.A.1

12 **7. Utility Easements**

13 Water, sewer and storm easements will be required on the final short plat and the following language will be  
14 needed on the final short plat document for recording:

15 ***Public Water & Sewer Easement Provisions***

16 *A perpetual easement is hereby dedicated to the City of Bellevue, a Washington municipal*  
17 *corporation, over, across, through and under (make reference to various areas on plat; e.g.*  
18 *Exterior 10 feet of Lot 1, private Tract B, etc.), for the purpose of constructing, installing,*  
19 *reconstructing, replacing, repairing, maintaining and operating public water and sanitary sewer*  
20 *systems, including pipelines, water meters and all necessary connections and appurtenances*  
21 *thereto, together with the right of ingress thereto and egress there from. The use of such area*  
22 *immediately adjacent to the above easement is also dedicated to the City of Bellevue and/or its*  
23 *agents or contractors as reasonably required for the construction and maintenance of the public*  
24 *water and sanitary sewer systems located within the easement. Use of the additional area adjacent*  
25 *to the easement shall be limited to the purposes described herein, and immediately after the*  
26 *construction and/or installation of said public water and sanitary sewer systems, the City of*  
*Bellevue shall restore the premises as near as may be to its condition immediately before such*  
*construction or entry. The private owners shall retain the right to use the surface of said easement*  
*and adjacent area provided that said use does not interfere with the easement rights conveyed*  
*herein and provided that no permanent buildings or structures are erected on said easement.*

***PRIVATE EASEMENT PROVISIONS:***

*The Private Access and Utility Easement shown over and across (make reference to various areas*  
*on plat; e.g. Exterior 10 feet of Lot 1, private Tract B, etc.) is established for the benefit of the*  
*owner(s) (of Lot(s) #). The cost of maintenance, repairs or reconstruction of that portion of the*  
*road used in common shall be borne in equal shares, and when necessary to repair, clean or*  
*reconstruct the road, the property owner (to whom the easement benefits) shall have a right of*  
*entry for that purpose. The Private Access and Utility Easement shall remain open and*  
*unobstructed at all times for emergency and public service vehicles, and shall be posted and*  
*marked on one side "Fire Lane - No Parking" per Bellevue Standards. The covenants herein shall*  
*run with the land and shall forever be binding upon all parties, their heirs, successors and assigns.*

***Conveyance system***

*The Private Storm Drainage Easement shown over and across (make reference to various areas on*  
*plat; e.g. Exterior 10 feet of Lot 1, private Tract B, etc.) is established for the benefit of the*  
*owner(s) (of Lot(s) #) and for the purpose to operate and maintain a storm water runoff*

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1 conveyance to a public or private surface water system or facility. The cost of maintenance,  
2 repairs or reconstruction of that portion of the storm system used in common shall be borne in  
3 equal shares, except that the owners of any lower parcel shall not be responsible for the part of the  
storm system above their connection; and when necessary to repair, clean or reconstruct the storm  
system, the property owner(s) (to whom the easement benefits) shall have a right of entry for that  
purpose.

4 **Runoff control and water quality**

5 That portion of the storm system used in common over and across (make reference to various areas  
6 on plat; e.g. Exterior 10 feet of Lot 1, private Tract B, etc.) is for the benefit of the owner(s) (of  
7 Lot(s) #) and for the purpose to operate and maintain an on-site surface water facility to infiltrate,  
8 disperse, and/or detain storm water runoff together with water quality treatment. The cost of  
maintenance, repairs or reconstruction of that portion of the storm system used in common shall be  
borne in equal shares by all lot owners benefited by the facility; and when necessary to repair,  
clean or reconstruct the storm system, the property owner(s) (to whom the easement benefits) shall  
have a right of entry for that purpose.

9 Storm drainage system and maintenance shall conform to the operation and maintenance schedule  
10 as approved by the City of Bellevue and filed with the Recorder's Office of King County,  
Washington.

11 **Private joint use lines**

12 The Private Sanitary Sewer Easement shown over and across (make reference to various areas on  
13 plat; e.g. Exterior 10 feet of Lot 1, private Tract B, etc.) is established for the benefit of the  
14 owner(s) (of Lot(s) #). The cost of maintenance, repairs or reconstruction of that portion of the  
sanitary sewer system used in common shall be borne in equal shares, except that the owners of  
any lower parcel shall not be responsible for the part of the sanitary sewer system above their  
connection; and when necessary to repair, clean or reconstruct the sanitary sewer system, the  
property owner(s) (to whom the easement benefits) shall have a right of entry for that purpose.

15 **Private water lines beyond back of meter**

16 The Private Water Easement shown over and across (make reference to various areas on plat; e.g.  
17 Exterior 10 feet of Lot 1, private Tract B, etc.) is established for the benefit of the owner(s) (of  
18 Lot(s) #). The cost of maintenance, repairs or reconstruction of that portion of the water system  
used in common shall be borne in equal shares, except that the owners of any lower parcel shall  
not be responsible for the part of the water system above their connection; and when necessary to  
repair, clean or reconstruct the water system, the property owner(s) (to whom the easement  
benefits) shall have a right of entry for that purpose.

19 Authority: BCC 24.02, 24.04, and 24.06.

20  
21 **D. CONDITION APPLIED PRIOR TO ISSUANCE OF ANY BUILDING PERMIT FOR A SINGLE FAMILY  
RESIDENCE IN THE SUBDIVISION**

22 **1. Fire Sprinklers**

23 Sprinkler requirements will be determined at the building permit stage. Authority: International Fire  
24 Code 503.3, and 503.2.7.

25 **FINDINGS, CONCLUSIONS AND DECISION**  
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**NOTICE OF RIGHT TO APPEAL**  
(Pursuant to Resolution No. 5097)

**RIGHT TO APPEAL-TIME LIMIT**

A person who submitted written comments to the Director prior to the hearing, or submitted written comments or made oral comments during the hearing on this matter, may appeal the decision of the Hearing Examiner to the Bellevue City Council by filing a written appeal statement of the Findings of Fact or Conclusion being appealed, and paying any appeal fee, no later than 14 calendar days following the date that the decision was mailed. The appeal must be received by the City Clerk by **5:00 p.m. on Thursday, May 18, 2017.**

**TRANSCRIPT OF HEARING-PAYMENT OF COST**

An appeal of the Hearing Examiner's decision requires the preparation of a transcript of the hearing before the Hearing Examiner. Therefore, the request for appeal must be accompanied by an initial deposit of \$100. Should the actual cost be less the amount of the deposit, any credit due shall be reimbursed to the appellant. Should the cost for transcript preparation be more than the deposit, the appellant will be additionally charged.

**WAIVER OF TRANSCRIPTION FEE**

Upon request, the City Clerk will waive transcription fees upon submission by an appellant of the following documentation: a) an affidavit stating that the appellant's net financial worth does not exceed \$20,000; b) an affidavit stating that the appellant's annual income does not exceed \$5,200; c) a brief statement of the issues sought to be reviewed; d) a designation of those parts of the record the party thinks are necessary for review; e) a statement that review is sought in good faith.

The transcription fee waiver is available to individuals over eighteen (18) years of age and is not available to corporations, companies, partnerships, or any business, enterprise, community club or and social recreational organization.

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