



1 foundations and fences of adjoining property owners. Adjoining property owners also testified that  
2 they would not grant any temporary construction easements for development of the access tracts  
3 and it does not appear possible to construct needed improvements without these easements. Since  
4 the private access tracts proposed by the applicant do not meet city code and the noncompliance  
5 does not qualify for a modification, the subdivision must be denied.

6 The applicant has requested a remand instead of denial. That request cannot be granted. The  
7 Renton Municipal Code gives no express authority to the examiner to remand an application for  
8 further modification. Even if that authority were granted or could be implied, the remand would  
9 have to be limited to matters that could be delegated for final staff approval, since the City's code  
10 review process must be interpreted in light of the Regulatory Reform Act mandate that land use  
11 permit review be limited to one public hearing. As noted in the staff report, the revisions necessary  
12 to bring this proposal into conformance with applicable development standards could be substantial  
13 and may involve a significant amount of discretionary as opposed to ministerial decision making.  
14 These types of decisions and project modifications cannot be delegated to final staff decision  
15 making. Any such decisions and modifications must be approved by the hearing examiner after an  
16 opportunity for public review and comment. Denial is the only appropriate resolution to this  
17 application.

18 One important point that the parties should keep in mind is that if the applicant reapplies there will  
19 be a completely new set of access standards that apply to the two 24 foot access tracts. The  
20 pertinent standards that apply to the access tracts were amended by Renton Ordinance 5727 after the  
21 vesting date for the application subject to this decision. Any re-application will have to comply  
22 with the new access standards adopted in Renton Ordinance No. 5727. RMC 4-6-060(J)(2) was  
23 amended by Ordinance No 5727 such that the minimum 26 foot easement width no longer applies.  
24 Further, RMC 4-6-060(K), the access alternative advocated by staff for the application subject to  
25 this decision, was repealed by Ordinance No. 5727<sup>1</sup>.

## 17 II. TESTIMONY

18 Clark Close, Renton planner, summarized the proposal. Staff is requesting denial as opposed to the  
19 remand requested by the applicant. Winsper, the subdivision creating the parcel proposed for  
20 subdivision, was approved in 1991 by King County. Adequate access could be accomplished by  
21 converting the two access tracts into driveways that serve fewer lots.

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23  
24 <sup>1</sup> The conclusion regarding re-application standards in this decision are advisory only, provided in order to prevent  
25 any public confusion over the consequences of this decision. The parties to a reapplication will be free to argue any  
26 alternative vesting argument they believe applies to the proposal and this decision should not be considered as  
binding on the vesting issue.

1 Rory Dees, applicant, requested that the project be remanded to address the access issues raised by  
2 staff. He noted that the City had initially not had any problems with the proposed access. Mr. Dees  
did not wish to withdraw his application.

3 Vanessa Dolbee, planning manager, requested denial as opposed to remand because the applicant  
4 had declined to revise their proposal prior to the hearing. A denial would provide an opportunity  
5 for public comment on a new proposal through a reapplication process.

6 Carl Kiminki, neighbor, noted that traffic has increased by 75% over the years. Talbot and Grady  
7 suffer from congestion. Currently the open drainage on the property often gets clogged.

8 Nona Braun, neighbor, had concern over the use of the cul-de-sac and increased traffic in the cul-  
de-sac.

9 Ulf Goranson vice president of HOA, had concern over the use of the access tracts for so many lots.

10 Mary KlaasSchultz, noted that the side yards of the proposed lots would abut the rear yards of  
11 adjoining homes, creating privacy issues. She noted that the proposal will create flag lots that are  
12 not part of the existing subdivision. Her house would be just a few feet from the proposed access  
13 street. The access tracts only provide for half the width required by city code. Because of the 50  
14 foot change in grade, drainage is a serious concern. The proposed six inch gutters aren't sufficient  
15 for drainage control and are far less than adjoining curb/gutter requirements. There are  
discrepancies in the tree retention documents. Ms. Schultz isn't opposed to development but  
believes that street standards should be followed. Safety walls should be included as well as a fire  
access turn around.

16 Doug Dalen, neighbor, noted that one of the big selling points for his lot was the tree sanctuary of  
17 the subject parcel. Animals such as deer will be forced into his property because of the  
development. Property values will go down.

18 Jake Hertz, neighbor, has a backyard that adjoins the development. Houses will look directly into  
19 his backyard. When trees are removed, his backyard will look directly into the second floor of the  
20 new homes. His yard slopes into the subject property, which will cause flooding of the proposed  
lots.

21 Byron Gangwish, neighbor, noted that once the homes are built it will be too late to address  
22 drainage. The private access tract will be close to his house and he is uncomfortable sleeping five  
feet from the road.

23 Sharon Gangwish, neighbor, noted the easement slope is over 15% grade. The retaining wall will  
24 be five feet from her home. A pond is also on her property next to the proposed road with Koi and  
25 associated improvements. The road and needed temporary construction easement will result in the  
destruction of her fence and pond.

1 Luz Chan, neighbor, abuts one of the access easement. She doesn't feel safe with the road just five  
2 feet from her home. She also has a concern over the lighting of the access tracts and light trespass  
3 onto her property. She is also concerned about drainage. She has had to hire contractors to address  
4 drainage onto her property. Development of the access tracts will prevent her from accessing her  
5 rear yard from the exterior.

6 Dylan Moline, neighbor, noted that one of the reasons he moved to his new home was to get away  
7 from the noise in Kirkland and he doesn't want to have to live with a year of construction noise for  
8 the proposed development.

9 Bruce Wicks, neighbor, wanted to be on record as opposing the development.

10 Virginia Klaas, neighbor, abuts one of the access tracts. She argued that the tracts were intended to  
11 serve a single home. She noted that one tract has a curb cut and the other does not and that the curb  
12 cut is narrower than her and other driveways in the vicinity. She noted that the access tract without  
13 a curb cut may have been intended for emergency access or a bike tract. She further noted that the  
14 width of the tracts didn't comply with the applicable King County road standards when the tract  
15 was created. She noted that the side yard requirements for the homes along the access tracts is 15  
16 feet and that the access tracts don't comply with minimum width requirements. The proposed roads  
17 also don't comply with fire access turn-around requirements.

18 Bruce Truong, neighbor, objected to the proposal because it would necessitate the removal of lights  
19 necessary for road safety. The proposal would cause a lot of overflow parking. He said the road  
20 system in the area has blind spots that will affect emergency response. Development of the property  
21 would also displace wildlife such as snakes into the adjoining neighborhood.

22 Jerome Jaeb, neighbor, stated that the project does not meet numerous city development standards,  
23 including road width and side yards. He believes a detailed survey is necessary to find  
24 encroachments in the area. The steep slopes of the access easements necessitate retaining walls and  
25 there isn't sufficient space for the walls. There are no street lights proposed and inadequate access  
26 for pedestrians.

Rich Perteet, neighbor, is a civil engineer. He had always assumed that the 24 foot easements were  
for driveways, otherwise wider side yard setbacks would have been imposed of the adjoining  
homes. He was also concerned about lack of pedestrian access.

Bill Smith, neighbor, past president of Winsper HOA, opposes the project because of increased  
traffic and the watershed behind the project will attract trash and pedestrians.

Andrea Smith, neighbor, strongly opposes the proposal for safety and aesthetic reasons. She noted  
the project will diminish the livability of the Winsper community.

Sheryl Perteet, neighbor, stated she opposed the project.

1 Vicki Grover, Renton Public Works civil engineer, testified that the access tracts could not be  
2 constructed without putting the foundations and fences of adjoining homes at risk.

3 Rory Dees, applicant, testified that prior planners had told him his proposal was acceptable. He was  
4 shocked to see the planning staff now recommend denial of the proposal. He stated he purchased  
5 his property based upon comments from the city that he could divide his property as proposed. He  
6 inquired why the property was zoned to allow the density he proposed if that wouldn't be allowed.  
7 Mr. Dees also noted that RMC 4-6-060(K) allows three lots to be served if one of the lots doesn't  
8 have public frontage.

### 9 III. EXHIBITS

10 The 43 exhibits identified in the staff report and environmental review report were admitted. In  
11 addition, the following were admitted during the hearing:

- 12 Exhibit 44: Staff power point.
- 13 Exhibit 45: Email from applicant requesting continuance and email order denying request.
- 14 Exhibit 46: City of Renton core maps located at City's website
- 15 Exhibit 47: Google maps of subject property.
- 16 Exhibit 48: Schultz power point presentation.
- 17 Exhibit 49: Gangwish powerpoint.
- 18 Exhibit 50: Klaas powerpoint.
- 19 Exhibit 51: Jerome Jaeb powerpoint.

### 20 IV. FINDINGS OF FACT

#### 21 Procedural:

- 22 1. Applicant. Rad Holdings, LLC.
- 23 2. Hearing. A consolidated hearing on the preliminary plat application and modification request  
24 was held on July 14, 2015.

#### 25 Substantive:

- 26 3. Project Description. The applicant has applied for approval of a nine lot preliminary plat  
and a modification to private street width standards. There are two single family residences (3106  
and 3112 Talbot Road South) located on the subject parcel that gain access to the site from Talbot  
Road South. The single family house located at 3106 would remain and be incorporated into the  
subdivision as Lot 9, while the house located at 3112 is on a septic system and would be demolished.  
Together the nine (9) residential lots (8 new + the remaining single family house) would result in a  
density of 4.23 du/ac. Residential lot sizes range from 4,502 sf to 18,169 sf with an average lot size  
of 7,954 sf. In addition to the 9 residential lots, four (4) tracts are proposed for access roads,  
sensitive areas, and stormwater detention. The eight (8) new residential lots would be served from

1 Winsper Division No. 1 Subdivision (Tract G and Tract H) via two dedicated ingress/egress  
2 easement areas of 24 feet in width through the development on S 32nd Place. There are 142  
3 significant trees on the site and the applicant is proposing to retain 27 original trees. A detention  
4 vault in the westerly portion of the site is proposed within Tract D which would discharge into the  
5 existing conveyance system on the east side of Talbot Road.

6 RMC 4-6-060(J)(2) requires private access road easements to be a minimum of 26 feet in width.  
7 Tracts G and H, which are proposed to serve as private access roads, are only 24 feet in width.  
8 Consequently, the applicant has requested a street modification pursuant to RMC 4-9-250(D)(2).

9 The applicant filed the subject preliminary plat application on August 1, 2014 and it was found  
10 complete by the City on August 14, 2014.

11 4. Surrounding Area. The subject site is surrounding on all sides by single family residential  
12 development zoned R-8.

13 5. Adverse Impacts of Proposed Street Modification. The proposed modification to the 26 foot  
14 width requirement for the access tracts imposed by RMC 4-6-060(J)(2) would exacerbate a safety  
15 hazard and jeopardize adjoining property improvements. The road improvements identified within  
16 the preliminary plat plan sheets show two (2) 10-foot wide paved lanes with vertical curb and gutter  
17 through each tract. City of Renton staff have concern regarding the constructability of these  
18 accesses due to the slope of the site. Both accesses would be required to construct retaining walls  
19 along the eastern sides of both access roads. The eastern most access has a slope in excess of 15%  
20 and requires a minimum of 1.5 feet of clear zone between the back of the curb and the face of the  
21 retaining wall. The construction of the retaining walls proposed for both accesses would require  
22 temporary construction easements to be obtained from the adjoining property owners. At the July 14  
23 hearing the property owners testified they would not grant the needed easements. The temporary  
24 construction easements may not be feasible due to the close proximity of other private existing  
25 structures located in the area where the retaining walls would need to be constructed.

26 Due to the lack of sufficient width within the existing tracts and the proximity of the existing homes  
to the proposed new roadway a safety hazard would be created as a result of the construction of a  
substandard private street, as the access roads would have virtually no shoulder (Exhibits 18-23).  
Due to the proposed future cross section, public works staff have concluded that any vehicular  
incident along these narrow access tracts could result in injury and/or property damage to the  
adjacent home owners or the driver of the vehicle. Specifically, this is due to the lack of space to  
"correct" and/or adjust a vehicular movement and at the same time avoiding the existing residences.  
Vicki Grover, a civil engineer from the City's Public Works Department, testified in her  
professional opinion that construction of the access roads on the two access tracts (G and H) would  
jeopardize adjoining fences and home foundations. For these reasons, staff have concluded that the  
construction of a private street through a substandard access easement would result in a detriment to  
public safety and general welfare as it pertains to the existing constructed homes at 618, 624, 652,  
and 700 S 32nd Pl and any future vehicles that may utilize the proposed private street.

1 Another uncontested safety hazard attributable to the Tract G and H is dangerous walking  
2 conditions for school children. Due to the narrow width and installation of retaining walls, the  
3 proposed access tracts would not have sidewalks or a usable road shoulder upon which children

4 Given the plausibility of the staff's analysis and the absence of any evidence to the contrary, it is  
5 determined that staff's conclusions on the safety and property hazards of the proposed access are  
6 correct. Although the requested reduction in width by two feet from required access standards is not  
7 solely responsible for the safety and property hazards created by the proposed access, it is clear that  
8 the reduction will materially exacerbate those hazards given the small amount of room in which  
9 vehicles have to maneuver within the access tracts.

## 10 CONCLUSIONS OF LAW

11 1. Authority. RMC 4-7-020(C) and 4-7-050(D)(5) provide that the Hearing Examiner shall  
12 hold a hearing and issue a final decision on preliminary plat applications. RMC 4-9-250(D)(2)  
13 grants the Community and Economic Development Administrator or his/her designee the authority  
14 to approve modifications to development standards. The waiver is classified as a Type I permit by  
15 RMC 4-8-080(G). However, RMC 4-8-080(C)(2) requires consolidated permits to each be  
16 processed under "the highest-number procedure". The modification request has been consolidated  
17 with the preliminary plat application, which is classified as a Type III application by RMC 4-8-  
18 080(G). Consequently, the modification request is also classified as a Type III application, which is  
19 subject to hearing examiner approval pursuant to RMC 4-8-080(G).

20 2. Proposal Must Comply With RMC 4-6-060 for Approval. All applicable street standards set  
21 by RMC 4-6-060 must be met in order to acquire preliminary plat approval. Chapter 4-7 RMC  
22 governs the criteria for preliminary plat review. RMC 4-7-150(B) expressly provides that street  
23 access by private roads is acceptable "*per the requirements of the street standards [RMC 4-6-060]*".  
24 RMC 4-7-080(B)(4) requires that a subdivision must make adequate provision for streets. This is  
25 consistent with RCW 58.17.110, which also requires a finding that a preliminary plat makes  
26 appropriate provision for streets and also that appropriate provision is made for public safety. The  
street standards of RMC 4-6-060 are Renton's legislative standard for street  
adequacy/appropriateness as required by RMC 4-7-080(B)(4) and RCW 58.17.110. Further, as  
demonstrated by the City staff for the substandard access proposed by the applicant, the failure to  
comply with street standards can create public safety problems.

3. Access Tracts G and H Fail to Comply with RMC 4-6-060 Because of Insufficient Width.  
Access Tracts G and H fail to comply with RMC 4-6-060 because they are only 24 feet in width.

1 RMC 4-6-060(J)(2), as vested for this application, required a minimum width of 26 feet for the  
2 access tracts. The tracts are at least<sup>2</sup> two feet short of the required 26 feet.

3 RMC 4-6-060(J)(1) also requires that at least of the lots served by each access tract must abut public  
4 right of way. The preliminary plat drawings do not show any of the eight lots accessed by Tracts G  
5 and H as abutting public right of way. Unless Tracts G and H were lawfully integrated into four of  
6 the lots as the “handle” of panhandle lots, it is unclear from the record how the proposal was made to  
7 comply with the requirement to abut public right of way. Since the applicant and staff were not  
8 given an opportunity to address this issue during the hearing and the plat already cannot be approved  
9 due to the width issue, the public abutment issue will not be resolved in this decision. However,  
10 should the applicant reapply, the applicant will still have to comply with RMC 4-6-060(J)(1)(a) as  
11 amended by Renton Ordinance No. 5727. As amended, RMC 4-6-060(J)(1)(a) now requires that at  
12 least one of the lots served by the access tract must abut a public right of way with at least 50 linear  
13 feet of property.

14 4. Insufficient Width of Access Tracts G and H Fails to Qualify for Modification. The  
15 applicant’s request for modification of the 26 foot width requirement of RMC 4-6-060(J)(2) to 24  
16 feet cannot be approved because the insufficient width exacerbates safety and property hazards  
17 created by the narrow width of Access Tracts G and H. The pertinent criteria for modification  
18 requests, governed by RMC 4-9-250(D)(2), are as follows:

- 19 *a. Substantially implements the policy direction of the policies and objectives of the*  
20 *Comprehensive Plan Land Use Element and the Community Design Element and the*  
21 *proposed modification is the minimum adjustment necessary to implement these policies and*  
22 *objectives;*
- 23 *b. Will meet the objectives and safety, function, appearance, environmental protection and*  
24 *maintainability intended by the Code requirements, based upon sound engineering judgment;*
- 25 *c. Will not be injurious to other property(ies) in the vicinity;*
- 26 *d. Conforms to the intent and purpose of the Code;*
- e. Can be shown to be justified and required for the use and situation intended*

As determined in Finding of Fact No. 5, the proposed access tract width modification exacerbates  
significant safety and property hazards created by the proposed development of Access Tracts G and  
H for private roads. For this reason, none of the modification criteria above are met. RMC 4-6-  
060(A) provides that the purpose of the street standards of RMC 4-6-060 is to “ensure reasonable  
and safe public access to public and private properties”. Since the proposed width reduction would  
exacerbate unsafe access conditions, the purpose of RMC 4-6-060 would not be met. As further

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<sup>2</sup> Some of the public comment letters asserted that the actual width of the tracts was even less than 24 feet, according  
to the measurements of some of the neighbors. As noted in the written staff response to these comments, a  
professional survey depicting the narrower widths would be necessary to sufficiently counter the 24 foot widths  
depicted in the approved King County plat documents that created the tracts.

1 determined in Finding of Fact No. 5, the proposal jeopardizes the foundation and fences of  
2 adjoining homes, such that it cannot be concluded that the proposal would not be injurious to other  
3 properties in the vicinity as required by the criteria quoted above. For these reasons alone the  
4 requested modification clearly cannot be granted. There was also compelling evidence presented by  
5 Mr. Perteet and Mr. Schultz to suggest that the requested modification is not justified since the  
6 access tracts do not appear to have been intended to serve more than one or two residential lots at  
7 the time they were approved by King County.

8 5. Proposed Preliminary Plat Cannot be Approved. As previously concluded, the proposal  
9 must comply with RMC 4-6-060 in order to be approved. As further previously concluded, the  
10 proposal fails to comply with RMC 4-6-060(J)(2). Consequently, the proposal cannot be approved.

11 6. Remand Not An Option. The applicant has requested a remand instead of denial. That  
12 request cannot be granted. The Renton Municipal Code gives no express authority to the examiner  
13 to remand a subdivision application for further modification. RMC 4-8-100(G)(4), "*Conditions and*  
14 *Decision Options and Criteria*", provides that the examiner "*may approve or deny or provide a*  
15 *recommendation to the City Council*" regarding permit applications. No part of the RMC grants the  
16 examiner any express authority to remand subdivision applications. Even if that authority could be  
17 implied or there was some express authority for remand, the remand would have to be limited to  
18 one public hearing. See RCW 36.70B.050(2). As noted in the staff report, the revisions necessary  
19 to bring the proposal into conformance with applicable development standards could be substantial  
20 and involve a significant amount of discretionary as opposed to ministerial decision making. These  
21 types of decisions and project modifications cannot be delegated to final staff decision making.  
22 Any such decisions and modifications must be approved by the hearing examiner after an  
23 opportunity for public review and comment. Denial is the only appropriate resolution to this  
24 application.

## 25 DECISION

26 The proposed preliminary plat is denied because access Tracts G and H do not comply with  
Renton's street standards due to insufficient width. The requested modification to the width  
requirement is denied because the reduced width would exacerbate safety and property hazards  
associated with development of Tracts G and H as a private road.

DATED this 28<sup>th</sup> day of July, 2015.

  
Phil A. Olbrechts

**APPEAL RIGHTS AND VALUATION NOTICES**

RMC 4-8-080 provides that the final decision of the hearing examiner is subject to appeal to the Renton City Council. RMC 4-8-110(E)(14) requires appeals of the hearing examiner's decision to be filed within fourteen (14) calendar days from the date of the hearing examiner's decision. A request for reconsideration to the hearing examiner may also be filed within this 14 day appeal period as identified in RMC 4-8-110(E)(13) and RMC 4-8-100(G)(9). A new fourteen (14) day appeal period shall commence upon the issuance of the reconsideration. Additional information regarding the appeal process may be obtained from the City Clerk's Office, Renton City Hall – 7<sup>th</sup> floor, (425) 430-6510.

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