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BEFORE THE HEARING EXAMINER FOR THE CITY OF MILL CREEK

RE: Harms Estate

Preliminary Plat/PAD

File No. PP 15-67

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL DECISION

SUMMARY

The applicant has requested approval of a 28-lot preliminary plat and planned area development (“PAD”) located at located at 3601 Seattle Hill Road. Via PAD review, the applicant requests modifications to minimum lot area and setback standards set by the City’s zoning code. The preliminary plat and PAD are approved, including all requested modifications, subject to conditions.

EXHIBITS

The following exhibits were admitted during the November 16, 2015 hearing:

- Exhibit 1: Staff Report, revised by staff during hearing, including attachments A-C and documents identified in Attachment D.
- Exhibit 2: Staff power point presentation

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is Harbour Homes LLC.

1 2. Hearing. A hearing was held on the subject application on November 16, 2015 at 6:00 pm in
2 the City of Mill Creek Council Chambers.

3 3. Project Description. The applicant has requested approval of a 28-lot preliminary plat and
4 planned area development (“PAD”) application, to be accessed from an existing stub-out road
5 located on the east side of 35th Ave. SE at 149th Pl. SE. The proposal also includes separate tracts
6 designed to accommodate drainage facilities, access to lots, wetlands, open space and roadway
7 buffers. The project site is 7.13 acres in size and is currently developed with two single-family
8 residences. The project site is located at 3601 Seattle Hill Road.

9 Through the PAD process the applicant requests modifications to minimum lot size and setback
10 requirements. Proposed modifications to setbacks are as follows:

11 Front yard setbacks:

- 12 • 20 feet for the garage side of the lot and 10 feet on the non-garage side of corner lots (20
13 foot front yard setbacks required by MCMC 17.06.050).

14 Rear yard setbacks:

- 15 • 10 feet for Lots 1 and 2; 15 feet for Lots 3-28 (20 foot rear yard setbacks required by
16 MCMC 17.06.050).

17 Side yard setbacks:

- 18 • 10 feet total; no side less than 5 feet (20 foot total side yard setbacks required by MCMC
19 17.06.050).

20 As to the PAD request to modify minimum lot size, the applicant requests lots ranging in size from
21 4,175 sq. ft. minimum to 9,248 square feet, with an average lot size of 5,209 square feet. Specific
22 lot sizes are identified in the proposed preliminary plat map, Ex. 1(B). MCMC 17.06.040 requires a
23 minimum lot size of 8,400 square feet for the proposal.

24 4. Adequacy of Infrastructure. The proposed preliminary plat/PAD provides for adequate and
25 appropriate infrastructure. City public works and planning staff have reviewed the proposed
26 infrastructure improvements associated with the project and have determined that if recommended
conditions are implemented, the preliminary design of the proposal will meet City standards for
infrastructure. All staff recommended conditions of approval have been adopted by this decision.
Given that the City’s development standards address all pertinent infrastructure needs created by the
proposal and that there is no evidence or reasonable inference that any infrastructure may not be
adequate or appropriate, the staff findings of compliance are sufficient to establish adequate and
appropriate infrastructure, addressed in greater detail below:

A. Drainage. Public works staff have reviewed the preliminary drainage design against the City’s
stormwater standards and found the design to be in compliance. Stormwater from the proposed
development will be collected and conveyed in a closed system of catch basins and pipes into
two underground vaults, which will provide both flow control and water quality treatment. The

1 outfall from the northern vault will be directed to Tract 998 and the southern vault will be
2 connected to the Seattle Hill Road system, which will maintain pre-developed drainage patterns.

3 B. Transportation. Off-site traffic impacts have been addressed through SEPA review. Impact
4 fees have been assessed through SEPA to address proportionate share impacts to traffic
5 facilities in the City as required by City Ordinance No. 2011-735 as well as unincorporated
6 Snohomish County via an interlocal agreement. A traffic study submitted as part of the SEPA
7 review established that the proposal will not violate adopted level of service standards. The
8 developer is required to install improvements along the Seattle Hill Road frontage in accordance
9 with MCMC 16.16.050. However, due to an upcoming planned road widening project by
10 Snohomish County, these improvements will be limited to coordination of drainage facilities, as
11 well as dedication of right-of-way and drainage easements as needed to Snohomish County on
12 the final plat.

13 C. Parking. The proposal provides parking throughout the site in garages, driveways, and on the
14 public road where feasible. Per MCMC Section 17.27.020, Off-street Parking and
15 Requirements, single-family dwellings shall have two spaces per dwelling unit. As proposed,
16 each unit has four off-street parking spaces, two in the garage and two in the driveway.

17 D. Landscaping and Project Design (Chapter 17.34 MCMC). As required by City Code and
18 included as a condition of approval, all proposed landscaping (except on private lots) is required
19 to be submitted to the City's Design Review Board for review and approval for consistency with
20 the Design Standards in MCMC Chapter 17.34 prior to Final Plat Approval.

21 E. Parks and Open Space. Approval of the Preliminary Plat/Planned Area Development will
22 increase the demand upon the City's park and recreation facilities by allowing the construction
23 of a total of 28 single-family residential dwelling units. Therefore, to mitigate the project's
24 impacts on park and recreation facilities, mitigation fees are required for the development of
25 neighborhood parks and community parks. Mitigation fees to offset impacts to parks and
26 recreation facilities are calculated in accordance with Resolution 2013-503.

MCMC 17.22.060 governs the City's open space requirements. For subdivisions, MCMC
17.22.060 only generally requires that the amount of open space must be proportional to the
number of dwelling units. In the absence of precise standards and studies supporting the need
for open space, the general requirements of MCMC 17.22.060 would be legally challenging to
enforce on their own. If a municipality wishes to make a developer set aside land for park
purposes, the municipality has the burden of proof in establishing the need for that park space.
Failure to establish that need can create an unconstitutional taking of property without just
compensation. See *Isla Verde Int'l Holdings v. City of Camas*, 146 Wn.2d 740 (2002). Even
without these constitutional limitations, the open space provided by the applicant exceeds any

1 reasonable interpretation of the proportionality requirements of MCMC 17.22.060. The
2 proposal provides approximately 15,000 square feet of common open space and 88,000 square
3 feet of wetland and/or buffer native growth protection area and tree retention/preservation area.
4 Tract 999 will be a storm drainage and open space area, which will include a play structure,
5 picnic table and benches. All of this open space clearly provides for adequate and appropriate
park and open space and also exceeds applicable permitting standards to constitute a public
benefit under PAD review.

6 F. Fire Services. The City of Mill Creek and Snohomish County Fire District No. 7 have executed
7 an Interlocal Agreement for mitigation of development impacts on fire facilities/services.
8 Mitigation fees are determined by the anticipated impact a development will have on Fire
9 District No. 7 facilities. Based on the provisions of the agreement, the mitigation required is
10 \$365 per equivalent development unit (EDU). Giving credit to one existing single family
dwelling unit, the fire mitigation fees required by the agreement and imposed by the conditions
of approval of this decision total \$9,855.00.

11 G. Schools. The City of Mill Creek and the Everett School District have executed an Interlocal
12 Agreement for mitigation of development impacts on district facilities. Mitigation fees are
13 calculated per the Interlocal Agreement between the City and Everett School District. School
14 impact fees imposed pursuant to the agreement total \$68,013.00 and are imposed as a condition
15 of this decision. The proposal also assures safe walking conditions to and from schools, as all
interior streets have sidewalks and these sidewalks connect to an exterior network of sidewalks
that connect to the one school within walking distance as well as the school bus stop that will
serve the development, located at the intersection of 149th Place SE and d35 Avenue SE.

16 F. Transit. The proposal provides for adequate transit, to the extent that transit improvements can
17 be legally required of the applicant, by connecting sidewalks to the surrounding sidewalk
18 network, which enables safe pedestrian access to any transit stops within pedestrian distance
from the project site.

19 G. Water and sewer. Water and sewer will be provided by the Silver Lake Water and Sewer
20 District, which has issued a certificate of water and sewer availability for the proposal.

21 5. Adverse Impacts. There are no adverse impacts associated with the proposal. The property is
22 fully compatible with adjoining land uses. Property to the north and northwest and east is also
23 zoned LDR and developed with single family homes. Properties to the west and southwest are
24 zoned Neighborhood Business and property to the south is located in unincorporated Snohomish
25 County and is also developed with low density residential development. As demonstrated at p. 5 of
26 the staff report, the reduced lot sizes proposed via the PAD are still larger than the corresponding
average and minimum lot sizes of nearby subdivisions within the LDR zone. Much of the perimeter
of the proposed subdivision will be composed of open space and critical area tracts that will buffer
adjoining uses and City landscaping standards will create additional buffering. As determined in

1 Finding of Fact No. 4, all demands upon infrastructure will be fully mitigated and stormwater
2 impacts will be fully mitigated through compliance with the City’s stormwater standards. The only
3 critical areas on site are wetlands. Impacts to the wetlands have been fully mitigated through
4 application of the City’s critical area regulations, which have been implemented through preparation
5 of a critical areas study, Ex. (1)(D)(12), and numerous conditions of approval recommended by staff
6 that have been adopted by this decision.

7 6. Public Benefit and Superior Design. The requested PAD modifications and proposed PAD
8 design provide for design that is superior to standard subdivision design and also provided for
9 public benefits beyond those required of a standard subdivision for the following reasons:

10 • The proposed reduced lot sizes are comparable to the nearby single-family developments.
11 Smaller lot sizes have been permitted within the City of Mill Creek to encourage the
12 provision of additional common and/or open space. Reduced lot sizes are necessary to meet
13 density targets established in the Comprehensive Plan. (Supports PAD Purposes A, B, F,
14 L¹)

15 • Reduced lot size allows additional open space beyond the required 50-foot wide roadway
16 buffer. Preservation of open space reduces impervious surface. The proposal provides
17 approximately 15,000 square feet of common open space and 88,000 square feet of wetland
18 and/or buffer native growth protection area and tree retention/preservation area. As
19 determined in Finding of Fact No. 4, the open space proposed by the applicant significantly
20 exceeds that which could be required of a standard subdivision. (Supports PAD Purposes
21 B, C, I)

22 • The tree preservation tract (Tract 998, the wetland, NGPA and tree retention tract) in the
23 northeast corner of the site provides nearly 10,000 square feet of protected open space
24 above and beyond the required critical area buffer and beyond what would be required if
25 the plat were not reviewed as a Planned Area Development. Preservation of approximately
26 35-40 significant trees within Tract 998 protects a stand of trees that is an asset to the
surrounding community and also retains the natural understory vegetation. (Supports PAD
Purposes B, C, E, F, K)

• Reduced setbacks allow flexibility in home type and design while maintaining 35% lot
coverage. The requested building setback reductions are consistent with the approved
setbacks in the adjacent neighborhoods. Reduced setbacks allow integration of new
development similar to type and value of surrounding development. (Supports PAD
Purposes A, D, F)

¹ The “PAD purposes” referenced in Finding of Fact No. 6 are citations to the purposes of the PAD ordinance enumerated in MCMC 16.12.020, which is quoted in the Conclusions of Law.

1 The proposed subdivision satisfies the state and City criteria quoted above. Appropriate provisions
2 are made for the public health, safety and general welfare and the public use and interest will be
3 served as required by RCW 58.17.110(2) since the subdivision doesn't create any significant adverse
4 impacts as determined in Finding of Fact No. 5, provides for adequate infrastructure as determined in
5 Finding of Fact No. 4 and allows for the reasonable development of the applicant's property. As
6 determined in Finding of Fact No. 4, the proposal provides for appropriate provision of all of the
7 specific infrastructure identified in RCW 58.17.110(2).

6 **PAD CRITERIA**

7 **MCMC 16.12.040:** *All zoning and subdivision requirements may be modified in a planned area*
8 *development in the interest of the expressed purposes above except:*

- 9 *A. Permitted uses;*
- 10 *B. Street setbacks on exterior streets in residential zones;*
- 11 *C. Surveying standards;*
- 12 *D. Engineering design and construction standards of public improvements but not including street*
13 *right-of-way width; and*
- 14 *E. Roadway buffer/cutting preserves consistent with the streetscape element of the comprehensive*
15 *plan.*

16 **MCMC 16.12.020:** *The purpose of this chapter includes but is not limited to the following:*

- 17 *A. To allow for creative development equal to or superior to traditional lot-by-lot development.*
- 18 *B. To preserve open space, natural vegetation, watercourses, wetlands, historic buildings and places,*
19 *and other community values.*
- 20 *C. To provide more efficient street and utility systems and retain existing vegetation by clustering*
21 *buildings.*
- 22 *D. To provide for a variety of housing types in one development with architectural design*
23 *compatibility.*
- 24 *E. To provide integrated landscape development.*
- 25 *F. To provide for the integration of new development into the existing community while protecting*
26 *and preserving the values of the surrounding neighborhood.*
- 27 *G. To provide for the site planning and regulation of nonresidential sites not requiring a subdivision*
28 *for development.*
- 29 *H. To manage stormwater through a land development strategy that emphasizes conservation and*
30 *use of on-site natural features integrated with engineered, small-scale hydrologic controls to more*
31 *closely mimic predevelopment hydrologic conditions.*
- 32 *I. To minimize impervious surfaces and effective impervious surfaces.*
- 33 *J. To encourage infiltration as a preferred method of stormwater drainage, when feasible.*
- 34 *K. To encourage development of residential environments that are harmonious with on-site and off-*
35 *site natural and built environments.*
- 36 *L. To further the goals and the implementation of the policies of the comprehensive land use plan.*

1
2 5. The modifications proposed by the applicant are authorized by the City's PAD regulations.
3 Specifically, the proposed modifications to applicable LDR minimum lot and setback standards as
4 identified in Finding of Fact No. 3 are in the interest of the PAD purposes expressed in MCMC
5 16.12.020 for the reasons identified in Finding of Fact No. 6.

6 **DECISION**

7 The proposed preliminary plat and PAD are approved subject to the following conditions:

8 **Preliminary Plat:**

- 9 1. Development shall occur as portrayed on the Preliminary Plat Map, except as may be
10 modified by the Hearing Examiner following the open record hearing, per MCMC Chapter
11 4.34.
- 12 2. Minimum lot size and building setbacks on the lots shall be as follows:

13 Minimum lot size: 4,175 square feet

14 Front yard setbacks:

- 15 • 20 feet for the garage side of the lot and 10 feet on the non-garage side of corner lots.

16 Rear yard setbacks:

- 17 • 10 feet for Lots 1 and 2;
- 15 feet for Lots 3-28

18 Side yard setbacks:

- 19 • Total of 10 feet; no side less than 5 feet.

20 3. All utility, stormwater, drainage, maintenance, and landscaping buffers/easements, together
21 with attendant restrictions and conditions, shall be portrayed on the final plat. Building
22 setback lines shall be shown on the face of the final plat.

23 4. In accordance with MCMC Section 16.04.100, the Preliminary Plat approval shall expire
24 and become void if the final plat is not submitted for approval in accordance with the time
25 frames set forth in RCW 58.17.140.

26 5. The subdivision shall be incorporated into a homeowners association which will be
responsible for the maintenance of all privately owned common areas and facilities.
Homeowners association documents in accordance with MCMC Section 16.12.100 shall be
submitted with the final plat application and recorded at the time of final plat recording.

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2 6. The developer may assign its rights and obligations under this development approval upon
3 prior written notice to the City identifying the new entity and evidencing the transfer of
4 obligations to the new entity.

4 **Landscaping:**

- 5 7. Landscaping plans for Tracts 996, 997, and 999 and the street trees shall be submitted to the
6 Design Review Board for review and approval in accordance with MCMC Chapters 4.18
7 and 17.34.
- 8 8. The developer shall provide a secured landscape performance bond equal to 125 percent of
9 the cost of installation (labor and materials), in accordance with MCMC Section 16.16.040.
Said bond shall be posted prior to the issuance of the first building permit.
- 10 9. Once the developer has fulfilled the obligations of the landscape performance bond, the
11 applicant shall enter into a two-year maintenance agreement for the approved and installed
12 landscaping in accordance with MCMC Section 16.16.090.

13 **Protection of Critical Areas:**

- 14 10. A final critical areas report/wetland buffer mitigation plan shall be prepared in compliance
15 with MCMC Chapter 18.06 and submitted to the City prior to approval of the civil
16 engineering plans.
- 17 11. The wetlands and buffers shall be contained in separate tracts and shall be designated as
18 Native Growth Protection Areas (NGPAs) on the face of the plat, and shall be recorded on
all documents of title for all affected lots or land areas, pursuant to MCMC Section
18.06.830. Tract restrictions shall include:
- 19 a. An assurance that native vegetation will be preserved for the purpose of preventing harm to
20 property and the environment, including, but not limited to, controlling surface water runoff
21 and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal
habitat; and
- 22 b. The right of the City to enforce the terms of the restrictions.
- 23 12. The edge of the wetland buffers shall be clearly staked and flagged. Site clearing shall not
24 commence until the applicant has submitted written notice to the Department of Community
25 and Economic Development that the buffer requirements of MCMC Sections 18.06.810 and
26 18.06.930 (E) have been met.

1 13. Prior to final plat approval, the boundary at the edge of the NGPAs shall be identified with
2 permanent signs or markers every 100 feet to clearly indicate the location of the NGPA
3 buffers, pursuant to MCMC Section 18.06.810.

4 14. The developer shall provide a secured wetland mitigation bond with the City equal to 125
5 percent of the cost of installation (labor and materials) for implementation of the Final
6 Wetland Buffer Mitigation Plan. Said bond shall be posted prior to issuance of the first
7 building permit.

8 15. A restriction shall be shown on the face of the Final Plat preserving all trees in Tracts 994,
9 996, and 998 and to the extent feasible in Tracts 997 and 999.

10 16. Pursuant to MCMC Section 15.10.045.A, barrier fencing shall be placed around the drip
11 lines of the trees to be retained (including the wetland buffer) prior to commencing clearing
12 and grading, and be maintained until construction is completed.

13 17. In accordance with MCMC Section 15.10.075.B, where trees designated to be retained are
14 damaged, destroyed or removed during the construction of the proposed improvements, a
15 penalty in the amount of \$1,000 may be assessed for each tree, and each tree shall be
16 replaced at a 3:1 ratio.

17 **Engineering and Site Work:**

18 18. Grading, roadway, stormwater, and erosion control plans shall be approved by the City
19 Engineer and Director of Community and Economic Development prior to any clearing or
20 grading work on the site, MCMC Chapter 15.12.

21 19. All public improvement work shall be adequately guaranteed through an agreement and
22 security mechanism acceptable to the City Attorney and City Engineer prior to beginning
23 construction in accordance with MCMC Chapters 16.16 and 16.20.

24 20. The developer shall construct a new public roadway within the development for access to the
25 proposed lots from the existing roadway stub on 149th Place SE. These public
26 improvements shall consist of: (i) Full width of the street and sidewalk cross section with
functional elements in accordance with Resolution 2003-338, including vertical concrete
curb and gutter, parking on one side only, a five-foot wide concrete sidewalk connecting to
the existing on 149th Place SE; and five-foot wide planter strip; (ii) Street lighting through
Snohomish County PUD No. 1; (iv) Stormwater and drainage facilities; (v) Street trees and
landscaping; (vi) Striping and signage; (vii) Dedication of public right-of-way and drainage
easements as needed to the City of Mill Creek and Snohomish County on the Final Plat.

1 21. The developer shall submit engineering design plans and documentation to address all
2 required public and private drainage improvements. The approved stormwater system shall
3 include the following elements and conditions per MCMC Chapter 15.14:

4 A. The applicant shall coordinate the design and construction of the stormwater system
5 along Seattle Hill Road with Snohomish County Public Works for their future road
6 improvement project.

7 B. Stormwater facilities that meet the requirements of the City of Mill Creek, the
8 February 2005 edition of the Washington State Department of Ecology Stormwater
9 Management Manual for Western Washington, and Appendix 1 of the City's Phase 2
10 NPDES Permit (dated as effective September 1, 2012).

11 C. A final stormwater drainage report signed and stamped by a licensed professional
12 engineer shall be submitted to the City Engineer for review and approval.

13 D. The property owners shall be obligated to own, maintain and operate the stormwater
14 system outside the public right-of-way to the satisfaction of the City Engineer.

15 E. Provisions shall be included with the Final Plat for maintenance of the stormwater
16 system outside the public right-of-way, including, but not limited to, adequate access
17 to maintenance locations, provisions and easements that allow the City to inspect and
18 maintain the system at its discretion, and adequate provisions to ensure uninterrupted
19 function of the facilities for the proposed development.

20 22. Dust and erosion shall be controlled by promptly covering exposed stockpiles, watering
21 areas of soil disturbance, using a street sweeper on adjacent roads, and other Best
22 Management Practices as directed by the City Engineer, MCMC Chapter 15.12.

23 23. All new and existing utilities within the project shall be placed underground in accordance
24 with MCMC Section 17.22.110. The applicant shall be responsible for all costs associated
25 with undergrounding the utilities. Appropriate easements or right-of-way for all utilities
26 shall be provided by the applicant and shown on the face of the Final Plat.

27 24. The developer shall install a mailbox structure and covered stand for the proposed
28 development in accordance with City standards. The location of the mailboxes shall be
29 approved in writing by both the City and Post Office prior to installation.

30 **SEPA Mitigation:**

31 25. The developer shall pay mitigation to the City of Mill Creek in the amount of \$81,000.00 for
32 impacts to the City roadway system. Payment of traffic mitigation fees to the City of Mill
33 Creek is required prior to approval of the Final Plat.

- 1
- 2 26. In accordance with the Reciprocal Impact Mitigation Agreement between the City of Mill
3 Creek and Snohomish County, proof of payment of traffic mitigation fees to Snohomish
4 County totaling \$48,040.78 shall be provided to the City prior to approval of the Final Plat.
- 5 27. Pursuant to Chapter 17.48 MCMC, the developer shall pay neighborhood park mitigation
6 fees to the City of Mill Creek in the amount of \$77,321.52 prior to approval of the Final Plat.
- 7 28. Pursuant to Chapter 17.48 MCMC, the developer shall pay community park mitigation fees
8 to the City of Mill Creek in the amount of \$46,944.09 prior to approval of the Final Plat.
- 9 29. In accordance with the Interlocal Agreement between the City of Mill Creek and Snohomish
10 County Fire District No. 7, the developer shall pay fire mitigation fees to the City of Mill
11 Creek in the amount of \$9,855.00 prior to approval of the Final Plat.
- 12 30. In accordance with the Interlocal Agreement between the City of Mill Creek and the Everett
13 School District, proof of payment of mitigation fees totaling \$68,013.00 shall be provided to
14 the City prior to issuance of the first building permit.

15 **Public Services:**

- 16 31. The developer shall ensure adequate fire flow/hydrants and 4" STORTZ adaptors on all
17 hydrants.
- 18 32. The developer shall ensure floor plans that allow for secondary egress (windows) from
19 rooms on either the front or rear of the structure.
- 20 33. The developer shall ensure parking is only allowed on one side of the road and is clearly
21 marked with signage.
- 22 34. Parking shall be prohibited on the road corners, in the cul-de-sac, and in Tract 995, the 20
23 foot wide shared driveway tract for Lots 14-18. Curbs shall be clearly marked and "No
24 Parking" signage shall be installed prior to Final Plat approval.
- 25 35. The following improvements shall be installed for the Silver Lake Water and Sewer District:
26 (i) The developer shall construct a dry 8" diameter sewer extension line with a minimum
slope of 1% from the plat sewer line between lots 15 and 16 to the Tri-Way Grange property
located to the southwest of the proposed plat; (ii) The developer shall construct sewer mains
to connect to the existing sewer line along the eastern side of the property; (iii) The
developer shall construct a new water main to connect to the existing water main in Seattle
Hill Road; and (iv) The developer shall grant appropriate 15-foot wide water and sewer
easements on the face of the Final Plat after confirming the locations with Silver Lake
Water and Sewer District.

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DATED this 2nd day of December, 2015.


Phil A. Olbrechts

City of Mill Creek
Hearing Examiner

Appeal Right and Valuation Notices

MCMC 14.03.030(4) provides that the final decision of the hearing examiner is subject to appeal to the Mill Creek City Council. RMC 14.11.030 requires appeals of the hearing examiner’s decision to be filed within fifteen days from the date of the hearing examiner’s decision. Appeal requirements are governed by Chapter 14.11 MCMC.

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