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**THE HEARING EXAMINER OF THE CITY OF BELLINGHAM  
WHATCOM COUNTY, WASHINGTON**

<b>IN RE:</b>  <b>STREAM REAL ESTATE DEVELOPMENT, Applicant</b>  <b>3509 Meridian Street</b>  <b>SUB2022-0033 and VAR2023-0002 / Stream Townhomes Preliminary Plat</b>	<b>HE-23-PL-012</b>  <b>FINDINGS, CONCLUSIONS, AND DECISIONS</b>  <b>SHARON A. RICE</b> <b>HEARING EXAMINER</b>
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**SUMMARY OF DECISIONS**

The requested preliminary plat to subdivide 4.127 acres into 67 infill townhouse lots and the associated infrastructure variance are **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Ali Taysi, AVT Consulting LLC, on behalf of Stream Real Estate Development, requested approval of a preliminary plat to subdivide approximately 4.127 acres into 67 infill townhouse lots and a variance from the infrastructure requirements of Bellingham Municipal Code (BMC) 23.04.090. The subject property is addressed as 3509 Meridian Street, Bellingham, Washington.

**Hearing Date:**

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on March 13, 2024. The record was held open two business days to allow for public comment, with additional time for responses by the parties. Post-hearing comment was timely submitted, as was a response from the Applicant. The record closed on March 18, 2024. No in-person site visit was conducted, but the Examiner viewed the property on Google Maps.

1 **Testimony:**

2 At the hearing the following individuals presented testimony under oath:

- 3 Ali Taysi, AVT Consulting LLC, Applicant Representative
- 4 Ryan Nelson, Planner II, City of Bellingham
- 5 Kurt Nabbeheld, Development Services Manager, City of Bellingham
- 6 Nick Palewicz, Freeland & Associates, Applicant's Civil Engineer
- 7 Aubrey Stargell, Applicant's Arborist
- 8 Roger Hunt, Bellingham Golf & Country Club Representative
- 9 Michael Ferrer, Executive Director of Whatcom Million Trees Project
- 10 Kathy Furtado
- 11 Barbara Zielstra
- 12 Laura Weiss
- 13 Kari Galbraith
- 14 Brenda Chevalier
- 15 Robin Thomas
- 16 Wendy Larson
- 17 Jim Smith
- 18 Virginia Naef
- 19 Sarah Gardam
- 20 Tim Douglas
- 21 Marylou White
- 22 Joy Patterson
- 23 Alex McLean

24 **Exhibits:**

25 At the open record hearing, the following exhibits were admitted in the record:

- 26 Exhibit 1 Planning and Community Development Department Staff Report including
- 27 the following attachments:
  - 28 A. Architectural and Civil Plans including Tree Preservation and
  - 29 Landscaping Plans, dated April 12, 2023
  - 30 B. Consolidated Infill Housing/Multifamily Design Review Permit and
  - SEPA decision (DR2022-0023/SEP2022-0032), with attachments:
    - 1. Land Use Narrative<sup>1</sup>
    - 2. Minor modification request letter

31 <sup>1</sup> For the record, this document is marked "B2". This decision does not cite the subparts of Exhibit 1.B.

1                   3. City of Bellingham Policy, entitled “Clarify procedure for issuing  
2                   building permit applications for IRC townhouses associated with a  
3                   preliminary plat”, dated March 22, 2021

4                   C. Vicinity Map

5                   D. Zoning and Land Use Designations

6                   E. Land Use Application materials:

7                   1. Land Use Application

8                   2. Applicant Narrative (response to variance and subdivision criteria)

9                   F. Request for Information (RFI), dated October 13, 2022

10                  G. Applicant’s response to RFI, dated January 25, 2023

11                  H. Potential Retention Tree Analysis prepared by Aubrey Stargell, dated  
12                  January 23, 2023

13                  I. Traffic Impact Analysis, Transpo Group, dated February 2022

14                  J. Notice of Application/Mailing List

15                  K. Public Comment:

16                  1. Email from Michael Feerer, dated June 8, 2023

17                  2. Comment from Susan Willhoft

18                  3. Email from John Hauter, dated June 7, 2023

19                  4. Email from Stephanie Twiford, dated June 8, 2023

20                  5. Email from Susan Witter, dated September 11, 2023

21                  6. Emails from Tim Douglas, dated August 29, 2023, June 8, 2023

22                  7. Emails from Jayne Freudenberger, dated July 29, 2023, June 22, 2023

23                  8. Letter from Paula Rotondi

24                  9. Email from Sue Griffith

25                  10. Email from Dorene Gould, dated July 17, 2023

26                  11. Email from Vicki Thomas, dated June 22, 2023

27                  12. Email from Judy Hopkinson, dated June 22, 2023

28                  13. Email from Kathryn Alexander, dated June 21, 2023

29                  14. Email from Olivia Mecum, dated June 18, 2023

30                  15. Email from Mickey McDiarmid, dated June 14, 2023

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- 16. Email from Lisa Heezen, dated June 9, 2023
- 17. Email from Robin Thomas, dated June 8, 2023
- 18. Email from Judith Akins, dated June 8, 2023
- 19. Email from Laura Weiss, dated June 8, 2023
- 20. Email from Alyson Greene May, dated June 8, 2023
- 21. Email from Jane Moudry, dated June 8, 2023
- 22. Email from Valerie Anderson, dated June 8, 2023
- 23. Email from Bryan Fitzwater, dated June 8, 2023
- 24. Email from Margie Katz, dated June 8, 2023
- 25. Email from Paula O'Brien, dated June 7, 2023
- 26. Email from Lois & Tinus Poppema, dated June 5, 2023
- 27. Email from Ben DeBoer, dated June 4, 2023
- 28. Email from Janis Olson, dated June 2, 2023
- 29. Email from Dominique Coulet du Gard, dated June 2, 2023
- 30. Email from Reisa Latorra, dated June 2, 2023
- 31. Email from [swede07@comcast.net](mailto:swede07@comcast.net), dated June 1, 2023
- 32. List of Comments by Zip Code from A – Z
- L. Map of tree canopy in the vicinity
- M. RFI, dated July 6, 2023
- N. Applicant's response to RFI, dated September 18, 2023
- O. SEPA Determination of Non-Significance (SEP2022-0033), dated October 4, 2023
- P. Notices of Public Hearing:
  - 1. Notice of Hybrid Public Hearing on October 11, 2023, dated September 27, 2023
  - 2. Notice of Hybrid Public Hearing on March 13, 2024, dated February 26, 2024
  - 3. Mailing list
- Q. Aerial Map

- 1 R. Critical Area Review Memorandum prepared by Northwest Ecological
- 2 Services LLC, dated October 13, 2021
- 3 S. Geotechnical Report prepared by PanGeo Incorporated, dated January
- 4 2022
- 5 T. Preliminary Stormwater Plan prepared by Freeland & Associates, dated
- 6 July 2022
- 7 U. Map of Bellingham School District attendance areas
- 8 Exhibit 2 Certificate of Posting and photographs
- 9 Exhibit 3 Additional Public Comments received as of March 15, 2024:
- 10 1. Email from Dana Thomas, dated March 4, 2024
- 11 2. Email from Renee Sherrer, dated March 1, 2024
- 12 3. Email from John Holstein, dated March 9, 2024
- 13 4. Email from Jeff Daffron, dated February 29, 2024
- 14 5. Email from Tom and Elli Harron, dated March 12, 2024
- 15 6. Email from Emelie Jeffers, dated March 2, 2024
- 16 7. Email from Stephanie Carter, dated March 6, 2024
- 17 8. Email from Lois Poppema, dated March 1, 2024
- 18 9. Email from Carly Lonergan, dated February 29, 2024
- 19 10. Email from Reisa Latorra, dated March 6, 2024
- 20 11. Email from Judith Akins, dated March 3, 2024
- 21 12. Email from Sheila McElhinney, dated March 1, 2024
- 22 13. Email from Annie Prevost, dated March 8, 2024
- 23 14. Email from Erin Moore, dated March 8, 2024
- 24 15. Email from Stephen Zylstra, dated March 4, 2024
- 25 16. Email from David Jimison, dated February 29, 2024
- 26 17. Email from Tegan Keyes, dated March 8, 2024
- 27 18. Email from Tom Neumann, dated March 2, 2024
- 28 19. Email from Carolyn Koehline, dated March 3, 2024
- 29 20. Email from Minda Rae Amiran, dated March 1, 2024
- 30 21. Email from Dominique Coulet du Gard, dated March 3, 2024

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- 22. Email from Janet Higbee-Robinson, dated March 1, 2024
- 23. Email from Valerie Anderson, dated March 4, 2024
- 24. Email from Margaret Hayes, dated February 29, 2024
- 25. Spreadsheet of summary comments submitted by Michael Feerer
- 26. Email from Jim Smith, dated March 13, 2024
- 27. Letter from Wendy Larson, dated March 13, 2024
- 28. Email from Anne Poulson, dated March 13, 2024
- 29. Letter from Sarah Gardam, dated March 13, 2024
- 30. Email from Katharine Gring, dated March 13, 2024
- 31. Email from Caroline Ferguson, dated March 13, 2024
- 32. Email from Lynn Billington, dated March 13, 2024Letter from Tim Douglas
- 33. Letter from Barbara Zielstra, dated March 13, 2024
- 34. Email from Kristina Heintz, dated March 13, 2024
- 35. Email from Deborah Valentine, dated March 12, 2024
- 36. Email from Reisa Latorra, dated March 13, 2024
- 37. Email from Pati Villhauer, dated March 12, 2024
- 38. Email from Ken Kaliher, dated March 12, 2024
- 39. Email from Sheryl Peterson, dated March 13, 2024
- 40. Presentation summary from Michael Feerer
- 41. Letter from Kathy Furtado, dated March 13, 2024
- 42. Testimony from Laura Weiss
- 43. Letter from Kari Galbraith, dated March 13, 2024
- 44. Testimony from Brena Chevalier
- 45. Testimony from Robin Thomas
- 46. Testimony from Wendy Larson
- 47. Testimony from Virginia Naef
- 48. Testimony from Jim Smith

- 1                   49. City of Bellingham, Meridian Street Roundabouts Feasibility Study,  
dated December 2019, submitted by Marylou White
- 2                   50. Letter from Joy Patterson, dated March 13, 2024
- 3 Exhibit 4 Certificate of multimodal transportation concurrency, issued March 24, 2022
- 4 Exhibit 5 Post-hearing public comment from Matt Larson, dated March 15, 2024
- 5 Exhibit 6 Applicant's response to additional comment, dated March 18, 2024
- 6 Exhibit 7 Emails from Ali Taysi and Ryan Nelson, dated March 18, 2024 regarding  
7 additional recommended condition of approval

8 After considering the testimony and exhibits submitted, the Hearing Examiner enters the  
9 following findings and conclusions:

**FINDINGS**

*Site and Surroundings*

- 12 1. Ali Taysi, AVT Consulting LLC, on behalf of Stream Real Estate Development,  
13 requested approval of a preliminary plat to subdivide approximately 4.127 acres  
14 into 67 infill townhouse lots and a variance from the infrastructure requirements  
15 of Bellingham Municipal Code (BMC) 23.04.090. The subject property is  
16 addressed as 3509 Meridian Street, Bellingham, Washington.<sup>2</sup> *Exhibits 1, I.A,*  
17 *and I.E.*
- 18 2. The 179,793 square foot subject property was originally part of the adjacent  
19 Bellingham Golf and Country Club (BGCC) property and was created through a  
20 short plat that was preliminarily approved on September 5, 2019 and recorded on  
August 2, 2022. *Exhibits 1 and I.A.*
- 21 3. The subject property is undeveloped and in a forested condition. It is bordered  
22 by Meridian Street to the east, Birchwood Avenue to the south, and BGCC to the  
23 north and west. The BGCC property is developed with a an 18-holf golf course,  
24 driving range, clubhouse, swimming pool, and various outbuildings. *Exhibits 1,*  
*I.A, and I.Q.*
- 25 4. The subject property is located within Area 5 of the Birchwood Neighborhood  
26 and is zoned Residential - Multi with a Planned use qualifier and high-density

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27  
28 <sup>2</sup> The legal description of the property is: Lot 2, as delineated on BG &CC Short Plat, according to the  
29 plat thereof, recorded under auditor's file no. 2022-0800206, records of Whatcom County, Washington.  
The assessor's parcel number is 380213-546133-0000. *Exhibits 1 and I.A.*

1 designation. The Comprehensive Plan land use designation is Residential Multi,  
2 High Density. The minimum development density that must be achieved in the  
3 high-density designation is one dwelling unit per 3,599 square feet of gross land  
4 area. There is no maximum density. *Exhibits 1 and 1.D; Bellingham Municipal  
Code (BMC) 23.08.040; BMC 20.32.040.B(2)(a)(i) and -B(2)(b)(1).*

5 5. The BGCC land to the north and west of the subject property is zoned  
6 Residential - Multi. Property east of Meridian Street is zoned Light Industrial  
7 and Commercial. Land uses along Meridian Street include a variety of  
8 commercial uses including medical/dental offices, farm supply retail sales, and  
9 real estate offices. The land to the south of Squalicum Way (parallel to and  
10 south of Birchwood Avenue) is zoned Residential Single. Cornwall Park is to  
11 the southeast of the subject property; it is one of the largest parks in the city.  
12 *Exhibits 1 and 1.D; Ryan Nelson Testimony.*

13 6. Meridian Street, an 80-foot arterial, is fully improved to City standards with  
14 asphalt drive lanes, curb, gutter, and sidewalk except for a segment beginning  
15 near the north end of the subject property and extending north (off site) along the  
16 BGCC property frontage. There are existing public water, sewer, and  
17 stormwater mains within Meridian Street. *Exhibits 1, 1.A, and 1.E2.*

18 7. Whatcom Transit Authority provides bus service (routes 4 and 15) along  
19 Meridian Street, with the nearest stop north of the subject property  
20 approximately 800 feet. *Exhibit 1; Ryan Nelson Testimony.*

21 8. The subject property is heavily forested but does not contain any regulated  
22 critical areas (e.g., wetlands, streams, geologic hazards, protected habitats) or  
23 critical area buffers. There is a regulated stream within the Country Club  
24 property, but it is more than 600 feet from the subject property at the closest  
25 point. *Exhibits 1, 1.E1, 1.R, and 1.S.*

#### 26 *Proposal*

27 9. Consistent with the minimum density standard of the zone, which would require  
28 50 dwelling units for the 179,793 square foot lot, the Applicant proposes 67  
29 dwelling units, each on its own lot, resulting in a density of one lot per 2,683  
30 square feet of gross site area. Because the proposal is for an “infill toolkit”  
project pursuant to BMC 20.28, there are no applicable minimum lot dimension,  
lot size, or minimum street frontage requirements. *Exhibit 1; BMC 20.28.050.*

10. The 67 townhouses would be developed in 18 buildings, with each building  
containing two, four, or five attached units. Consistent with long, narrow



1 dimensions of the property, the buildings would be generally arranged in a linear  
2 configuration around a central private lane. The fronts of nearly all of the  
3 buildings would face the exterior of the site and the garages would face the  
4 interior of the site. Thus, the buildings within the western portion of the site  
5 (Buildings 5.3, 5.2, 2.4, 2.3, 2.2, 4.5, 4.3, 4.4, and 2.1, comprising Lots 1-30)  
6 would face the golf course, and all but one of the buildings within the eastern  
7 portion of the site (Buildings 5.4, 5.5, 5.6, 4.6, 4.7, 5.1, 4.1, and 4.2, comprising  
8 Lots 31-51 and 54-67) would face Meridian Street; the side of Building 2.5  
9 would face Meridian Street. This layout is consistent with BMC 20.28.050,  
10 which prioritizes fronting infill housing units on existing improved streets. Most  
11 of the buildings (including all of those in groupings of four or five units and one  
12 of the groupings of two units) would be three stories tall. Four buildings  
13 (Buildings 2.1, 2.2, 2.3, and 2.4) would be two-story duplex units.<sup>3</sup> Each duplex  
14 unit would have a larger footprint than the taller building units because they  
15 would have the majority of living space including the primary bedroom on the  
16 ground floor. *Exhibits 1.A and 1.N.*

- 17 11. Consistent with the lot design standards of BMC 23.08.060, the proposed lots  
18 would have logical boundaries, in that they would be designed at right angles to  
19 the internal private lane. The lots are exempt from the building envelope (i.e.,  
20 width and depth) requirements of BMC 23.08.060.D. All lots would have access  
21 to public infrastructure in Meridian Street. Based on Planning Staff's review, the  
22 lots would be buildable without variances not already addressed in the  
23 application. *Exhibits 1 and 1.A.*
- 24 12. The proposed internal private lane entering the site from Meridian and extending  
25 to the north and south would be 20 feet wide. It would be designated a fire lane  
26 with fire turnarounds provided at the north and south ends and wide turning radii  
27 at internal intersections. No on-street parking would be allowed on the internal  
28 private land. Meridian Street does not allow on-street parking. To address  
29 visitors and delivery vehicles, 21 guest parking spaces would be provided spread  
30 throughout the site, consistent with BMC 20.28.050.H(1)(b). Each dwelling unit  
would have two off-street parking spaces within its garage consistent with BMC  
20.28.050.H(1)(a). *Exhibits 1.A and 1.G; Ali Taysi Testimony.*
13. Each dwelling unit would have direct access to a sidewalk/pedestrian path from  
its front door. The units facing Meridian Street would have access to the existing

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<sup>3</sup> There was testimony suggesting that the duplex units would be one story tall, but the building  
elevations/floor plans show a second floor for each duplex unit. *Exhibit 1.A, e.g., Sheets G1.02 and  
A4.10.*

1 public sidewalk, and the units facing the golf course would have access to a  
2 community sidewalk system. The proposal includes extending frontage  
3 improvements (curb, gutter, and sidewalk) offsite from the north lot line  
4 approximately 780 feet to complete the gap in sidewalk. This would provide  
5 safe pedestrian connection to the WTA stops on Meridian Street. *Exhibits 1.A*  
6 *(e.g., Sheet C2.3) and 1.B1; Ali Taysi Testimony.*

7 14. The subject property is forested with mature trees, with native conifers  
8 predominating (mostly Douglas fir with some western hemlock and western red  
9 cedar). There are also big leaf maple and red alder trees present, although most  
10 are overmature and/or damaged or defective. There are 394 significant trees on  
11 the subject property, plus an additional six in the Meridian Street right-of-way  
12 along the property frontage. The Applicant's landscape architect identified 91  
13 trees that could potentially be retained consistent with the proposed development  
14 plan. These trees were evaluated by a certified arborist, who found that many are  
15 in poor condition and/or had poor likelihood of survival after development. The  
16 Applicant proposes to retain a total of 65 trees, including 52 evergreen trees (51  
17 within subject property and one within right-of-way) and 13 deciduous trees (12  
18 within subject property and one within right-of-way). A total of 335 trees would  
19 be removed. *Exhibits 1.A, 1.H, and 1.Q.*

20 15. The BMC does not require a specific level of tree retention, nor does it require  
21 removed trees to be replaced at specific ratios. The land clearing chapter (BMC  
22 16.60) only requires applicants to provide a tree retention plan identifying trees  
23 to be removed, trees to be preserved, and tree protection methodology, and  
24 requires that significant trees "be replaced at a ratio to be determined by the  
25 PCDD." *BMC 16.60.080; Ryan Nelson Testimony.* The green factor calculation  
26 set forth in BMC 20.12.030 provides credit for the preservation of exceptional  
27 trees but does not require trees to be preserved; the required landscaping score  
28 can be achieved using new plants or other landscape features. *BMC 20.12.030.*  
29 The only other applicable ordinance addressing tree retention is BMC  
30 23.08.030.C (one of the subdivision performance standards), which specifies that  
natural features such as trees "should be incorporated into the overall land  
division design through preservation to the extent feasible." *BMC 23.08.030.C;*  
*Ryan Nelson Testimony.*

16. Planning Staff has required the Applicant to replace removed trees at a 3:1 ratio  
for those trees 30 inches in diameter or greater at breast height, and at a 1:1 ratio  
for those less than 30 inches in diameter. The resulting number of required  
replacement trees would be 477. Due to the extent of infrastructure within the  
site, some of the replacement trees would be planted off site. At present, the

1 Applicant proposes to plant the additional trees on the golf course, which  
2 location is acceptable to the City and BGCC, but the Applicant is open to other  
3 approved tree planting locations. The City's recommended conditions of  
4 approval would require any replacement trees not installed within the subdivision  
5 to be planted on the golf course property or within the Birchwood neighborhood.  
6 Staff also recommended a condition of approval would require a notice to be  
7 recorded on the property title indicating the requirement to retain the replacement  
8 trees planted on private property. *Exhibits 1, 1.B, 1.A, 1.E1, 1.G, 6, and 7;*  
9 *Testimony of Ali Taysi and Roger Hunt.*

10 17. Each lot would have private, usable open space in the form of decks and/or  
11 yards. Because some lots would not provide the 200 square feet required by  
12 BMC 20.28.140.D(1), common usable open space would be provided to offset  
13 the shortage, as allowed by the ordinance. In this case, the amount of common  
14 usable open space needed to offset the private open space shortage would be  
15 1,633 square feet. The proposal would provide 3,862 square feet of landscaped  
16 common open space near the site entrance separated from the arterial by a fence  
17 and trees. *Exhibit 1.A.*

18 18. The minimum open space required for the subdivision is 30% of the overall site  
19 area, and the project must achieve a green factor landscaping score of 0.4. *BMC*  
20 *2.28.140.D.* The total open space on site would be 67,396 square feet, or 37% of  
21 the site area. The submitted landscape plan depicts a green factor score of 0.438.  
22 *Exhibit 1.A.* Although questions were raised in public comment as to whether  
23 the minimum green factor score can be met on site due to the viability of trees to  
24 be retained and disagreement with measurement methodology (see Michael  
25 Feerer testimony and Exhibit 3.41), the submitted landscape plan is only  
26 preliminary. Per the conditions of the administrative design review decision  
27 (Exhibit 1.B), which addressed landscaping, the Applicant is required to  
28 demonstrate compliance with the green score requirement at the time of building  
29 permit application. *Exhibit 1.B; Ryan Nelson Testimony.* Further, the draft  
30 landscaping plan does not account for all of the replacement trees, some of which  
would be planted on site within an open space tract between the units and the  
golf course. Thus, to the extent that there is any deficiency in the current plan,  
the Applicant would be required to demonstrate a Code-compliant score prior to  
building permit issuance. *Exhibit 6.*

19. Access to the subdivision would be from Meridian Street via a single access  
point aligned with Orchard Drive. The project is limited to one access point due  
to the arterial classification of Meridian Street. The intersection is, and would  
continue to be, unsignalized, other than the approaches to Meridian Street from

1 Orchard Drive and the site access which are/would be stop sign controlled.  
2 *Exhibit 1.I; Ali Taysi Testimony.*

3 20. The City of Bellingham's Transportation Improvement Plan includes future  
4 installation of a roundabout at the intersection of Meridian Street and  
5 Birchwood/Squalicum. The Applicant would dedicate right-of-way along the  
6 subject property's Birchwood Avenue frontage to facilitate this improvement.  
7 Proposed frontage improvements along Meridian Street would be constructed  
8 within existing right-of-way. *Exhibits 1, 1.A, and 1.E1.*

9 21. The proposal is expected to add 468 average daily vehicle trips to the  
10 surrounding street system, including 30 AM peak hour trips and 39 PM peak  
11 hour trips. With the exception of the proposed site access at the intersection of  
12 Meridian Street and Orchard Drive, the traffic generated by the proposal is not  
13 expected to cause the level of service (LOS) of intersections in the vicinity to fall  
14 below existing levels. The intersections of Meridian Street with the I-5 north  
15 ramp, the I-5 south ramp, Birchwood Avenue/Squalicum Way, and the Cornwall  
16 Park access would continue to operate at LOS D or better in 2025 with the traffic  
17 generated by the project. The traffic from the proposed development would also  
18 not degrade the LOS of these intersections based on projected 2032 conditions  
19 (which assume installation of a roundabout at the intersection of Meridian and  
20 Birchwood/Squalicum Way). *Exhibit 1.I.*

21 22. With respect to the intersection of Meridian Street and Orchard Drive, the LOS  
22 would drop to F under both 2025 and 2032 traffic projections. The LOS failure  
23 would impact the low volume side street movements (specifically, the eastbound  
24 approach from the subject property). The Applicant's transportation engineer  
25 evaluated the intersection against the signal warrants contained in the Manual on  
26 Uniform Traffic Control Devices and found that a signal is not warranted at the  
27 intersection. No mitigation is proposed for the intersection because the high  
28 delays would occur at the side streets where traffic volume is low. Also, the  
29 future roundabout at Birchwood Avenue/Squalicum Way would provide a  
30 turnaround option for drivers having difficulty turning left from the subject  
property. The Applicant would make a proportionate share financial contribution  
to the roundabout project and would dedicate land along Birchwood Avenue for  
the roundabout. The area to be dedicated is the full width of the southern end of  
the site at a depth ranging from 28 to 46 feet. *See Exhibit 1.A, Sheet 2.1.* In  
addition, the Applicant would pay traffic impact fees pursuant to BMC  
19.06.040.A. These fees might be eligible for discount based on the value of the  
dedicated right-of-way. *Exhibits 1.A and 1.I.* The City issued a multimodal  
transportation concurrency certificate on March 24, 2022. *Exhibits 1.B and 4.*

- 1 23. Stormwater runoff would be infiltrated on site. As detailed in the project's  
2 preliminary stormwater site plan, the soils underlying the proposal were  
3 evaluated and found to be suitable for infiltration. Below-grade infiltration  
4 galleries would be filled with gravel or contain chambers to hold stormwater  
5 until infiltration can be completed. Final stormwater provisions would be  
6 reviewed for full compliance with BMC Chapter 15.42 through the civil  
7 engineering and construction permit processes. *Exhibits 1 and 1.T; Nick  
8 Palewicz Testimony.*
- 9 24. For compliance with fire code requirements due to the single access to the site,  
10 all proposed units would be equipped with fire sprinklers. In addition, the  
11 recommended conditions of approval would prohibit fences between units  
12 within front yards to ensure access for emergency services. The internal private  
13 lane was designed to comply with emergency vehicle access standards. *Exhibits  
14 1, 1.A, and 1.G; BMC 17.20.*
- 15 25. School-aged residents of the plat would attend Birchwood Elementary School,  
16 Shuksan Middle School, and Bellingham High School, each of which is 2.6 or  
17 more miles from the subject property. There are existing sidewalks between the  
18 subject property and the schools via Meridian Street, Birchwood Avenue,  
19 Northwest Avenue, Illinois Street, and Cornwall Avenue. School capacity  
20 impacts would be mitigated through the City's adopted impact fee ordinance.  
21 *Exhibits 1, 1.E.2, and 1.U.*
- 22 26. As noted above, Cornwall Park is across Meridian Street to the southeast of the  
23 subject property, south of Birchwood Avenue. The Bellingham Parks,  
24 Recreation, and Open Space Plan does not identify any public park amenities on  
25 or adjacent to the subject property. *Exhibits 1 and 1.C; Google Maps site view.*
- 26 27. The Applicant requested a variance from BMC 23.04.090, which requires the  
27 subdivision into five or more lots of land that has been short platted within the  
28 last five years to be conditioned on installation of public infrastructure across the  
29 full frontage of the original property boundaries. In this case, the subject  
30 property's subdivision from the BGCC site occurred less than five years ago.  
Although the property subject to the subdivision proposal only has frontage on  
Meridian Street and Birchwood, the Bellingham Golf and Country Club also has  
frontage on McLeod Road. Due to the large size of the BGCC parcel (5,637,720  
square feet), the frontage improvement requirement applicable to McLeod Road  
pursuant to BMC 23.04.090 would be 2,500 lineal feet, triggering the need for  
separate stormwater management facilities and resulting in a cost that would  
make the project infeasible. Some of the improvements would be a half-mile

1 from the subject property. Planning Staff submitted that there is an insufficient  
2 nexus between the impacts of the development and a requirement to improve  
3 McLeod Road and recommended that the variance be granted. Although no  
4 improvements would be made to McLeod Road, the Applicant would install  
5 frontage improvements including curb, gutter, and sidewalk along Meridian  
6 Street to the north of the subject property where there is currently a gap. This  
7 would ensure a continuous walkway between the subject property and the  
8 existing bus stop on Meridian near McLeod Street. *Exhibits 1, 1.A (Sheet C2.3),  
9 and 1.E2; Ryan Nelson Testimony.*

- 10 28. The City of Bellingham Comprehensive Plan land use map designates the subject  
11 property as Multi Family Residential, High Density. Planning Staff submitted  
12 that the following goals and policies of the Bellingham Comprehensive Plan are  
13 applicable:

14 Land Use

15 GOAL LU-5 Support the Growth Management Act's goal to encourage growth  
16 in urban areas.

17 Policy LU-66 Encourage design flexibility (e.g. clustering and low impact  
18 development) to preserve existing site features, including trees,  
19 wetlands, streams, natural topography, and similar features.

20 Housing

21 Policy H-3 Encourage well-designed infill development on vacant or  
22 underutilized properties.

23 Capital Facilities and Utilities

24 GOAL CF-8 Promote the delivery of adequate utilities and encourage the  
25 design and siting of private utility facilities in a manner that  
26 minimizes impacts on adjacent land uses and the environment.

27 Policy CF-3 Encourage and support development in areas where adequate  
28 public facilities and services exist or can be provided in an  
29 efficient manner.

30 Policy CF-4 Protect public health, enhance environmental quality, and promote  
conservation of natural resources through appropriate design and  
installation of new public facilities.

Policy CF-17 New development should pay its proportional share of the cost of  
new public facilities that serve the subject development.

Economic Development

Policy ED-40 Identify and remove barriers to redeveloping underutilized and/or  
vacant land and buildings.

Environment

Policy EV-34 Encourage the preservation and planting of street trees and trees on private property using the “right tree, right place” concept.

Staff submitted that the project would be consistent with the intent of the land use, housing, capital facilities, economic development, and environment chapters of the Comprehensive Plan by furthering the listed goals and policies. *Exhibit 1*. The Applicant also identified Policy LU-10 as relevant, which encourages development to “achieve a healthy mix of housing that is affordable to a wide range of incomes” and to implement tools such as the Infill Housing Toolkit. *City of Bellingham Comprehensive Plan, Land Use Chapter, page 7; Ali Taysi Testimony*.

*Procedural Findings*

29. On March 15, 2022, the Applicant held a pre-application neighborhood meeting. At the meeting, neighbors expressed concerns regarding traffic, critical areas, flooding, street trees, pedestrian circulation, tree preservation, noise, and location on trucking route. *Exhibit 1*.

30. On August 4, 2022, the Applicant submitted applications for a preliminary plat, an infill toolkit/multifamily design review permit, State Environmental Policy Act (SEPA) review, and a planned development permit (the planned development permit was subsequently withdrawn as it was determined not to be required for the project). The City issued a notice of complete application on October 1, 2022. The City issued a request for information to the Applicant on October 13, 2022, and the Applicant submitted responsive information and the variance application on January 25, 2023. On May 25, 2023, the City issued a notice of application and optional DNS [determination of non-significance] Process. In response to public comments received, the City issued a second request for information to the Applicant. The Applicant submitted additional information, and the City issued the final SEPA DNS on October 4, 2023. *Exhibits 1, 1.E, 1.F, 1.G, 1.J, 1.M, 1.N, and 1.O*.

31. The SEPA DNS was based on review of the submitted environmental checklist, preliminary stormwater plan, geotechnical report, traffic impact analysis, critical area review memorandum, tree retention analysis, and architectural, civil, tree preservation, and landscaping plans. Planning Staff determined that no additional mitigation was required under SEPA because the requirements for environmental analysis, protection, and mitigation were adequately addressed by the City’s adopted development regulations and comprehensive plan. Because the optional DNS process specified in WAC 197-11-355 was used for

1 environmental review, and a comment period was provided with the notice of  
2 application, there was no further comment period on the final DNS. *Exhibits 1,*  
3 *1.J, and 1.O.*

4 32. On October 4, 2023, the City issued a Type II Consolidated Decision and Permit  
5 addressing infill housing/multifamily design review and SEPA review. The  
6 decision was to approve, with conditions, the project design under the City's  
7 Multifamily Residential Design Handbook and the infill townhouse standards of  
8 BMC 20.28, including some minor modifications to the standards per BMC  
9 20.28.030.B relating to building height, setbacks, building orientation, and fence  
10 height. The Type II decision was not appealed. *Exhibit 1.B.*

11 33. Notice of the March 13, 2024 hybrid open record hearing was issued February  
12 26, 2024 and posted on site on February 29, 2024. *Exhibits 1.P and 2.*

13 34. Extensive public comment was received in opposition to the application, with the  
14 comments primarily relating to the proposed tree removal, traffic, and  
15 compliance with the Infill Toolkit standards. With respect to trees, commenters  
16 asserted the following concerns: that the replacement trees would not perform  
17 the same ecological function as the mature trees to be removed for several  
18 decades; that the trees proposed for retention are in poor condition and might not  
19 survive adjacent construction (which they contend is proposed within 12 feet);  
20 that the tree removal would be contrary to the City's climate resilience goals and  
21 that the long-term maintenance of off-site replacement trees would not be  
22 assured. With respect to traffic, a request was made that the roundabout at  
23 Meridian and Birchwood be installed prior to development of the subject  
24 property. There were also comments regarding the poor quality of McLeod  
25 Road. With respect to the design standards, the primary issues raised related to  
26 the green factor and the extent to which the garages occupy the internal  
27 streetscape (which opponents referred to as a "garage ghetto"). Project  
28 opponents requested that the Applicant be required to reduce the number of  
29 units, urging the removal of the eight larger duplex units (which opponents  
30 referred to as "luxury" townhomes) in favor of retaining existing trees in their  
proposed footprints, on the grounds that the larger units are inconsistent with the  
spirit and intent of the Infill Toolkit. Commenters also objected to the proposal  
on the grounds that it is inconsistent with the City's Urban Forestry Management  
Plan, expected to be adopted this year. Opponents disputed the adequacy of the  
SEPA review, particularly with respect to impacts related to noise, air,  
stormwater runoff, and recreation. Opponents expressed concern that any  
replacement trees planted on the Country Club property or elsewhere in the City  
would not be protected by conservation easements that would ensure they are



1 retained for the purpose of offsetting the loss of the site's mature trees for the  
2 long term, rendering replacement ineffective. Several contended that the site's  
3 mature trees should be viewed as public resources being removed for private  
4 benefit, from both a wildlife habitat and a climate resilience perspective. At least  
5 one commenter objected to the proposed common open space near the site  
6 entrance, arguing it is too close to the arterial street which has heavy traffic and  
7 would be unsafe for children's play. Many expressed the view that the project  
8 seeks to maximize developer profit at the expense of the City's forest canopy to  
9 the public detriment, and argued that needed infill should go elsewhere. One  
10 commenter suggested that the City implement a policy of prioritizing areas in  
11 need of forest canopy and direct replacement trees to identified locations to result  
12 in the highest public good. *Exhibits 1, 1.B, 1.K, 3, and 5; Testimony of Michael*  
13 *Feerer, Kathy Furtado, Barbara Zielstra, Laura Weiss, Kari Galbraith, Brenda*  
14 *Chevalier, Robin Thomas, Wendy Larson, Jim Smith, Virginia Naef, Sarah*  
15 *Gardam, Tim Douglas, Marylou White, Joy Patterson, and Alex McLean.*

12 35. Addressing the concerns expressed in public comment, the Applicant provided  
13 credible information that trees have been proposed to be retained "to the extent  
14 feasible" given the long, narrow site dimensions and the infrastructure  
15 requirements that prevent tree retention in the central portion of the site. City  
16 Planning Staff concurred that the ordinance requirement is satisfied. The  
17 Applicant emphasized that the larger-footprint units add to the mix of housing  
18 types by providing for those with mobility issues, and that eliminating the eight  
19 units, which would reduce the scale of the project by approximately 12%, would  
20 jeopardize financing. The Applicant submitted there are environmental benefits  
21 to retaining the full density on the site, which they contended include supporting  
22 mass transit improvements and reducing long-distance commutes by providing  
23 additional housing to support the jobs in Bellingham. Further, the Applicant  
24 emphasized that the site design including the duplex units has already been  
25 approved through an administrative Type II process, which was not appealed.  
26 *Exhibits 1, 1.B, 1.N, and 6; Testimony of Ryan Nelson and Ali Taysi.* Of note,  
27 the "luxury" units would share a wall and would each have 2,215 square feet of  
28 interior space, including 1,389 square feet of ground floor space. *Exhibit 1.A,*  
29 *Sheet G1.05.* The Applicant offered to comply with a City-approved mechanism  
30 for ensuring replacement trees planted offsite are retained indefinitely even once  
they are no longer in the Applicant's control. Planning Staff and the Applicant  
conferred after the hearing to identify a proposed mechanism and submitted a  
proposed additional condition that would require the Applicant to record a notice  
on title of any offsite private property receiving the project's replacement trees  
that would be recorded with the Whatcom County Auditor prior to final plat  
approval and/or issuance of building permits on the project property. The notice

1 would inform the offsite property owners that the replacement trees are required  
2 to be retained. *Testimony of Ali Taysi and Ryan Nelson; Exhibit 7.*

- 3 36. Having reviewed the complete materials and heard all testimony at hearing,  
4 Planning Staff maintained their recommendation for approval subject to the  
5 conditions in the staff report and with the addition of the condition contained in  
6 Exhibit 7 described above. *Exhibits 1 and 7; Ryan Nelson Testimony.* The  
7 Applicant waived objection to the recommended conditions as modified. *Ali*  
8 *Taysi Testimony; Exhibit 7.*

## 9 CONCLUSIONS

### 10 Jurisdiction

11 The Hearing Examiner is granted authority to hold hearings and make decisions on  
12 preliminary plat applications pursuant to RCW 58.17 and BMC 2.56.050(A) (1 and 3).  
13 The Hearing Examiner's authority to decide subdivision variances is established in  
14 BMC 23.48.020 and 21.10.040.D(7).

### 14 Criteria for Review

#### 15 *Preliminary Plat*

16 Pursuant to Bellingham Municipal Code 23.16.030.A, preliminary plats shall be given  
17 approval, including preliminary plat approval subject to conditions, upon finding by the  
18 hearing examiner that all of the following have been satisfied:

- 18 1. It is consistent with the applicable provisions of this title, the Bellingham  
19 comprehensive plan and the Bellingham Municipal Code;
- 20 2. It is consistent with the applicable provisions of Chapter 23.08 BMC;
- 21 3. The division of land provides for coordinated development with adjoining  
22 properties or future development of adjoining properties through, where  
23 appropriate, the extension of public infrastructure, shared vehicular and  
24 pedestrian access, and abutment of utilities;
- 25 4. Each lot in the proposal can reasonably be developed in conformance with  
26 applicable provisions of the BMC, including but not limited to critical areas,  
27 setbacks, and parking, without requiring a variance that is not processed  
28 concurrently with the subdivision application pursuant to Chapter 23.48  
29 BMC;
- 30 5. There are adequate provisions for open spaces, drainage ways, rights-of-way,  
sidewalks, and other planning features that assure safe walking conditions for  
pedestrians, including students who walk to and from school, easements,

1 water supplies, sanitary waste, fire protection, power service, parks,  
2 playgrounds, and schools; and

- 3 6. It will serve the public use and interest and is consistent with the public  
4 health, safety, and welfare. The director shall be guided by the policy and  
5 standards and may exercise the powers and authority set forth in Chapter  
6 58.17 RCW, as amended.

6 *Subdivision Variance*

7 Pursuant to BMC 23.48.040.A, the hearing examiner may grant a variance from any  
8 term of Title 23, except minimum lot size, if it is shown that the proposal is consistent  
9 with the following criteria:

- 9 1.a. Because of unusual shape, the location of preexisting improvements, other  
10 extraordinary situation or condition, or physical limitation including, but not  
11 limited to, exceptional topographic conditions, geological problems, or  
12 environmental constraints, in connection with a specific piece of property,  
13 the literal enforcement of this title would involve difficulties, result in an  
14 undesirable land division, or preclude a proposal from achieving zoned  
15 density; or  
16 1.b. The granting of the variance will establish a better lot design resulting in a  
17 development pattern found to be consistent with the neighborhood character  
18 including, but not limited to, development orientation to the street, setbacks,  
19 lot orientation, or other contextual element associated with the proposed  
20 development; and  
21 2. The granting of the variance will not be unduly detrimental to the public  
22 welfare nor injurious to the property or improvements in the vicinity and  
23 subarea in which the subject property is located.

21 **Conclusions Based on Findings**

- 22 1. As conditioned, and with approval of the subdivision variance as described  
23 below, the subdivision is consistent with the applicable provisions of the BMC  
24 and the Comprehensive Plan. Many aspects of compliance were addressed in the  
25 Type II design review and SEPA decision, including compliance with the infill  
26 development standards of BMC 20.28. The Type II decision was not appealed  
27 and has become final. The proposed density resulting from the subdivision is  
28 consistent with that required in the zone. The plat would be consistent with  
29 Comprehensive Plan policies supporting infill development, a mixture of housing  
30 types, development where adequate public facilities and services exist,  
proportionate share mitigation, and tree preservation and planting. Addressing  
the extensive public opposition to the removal of the site's trees, it is concluded

1 that the subject property – including its tree canopy – is private property, the  
2 owner of which is entitled to develop it in conformance with the regulations in  
3 effect at the time of complete application. Opponents did not succeed in  
4 demonstrating that the proposal fails to comply with any applicable regulation or  
5 development standard. Members of the public are to be acknowledged for their  
6 extensive engagement in the review of this proposal, which arguably resulted in  
7 a higher-than-standard tree replacement ratio and in potentially more tree  
8 retention than would have occurred without their involvement. Those who  
9 engaged in this process are encouraged to forward their concerns about tree  
10 canopy retention and its relationship to climate resilience to the City Council and  
11 the Planning Commission to ensure that future adopted City regulations  
12 appropriately reflect community values. *Findings 4, 5, 6, 7, 9, 10, 11, 14, 15, 16,*  
13 *17, 18, 20, 22, 27, 28, 31, 32, 35, and 36.*

- 14 2. As conditioned, the subdivision is consistent with the applicable provisions of  
15 BMC 23.08. Of note, the Applicant has demonstrated that existing trees would  
16 be retained to the extent feasible given the design constraints of the parcel, the  
17 reasonable mix of housing types proposed, the competing goals of the  
18 comprehensive plan, and economic considerations. The conditions of approval  
19 require the Applicant to prepare a tree replanting plan, provide an environmental  
20 surety of 150% of the cost of installing the trees, schedule an inspection of  
21 clearing limits and critical root zone protection prior to site disturbance, comply  
22 with best management practices for protection of critical root zones, incorporate  
23 native trees into the landscaping to the extent practicable, plant the replacement  
24 trees on the BGCC property or elsewhere within the Birchwood neighborhood,  
25 and record a notice on the title of any private property used for replacement trees  
26 (including the BGCC). These conditions address some of the concerns raised in  
27 public comment. *Findings 14, 15, 16, 34, 35, and 36.*

28 Also of note, the subdivision incorporates pedestrian features that create access  
29 to services such as schools and public transit stops consistent with BMC  
30 23.08.030.F, including extensive offsite sidewalk that would complete an  
existing gap in pedestrian facilities. The lots would be consistent with the  
applicable provisions of BMC 23.08.060. The subdivision provides for  
dedication of right-of-way consistent with BMC 23.08.070.A. Public utilities  
would be provided to the lots. No public park facilities are required for the  
project. *Findings 6, 11, 13, 20, 26, and 27.*

- 31 3. As conditioned, the subdivision provides for coordinated development by  
32 extending Meridian Street improvements to the north of the subject property and  
33 by dedicating right-of-way for the City's future roundabout. *Findings 20 and 27.*

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4. As demonstrated by approval of the Type II consolidated permit, each lot could be reasonably developed in conformance with the applicable provisions of the BMC. The building envelope requirements of the BMC do not apply to the project. Setbacks modifications were addressed in the Type II design review/SEPA decision. There are no critical areas on site. Two parking spaces would be provided on each lot, and additional off-street guest parking would be provided throughout the plat. *Findings 8, 11, 12, and 32.*

5. As conditioned, the subdivision makes adequate provision for open spaces, drainage, rights-of-way, sidewalks, safe walking conditions, easements, utilities, fire protection, parks, playgrounds, and schools. The open space on site would exceed ordinance requirements. There is a public park just to the southeast of the subject property. The Applicant would dedicate right-of-way and pay proportionate share mitigation toward the roundabout project. As proposed and conditioned, sidewalks would be available within the site, between the site and the nearest schools, and between the site and the bus stop to the north. The conditions of approval address public utility easement requirements, fire protection requirements, and transportation, park, and school impact fee requirements. *Findings 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 36.*

6. As conditioned, the subdivision would serve the public use and interest by providing high-density housing consistent with the zoning and comprehensive plan designations. The subdivision would be consistent with the public health, safety, and welfare by providing improvements to Meridian Street, contributing to the City's roundabout project, complying with fire code requirements, and planting replacement trees at the ratios required by Planning Staff. Because the traffic generated by the subdivision would not cause the LOS of the intersection of Meridian and Birchwood to fall below City standards, requiring the roundabout improvement prior to subdivision approval is not warranted. *Findings 4, 9, 14, 15, 16, 20, 21, 22, 24, 27, 28, and 36.*

7. The proposal satisfies the criteria for a subdivision variance based on compliance with criteria 1.a and 2. The size and shape of the BGCC parcel relative to the subject parcel represents an extraordinary condition such that literal enforcement of the frontage improvement requirement as applied to McLeod Road would result in significant difficulties and likely render the project infeasible. Granting the variance would not be unduly detrimental to the public welfare or injurious to property or improvements in the vicinity because sole access to the subject property would be from Meridian Street, which would be improved consistent with City standards both along the subject property frontage and along the

1 BGCC property frontage. These improvements would provide a continuous  
2 walking path to the existing bus stop near the intersection of Meridian and  
3 McLeod. While there was credible public comment regarding the need for  
4 improvements on McLeod Street, based on the evidence submitted, a  
5 requirement that the Applicant provide the improvements would be  
6 disproportionate to the impacts of the project. *Findings 27, 35, and 36.*

## 7 DECISIONS

8 Based on the preceding findings and conclusions, the requested preliminary plat and  
9 subdivision variance are **APPROVED** subject to the following conditions:

### 10 A. GENERAL REQUIREMENTS

- 11 1. The plat shall be developed generally consistent with the lot layout on Exhibit  
12 1.A as conditioned.
- 13 2. Preliminary plat approval is contingent upon the approval of a Consolidated  
14 Permit for Type II land use decisions for Infill Toolkit/Multifamily Design  
15 Review and SEPA review in accordance with BMC Chapters 20.25 and 16.20,  
16 and all conditions of that permit shall be deemed conditions of approval of this  
17 preliminary plat approval.
- 18 3. Modifications to this decision shall be processed in accordance with BMC  
19 23.12.080.
- 20 4. A clearing and grading plan for the property, including rights-of-way, shall be  
21 submitted for review and approval by the Planning and Public Works  
22 Departments concurrent with review of civil drawings for the infrastructure.
- 23 5. Development of the property shall be consistent with the provisions of BMC  
24 Title 23, and with the description of the Proposal contained in the Determination  
25 of Non-significance, except as otherwise provided herein.
- 26 6. Impact fees for transportation, schools and parks shall be paid in accordance  
27 with applicable BMC requirements.
- 28 7. Preliminary plat approval shall expire as provided in BMC 23.16.070.

### 29 B. CONDITIONS FOR FINAL PLAT APPROVAL

30 The Applicant shall obtain all necessary permits and/or approvals from the City  
necessary to satisfy the following conditions prior to final plat approval pursuant to  
Chapter 23.12 BMC.

1. Access to the site shall be limited to one driveway off Meridian Street as shown  
on Exhibit 1.A.

- 1 2. The Applicant shall be required to dedicate right of way as depicted on the plan  
2 set in Exhibit 1.A to facilitate the capital transportation roundabout  
improvement located at the intersection of Meridian/Birchwood/Squalicum.
- 3 3. The Applicant shall be required to obtain Public Facility Construction  
4 Agreement approval from the Public Works Department for the construction of  
5 a missing segment of sidewalk and curb and gutter stormwater infrastructure  
6 along Meridian Street from the northern portion of the subject property to the  
7 existing bus stop in front of the BGCC near the intersection of Meridian Street  
8 and McLeod Road. Additionally, the Applicant shall be required to extend  
9 water/sewer/stormwater mains in accordance with Public Works Department  
10 requirements within the subject property. The public utility main extensions  
11 shall require public utility easements reviewed and approved by the City and  
recorded with the Whatcom County Auditor prior to final plat approval. The  
required public infrastructure construction shall be completed and accepted by  
the City prior to final plat approval.
- 12 4. In order to comply with Fire Department requirements, all units shall be  
13 equipped with NFPA 13D sprinkler systems and building elevations shall be  
consistent with the plans shown in Exhibit 1.A.
- 14 5. The Applicant shall be required to submit private covenants, conditions, and  
15 restrictions (CC&Rs) for vehicular/pedestrian access, parking, utilities, open  
16 space amenities, waste/recycling, mail service, and all other commonly held  
17 tracts and amenities for City review and approval prior to final plat approval.  
18 The private CC&Rs shall include a clause that no fencing between individual  
19 units is allowed in front yards to ensure access for emergency services. The  
private CC&Rs shall be recorded with the Whatcom County Auditor with the  
recording of the final short plat.
- 20 6. Private covenants shall be recorded with the plat to specifically define the  
21 common, limited common, and private elements of the proposal. The covenants  
22 shall also include maintenance obligation of these elements and a cost sharing  
mechanism for each.
- 23 7. Mailboxes shall be installed as approved by the United States Postal Service.
- 24 8. The Applicant shall be responsible to obtain any and all necessary Federal  
25 and/or State approvals associated with the proposal.
- 26 9. The following shall be shown on the face of the plat, as applicable:  
27 a. All existing, required, and proposed easements.  
28 b. A note stating that all lots are subject to those conditions set forth in this  
29 Order, and as may be amended in accordance with the municipal code.

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- c. A note referencing any existing private covenants and any covenants specific to the proposed lots.
  - d. The Applicant shall be required to provide a final stormwater report prepared by a qualified professional identifying compliance with BMC 15.42 for Public Works Department review and approval prior to final plat approval.
  - e. The proposal is required to provide street trees for every 50 feet of street frontage.
10. Pursuant to BMC 16.60.080.A.1, no clearing is permitted on an undeveloped lot without a valid building permit or public facility construction agreement.
  11. The Applicant shall be required to submit a native tree replacement plan for City review and approval. The native tree replacement plan shall be prepared by an experienced professional. The tree replanting plan shall include a mix of medium-large native conifers and should be developed to match the soil conditions and sun exposure of the location where the replacement trees will be planted.
  12. Prior to the issuance of a building or construction permit and site disturbance, the Applicant shall be required to provide an environmental surety approved by the City for 150% of the cost for installing the proposed tree planting plan, including annual maintenance and monitoring for five years, and an as-built mitigation report, each prepared by a qualified professional and submitted to the City. Maintenance and monitoring shall be required for the full five years for all replacement trees regardless of where they are planted. During the five year monitoring period, the Applicant shall be required to replace each tree that does not survive with an equivalent native seedling. The surety shall be fully executed with City signatures before this condition is considered satisfied. The party initially providing the surety shall remain responsible for maintaining the surety through the duration of the mitigation maintenance and monitoring period required by the City unless the City approves, in writing, the transfer of responsibility for maintaining the surety to another party.
  13. Prior to the issuance of a building permit and/or any site disturbance, the Applicant shall schedule a site visit with the planning project manager, project arborist, and contractor to inspect the clearing limits and tree/critical root zone protection.
  14. The Applicant shall be required to adhere to best management practices on protection of critical root zones of preserved trees and installation of 477 replacement trees on and off site. Tree boxes and other related protections as specified in the arborist report (Exhibit 1.H) shall be required to protect all



1 retained trees onsite throughout the construction period.

2 15. The native tree replacement plan shall include deer protection of tree seedlings  
3 provided by secured tree cages or high perimeter deer fencing. The plan shall  
4 include blue tubes for the first three years for all tree species impacted by  
5 rodents or rabbits. The plan shall include regularly scheduled watering from  
6 May through September for all replacement trees regardless of location unless  
7 otherwise specified by the qualified professional and approved by the City.

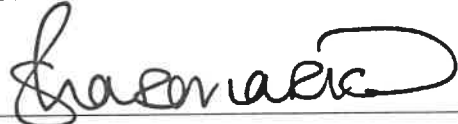
8 16. The Applicant shall be required to incorporate native trees into the landscaping  
9 plan to the extent practicable.

10 17. As a condition of approval, the Applicant shall plant the required native  
11 replacement trees within the subdivision, within the BGCC site, and/or in the  
12 Birchwood Neighborhood.

13 18. For all replacement trees to be planted on private property, the Applicant shall  
14 be required to record a notice on the title of the private property ensuring long  
15 term survival and retention of the replacement trees in order to comply with the  
16 Hearing Examiner condition of approval and Bellingham Municipal Code. The  
17 notice on title shall not be terminated or modified unless approved by the City  
18 in writing. The notice on title shall be approved by the City and recorded with  
19 the Whatcom County Auditor prior to final plat approval and/or issuance of  
20 building permits on the subject property.

21 DECIDED April 8, 2024.

22 **BELLINGHAM HEARING EXAMINER**

23 

24 Sharon A. Rice