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

IN RE:	HE-23-PL-026
CHAY and CHRISTINA TAN and ETHAN and KELLI POTTS, Applicants	FINDINGS, CONCLUSIONS, AND DECISION
4241 Northwest Avenue	SHARON A. RICE
SUB2024-0016 / Cluster Preliminary Plat	HEARING EXAMINER

SUMMARY OF DECISION

The requested cluster preliminary plat to subdivide approximately 3.79 acres into 35 lots is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Ali Taysi, AVT Consulting LLC, on behalf of Chay and Christina Tan and Ethan and Kelli Potts (Applicants), requested a cluster preliminary plat to subdivide approximately 3.79 acres into 35 lots, including one detached single-family residential lot and 34 Infill Toolkit townhouse lots developed per Bellingham Municipal Code (BMC) 20.28.140. The subject property is located at 4241 Northwest Avenue in Bellingham, Washington.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on November 13, 2024. The record was held open two business days to allow for post-hearing written public comment, with additional days for responses by the parties. No post-hearing comments were submitted, and the record closed on November 15, 2024.

No in-person site visit was conducted, but the Examiner viewed the subject property and surroundings on Google Maps.

1 **Testimony:**

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

3 Ryan Nelson, Planner II, Planning and Community Development Department

4 Ali Taysi, AVT Consulting LLC, Applicants' Representative

5 Kristi Bowker, City of Bellingham Hearing Clerk

6 **Exhibits:**

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

8 Exhibit 1 Planning and Community Development Department Staff Report, including
9 the following Attachments:

10 A. Architectural and Civil Plans including Landscaping Plans, dated
11 June 19, 2024

12 B. Consolidated Design Review/Critical Area Permit and SEPA Review
(DR2024-0004/CAP2024-0021/SEP2024-0010)

13 C. Vicinity Map

14 D. Zoning and Comprehensive Plan Designation Map

15 E. Land Use Application materials

16 E1. Land Use Application

17 E2. Response to Subdivision Performance and Decision Criteria

18 F. Request for Information (RFI), dated May 20, 2024

19 G. Applicant's response to RFI, dated June 25, 2024

20 H. Notice of Application/Mailing List

21 I. SEPA Determination of Non-significance, dated November 6, 2024

22 J. Notice of Public Hearing

23 K. Aerial Map

24 L. Wetland and Fish and Wildlife Habitat Assessment Report, Soundview
25 Consultants, dated February 2024

26 M. Wetland Buffer Mitigation Plan, Soundview Consultants, dated
27 February 2024

28 N. Preliminary Stormwater Plan, Freeland and Associates, dated
29 February 2024

1 O. Map of schools in the vicinity

2 P. Public comment

3 Q. Multimodal Transportation Concurrency Certificate, issued
4 March 11, 2024

5 After considering the admitted testimony and exhibits, the Hearing Examiner enters the
6 following findings and conclusions.

7
8 **FINDINGS**

9 1. Ali Taysi, AVT Consulting LLC, on behalf of Chay and Christina Tan and
10 Ethan and Kelli Potts (Applicants) requested a cluster preliminary plat to
11 subdivide approximately 3.79 acres into 35 lots, including one detached single-
12 family residential lot and 34 Infill Toolkit townhouse lots developed per
13 Bellingham Municipal Code (BMC) 20.28.140. The subject property is located
14 at 4241 Northwest Avenue in Bellingham, Washington.¹ *Exhibits 1, 1.A, 1.E1,*
15 *and 1.E2.*

16 2. The subject property is within Area 20 of the Cordata Neighborhood and has a
17 zoning designation of Residential Single, with Detached/Cluster/Cluster
18 Attached use qualifiers. Infill housing types (BMC 20.28) are permitted in the
19 zone at a density of 4,300 square feet per dwelling unit. *Exhibits 1 and 1.D;*
20 *BMC 20.00.045; BMC 20.28.050.B.*

21 3. The subject property is approximately 3.79 acres in area (164,883 square feet)
22 and is developed with one single-family residence, which is accessed from
23 Northwest Avenue. All adjacent parcels are within the same zoning designation
24 as the subject property. Adjacent parcels to the west are developed with Infill
25 Toolkit dwelling units. Parcels to the north and south are undeveloped. The
26 parcels to the east (across Northwest Avenue from the subject property) are
27 developed with detached single-family residences. *Exhibits 1, 1.D, and 1.K.*

28 4. The Applicant proposes to retain the existing single-family residence on
29 proposed Lot 35 and divide the remainder of the property into 34 townhouse

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¹ The legal description of the subject property is: Lots 5, 6, 7, 8, and 15, Plat of the Amended Map of
Canfield 3rd Addition to Whatcom, Whatcom County, Washington, According to the Plat thereof,
Recorded in Volume 2 of Plats Page 48, Records of Whatcom County, Washington, except a strip of Lot
15 sold to Whatcom County by Quit Claim Deed Recorded under Auditor's File Number 162931; Situate
in Whatcom County Washington. Also known as Assessor's parcel number 380211-435186-0000.
Exhibits 1 and 1.A.

1 lots, two conservation tracts (Conservation Tracts A and B), and a common
2 tract. The townhouses would be grouped in buildings of four, five, and six
3 units. The overall project density would be one lot per 4,711 square feet,
4 consistent with the maximum density authorized in the zone. Approximately
5 65% of the site would be retained in open space. *Exhibits 1 and 1.A.*

5. Consistent with the applicable lot design standards of BMC 23.08.060, the
6 proposed lots would have logical boundaries, with the lot lines generally
7 approaching the access drive at right angles. The Applicant has demonstrated
8 through the submitted plans that the lots would be buildable consistent with
9 applicable setback requirements.² Lots created through the Infill Toolkit do not
10 have minimum lot sizes. *BMC 20.28.050.C.* The retained detached clustered
11 single-family residence has a required minimum lot size of 4,300 square feet.
12 *BMC 20.00.045 (Area 20).*³ The Infill Toolkit townhouse lots would range
13 from approximately 1,150 square feet to 3,575 square feet. The exact area of
14 proposed Lot 35, on which the existing residence would be retained, is not
15 provided in the record and is not easily calculated due to the lot's irregular
16 shape; however, it appears to equal or exceed 4,300 square feet. *Exhibit 1.A*
17 *(sheet DR-6).* The infill townhouse lots are exempt from the building envelope
18 (i.e., width and depth) requirements of BMC 23.08.060.D, and proposed Lot 35,
19 containing the existing single-family residence, would comply with the 40- by
20 40-foot building envelope requirement applicable to detached cluster residences.
21 The lots would abut public infrastructure by easement, as only Lot 1 would
22 directly abut Northwest Avenue. *Exhibits 1, 1.A, and 1.G.*

6. The subject property contains two Category III wetlands (Wetlands A and B).
23 Wetland A is located in the northern portion of the property and Wetland B is
24 located in the southwest and southeast corners of the property. Both wetlands
25 have habitat scores of 4, requiring 80-foot buffers pursuant to BMC Table
26 16.55.340.C. *Exhibit 1.L.*

7. The Applicant proposes to cluster the townhouses in the central portion of the
27 site to avoid wetland impacts and to minimize wetland buffer impacts. The
28 Applicant proposes to reduce the wetland buffer from 80 feet to 60 feet pursuant

26 ² Of note, the existing residence to be retained appears to have a setback of only eight or nine feet from
27 the proposed internal private access drive. Presumably this is acceptable where a five-foot side setback is
28 required and the internal lane is private rather than a public street, which would require a 10-foot flanking
street setback. *Exhibit 1.A (sheet DR2).*

29 ³ The undersigned notes that it is possible that detached clustered Lot 35's minimum lot size is 4,000
square feet per BMC 23.08.050.A(3), which standard the lot would also appear to meet.

1 to BMC 16.55.340.C(2) and to permanently impact 510 square feet of the
2 reduced Wetland A buffer and 1,892 square feet of the reduced Wetland B
3 buffer. As mitigation for these impacts, the Applicant proposes to create 519
4 square feet of new Wetland A buffer and 3,977 square feet of new Wetland B
5 buffer, restore 2,450 square feet of existing buffer, and enhance 41,366 square
6 feet of existing buffer. The restoration and enhancement activities would
7 include removing invasive species and planting native trees, shrubs, and
8 groundcover. The wetlands and buffers would be preserved in perpetuity
9 through conservation easements. *Exhibit 1.M.*

8. A critical area permit authorizing the proposed wetland buffer impacts and
mitigation was conditionally approved on November 6, 2024, as part of a Type
II consolidated decision (Exhibit 1.B). The conditions of approval address
inspection, timing, surety, easement, fencing, signage, monitoring, and
state/federal permitting requirements. *Exhibit 1.B.*

9. The cluster plat application is not subject to the City's interim landmark tree
ordinance, because it vested prior to the effective date of that ordinance but is
subject to requirements to incorporate trees into the subdivision design to the
extent feasible (BMC 23.08.030.C) and to replace removed significant trees at a
ratio to be determined by the Planning and Community Development
Department (BMC 16.60.080.B(4)). Due to the wetlands and buffers in the
northern and southern portions of the site, which constrain the placement of
buildings and infrastructure, most of the trees within the central portion of the
site would be removed. However, at the City's request, the Applicant was able
to identify additional trees for retention, including two 20-inch diameter fir trees
near the proposed site entrance. The submitted tree removal plan indicates that
110 significant trees would be removed. The proposed tree planting would
exceed a 1:1 ratio and has been deemed acceptable by Planning Staff. The
landscape plan provides for the planting of 92 trees within the development
area, plus 175 trees would be planted within the wetland buffers as part of the
proposed mitigation plan. The wetland buffer plantings would be protected in
perpetuity through conservation easements. *Exhibits 1, 1.A, 1.B, and 1.M;*
Testimony of Ali Taysi and Ryan Nelson.

10. The subdivision is not subject to the lot size transition requirements of BMC
23.08.060.F(1) because the adjacent parcels to the north and south are
undeveloped and, due to the proposed conservation tracts, the proposed lots
would not abut the north or south property lines. The properties to the west are
developed similarly to the development proposed for the subject property.
Exhibit 1; Ryan Nelson Testimony.

1 11. Vehicular access to the subdivision would be from a new 20-foot-wide
2 driveway extending west from Northwest Avenue, which is an arterial street
3 subject to access spacing standards. The driveway would be constructed to the
4 “large lane” standards of BMC 20.28.050, including a 12-foot-wide driving lane
5 and two four-foot walking paths.⁴ The individual townhouses would take
6 access from this main driveway or from one of two driveway segments
7 extending south. The westernmost leg of the driveway network would be
8 configured to serve as a turn-around for fire and waste collection vehicles. The
9 access design is consistent with Fire Department requirements. Fire apparatus
road permits would be required prior to final plat approval. All units would be
equipped with fire sprinkler systems. *Exhibits 1, 1.A, 1.E2, and 1.F; Testimony
of Ali Taysi and Ryan Nelson.*

10 12. There are no alternatives to the proposed single access to Northwest Avenue.
11 The wetlands along the north and south boundaries of the subject property
12 prevent establishment of shared access with adjacent properties. The Applicant
13 attempted to establish access from the west, but the adjacent property owner
14 denied the request. *Testimony of Ryan Nelson and Ali Taysi; Exhibits 1
and 1.A.*

15 13. Northwest Avenue is not fully improved to City standards along the property
16 frontage. Right-of-way dedication of 10 feet (for most of the property
17 frontage⁵) and construction of curb, gutter, sidewalk, street trees, bicycle lane,
and stormwater infrastructure would be required. *Exhibits 1 and 1.A.*

18 14. Pedestrian walkways would be provided within the plat, providing connections
19 between the units and the site entrance to the east and to Talus Way to the west.
20 All driveways and pedestrian paths would be contained within a common tract
21 that would be owned and maintained by the homeowners association. *Exhibit
22 1.A; Ali Taysi Testimony.* Although in public comment on the proposal a
23 request was made that a public trail be established through the subject property
24 between the neighborhood to the west and Northwest Drive, City Planning Staff
submitted that there isn’t code authority to require that the proposed pedestrian
connection between Talus Way and Northwest Drive be made open to the

25
26 ⁴ Although a modification to the standard is described in the project narrative, this request was withdrawn
27 due to lack of City support, and the submitted site plan depicts compliance with the standard. *Exhibits
1.A and 1.E2; Ali Taysi Testimony.*

28 ⁵ The existing right-of-way is wider at the south end of the property frontage. *Exhibit 1.A (see Cover
29 Sheet & Existing Conditions map); Ali Taysi Testimony.*

1 public. The City Parks, Recreation, and Open Space Plan does not provide for a
2 public trail on the subject property.⁶ *Ryan Nelson Testimony; Exhibit 1.P.*

3 15. Consistent with City parking standards, two off-street garage parking spaces
4 would be provided for each townhouse, and the existing two-car garage would
5 be retained for the existing single-family residence. In addition, the townhouses
6 within four of the buildings would each have sufficient driveway length to
7 provide an additional parking space. Eleven guest parking stalls would be
8 provided along the internal street. *Exhibits 1.A and 1.E2; Ali Taysi Testimony.*

9 16. Transit service is available to the site. Whatcom Transit Authority provides bus
10 service along Northwest Avenue, with the nearest stops approximately 400 feet
11 to the northwest and 1,000 feet to the southwest. *Exhibits 1 and 1.E2.*

12 17. The Applicant would connect the proposed lots to the public sewer system by
13 extending an existing sewer main through the site from the development to the
14 west of the subject property. Although not needed to provide sewer to the
15 proposed lots, the Applicant would also extend a dry sewer main through
16 Northwest Avenue in conjunction with required frontage improvements to
17 facilitate development of adjoining properties, unless determined otherwise by
18 the Public Works Department during the civil engineering phase. A lift station
19 would need to be constructed to provide sewer service in Northwest Avenue.
20 *Exhibits 1 and 1.A.*

21 18. The Applicant would connect the proposed lots to the public water system by
22 extending an existing water main through the site from the development to the
23 west of the subject property. There is also an existing water main in Northwest
24 Avenue. *Exhibit 1.A.*

25 19. The soils on-site are not suitable for infiltration. If capacity is available, the
26 Applicant proposes to direct runoff from the developed site into the City of
27 Bellingham North End Regional Pond for treatment and flow control. If
28 capacity is not available, the Applicant would be required to construct a
29 stormwater vault on-site. The final stormwater management plan required in a
30 recommended condition of approval would be required to demonstrate
compliance with BMC Chapter 15.42. A portion of the roof runoff would be

⁶ The Hearing Examiner further notes that Mahogany Avenue, an east-west public street that is improved with sidewalks, provides a connection from the neighborhood to the west and Northwest Avenue only a short distance south of the subject property. *Exhibit 1.C; Google Maps Site View.*

1 dispersed into an on-site wetland to ensure sufficient hydrology is maintained.
2 *Exhibits 1 and 1.K; Ryan Nelson Testimony.*

3 20. Public parks are or would be available in the vicinity of the site, including a
4 planned City park a short distance northwest of the subject property. The
5 proposal includes a walkway between the west terminus of the internal
6 driveway and Talus Way, which would provide access to the park. The
7 Bellingham Parks, Recreation, and Open Space Plan does not call for public
8 recreation amenities on or adjacent to the subject property. *Exhibits 1, 1.A, and
9 1.E2; Ali Taysi Testimony.*

10 21. The subject property is within the service area of Alderwood Elementary
11 School, Shuksan Middle School, and Squalicum High School. Students
12 attending public schools at all levels would be bussed to school, as the distances
13 between the subject property and the schools range from 1.3 to 5.4 miles.
14 Sidewalks would be provided along the internal street; between the internal
15 street and the existing sidewalk system on Talus Way, and along the subject
16 property's Northwest Avenue frontage, connecting to the existing sidewalk on
17 Northwest Drive near the intersection of Mahogany Avenue. These sidewalks
18 would connect school-aged residents of the plat with school bus stops. *Exhibits
19 1, 1.A, and 1.E2; Ali Taysi Testimony.*

20 22. The City of Bellingham Comprehensive Plan land use map designates the
21 subject property as Residential Single, Medium Density. Planning Staff
22 submitted that the following goals and policies of the Bellingham
23 Comprehensive Plan would be furthered by the project.

24 Land Use

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

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

Housing

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

Capital Facilities and Utilities

GOAL CF-8 Promote the delivery of adequate utilities and encourage the
design and siting of private utility facilities in a manner that

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minimizes impacts on adjacent land uses and the environment.

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

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.

Exhibit 1.

Procedural Findings

- 23. On September 12, 2023, the Applicant held a pre-application neighborhood meeting. *Exhibit 1.*
- 24. The City issued a Multimodal Transportation Concurrency Certificate for the project on March 11, 2024. *Exhibits 1 and 1.Q.*
- 25. On April 3, 2024, the Applicant submitted applications for a preliminary plat, Infill Toolkit/multifamily design review permit, critical areas permit, and State Environmental Policy Act (SEPA) review. The City determined the applications to be complete on May 1, 2024. After requesting and obtaining additional information from the Applicant, the City issued a notice of application and optional DNS Process on July 12, 2024. The project’s final determination of non-significance (DNS) was issued on November 6, 2024. *Exhibits 1, 1.H, and 1.I.*
- 26. On November 6, 2024, the City issued a Type II consolidated permit for infill housing, design review, critical areas, and SEPA review. The decision was to

1 approve, with conditions, the project design under the City's Multifamily
2 Residential Design Handbook, the infill townhouse standards of BMC 20.28,
3 and the critical areas ordinance. Approval of the infill townhouse permit
4 included a modification of standards relating to the configuration of guest
5 parking. As of the date of the hearing, no appeal of the consolidated permit had
6 been filed. *Exhibits 1 and 1.B; Ryan Nelson Testimony.*

7 27. Notice of the open record hearing was issued on October 29, 2024. *Exhibit 1.J.*

8 28. Having heard all testimony, Planning Staff maintained their recommendation for
9 approval of the preliminary plat subject to the conditions in the staff report.
10 *Exhibit 1; Ryan Nelson Testimony.* The Applicant waived objection to the
11 recommended conditions. *Ali Taysi Testimony.*

12 CONCLUSIONS

13 **Jurisdiction:**

14 The Hearing Examiner is authorized to render a decision on preliminary plats through
15 the Type III-B review process pursuant to BMC 21.10.040.E(1).

16 **Criteria for Review:**

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

- 20 1. It is consistent with the applicable provisions of this title, the Bellingham
21 comprehensive plan and the Bellingham Municipal Code;
- 22 2. It is consistent with the applicable provisions of Chapter 23.08 BMC;
- 23 3. The division of land provides for coordinated development with adjoining
24 properties or future development of adjoining properties through, where
25 appropriate, the extension of public infrastructure, shared vehicular and
26 pedestrian access, and abutment of utilities;
- 27 4. Each lot in the proposal can reasonably be developed in conformance with
28 applicable provisions of the BMC, including but not limited to critical areas,
29 setbacks, and parking, without requiring a variance that is not processed
30 concurrently with the subdivision application pursuant to Chapter 23.48
BMC;
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 **Conclusions Based on Findings:**

- 7 1. As conditioned, the proposal is consistent with the applicable provisions of BMC
8 Title 23, the Bellingham Comprehensive Plan, and the Bellingham Municipal
9 Code. Many aspects of compliance were addressed in the Type II consolidated
10 permit, including compliance with the infill development standards of BMC
11 20.28 and the critical areas code. The proposal is consistent with Comprehensive
12 Plan policies supporting infill development and design flexibility, encouraging
13 development where adequate public facilities and services exist, and encouraging
14 the preservation and planting of trees. *Findings 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,*
15 *14, 15, 16, 17, 18, 19, 20, 22, 26, and 28.*
- 16 2. As conditioned, the proposal demonstrates compliance with the applicable
17 provisions of BMC Chapter 23.08. Consistent with the purposes of the chapter
18 to encourage compact and walkable neighborhoods and to preserve
19 environmentally sensitive features, the proposal would provide a pedestrian
20 connection to Talus Way to the west and would preserve wetlands, buffers, and
21 trees within conservation easements. These features are also consistent with the
22 subdivision performance standards of BMC 23.08.030. Right-of-way would be
23 dedicated along Northwest Avenue and frontage improvements installed to bring
24 the frontage fully up to current City standards. The improvements would ensure
25 the orderly extension of public infrastructure for future development. The
26 proposed access location is appropriate given critical areas and other constraints.
27 Street trees would be provided. The number of lots proposed would be
28 consistent with the density limitation of Area 20 of the Cordata Neighborhood, as
29 applicable to infill development. The Infill Toolkit lots are exempt from
30 minimum lot size requirements.⁷ Proposed Lot 35 would satisfy the minimum
clustered detached lot size. All lots would comply with the lot design standards
of BMC 23.08.060. No lot size transition is required, and the proposed 65%
open space would far exceed the required 15% minimum. The lots would be
served by public water and sewer and a stormwater management system.
Findings 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, and 20.

29 ⁷ BMC 20.28.050.C.

- 1 3. As conditioned, the subdivision provides for coordinated development with
2 adjoining properties through the construction of frontage improvements and
3 extension of utility mains as required by the Public Works Department. Shared
4 vehicular access to the site was investigated and found not to be feasible.
5 *Findings 6, 7, 11, 12, 14, 17, and 18.*
- 6 4. Approval of the consolidated Type II permits demonstrates that each lot can be
7 developed in conformance with applicable regulations pertaining to critical areas,
8 applicable zoning setbacks and/or Infill Toolkit performance standards, and
9 parking without requiring a variance. Each lot would have two garage parking
10 spaces, many lots would provide additional parking in the driveway, and 11
11 additional guest parking stalls would be provided sitewide. *Findings 5, 8,
12 and 26.*
- 13 5. As conditioned, adequate provision would be made for open spaces, drainage,
14 rights-of-way, sidewalks, safe walking conditions for pedestrians, easements,
15 water, sewer, fire protection, power, parks, playgrounds, and schools. Open
16 space would be provided along the northern and southern boundaries of the site
17 for critical areas protection. There is a planned public park in the near vicinity of
18 the subject property. Sidewalks would be provided along the internal lanes and
19 along Northwest Avenue. Public water and sewer would be extended to each lot.
20 School, park, and transportation impact fees would be paid on a per lot basis at
21 time of building permit issuance. *Findings 4, 6, 7, 11, 13, 14, 17, 18, 19, 20,
22 and 21.*
- 23 6. As conditioned, the proposal would serve the public use and interest and would
24 be consistent with the public health, safety, and welfare. The proposed
25 development would be consistent with the character of existing development to
26 the west of the subject property. The project was reviewed for compliance with
27 SEPA and a DNS was issued. Frontage improvements including sidewalks
28 would be provided along Northwest Avenue. The public interest would be
29 served by the creation of the proposed infill lots where urban services are
30 available. *Findings 3, 10, 13, 16, 17, 18, 19, 20, 25, 26, and 28.*

DECISION

Based on the preceding findings and conclusions, the requested cluster preliminary plat to subdivide approximately 3.79 acres into 35 lots at 4241 Northwest Avenue is **APPROVED** subject to the conditions below.

A. General Requirements

Findings, Conclusions, and Decision

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H:/DATA/HEARING EXAMINER/DECISIONS/Tan Potts 4241 Northwest Ave Cluster SUB Decision BELLINGHAM, WA 98225
(360) 778-8399

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

- 1 1. The plat shall be developed generally consistent with the lot layout on Exhibit
2 1.A, as conditioned.
- 3 2. Preliminary plat approval is contingent upon the ultimate approval of a
4 consolidated permit for Type II land use decisions for Infill Toolkit/multifamily
5 design review, critical areas and SEPA review in accordance with Chapters
6 20.25, 16.55 and 16.20 BMC, and all conditions of that permit shall be deemed
7 conditions of approval of this preliminary plat approval.
- 8 3. Modifications to this decision shall be processed in accordance with BMC
9 23.12.080.
- 10 4. A clearing and grading plan for the property, including rights-of-way, shall be
11 submitted for review and approval by the Planning and Public Works
12 Departments concurrent with review of civil drawings for the infrastructure.
- 13 5. Development of the property shall be consistent with the provisions of BMC
14 Title 23, and with the description of the Proposal contained in the determination
15 of non-significance, except as otherwise provided herein.
- 16 6. The Applicant shall be required to apply for a street name application from the
17 Fire Department for the proposed new private road. The owner shall submit a
18 letter of No Contest for the required change of address for the existing
19 residence.
- 20 7. Impact fees for transportation, schools, and parks shall be paid in accordance
21 with applicable BMC requirements.
- 22 8. Preliminary plat approval shall expire as provided in BMC 23.16.070.

22 **B. Conditions For Final Plat Approval**

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

- 25 1. Access to the site shall be limited to one driveway off Northwest Avenue as
26 shown on Exhibit 1.A.
- 27 2. The Applicant shall be required to dedicate 10 feet of right-of-way abutting
28 Northwest Avenue as depicted on the plan set in Exhibit 1.A to facilitate future
29 public right-of-way needs for the City.

30 *Findings, Conclusions, and Decision*

page 13 of 15

H:/DATA/HEARING EXAMINER/DECISIONS/Tan Potts 4241 Northwest Ave Cluster SUB Decision BELLINGHAM, WA 98225
(360) 778-8399

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
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3. The Applicant shall be required to obtain Public Facility Construction Agreement approval from the Public Works Department for the construction of bicycle lanes, sidewalks, curb and gutter, stormwater infrastructure, and a dry sewer main (unless otherwise determined by the Public Works Department) abutting the subject property and Northwest Avenue.

Additionally, the Applicant shall be required to extend water/sewer/ stormwater mains in accordance with Public Works Department requirements within the subject property. The public utility main extensions 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.

4. In order to comply with Fire Department requirements all units shall be equipped with NFPA 13D sprinkler systems and building elevations shall be generally consistent with the plans shown in Exhibit 1.A. All units constructed under the International Residential Code are allowed to be equipped with NFPA 13D sprinkler systems. Dwelling units for buildings constructed under the International Building Code shall be sprinklered per NFPA 13 or 13R standards.

5. The Applicant shall be required to submit private covenants, conditions, and restrictions (CC&Rs) for vehicular/pedestrian access, parking, utilities, open space amenities, waste/recycling, mail service, etc. for City review and approval prior to final plat approval. The private CC&Rs shall be recorded with the Whatcom County Auditor with the recording of the final plat.

6. Private covenants shall be recorded with the plat to specifically define the common, limited common, and private elements of the proposal. The covenants shall also include maintenance obligation of these elements and a cost sharing mechanism for each.

7. Mailboxes shall be installed as approved by the United States Postal Service.

8. The Applicant shall be responsible to obtain any and all necessary Federal and/or State approvals associated with the proposal.

9. The following shall be shown on the face of the plat, as applicable:

- a. All existing, required, and proposed easements.
- b. A note stating that all lots are subject to those conditions set forth in this

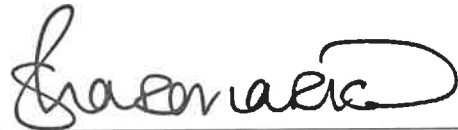
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Order and as may be amended in accordance with the municipal code.

- 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. 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 to inspect the clearing limits and tree/critical root zone protection.
12. The Applicant shall be required to adhere to best management practices on protection of critical root zones of preserved trees.

DECIDED December 3, 2024.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice