

July 29, 2024

MEMORANDUM

To: Seattle City Council
From: Lish Whitson, Analyst
Subject: Council Bill 120818 and Clerk File 314489: 13th Avenue Townhomes Subdivision

On Tuesday, July 30, the City Council (Council) will consider [Council Bill \(CB\) 120818](#) and [Clerk File \(CF\) 314489](#). Passage of the CB and filing of the CF would grant final approval to the 13th Avenue Townhomes subdivision, which is located at 1118 and 1122 13th Avenue between E Spring Street and E Union Street, in the Squire Park neighborhood of the Central District, Council District 3. The subdivision would facilitate the division of two lots into 12 unit lots, to facilitate the sale of individual townhouse units. The project includes two five-story structures, each containing six townhouse units.

Attachment 1 describes the subdivision approval process. Final approval of a plat is a legislative act unless the Council has delegated that review to another body. Council's review of a final plat is limited to certifying that the plat has met conditions that have previously been placed on the plat by the Seattle Hearing Examiner. Under Washington State Law, Council is required to act within 30 days of filing of the final subdivision. Because Council's purview is constrained both in time and substance, Council routinely considers final subdivision ordinances, like the 13th Avenue Townhomes subdivision, at a City Council meeting without consideration at committee. The bill is necessary to allow 13th Avenue Townhomes, which have been built, to be sold as individual units.

The SDCI Director recommended approval of the preliminary subdivision with two conditions. On February 13, 2023, the Seattle Hearing Examiner approved the preliminary subdivision (see Attachment 2) with the following conditions:

Prior to Final Plat Approval:

1. The approved Declaration of Covenants, Conditions, restrictions and Easements shall be recorded at King County and the recording number provided on the final plat documents.
2. The covenants and bylaws for the proposed Homeowner's Association (HOA) for shared utilities, maintenance, etc. be recorded at King County and the recording number to be included on the final plat.

The Seattle Department of Transportation (SDOT), the Seattle Department of Construction and Inspections (SDCI) and Council Central Staff have confirmed that the final subdivision would

meet all applicable conditions and recommends that the Council grant final approval (this requires a “do pass” vote on CB 120818 and a vote to “place on file” CF 314489.)

Attachments:

1. Seattle City Council Review of Final Subdivisions
2. Seattle Hearing Examiner’s Recommendation on the 13th Avenue Townhomes Subdivision

cc: Ben Noble, Director

Attachment 1



Seattle City Council Review of Final Subdivisions

Any application to divide one or more pieces of property into ten or more lots requires review under Washington State Law and the Seattle Municipal Code (SMC) as a subdivision. SMC [Chapter 23.22](#) contains the regulations that guide the City's review of subdivision applications. One requirement of the subdivision review process under current City regulations is that the City Council review and approve final subdivision plans.¹ The Revised Code of Washington (RCW) [58.17.140](#) requires that the City Council grant final approval for subdivisions within 30 days of filing of the final plat by the owner.

The Council grants such approval after completion of the following steps have been completed:

1. SDCI reviews and issues a Master Use Permit for development that will end in a subdivision;
2. Hearing Examiner holds a public hearing and approves the preliminary plat², usually subject to conditions;
3. Developer builds all of the planned site infrastructure (this includes construction of shared driveways and installation of utilities);
4. Developer submits a final plat that conforms with the Hearing Examiner's conditions;
5. SDOT and SDCI inspect the site to determine whether the site infrastructure has been installed as depicted on the preliminary plat and reviews the final plat to confirm that all the applicable requirements have been met;
6. SDOT transmits the final plat and legislation to approve the final plat to Council; and
7. The council determines that all applicable requirements and conditions have been met or can be met if a bond is posted.

When reviewing final plats, Seattle Municipal Code (SMC) [23.22.074](#) requires the Council to determine that:

1. The final plat is in substantial conformance with the approved preliminary plat;
2. The requirements imposed when the preliminary plat was approved have been met;

¹ The RCW was recently amended to allow the Council to delegate decisions on final plats to the Planning Commission, a City agency, or other City administrator. The City has not updated its regulations to make this change.

² A plat generally refers to the map or plans that depict a subdivision, including providing dimensions for each new lot. The terms plat and subdivision are often used interchangeably.

3. A bond, if required by the City, is sufficient in its terms to assure that the improvements will be completed; and
4. The applicant has satisfied the requirements of Washington State Law and the SMC that were in effect at the time of preliminary plat approval.

There is no substantive or policy review in the Council's consideration of a final plat, the Council's review is purely ministerial.

Final subdivision approval requires the Council to vote to:

1. Pass a Council Bill to approve the final plat, and
2. Place on file a Clerk File that was created at the time of initial application.

Both the Council Bill and the Clerk File are typically referred directly to the City Council because of the short deadline for approval under the RCW and the lack of discretion in the Council's decisions.

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of Application of
SUE WINTERS

**Hearing Examiner File
MUP-23-001**

for a Full Subdivision of Property at
1118 13TH Avenue.

Department Reference:
3038128-LU (CF #314489)

FINDINGS OF FACT

1. Project Overview. The Applicant seeks preliminary approval to subdivide a single parcel into 12 unit lots. The development includes 12 townhouse units in two structures. Development standards will apply to the development site as a whole and not to the individual lots. The plat allows for individual unit sale or lease. The Department of Construction and Inspections (“Department”) recommended conditioned approval. There were no SMC 23.76.024(D) requests for further Hearing Examiner consideration of the recommendation.

2. Hearing. The hearing was held remotely February 14, 2023, with the applicant, Department, and public provided a call-in number and internet link for participating. The Department appeared through Department Planner David Sachs. The applicant also appeared but did not testify. No member of the public indicated a wish to comment. There were no reported difficulties with calling in to comment, but in case there were, the record was kept open through day end. No further comment was received.

3. Notice. Hearing notice met Seattle Municipal Code requirements.¹

4. Exhibits. Exhibits 1-13 were admitted, which included the Department Recommendation, comments, proposed covenants/easements, plat, and hearing notice.

5. Project Location and Site Description. The 8,704 square foot site slopes downward northeast to west about six feet and is elevated above the public right-of-way to the west. There is alley access from the east. There are no critical areas on site.

6. Zoning. The site is zoned Multi-family Low Rise 3 with an “M” Mandatory Housing Affordability suffix (LR3 (M)). Surrounding zones are Midrise, Multi-family Low Rise 2 and 3, and Neighborhood Commercial 3-75, all with an M suffix.

7. Other Permitting. The project was subject to Administrative Design Review and State Environmental Policy Act, Ch. 43.21C RCW review, and the building permit has issued.²

¹ SMC 23.76.024(C); Exhibit 13 (Notice of Hearing).

² Exhibit 1 (Recommendation), pp. 1-2; Testimony, Department.

8. Public Comment to Department. The Department received public comment on parking, trees/vegetation, and cultural resources, which the earlier approval has addressed.

9. Agency Comment. The plat proposal was circulated for agency review. If code requirements and conditions are met, approval was not objected to.

- Seattle/King County Public Health. No comment.
- Seattle City Light. The City Light Easement is shown on the preliminary plat, sheet 12. No additional easements are now required.
- Seattle Office of Housing. No comment.
- Seattle Parks and Recreation. No comment.
- Seattle Public Utilities. Water Availability Certificate issued.
- Seattle Fire Department. No comment.
- Sound Transit. No comment.
- King County Metro Transit Division. No comment.
- King County Wastewater Treatment Division. No comment.
- Seattle Department of Transportation. No comment.
- Structural/Ordinance Review (SDCI). No comment.
- Department Drainage Review. No comment.

10. Dedications/Street Improvements/Parking. The site has frontage along 13th Avenue. There is an alley adjacent to the site. No street improvements are required within the existing 13th Avenue right-of-way. Adjacent and nearby dedicated streets have existing sidewalks. The proposal includes private walkways from the public sidewalk in the street to every dwelling unit. No on-site parking will be provided. Pedestrian access to each unit's front entry is from the adjacent public sidewalk. An access easement for common use of the outdoor common areas is provided. Further dedications are not needed.

11. School Walking Conditions. The plat makes appropriate provisions for safe school access to and from the site. The Applicant documented anticipated student walking paths to public grade schools (K-12) and considered the Seattle School District's safe route standards.³

³Exhibit 11; Testimony, Department and Applicant.

12. Open Space. Directly accessible, private usable open space is provided for each unit on the same lot it serves, with common amenity areas demarcated on the plat.

13. State Environmental Policy Act, Ch. 43.21C RCW. The Department's Determination of Non-Significance was not appealed.

14. Easement/Covenants. Access easements and covenants address joint use and maintenance issues. They address pedestrian access; joint use/maintenance; waste storage; signage; common amenities; and utility and emergency access. Easements and agreements are provided with the preliminary plat and will be executed with recording the final plat documents.

15. Department Recommendation and Plat Condition. The Department determined the plat will meet all development standards for the zone and recommended approval with two conditions on recordation of homeowner's association and covenant/easement documents. The Applicant did not object. The conditions should be imposed to ensure necessary restrictions are retained following property transfer. The Department Recommendation is incorporated as supplemental findings.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over preliminary plat decisions.⁴ Criteria used for determining whether an application should be approved include an assessment of the public use and interest. That assessment is largely based on infrastructure adequacy, including the road system, utilities, and basic services to support the plat.

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. The Hearing Examiner shall consider all relevant facts to determine whether the public interest will be served by the subdivision and dedication, and if it finds that the proposed plat makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, sites for school and schoolgrounds, sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, is designed to maximize the retention of existing trees, and that the public use and interest will be served by the platting of subdivision, then it shall be approved. ...⁵

2. Similar considerations are at SMC 23.22.052, which provides for "dedication of drainage ways, streets, alleys, pedestrian access and circulation, easements, slope rights, parks and other public open spaces ... as may be required to protect the public health, safety and welfare."⁶

⁴ Chapters 23.76 and 23.22 SMC.

⁵ SMC 23.22.054(A).

⁶ SMC 23.22.052(A).

The plat addresses these considerations. There is adequate provision for drainage, streets, safe walking conditions, open space and tree retention, and pedestrian access and circulation. Easements for common usage and maintenance are provided. Light, air, and usable open space between the structures is provided. Private easements for access and utilities adequately support the plat.

3. Unit lot subdivisions must also meet specific requirements.

The provisions of this Section 23.22.062 apply exclusively to the unit subdivision of land for residential development....

... The development as a whole shall meet development standards applicable at the time the permit application is vested. As a result of the subdivision, development on individual unit lots may be nonconforming as to some or all of the development standards based on analysis of the individual unit lot, except that any private usable open space or private amenity area for each dwelling unit shall be provided on the same unit lot as the dwelling unit it serves.

Subsequent platting actions, additions or modifications to the structure(s) may not create or increase any nonconformity of the parent lot.

Access easements and joint use and maintenance agreements shall be executed for use of common garage or parking areas, common open space (such as common courtyard open spaces for cottage housing), and other similar features, as recorded with the King County Recorder. For common parking areas and garages, access easements and joint use and maintenance agreements shall include the right to use any required electric vehicle charging infrastructure and the terms of use.

Within the parent lot, required parking for a dwelling unit may be provided on a different unit lot than the lot with the dwelling unit, as long as the right to use that parking is formalized by an easement on the plat, as recorded with the King County Recorder.

The fact that the unit lot is not a separate buildable lot and that additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot shall be noted on the plat, as recorded with the King County Recorder.⁷

These requirements are met. The unit lot subdivision will meet the development standards applicable to the parent lot. Parking is provided. Easements and private, usable open space are provided, and the required disclosures and joint use and maintenance agreement are provided on the plat face.

⁷ SMC 23.22.062(A-F).

4. The plat makes appropriate provision for open spaces, drainage ways, streets, transit stops, potable water, sanitary wastes, fire protection facilities, parks and playgrounds, and sidewalks that assure safe walking conditions for students who walk to and from school. The plat makes appropriate provisions for public health, safety, and general welfare.

5. The plat will promote individual ownership of the units, which will be constructed in a configuration compatible with the surrounding neighborhood. As conditioned, the plat will serve the public use and interest.


SECTION III. DECISION

The preliminary subdivision is **APPROVED** subject to these conditions:

Prior to Final Plat Approval:

1. The approved Declaration of Covenants, Conditions, Restrictions and Easements shall be recorded at King County and the recording number provided on the final plat documents.
2. The covenants and bylaws for the proposed Homeowner's Association (HOA) for shared utilities, maintenance, etc., be recorded at King County and the recording number to be included on the final plat.

Entered February 15, 2023.



Susan Drummond
Deputy Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The Hearing Examiner's decision is the final decision for the City of Seattle. Under RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of decision issuance unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the order on the motion for reconsideration.

The person seeking review must arrange for and initially pay for preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.