

June 28, 2022

MEMORANDUM

To: Seattle City Council
From: Lish Whitson, Analyst
Subject: Council Bill 120355 and Clerk File 314432: Elements on Dexter Plat

On Tuesday, July 5, 2022, the City Council (Council) will consider [Council Bill \(CB\) 120355](#) and [Clerk File \(CF\) 314432](#). Passage of the CB and filing of the CF would grant final approval of the “Elements on Dexter” plat, which is located at 2440 Dexter Avenue N in the Westlake neighborhood in Council District 7. The plat will facilitate the division of one parcel into 14 unit lots to facilitate the sale of individual townhouses, which have been built.

The Seattle Department of Transportation (SDOT), the Seattle Department of Construction and Inspections (SDCI) and Council Central Staff have confirmed that the plat would meet all applicable conditions and recommends that the Council grant final approval.

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 plat. Because Council’s purview is constrained both in time and substance, Council routinely considers final plat ordinances, like CB 120355, at a City Council meeting without consideration at committee. For these reasons, the CB and CF have been placed on the Consent Calendar.

The following is an overview of the plat process and a description of the Elements on Dexter plat. The Hearing Examiner’s “Findings and Decision” documents for the preliminary plat approval are attached, and a map is provided for informational purposes.

Overview of Process

The Revised Code of Washington (RCW) [58.17.140](#) requires that Council grant final plat approval for subdivisions within 30 days of filing of the final plat by the owner. Generally, the Council grants such approval after completion of the following steps:

1. SDCI issuance of a Master Use Permit and other project approvals;
2. Hearing Examiner approval of the preliminary plat approval, usually subject to conditions (the Hearing Examiner holds a public hearing prior to issuing a decision);
3. Developer’s construction of site infrastructure (this includes construction of roadways and installation of utilities);
4. SDOT and SDCI review of the final plat to confirm that all the applicable requirements have been met and transmittal of final plans and legislation to Council; and

5. Council determination that applicable requirements have been met or can be met if a bond is posted.

Final plat approval requires votes on both a Council Bill and a Clerk File. Both are referred directly to Council because of the short deadline for approval under the RCW.

When reviewing final plats, Seattle Municipal Code (SMC) [23.22.074](#) A 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;
3. The 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.

Description of the Elements on Dexter Plat

The Elements on Dexter Plat is located at 2440 Dexter Avenue N in the Westlake neighborhood. The project is located on the southwest corner of Dexter Avenue N and Wheeler Street.

The approximately 12,878 square foot site is currently composed of a single parcel. At the time of approval of the preliminary plat, the site was zoned Lowrise 3 with a mandatory housing affordability designation (LR3 (M)), a multi-family zone. Abutting properties are zoned the same. The LR3 (M) district extends to the north and south along Dexter. Commercial 1 and 2 zones are located along Westlake Avenue N and Aurora Avenue N to the east and west, respectively.

The plat would divide one parcel into 14 unit lots containing 14 townhouses in three structures. The unit lots would range in size from 663 to 1,248 square feet. Development of the site was permitted under permit [3033032-LU](#). This plat is only for the purpose of allowing sale or lease of the units.

Pedestrian access to units not fronting on Dexter Avenue N will be provided through a pedestrian easement off Wheeler Street. A shared underground garage, accessed from the alley on the east side of the site, provides bicycle parking and 19 car parking spaces for the 14 units. Other easements provide for common amenity areas fronting on Wheeler Street, emergency access, utilities, and address signs. The plans also include easement maintenance, private amenity area maintenance, joint use/management, and common wall agreements.

The SDCI Director recommended approval of the preliminary plat with conditions on August 3, 2020. On September 21, 2020, the Seattle Hearing Examiner recommended approval of the plat 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 "Parent Lot" of the proposed unit lot subdivision shall be defined on the final plat instead of the "Parent Parcel."

The Directors of SDOT and SDCI have confirmed that the plat meets all the requirements of the preliminary plat approval, as well as the requirements of Washington State platting law and the SMC. Consequently, SDOT prepared the CB for Council review and action. Central Staff has reviewed the final plat and legislation and recommends that the Council grant final plat approval.

Attachments:

1. Vicinity Map
2. Findings and Decision of the Seattle Hearing Examiner

cc: Esther Handy, Director
Yolanda Ho, Lead Analyst

**CITY OF SEATTLE
HEARING EXAMINER**

In the Matter of

**Application of Izabella Henry, Chadwick &
Winters, for Preliminary Unit Lot Subdivision**

Hearing Examiner File:
MUP-20-018

Department Reference
3033527-LU

FINDINGS AND DECISION

SECTION I. FINDINGS OF FACT

1. Project Overview. The Applicant seeks preliminary approval to divide a single development site into 14 unit lots. The 14 rowhouse units are under review (Permit #3033032-LU and Construction Permit #6691307-CN). Development standards will be applied to the development site as a whole and not to the individual lots.¹ The plat allows for individual unit sale or lease. The site consists of two parcels, with frontage on Wheeler Street to the north, Dexter Ave. N. on the west, and an alley on the east. The Director of the Department of Construction and Inspections recommended approval with conditions. There were no SMC 23.76.024(D) requests for further Hearing Examiner consideration of the recommendation .

2. Hearing. The hearing was held remotely on September 2, 2020, with the Applicant, Department, and members of the public provided a call-in number and internet link for participating. Mr. Graves, Sr. Land Use Planner, represented the Department, and the Applicant, Ms. Henry, appeared. No person from the public indicated a desire to comment at the hearing. There were no reported difficulties with anyone's ability to call in or provide comment, but in case anyone did have difficulty, and also to address Examiner questions, the record was kept open through September 4. The Department and Applicant submitted additional exhibits, which were admitted. Nothing additional was received from the public.

3. Exhibits. The Department submitted Department Exhibits 1-6, with Exhibit 5 submitted following the hearing at Examiner request to document hearing notice. Exhibit 6 is a public comment submitted before the hearing.² At Examiner request, the Applicant submitted Applicant Exhibits 1-3 following the hearing, which included the Plan Set, MUP Permit, and Permit Cover Sheet. All exhibits were admitted without objection.

4. Project Location. 2440 Dexter Avenue North, Seattle.

5. Zoning. The site is zoned Lowrise 3.

6. Public Comment. The two written comments received focused on parking and access.³

¹ Department Exhibit 1 (Staff Report), p. 1.

² The Examiner identified it as Exhibit 5 at the hearing. It has since been renumbered to avoid confusion with the already labeled Exhibit 5.

³ Department Exhibits 3 and 6.

7. **Agency Comment.** As long as code requirements and any requested prerequisites are met, there were no objections to approval.

- Dept. of Health. With sewer service, its review is not needed.
- Seattle City Light. With requested covenant language, approval was granted.
- Seattle Housing. Review not required.
- Seattle Parks and Recreation. Approval provided.
- Seattle Public Utilities. Water availability certificate is valid for 18 months.
- Fire Department. Approval provided.
- Sound Transit and King County Metro. No comment.
- King County Wastewater Treatment Division. No comment.
- Seattle Dept. of Transportation. Approved.
- Structural Ordinance Review (SDCI). Approved.
- Drainage Review (SDCI). Approved.

8. **Access.** Vehicle access to the development is from the alley into the garage.⁴ Pedestrian access if from Dexter Ave. N. through a pedestrian access easement.⁵ Given its street location, emergency access to the site is adequate.⁶

9. **Parking.** In response to Examiner questioning on a parking concern a neighbor had raised, the Applicant explained the below-grade garage, which has access from the alley, provides 15 parking spaces, although the code requires only seven.

10. **Street Improvements.** Seattle Dept. of Transportation approved the Street Improvement Plan, Permit #395838. It includes installation of street trees, sidewalk, curb, gutter, pavement and public storm drain extension. The Pedestrian Access Easement is described on Plat Sheets 8 and 12 (Applicant Exhibit 1).

11. **School Safe Walking Conditions.** The Applicant documented conditions along anticipated walking paths between the site and public grade schools (K-12) within the vicinity, based on the Seattle School District's safe route standards. Nearby Schools are John Hay Elementary, McClure Middle School, and Lincoln High School. The High School is 2.1 miles distant; the other two schools are 1.2 miles away.⁷

12. **Easements.** Easements for common usage and maintenance are provided. The plat is for fee simple ownership purposes. With required improvements, street and alley right of way abutting the site is adequate for public infrastructure serving the site. With the exception of City Light, which requested an easement, other on-site utility extensions and connections are private facilities with appropriate easements and covenants to ensure maintenance. New pedestrian pathways will be installed to provide access within the plat.⁸

⁴ Applicant Exhibit 1 (Plan Set), Sheets 7 and 12.

⁵ Applicant Exhibit 1 (Plan Set), Sheets 8 and 12.

⁶ Applicant Exhibit 1 (Plan Set), Sheet 9.

⁷ Department Exhibit 1 (Staff Report), pp. 8-9.

⁸ Easement descriptions are identified in the Applicant Exhibit 1 (Plan Set) and noted in the Staff Report, *see e.g.*, pp. 6-7 and pp. 10-11.

13. Open Space. Private usable open space will be provided for each unit on the same lot that it serves, and will be directly accessible to the unit.⁹

14. Critical Areas. The site contains a steep slope hazard area. A geotechnical report was prepared and reviewed by Department engineers. The site was determined to qualify for relief under SMC 25.09.090(B)(2)(b), as a location of previous legal grading. A steep slope variance is not required.

15. State Environmental Policy Act, Ch. 43.21C RCW. The Department Director issued a SEPA Determination of Non-Significance. It was not appealed.

16. Staff Report and Conditions. The Department Director has determined that the subdivision as a whole will meet all development standards for the zone, and recommends approval of the subdivision with conditions. Except as revised, the Department Staff Report is incorporated by reference. The four proposed conditions were not objected to. They should be imposed without substantive revision. They are reasonable and needed to clarify and/or make corrections to ensure plat consistency with the application materials, review process, and code.

SECTION II. CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over preliminary plat decisions.¹⁰ Criteria used for determining whether an application should be improved includes 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. ...¹¹

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”¹². The plat is consistent. There is adequate provision for drainage, streets, pedestrian access and circulation, and easements for common usage and maintenance are provided. Pedestrian access and safety is addressed, and between the structures, light, air and usable open space is provided.

⁹ Applicant Exhibit 1 (Plan Set), Sheets 11 and 13; Department Exhibit 1(Staff Report), pgs. 6-7, and 10.

¹⁰ Chapters 23.76 and 23.22 SMC

¹¹ SMC 23.22.054(A).

¹² SMC 23.22.052(A).

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.¹³

These requirements are met. The development as a whole will meet the development standards applicable to the parent lot; the required parking, easements and private, usable open space are provided; and, the required disclosures and joint use and maintenance agreement are provided on the face of the plat.

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 subdivision makes appropriate provision for the public health, safety, and general welfare.

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

¹³ SMC 23.22.062(A-F).

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 decisions of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued 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 date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of 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 P.O. Box 94729, Seattle, WA 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

Department Director:

Mr. Torgelson, Director, DCI
c/o Mr. Graves
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Applicant:

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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Izabella Henry**. Case Number: **MUP-20-018 (SD)** in the manner indicated.

Party	Method of Service
Applicant Izabella Phillips Chadwick Winters Land Surveying 206-294-0996 izabellah@chadwickwinters.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Property Owner Moira Haughian The Seattle Land Use Co. obo 2440 Dexter Ave N, LLC 206-954-1983 moira@seattlelanduseco.com Cameron McKinnon Gamut 360, LLC obo 2440 Dexter Ave N, LLC cameron@gamut360.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department David Graves SDCI 206-615-1492 david.graves@seattle.gov Jerry Suder SDCI 206-386-4069 jerry.suder@seattle.gov SCI Routing Coordinator SCI_Routing_Coordinator@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

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Dated: September 21, 2020

/s/ Galen Edlund-Cho
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