

September 4, 2024

MEMORANDUM

To: Seattle City Council
From: Lish Whitson, Analyst
Subject: Council Bill 120859 and Clerk File 314473: Mt. Bakersville Subdivision

On Tuesday, September 24, the City Council (Council) will consider [Council Bill \(CB\) 120859](#) and [Clerk File \(CF\) 314473](#). Passage of the CB and filing of the CF would grant final approval to the Mt. Bakersville subdivision, which is located at 2529 29th Avenue S, in the Mount Baker neighborhood, Council District 2. The subdivision is located in the middle of the block bounded by M L King Jr Way S on the west, S Bayview St. on the north, 30th Ave. S on the east, and S McClellan St. on the south. The project is accessed off of 29th Ave. S, which extends north from S McClellan St. and dead ends at the Mt. Bakersville subdivision.

The project includes five three-story structures, each containing four or five townhouse units. The subdivision would facilitate the division of a single lot into 21 unit lots to facilitate the sale of the individual townhouse units. The subdivision includes pedestrian, ingress, egress, parking, bicycle, waste/storage, common amenity area, address sign, management, and emergency access easements.

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 Mt. Bakersville subdivision, at a City Council meeting without consideration at committee. The bill is necessary to allow the Mt. Bakersville townhomes, which have been built, to be sold as individual units.

The Seattle Department of Construction and Inspections (SDCI) Director recommended approval of the preliminary subdivision with one condition. On November 22, 2022, the Seattle Hearing Examiner approved the preliminary subdivision (see Attachment 2) with the following condition:

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.

The Seattle Department of Transportation, 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 120859 and a vote to “place on file” CF 314473.)

Attachments:

1. Seattle City Council Review of Final Subdivisions
2. Seattle Hearing Examiner’s Decision on the Mt. Bakersville/2521 29th Ave. S. Subdivision

cc: Ben Noble, Director
Yolada Ho, Deputy 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. Seattle Department of Construction and Inspections (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. Seattle Department of Transportation (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, 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;
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.

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.

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

**Hearing Examiner File
MUP-22-009**

JAMIE YENGEL

for a Full Subdivision of Property at
2521 29th Ave. S.

Department Reference:
3037872-LU (CF #314473)

I. FINDINGS OF FACT

1. Project Overview. The Applicant seeks preliminary approval to subdivide a single parcel into 21 unit lots. The development includes 21 townhouse units in five three-story structures. For the unit lot subdivision, 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 November 16, 2022, with the Applicant, Department, and members of the public provided a call-in number and internet link for participating. The Department appeared through Department Planner Sean Conrad. The Applicant appeared through Lucas DeHerrera and the project architect, Jamie Yengel. No member of the public indicated a wish to comment. There were no reported difficulties with calling in to comment, but in case anyone did have difficulty, the record was kept open through November 17, 2022. No further comment was received.

3. Notice. Hearing notice met Seattle Municipal Code (“SMC”) requirements.¹

4. Exhibits. Exhibits 1-21 were admitted, which included the Department Recommendation, Department Master Use Permit Decision (which included the Administrative Design Review and State Environmental Policy Act, Ch. 43.21C RCW determination), comments, proposed covenants/easements, plat, and hearing notice.

5. Project Location and Site Description. The 19,345 square foot site was previously a paved parking lot, which slopes 12-feet down northeast to southwest.²

6. Zoning. The site is zoned Low Rise 3 with an “M” Mandatory Housing Affordability suffix (LR3 (M)). The same zone is to the east and west, with Residential Small Lot (M) to the north and Midrise Residential (M1) to the south. The site’s northwest corner has steep slopes.

¹ SMC 23.76.024(C); Exhibit 20 (Notice of Hearing).

² Exhibit 2 (Recommendation), pp. 1-2.

7. Other Permitting. The project was subject to Administrative Design Review and State Environmental Policy Act, Ch. 43.21C RCW review, and building permits have issued.³

8. Public Comment to Department. The Department received public comment on bedroom number and tree retention.⁴ All units have three bedrooms; none are proposed with four or more. Landscaping and the approach to tree retention was documented. The non-exceptional Japanese Selkova tree at the site's northwest corner and an exceptional Pacific Madrone in the northeast corner are proposed for retention.⁵ The approved landscape plan shows both trees remaining along with maple, cedar, and crape myrtle tree plantings.

9. Public Comment at Hearing. No citizens indicated a wish to speak at the hearing, but one written comment was submitted from Geri Pingul, who resides in Mt. Baker Cottages, comprised of six residences. Ms. Pingul stated they had a storm/sewer pump failure, and the drive on their property proved too narrow for the service truck to access the tanks, so they used the project site (parking lot) for access. In her comment, Ms. Pingul proposed a solution of tying the tanks in with the new development's lines. The approach would use gravity instead of the pumps now required at Mt. Baker Cottages.

The project proponent summarized discussions with Ms. Pingul on tie-in. As of the hearing, no agreement had been reached. The developer estimated the added cost of tie-in to be at least \$50,000, in addition to project redesign, pipe resizing, and additional permitting on a project which has been in review for about 3.5 years. There had been discussion with Ms. Pingul about Mt. Baker Cottages contributing to accomplish this, but this had not come to fruition. More generally, the Department noted vehicles can access the cottages' site, and hoses could then be extended as needed for tank service if alley widths are insufficient. As for site access to the proposed project, the Department provided additional information on its adequacy and on Seattle Department of Transportation's review and approval.

10. 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. Project served by public sewer and they rarely review this type of subdivision.
- Seattle City Light. Approval provided. The City Light Easement is shown on the preliminary plat, sheet 2. No additional easements are now required.
- Seattle Office of Housing. Approval provided. No comment.
- Seattle Parks and Recreation. Approval provided. No comment.
- Seattle Public Utilities. Approval provided with Water Availability Certificate #20200424.

³ Exhibit 2 (Recommendation), p. 1; *see also* Exhibit 1 (MUP Decision).

⁴ Exhibit 19.

⁵ Exhibit 2 (Recommendation), p. 4.

- Seattle Fire Department. Approval provided. No comment.
- Sound Transit. Approval provided. No comment.
- King County Metro Transit Division. Approval provided. No comment.
- King County Wastewater Treatment Division. No comment.
- Seattle Department of Transportation. Approval provided. The utility extension and restoration work requires a street improvement permit which is under review.
- Department Drainage Review. Approval provided.

11. Dedications. Street right-of-way abutting the site is adequate for supporting public infrastructure. City Light required an easement. Other on-site utility extensions and connections are private facilities with easements or covenants to ensure maintenance. Further dedications are not needed.

12. Street Improvements and Access. Vehicle and pedestrian access is from 29th Avenue South. Required street improvements are within the existing rights-of-way, 29th Avenue South, and were reviewed and approved under building permit #6704336-CN and SIP SUSIPX398266. Sidewalks are provided along 29th Avenue South within the existing public street rights-of-way. Onsite pedestrian easements provide access from the lots to the public rights-of-way.

13. Parking. Each townhouse unit has a single parking stall.

14. 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.⁶

15. 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.

16. Critical Areas. The site is not within a flood-prone area. Steep slopes are in the site's northwest corner. Most development is within currently paved areas so qualifies for Relief from Prohibition on Steep Slope Development, SMC 25.09.090(B)(2)(a).⁷

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

18. Easement/Covenants. Access easements and covenants address joint use and

⁶ Exhibit 2 (Recommendation), pp. 8-9; Exhibits 8-13; Testimony, Mr. Conrad.

⁷ Exhibit 2 (Recommendation), pp. 4-5, referencing Permit 6734382-EX.

maintenance issues. They address pedestrian access; vehicular 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 the recording of the final plat documents.

19. Department Recommendation and Plat Condition. The Department determined the plat will meet all development standards for the zone and recommended approval with one condition on covenant/easement recordation. The Applicant did not object to the condition. It should be imposed to ensure necessary restrictions are retained following property transfer. The Department Recommendation is incorporated.

SECTION II. CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over preliminary plat decisions.⁸ 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. ...⁹

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.”¹⁰ 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 (including through the frontage improvements). 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.

⁸ Chapters 23.76 and 23.22 SMC.

⁹ SMC 23.22.054(A).

¹⁰ SMC 23.22.052(A).

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.¹¹

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.

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.

¹¹ SMC 23.22.062(A-F).

SECTION III. DECISION

The preliminary subdivision is **APPROVED** subject to this condition:

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.

Entered November 22, 2022.



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 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 decision issuance date 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 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.

**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 **JAIME YENGEL** Hearing Examiner File: **MUP-22-009 (SD)** manner indicated.

| Party | Method of Service |
|---|---|
| Applicant Jamie Yengel yengel@cone-arch.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 SDCI Sean Conrad sean.conrad@seattle.gov Nathan Torgelson Nathan.Torgelson@seattle.gov Ketil Freeman Ketil.Freeman@seattle.gov Roger Wynne Roger.Wynne@seattle.gov Janet Oslund Janet.Oslund@seattle.gov SCI_LUIB@seattle.gov 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 |
| Mailing Geri Pingul Geri_pingul@gmail.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 |

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| <p>Mailing</p> <p>Tan Nguyen 2540 29th Ave. S. #11 Seattle, WA 98144</p> <p>SUQUAMISH TRIBE* PO BOX 498 SUQUAMISH, WA 98392</p> | <p><input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p> |

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Dated: November 22, 2022

/s/ Angela Oberhansly
Angela Oberhansly
Legal Assistant