

January 10, 2023

MEMORANDUM

To: Seattle City Council
From: Lish Whitson, Analyst
Subject: Council Bill 120491 and Clerk File 314450: The Dao Subdivision/Plat

On Tuesday, January 17, 2023, the City Council (Council) will consider Council Bill (CB) 120491 and Clerk File (CF) 314450. Passage of the CB and filing of the CF would grant final approval of the “The Dao” plat, which is located at 7100 Beacon Avenue S in the south Beacon Hill neighborhood in Council District 2. The plat will facilitate the division of a development site into six lots, one of which is further subdivided into ten unit lots, to facilitate the sale of individual townhouse units. The project includes two three-story townhouse buildings with ten residential units and a three-story building with five live/work units on the property that is the subject of this legislation.

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 the plat of The Dao, at a City Council meeting without consideration at committee. The bill is necessary to allow The Dao’s townhouses and live/work units, which have been built, to be sold as individual units.

The Seattle Department of Transportation (SDOT), the Seattle Department of Construction and Inspections (SDCI) and Council Central Staff have confirmed that the [plat/subdivision] would meet all applicable conditions and recommends that the Council grant final approval (this requires a “do pass” vote on CB 120491 and a vote to “place on file” CF 314450.)

The following is an overview of the subdivision process and a description of the 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 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 shared driveways and installation of utilities);
4. SDOT and SDCI review of the final plat to confirm that all the applicable requirements have been met and transmit 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 Dao plat

The Dao plat is located at 7100 Beacon Avenue S in the South Beacon Hill neighborhood. The project is located on the southeast corner of Beacon Avenue S and S Myrtle Street. The site is located across the Beacon Avenue S from Van Asselt Elementary and across S Myrtle Street from the Van Asselt Community Center.

The approximately 19,976 square foot site is currently composed of one parcel. The site is zoned Neighborhood Commercial 1 with a 40-foot height limit and an (M) Mandatory Housing Affordability designation (NC1-40 (M)). Abutting properties to the south are also zoned NC1-30 (M). Areas to the east of the site, and across S Myrtle Street and Beacon Avenue S are zoned Neighborhood Residential 3 (NR3).

The plat would divide one parcel into six parcels, one of which would be further subdivided into ten unit lots. The unit lots would allow for the individual sale of ten townhouse units in two three-story buildings facing S Myrtle Street. The other five parcels each have a live/work unit, all of which would be located within a structure facing Beacon Avenue S. The live/work parcels would range in size from 661 to 1,383 square feet. The townhouse unit lots would range in size from 830 to 2,238 square feet. Development of the site was permitted under permit 3025996-LU. This plat is only for the purpose of allowing sale or lease of the units.

Pedestrian access to the live/work units and five of the townhouses is directly off the abutting streets. Access to the remaining townhouses is through a walkway from Beacon Avenue S. Parking is provided within each of the townhouse units and is accessed via an easement that runs off S Myrtle Street and through the middle of the lot. An additional two parking spaces are located behind the live/work structure. Easements are provided for utilities, parking, pedestrian access, emergency egress, common amenity areas, common walls, and signage.

The SDCI Director recommended approval of the preliminary plat with one condition on December 2, 2019. On October 7, 2021, the Seattle Hearing Examiner recommended approval of the plat 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 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
Aly Pennucci, Deputy Director
Yolanda Ho, Supervising Analyst

Vicinity Map

7100 Beacon Ave S



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

In the Matter of Application of

SETH HALE

for a Full Subdivision of Property at
7100 Beacon Avenue South.

**Hearing Examiner File:
MUP-21-021 (SD)**

Department Reference:
3035276-LU

I. FINDINGS OF FACT

1. Project Overview. The Applicant seeks preliminary approval to subdivide one parcel into six lots, with Parcel F supporting ten unit lots (“Plat”). The development will include two, three-story townhouse buildings with ten residential units and a three-story building with five live/work units. 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 October 5, 2021, at 9:00 AM, with the Applicant, Department, and members of the public provided a call-in number and internet link for participating. The Department appeared through Jerry Suder and the Applicant through Seth Hale. 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 October 6, 2021. No further comment was received.

3. Notice. The Department documented hearing notice met code.¹

4. Exhibits. The Department submitted Exhibits 1-26, which included the Department Recommendation, Department Master Use Permit Decision (including Administrative Design Review and State Environmental Policy Act, Ch. 43.21C RCW review), comments, proposed covenants/easements, and proposed homeowner association bylaws. The correct plat plan set is Applicant Exhibit 1, which replaces Department Exhibit 14. The Examiner admitted all exhibits.

5. Project Location and Site Description. At Beacon Avenue South and South Myrtle Street, the 19,976 square foot site slopes ten feet downward from west to east. The site is developed with a car repair shop with pavement covering the remaining area. It has no known topographical or subsurface hazard conditions.²

6. Zoning. The site is zoned Neighborhood Commercial 1 with a 40-foot height limit and

¹ SMC 23.76.024(C); Exhibit 15 (hearing notice); Testimony, Mr. Suder.

² See SMC 23.22.050.

M suffix (NC1-40 (M)). The project vested to the prior NC1-30 zoning. Single Family 5000 zoning surrounds the site on three sides (north, east, and west). NC1-40 (M) zoning continues to the south.

7. Other Permitting. The development project was subject to Administrative Design Review and was approved with one condition.³ The Design Review approval (Design Review #3025996-LU) included approval of three land use code departures: (1) an increase in the percentage of residential uses on the street-level façade; (2) a reduction to the required street-level transparency; and (3) a reduction to the street-level commercial depth. The development project was reviewed through building permit #6606801-CN and is under construction.

8. Public Comment. Comments were submitted to the Department from the Duwamish Tribe on requiring affordable housing.⁴

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. Approval provided.
- Seattle City Light. Approval provided. The City Light Easement is shown on the Preliminary Plat, sheet two.
- Seattle Office of Housing. Approval provided.
- Seattle Parks and Recreation. Approval provided.
- Seattle Public Utilities. Approval provided with Water Availability Certificate ID #20161210.
- Seattle Fire Department. Approval provided.
- Sound Transit. Approval provided.
- King County Metro Transit Division. Access to bus stop #46092 must be maintained and a full landing pad is recommended. Trolley comments need to be added to the plans reviewed. During the hearing, the Applicant confirmed that while not necessarily indicated in the plat as much of the work is in the right of way, the landing pad and was included in the building permit and is part of the project. Also, construction is underway and is not impacting the bus stop.⁵

³ Exhibit 16, p. 23 (“The building and landscape design shall be substantially consistent with the materials represented at the Recommendation meeting and in the materials submitted after the Recommendation meeting, before the MUP issuance. Any change to the proposed design, including materials or colors, shall require prior approval by the Land Use Planner.”).

⁴ Department Exhibits 5 and 6.

⁵ Testimony, Mr. Hale.

- King County Wastewater Treatment Division. No comment.
- Seattle Department of Transportation. Approval provided.
- Department Structural/Ordinance Review. Approval provided.
- Department Drainage Review. Approval provided.

10. Dedications. Street right of way abutting the site is adequate for supporting public infrastructure. Excepting City Light which 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.

11. Transportation. Transportation impacts were evaluated through SEPA. The Project is expected to generate 158 daily vehicle trips with 16 new PM peak hour trips and 13 new AM peak hour trips. The additional trips are expected to distribute on nearby roadways, with minimal impacts on service levels and the overall transportation system.

Sidewalks will be provided along South Myrtle Street and Beacon Avenue South within the existing public street rights-of-way. Sidewalks were reviewed and approved under Building Permit #6606801-CN. Onsite pedestrian access easements provide access from the lots to South Myrtle Street and Beacon Avenue South. At the hearing, the Applicant clarified that pedestrian access from the site is not through the drive aisle itself. The project provides separate pedestrian sidewalks from each unit that access the right of way and public sidewalk.⁶

Vehicle access is provided from S. Myrtle Street. These easements are depicted on plat sheet seven. SDOT approved the building permit plans, which includes street trees, sidewalk, curb, gutter, pavement, and public storm drainage.

12. Concurrency/Ch. 23.52 SMC. The unit lot subdivision allows the sale or lease of individual unit lots that were previously permitted and are under construction. The land division does not alter transportation levels-of-service or allow increased development that would change levels-of-service.

13. Parking. 12 parking spaces will support the 10 residential townhouse units and five live-work units. There is potential street spillover during residential peak parking demand of 2.4 vehicles, with limited commercial peak parking spill-over.

14. School Walking Conditions. The Applicant documented safe walking conditions along anticipated paths to public grade schools (K-12) within the vicinity and considered the Seattle School District's safe route standards.⁷

⁶ Testimony, Mr. Hale.

⁷ Exhibit 13 (Department Analysis and Recommendation), p. 8; Testimony, Mr. Suder.

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 and no critical areas are on site.⁸

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 maintenance issues. They include:

- Pedestrian Access Easement;
- Ingress, Egress and Parking Easement;
- Joint/Use Maintenance Agreements;
- Waste Storage Easements;
- Address Signage Easement;
- Common Amenity Area Easement;
- Utility and Emergency Access Easements; and,
- Common Wall Agreement.

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.⁹ 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

⁸ SMC 23.22.056.

⁹ Chapters 23.76 and 23.22 SMC

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. ...¹⁰

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.”¹¹ The Plat addresses these considerations. There is adequate provision for drainage, streets, pedestrian access and circulation, and easements for common usage and maintenance are provided. Sidewalk improvements are provided. There is adequate provision for pedestrian access and safety, and 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

¹⁰ SMC 23.22.054(A).

¹¹ SMC 23.22.052(A).

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.¹²

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.

SECTION III. DECISION

The request for 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 October 7, 2021.

/s/ Susan Drummond
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.

¹² SMC 23.22.062(A-F).

The decision 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 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 **SETH HALE**. Case Number: **MUP-21-021 (SD)** in the manner indicated.

Party	Method of Service
Applicant Seth Hale N5 Architecture 206-300-5339 seth@n5architecture.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 Steve Dao 206-226-2557 sdao8972@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 <input type="checkbox"/> Legal Messenger
Department Jerry Suder SDCI 206-386-4069 jerry.suder@seattle.gov SCI Routing Coordinator SCI_Routing_Coordinator@seattle.gov Janet Oslund janet.oslund@seattle.gov SCI_LUIB SCI_LUIB@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

<p>Nathan Torgelson nathan.torgelson@seattle.gov</p> <p>Roger Wynne roger.wynne@seattle.gov</p> <p>Sam Zimbabwe sam.zimbabwe@seattle.gov</p> <p>Ketil Freeman ketil.freeman@seattle.gov</p>	
---	--

Dated: October 8, 2021

/s/ Galen Edlund-Cho
Galen Edlund-Cho
Legal Assistant