



CITY OF ARLINGTON NOTICE OF DECISION

Rivertown Homes

Preliminary Major Unit Lot Subdivision – Conditional Use Permit

The City of Arlington has issued a Notice of Decision for a Preliminary Major Unit Lot Subdivision, Conditional Use Permit, as required by Arlington Municipal Code. The following project has been **APPROVED**, in accordance with the hearing exhibits and conditions listed in the attached Hearing Examiner Decision.

Project Name: Rivertown Homes Preliminary Unit Lot Subdivision

Proponent: Rivertown Homes LLC

Project Number: PLN #1115

Description of Proposal: The applicant is proposing to develop a twelve-lot preliminary major unit lot subdivision on two parcels that consist of six underlying lots of Block 10 of Haller City plat recorded under AFN189004245001. The development is located in the residential high-capacity zone and has a total area of 0.69 acres. The unit lot subdivision creates twelve fee simple lots for six townhouse style duplex units and twelve built-in accessory dwelling units. Each duplex has an accessory dwelling unit on the lower level. The proposal provides improvements to vehicular and pedestrian access, parking, walkways, private open space, water, sewer, and drainage for the new duplexes. Each unit has its own attached garage and driveway for two parking spaces per primary residential unit and guest parking along the alley.

The two existing homes and all existing trees will be removed for the site. Significant excavation and grading are required on the site to obtain building pads and retaining walls, which consists of 3,300 cubic yards of cut and 500 cubic yards of fill. The project proposes the following frontage improvements: sidewalk, landscape strip, curb, and gutter are proposed to be installed along N. Talcott Street, paving the public alley, and maintaining the existing improvements along E. Gilman Avenue.

Location: 416 and 422 E. Gilman Avenue

Hearing Examiner Decision: Approved, with Conditions

Notice of Decision Date: April 8, 2024

End of Appeal Period: April 29, 2024

Preliminary Major Unit Lot Subdivision Expiration Date: April 8, 2029

Appeals: A Party of Record may file an appeal of this decision within twenty-one (21) calendar days from issuance of this Notice of Decision to the Snohomish County Superior Court at 3000 Rockefeller Avenue M/S 502, Everett, WA 98201, pursuant the Land Use Petition Act, Chapter 36.70 RCW, by **Monday, April 29, 2024.**

Staff Contact: Amy Rusko, Planning Manager, arusko@arlingtonwa.gov

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ARLINGTON**

In the Matter of the Application of)	PLN#1115
)	
Joe Brandvold, Rivertown Homes, LLC)	Rivertown Homes
)	Preliminary Unit Lot Subdivision and
)	Conditional Use Permit
)	
For Approval of a Conditional Use Permit and Unit Lot Subdivision)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat and conditional use permit for a unit plot subdivision to create 12 townhouse dwelling units with a further 12 attached accessory dwelling units on a 0.69-acre property located at 416 and 422 East Gilman Avenue, is **APPROVED**. Conditions are necessary to mitigate specific impacts from the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 26, 2024 using remote access technology.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Amy Rusko, City Planning Manager

Mark Hayes, City Community and Economic Development Director

Randall Devoir, Applicant Representative, Cascade Surveying and Engineering

Brittany Belton, Cascade Surveying Land Use Planner and Project Coordinator

Exhibits:

The following exhibits were admitted into the record:

Exhibit 1 Staff Report, undated

Exhibit 2 Application, dated July 12, 2023

Exhibit 3 Project Narrative, undated

Exhibit 4 Preliminary Unit Lot Subdivision Site Plans, dated February 28, 2024

Exhibit 5 Preliminary Landscape Plans, dated February 26, 2024

Exhibit 6 Duplex Plans, dated October 16, 2023

Exhibit 7 Building Elevations, undated

Exhibit 8 Vicinity Map, undated

Findings, Conclusions, and Decision

City of Arlington Hearing Examiner

Rivertown PP & CUP

No. PLN#1115

- Exhibit 9 Approved Water Sewer Availability, dated February 9, 2024
- Exhibit 10 SEPA Checklist, dated January 11, 2024
- Exhibit 11 Complete Streets Checklist, undated
- Exhibit 12 Critical Areas Evaluation, dated January 9, 2023
- Exhibit 13 Unanticipated Discovery Plan, undated
- Exhibit 14 Preliminary Stormwater Drainage Report, prepared by Cascade Surveying and Engineering, Inc., dated January 8, 2024
- Exhibit 15 Infiltration Assessment Report, prepared by Geotech, dated December 8, 2022
- Exhibit 16 Traffic Impact Analysis, prepared by Kimley Horn, dated January 2024
- Exhibit 17 Legal Description, undated
- Exhibit 18 Public Notice Materials, undated
- Exhibit 19 WSDOT Aviation Comments, dated September 13, 2023
- Exhibit 20 WSDOT Transportation Comments, dated September 15, 2023
- Exhibit 21 Jennifer Benton Comments, dated September 18, 2023
- Exhibit 22 Tulalip Tribe Comments, dated September 21, 2023
- Exhibit 23 Notice of Public Hearing Documents, published March 8, 2024
- Exhibit 24 Notice of MDNS Decision Documents, issued February 8, 2024
- Exhibit 25 Neighborhood Meeting Notes, dated October 3, 2023
- Exhibit 26 Notice of Application and Notice of Neighborhood Meeting Documents, published September 12, 2023
- Exhibit 27 Resubmittal Extension Letters, various dates
- Exhibit 28 Notice of Complete Application, dated September 1, 2023
- Exhibit 29 Correspondence from Todd Gray, dated February 8, 2024
- Exhibit 30 City Impact Mitigation Fees, dated January 2023
- Exhibit 31 Post-Hearing Memo, dated March 27, 2024

The Hearing Examiner enters the following findings and conclusions based upon the testimony at the open record hearing and the admitted exhibits:

FINDINGS

Application and Notice

1. Joe Brandvold, Rivertown Homes, LLC (Applicant), is proposing to develop a 12-lot preliminary major unit lot subdivision on two parcels that consist of six underlying lots of Block 10 of Haller City plat recorded under AFN189004245001. The application is for a preliminary major unit lot subdivision of 12 fee simple lots. There are 6 total proposed buildings of two duplex and one ADU each. All buildings are separated by a minimum of 10 feet. The project is being processed as a preliminary major unit lot subdivision. The development is located in the residential high-capacity zone and has a total area of 0.69 acres. The unit lot subdivision creates 12 fee simple lots, for 6 townhouse style duplex units and 12 built-in accessory dwelling units. Each duplex has an accessory dwelling unit on the lower level. Project improvements to the site include vehicular and pedestrian access, parking, walkways, private open space, water, sewer, and drainage for the new

duplexes. Each unit has its own attached garage and driveway for two parking spaces per primary residential unit and guest parking along the alley. The subject property is located at 416 and 422 East Gilman Avenue, Southwest of the E. Gilman Avenue and N. Talcott Street intersection. *Exhibit 1, Staff Report, pages 2, 3, 9, and 13; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6.*

2. The two existing homes and all existing trees will be removed from the site. Significant excavation and grading are required on the site to obtain building pads and retaining walls, which consists of 3,300 cubic yards of cut and 500 cubic yards of fill. The project proposes the following frontage improvements: sidewalk, landscape strip, curb, and gutter are proposed to be installed along N. Talcott Street; paving the public alley; and maintaining the existing improvements along E. Gilman Avenue. *Exhibit 1, Staff Report, page 2.*
3. Prior to receiving the application, the City of Arlington (City) convened a neighborhood meeting, as required by Arlington Municipal Code (AMC) 20.16.235. The City issued a notice of the neighborhood meeting on September 12, 2023. The notice was published in the *Everett Herald*, posted on site, mailed to required parties, and posted on the City's website on September 12, 2023. The neighborhood meeting was held on October 3, 2023. No members of the public attended. *Exhibit 1, Staff Report, page 3.*
4. The application was deemed complete on September 1, 2023. The City issued a notice of application on September 12, 2023. The notice was advertised in the *Everett Herald*; posted on the site, City website, post office, city hall, and Arlington library; and mailed to all property owners within 500 feet of the property on September 12, 2023. The comment period was open until September 26, 2023. The City issued a notice of the open record public hearing on March 6, 2024. The notice of the open record public hearing was published in the *Everett Herald*, posted on the site, mailed to required parties, and posted on the City's website on March 8, 2024. *Exhibit 1, Staff Report, pages 3, 11, and 12.*

State Environmental Policy Act

5. The City acted as lead agency and analyzed the environmental impacts of the proposal as required by the State Environmental Policy Act (SEPA), chapter 43.21C Revised Code of Washington (RCW). The Applicant submitted a request for review of the proposed project "Rivertown Homes Preliminary Unit Lot Subdivision" under the State Environmental Policy Act (SEPA) on August 11, 2023, with revisions to the checklist on January 22, 2024. The City issued a Mitigated Determination of Non-significance (MDNS) per Arlington Municipal Code (AMC) 20.98.120 on February 7, 2024. The notice was published in the *Everett Herald*, posted on the site, mailed to required parties, and posted on the City's website on February 9, 2024. The 14-day SEPA comment period

ran from February 9, 2024 to February 23, 2024. *Exhibit 1, Staff Report, pages 3, 8, and 29; Exhibit 10.*

Public Comments

6. The City received some comments in response to the notices. The WSDOT Aviation Division and WSDOT Transportation Division responded that they had no comments. The Tulalip Tribe commented about the stormwater quality (flow control and treatment) for the project. The City responded stating that the City had the same concern and had issued comments to the Applicant and that the Applicant submitted revised plans. And Jennifer Benton, a neighbor, commented on her concerns about soil erosion and destabilization from removing so many trees from the properties, as well as potential impacts to her property, particularly to a large birch tree on the corner of her property. The City responded to Ms. Benton stating that the City also had concerns about the stabilization of the site and that staff would look into the impact of the tree in the corner. Ms. Benton attended the neighborhood meeting, and these issues were discussed and resolved with the Ms. Benton, the City, and the Applicant. The tree at the corner will be removed, and the site will be stabilized through retaining walls and specific grading for the residential homes. *Exhibit 1, Staff Report, pages 29 and 30; Exhibit 21.*

Comprehensive Plan and Zoning

7. The property is zoned “Residential High Capacity” (RHC) and is located on a city block layout. The surrounding properties are also zoned RHC and are all currently occupied with single-family residential structures, and properties to the south also contain multi-family residential structures. The RHC zoning district is designed primarily to “accommodate the highest capacity residential developments that are designed to be compatible with their sites and surroundings, building types are typically large scale, multi-family buildings, mixed use buildings, and live/work units.” *AMC 20.36.010(f)*. Major unit lot subdivisions of more than nine lots are allowed in the RHC zone with a conditional use permit. *AMC 20.40.120*. A *major subdivision* means the division of land “into ten or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.” *AMC 20.08.010*. In addition, the property is within Subdistrict D of the Airport Protection District Overlay. The purpose of this overlay is “to protect the viability of the Arlington Municipal Airport as a significant resource to the community by encouraging compatible land uses and densities, reducing hazards to lives and properties, and ensuring a safe and secure flying environment.” *AMC 20.38.010(a)*. The Applicant will sign an Airport Disclosure Notice with the Arlington Municipal Airport prior to project completion. Language shall be placed on the face of the final unit lot subdivision notifying future owners of possible affects from aviation activities. *Exhibit 1, Staff Report, pages 3, 4, 12, 13, and 26.*

Existing Site, Surrounding Area, and Proposed Development

8. The proposed project includes the development of 6 duplexes on 12 fee simple lots and 12 accessory dwelling units within a Unit Lot Subdivision. The property is zoned Residential High Capacity. A Conditional Use Permit is required for this project under AMC 20.40.020 and AMC 20.40.120, Residential Zones Permissible Use Table. Surrounding properties of the subject parcel are zoned Residential High Capacity on the north, east, south, and west and are all currently occupied with single-family and multi-family residential structures. The property abuts public roads on three sides of the property, E. Gilman Avenue to the north, N. Talcott Street to the east, and a public alley to the south. The existing site slopes from the south to the north, with an approximate elevation difference of 20 feet. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 4.*

Critical Areas

9. There are no critical areas on the site. *Exhibit 12.*

Unit Lot Subdivision

10. AMC 20.44.020A(a) provides for unit lot subdivisions as “an alternative to conventional subdivision processes by which the location of a building on a lot can be placed in such a manner that one or more of the building’s sides rest directly on a lot line, allowing for the creation of fee simple lots for townhome[s].” Unit lot subdivisions are allowed in RHC zones, subject to certain development standards, with unit lot subdivisions of more than nine lots requiring approval of a conditional use permit. The Design Review Board reviewed the submittal at the February 6, 2024, Planning Commission workshop and approved the submittal at the February 22, 2024, Planning Commission meeting. The Design Review Board Decision was issued on February 23, 2024. The preliminary major unit lot subdivision is required to meet the density and dimensional standards for the parent parcel. The City determined that these requirements have been met. *AMC Table 20.40-1; AMC 20.44.020A. Exhibit 1, Staff Report, pages 17, 18, and 21.*
11. Under AMC 20.44.020M, covenants, conditions, and restrictions (CC&Rs) shall be submitted with the final major unit lot subdivision for City review. The CC&Rs are required to be recorded, and the recording number shall be placed on the final major unit lot subdivision before recording with Snohomish County Auditor’s Office. A homeowner’s association is required to be established and documentation submitted to the City prior to recording the final major unit lot subdivision under AMC 20.44.020L. All private common areas within the major unit lot subdivision are required to be maintained by the homeowner’s association and shall be stated within the CC&Rs and stated on the final major unit lot subdivision. All private lots, buildings, and facilities within the major unit lot subdivision are required to be maintained by the individual lot owner and shall be stated in the CC&Rs and stated on the final major unit lot subdivision. *Exhibit 1, Staff Report, pages 17 through 20.*

Stormwater

12. The proposed preliminary major unit lot subdivision is subject to meeting the required stormwater regulations for the site. The project has received conceptual stormwater design approval. A Site Civil Permit shall be required for all site improvements. The approval of the stormwater system takes place during the permit review process. All stormwater systems shall comply with the City of Arlington Public Works Standards and Specifications and the most recent Department of Ecology Stormwater Manual for Western Washington. *Exhibit 1, Staff Report, page 29; Exhibit 4; Exhibit 14; Exhibit 15.*

Access and Traffic

13. The preliminary major unit lot subdivision does not propose any private access drives. All access is from public access points from E. Gilman Avenue, N. Talcott Street, Manhattan Street, and the public alley. The proposed project provides driveway access to each building lot from the public alley served from N. Talcott Street and Manhattan Street and also provides a means of ingress and egress for emergency vehicles, passenger vehicles, pedestrian, and bicycle transportation to the site through the public roadways of E. Gilman Avenue, N. Talcott Street, Manhattan Street, and the public alley. The Applicant provided a Traffic Impact Analysis prepared by Kimley Horn Traffic Consultants in January 2024. The traffic analysis concluded that the proposed use would produce nine new PM peak-hour-trips for six duplex units. The project receives credit for the two existing single-family residential units on the property. Accessory dwelling units are charged automatically at 50 percent of the current traffic impact fee amount (\$3,355 x 50% = \$1,677.50). *Exhibit 1, Staff Report, pages 16, 24, and 28; Exhibit 16; Exhibit 30.*

Lighting

14. In accord with AMC 20.60.400, the proposed project would provide sufficient lighting throughout the site that will illuminate the public road, private drive, parking areas, and residences. The proposed project must also provide low sodium, LED, or similar lamp type outdoor lighting. All lighting is required to be down shielded to prevent light pollution. Per AMC 20.60.410, the proposed project would provide down-shielded lighting that illuminates the site but does not shine onto neighboring properties or public rights-of-way. The final lighting plan would require approval with issuance of the permit. *Exhibit 1, Staff Report, page 25.*

Utilities and Services

15. The City would provide water and sewer service to the property. Upon permit approval, the construction of utilities would meet all requirements of the Public Works Construction Standards and Specifications and comply with the water availability approved by the Public Works Director on February 18, 2024. Per AMC 20.60.450, all proposed utilities to, and on, the site would be located underground. All utility lines are required to be shown on the civil plans and must be approved by the City of Arlington prior to construction activities on the site. The utilities proposed with the preliminary

major unit lot subdivision are required to be installed in accord with the Public Works Construction Standards and Specifications. All utility installation must be approved prior to final unit lot subdivision approval. The Applicant would be required to pay \$48,024 in school impact fees under AMC 20.90.230. *Exhibit 1, Staff Report, pages 16, 25, and 26; Exhibit 9.*

16. The City confirmed that it has capacity to provide water and sanitary sewer service to the property. The City would also provide police and fire emergency services to the property. Cascade Natural Gas would provide natural gas service, Snohomish County PUD would provide electricity service, Waste Management NW would provide garbage service, and Comcast would provide telecommunications services. Utility services, fire hydrants, and fire protection would be reviewed when civil construction drawings are submitted. *Exhibit 1, Staff Report, page 4; Exhibit 9; Exhibit 10.*

Parking

17. In accord with AMC 20.44.020G, the preliminary unit lot subdivision for duplexes requires 2 parking spaces per unit and for accessory dwelling units requires 1 parking space per unit. The duplex driveway and garage take access from the public alley and the accessory dwelling units will utilize on-street parking on E. Gilman Avenue and N. Talcott Street. The proposed preliminary major unit lot subdivision has provided one additional parking space for every four units. And the Applicant has provided three additional spaces off the public alley. The proposed parking spaces on the site would be used by residents or guests of residents and must not store inoperable motor vehicles. There would be no parking within the public alley, except for the designated parking areas for each unit and the shared parking stalls. The public alley between N. Talcott Street and Manhattan Street is the fire access to the residential structures and shall be signed as no parking. The project also provides bicycle racks on the north side of the three guest parking stalls within the public alley. Additional bicycle parking is provided within the duplex garages. *Exhibit 1, Staff Report, page 15 and 16; Exhibit 4.*
18. The preliminary major unit lot subdivision site plan shows the parking spaces within the driveway of each townhouse and the guest parking stalls that meet the dimensional requirements of AMC 20.72.030. In accord with AMC 20.72.060, the site plan shows the parking spaces within the garage, driveway, and guest parking as concrete. All resident/guest parking spaces located in the designated parking areas shall be painted with lines and other required markings. These requirements shall be reviewed and approved through the permitting process. Per AMC 20.76.130, the Applicant would provide shading of the guest parking spaces by utilizing the rear street trees of the abutting lots. The Applicant is not required to provide shading for driveway parking. *Exhibit 1, Staff Report, pages 26 and 27; Exhibit 4.*

Landscaping and Open Spaces

19. AMC 20.44.020A(d) requires that “all units created by a unit lot subdivision shall provide attached private open space for each individual unit equaling fifteen percent of the total lot area, but in no case shall be less than two hundred square feet.” The proposed preliminary major unit lot subdivision has provided a minimum of 15 percent of private open space per lot and equal to or more than 200 square feet. In fact, the private open space calculations in the site plan show each lot provides 375 square feet. Per AMC 20.44.020E, the Applicant does not propose common areas because the project creates fee simple lots on a city block that is bound by public right-of-way on three sides of the parent parcel. The City is providing a deviation from the required 10 percent usable open space for this site. The property was originally platted in 1890 and is located on Block 10, Lots 1-6. The original plat layout did not provide for specific open space on these lots. The layout of the underlying project is that of a typical block style plat with a public street and alley system already in place. The intent of construction on the lots is exactly what the Applicant has proposed, and requiring a separate tract for usable common open space does not make sense. Under AMC 20.52.010, the Applicant is required to pay a neighborhood/mini-park in-lieu fee for 10 single-family units. Under AMC 20.52.024, the Applicant is also required to pay community park impact fees for 10 single-family units (credit for the two existing homes on the site) and 12 single-family units at a 50 percent rate for the accessory dwelling units. The Applicant would be required to pay \$9,972 in community parks impact fees. *Exhibit 1, Staff Report, pages 14 and 23; Exhibit 4; Exhibit 5.*
20. The preliminary major unit lot subdivision has provided landscaping throughout the site. New landscaping is proposed in the front and rear yards of each unit, along with additional Type B landscaping on the east and west borders of the project. The project proposes street trees within the City right-of-way of E. Gilman and N. Talcott, with trees that are listed on the City approved tree list. AMC 20.76.030 requires one tree in both the front and rear yards of each townhouse unit. The Applicant must install trees per the standard detail for City of Arlington Planting Strip Behind Sidewalk Tree Detail R-270 that shows the installation of street trees with a root barrier on both sides of the root ball facing the right-of-way and sidewalk. Duplexes are considered at the single-family fee rate, and accessory dwelling units are calculated at 50 percent of the fee rate. The property owner(s) or homeowners’ association of the major unit lot subdivision would be required to maintain the landscaping on the property and within the right-of-way per chapter 20.76 AMC. This requirement shall be listed within the CC&Rs and recorded with the final major unit lot subdivision. *Exhibit 1, Staff Report, pages 14, 15, 17, and 26 through 28; Exhibit 4; Exhibit 5.*

Accessory Dwelling Units

21. Accessory dwelling units are allowed in the Residential High-Capacity zone. The project proposes one 420 square foot attached accessory dwelling unit per fee simple lot or each

side of the duplex unit. Each accessory dwelling unit would be built into the primary structure of each duplex unit as an attached unit. Because the accessory dwelling unit is part of the primary structure, no additional setbacks or height requirements apply, and no additional protection to public health and safety, ground and surface waters, or critical areas is required. The proposed accessory dwelling units would be built into the duplexes on the ground floor. The property is sloped, and the Applicant is taking advantage of the topography on the site by providing the accessory dwelling unit below, similar to a day light basement. The proposed project has been designed to incorporate the accessory dwelling unit into the duplex design. The elevations show that it would be unknown to someone driving or walking by the site that an accessory dwelling unit existed within the structure. Under AMC 20.44.042, ADUs are allowed on any lot that meets the minimum lot size required for the principal residence. The proposed principal structures meet the minimum lot sizes per the Unit Lot Subdivision code sections of AMC 20.44.020. Each accessory dwelling unit is proposed on the ground floor and would provides all aspects required for an accessory dwelling unit in accord with AMC 20.44.042. The property owner is required to submit building permits and plans for the duplex and attached accessory dwelling unit prior to construction. Under AMC 20.44.042(c), the proposed accessory dwelling units are allowed on each fee simple lot created from the preliminary major unit lot subdivision. City staff determined that the proposed inclusion of accessory dwelling units would meet the requirements of AMC 20.44.042. *Exhibit 1, Staff Report, pages 19 and 20; Exhibit 4.*

Conditional Use Permit

22. City staff concluded that the proposal would comply with all requirements of the code, had properly undergone SEPA review, would not materially endanger the public health and safety or materially harm adjoining or abutting property, and would be compatible with the area in which it is located. *Exhibit 1, Staff Report, page 32.*

Testimony

23. Amy Rusko, City Planning Manager, testified generally about the proposal. Ms. Rusko testified that there are two existing homes, which will be removed. The subject property is otherwise forested. Ms. Rusko testified that the subject property was originally six underlying lots, according to the plat of 1890. The proposal is for six townhouse-style duplexes, with 12 built-in accessory dwelling units. Frontage improvements would include sidewalk, curb and gutter, and landscaping strip. The public alley behind the subject property would also be paved.

Most of the surrounding properties are single-family homes or duplexes, although there is one multifamily parcel kitty-corner to the subject property. This development is very similar in size and scale to the proposed development, although the proposed development includes ADUs, which the adjacent property does not. Also, the proposed development has private yards, which the adjacent property does not.

Ms. Rusko testified that the Applicant is proposing an in-lieu fee to satisfy part of its mini-parks obligation. Ms. Rusko walked the Hearing Examiner through the calculations for the mini-park fee. She acknowledged that, for purposes of calculating the in-lieu fee, the City is giving the Applicant “credit” for the two existing homes to be demolished and only charging the Applicant for the “net” new residences to be constructed. Also, the City was not charging in-lieu fees for the ADUs, because they are not single-family residences.

Ms. Rusko acknowledged that the Applicant was not providing 10 percent useable open space, a requirement of AMC 20.52.030. Ms. Rusko cited the “flexibility in administration” authorized by AMC 20.52.070. Ms. Rusko testified that the lots were platted in 1890 without common open space, that similar projects had not been required to provide 10 percent common open space, and that there is a large volume of parks nearby, and the City intends to delete the open space requirement in the near future. Ms. Rusko offered to supply a memorandum after the hearing regarding open space.

24. Marc Hayes, City Community and Economic Development Director, testified that for traffic impact fees, the City does “credit” developers for existing traffic levels when calculating impact fees. He suggested that the City should do the same for mini-park in-lieu fees. He also suggested that the ADUs should not be counted as separate units for purposes of the in-lieu fee, because the ADUs could not exist as units on their own. If there were no ADUs—if the ADUs were instead mere additional bedrooms—they would not increase the in-lieu fee, because the in-lieu fee is calculated on a per-unit basis, not a per-person basis.

Mr. Hayes testified that the initial stormwater plan was not acceptable to the City but that the Applicant had supplied a more detailed stormwater plan, Exhibit 14. Mr. Hayes believed that flow control was required, but the Applicant’s original stormwater plan did not include flow control. The revised plan, Exhibit 14, did provide for flow control, although it repeated that flow control is not “required.” Mr. Hayes testified that flow control was necessary in this case, because there is a direct discharge to the Stillaguamish River from an existing storm drainage connection. For this reason, he insisted on infiltration trenches to provide flow control both on the south side of the project and on the north and east sides of the project. Mr. Hayes testified that the Exhibit 14 stormwater plan and Exhibit 4 site plan show these features, even though the Applicant continues to insist they are not necessary. *Testimony of Marc Hayes.*

25. Randall Devoir, Applicant Representative, testified that he is the project manager for the Applicant. He testified that he would abide by any conditions regarding parks and open space that the Hearing Examiner might choose to impose. He did not object to any of the proposed conditions in the staff report. *Testimony of Randall Devoir.*

26. Brittany Belton testified that she is the land use planner and project coordinator for Cascade Surveying. She testified that she had no questions or concerns. *Testimony of Brittany Belton.*

Staff Recommendation

27. Ms. Rusko testified that the City recommends approval of the project, with the conditions set forth in the staff report. Mr. Hayes did not object to any of these conditions. *Testimony of Amy Rusko; testimony of Marc Hayes.*

Post-Hearing Materials

28. Following the hearing, the City provided correspondence between itself and the Tulalip Tribes, in which the Tribes confirmed that their earlier concerns about stormwater had been addressed in the most recent preliminary stormwater plan. *Exhibit 29; Exhibit 14.*
29. The City provided a memo justifying its recommendation to “credit” the Applicant for the two homes to be demolished when it comes to calculating the in-lieu mini parks fee. The City cited AMC 20.90.040(e) to argue that traffic impact fees are given for existing uses that are being expanded, so the same should apply to mini park fees. In addition, the existing houses to be demolished have been in existing since 1923 and 1957, respectively. They have paid decades of taxes to the City, thus paying for any parks impacts they may have had. In addition, the City has historically credited new developments for dwelling units to be demolished when it comes to park impact fees. *Exhibit 31.*
30. The City’s memo also argued that the Hearing Examiner should use the “flexibility in administration” authorized in AMC 20.52.070 to waive the requirement for 10 percent common, usable open space. First, the City cited the fact that the original 1890 plat for these lots did not include open space. Second, the City pointed out the large number of parks nearby and provided calculations of the area of the parks and the walking distance between the subject property and the parks. The nearest park, Terrace Park, is 3.58-acre property just 305 feet from the subject property. Within half a mile of the subject property are Country Charm Conservation Area (138.25 acres), Twin Rivers County Park (49.35 acres), and Haller Park (2.84 acres). Stormwater Wetland Park (22.95 acres) is just under 3,000 feet away. *Exhibit 31.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a conditional use permit as well as preliminary plat applications, which are evaluated in the course of conditional use permit approval. *AMC 20.12.210(a); 20.12.230(2), 20.16.225(b); 20.16.400.*

Criteria for Review

In considering whether to approve an application for a conditional use permit, the hearing examiner shall proceed according to the following format:

- (1) The hearing examiner shall consider whether the application is complete. If no evidence is presented that the application is incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the hearing examiner that the application is complete.
- (2) The hearing examiner shall consider whether the application complies with all of the applicable requirements of this title. If a finding to this effect can be made, the hearing examiner need not make further findings concerning such requirements. If such a finding cannot be made, then a finding shall be made that the application be found not in compliance with one or more of the requirements of this title. Such a finding shall specify the particular requirements the application fails to meet. Separate findings may be made with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the hearing examiner to be unsatisfied through this process.
- (3) If the hearing examiner concludes that the application fails to comply with one or more requirements of this title, the application shall be denied. If the hearing examiner concludes that all such requirements are met, he shall issue the permit unless he denies the application for one or more of the reasons set forth in Section 20.16.140 (Special Use Permits and Conditional Use Permits). Specific findings for such a denial must be made, based upon the evidence submitted, justifying such a conclusion.

AMC 20.16.255(e).

Subject to Subsection (d) [of AMC 20.16.225], the designated decision-maker shall issue the requested permit unless it concludes, based upon the information submitted at a hearing if there is a hearing or by signed letter if there is not, that:

- (1) The requested permit is not within its jurisdiction according to the table of permissible uses, or
- (2) The application is incomplete, or
- (3) If completed as proposed in the application, the development will not comply with one or more requirements of this title (not including those the applicant is not required to comply with under the circumstances specified in Chapter 20.32, Nonconforming Situations), or
- (4) The proposed project has not complied with SEPA, or
- (5) The proposed project is not in conformance with the comprehensive plan, transportation plan, or other adopted plans, regulations, or policies.

*Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Rivertown PP & CUP
No. PLN#1115*

AMC 20.16.225(c).

Even if the permit-issuing authority finds that the application complies with all other provisions of this title, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (1) Will materially endanger the public health or safety, or
- (2) Will materially harm adjoining or abutting property,
- (3) In terms of design and use will not be compatible with the area in which it is located.

AMC 20.16.225(d).

Additionally, RCW 58.17.110(2) requires that a proposed subdivision shall not be approved unless the Hearing Examiner finds that:

- (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- (b) the public use and interest will be served by the platting of such subdivision and dedication.

The criteria for review adopted by the Arlington City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

- 1. With conditions, the proposal would comply with preliminary plat requirements under the State Subdivision Act (RCW 58.17.110).** The City provided reasonable notice of the application and received comments from the public, relevant agencies, and the Tulalip Tribes. These comments were addressed through modifications to the Applicant's stormwater plan, specifically requiring the Applicant to provide flow control, as depicted in the site plans dated February 28, 2024 (Exhibit 4). The Tulalip and the City each agreed that the proposed flow control measures would be adequate to protect the water quality of the Stillaguamish River. The Hearing Examiner determines that the preliminary subdivision would make appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation,

*Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Rivertown PP & CUP
No. PLN#1115*

playgrounds, and schools and school grounds. The City Department of Community and Economic Development acted as lead agency, reviewing the proposal under SEPA, and determined that, with mitigation measures, the proposal would not have any probable significant adverse environmental impacts. The MDNS was not appealed. The MDNS would require the Applicant to implement best management practices to prevent erosion, address stormwater runoff, and protect groundwater; implement dust control measures to reduce fugitive dust emissions; provide tree replacement at a three-to-one ratio; comply with noise restrictions during construction; obtain design review approval; install light fixture to prevent glare; construct frontage improvements and dedicate right-of-way; submit an unanticipated discovery plan; connect to City water and wastewater systems; and pay applicable traffic, school, and park impact fees.

The Applicant's Traffic Impact Analysis determined that all studied intersections would continue to operate at acceptable levels of service during AM and PM peak hours. The City determined that the project would produce nine new PM peak-hour-trips for 6 duplex units and would require appropriate traffic impact fees. The proposed development would provide adequate roads and sidewalks for vehicular and pedestrian access in compliance with City code requirements and would add sidewalk and other frontage improvements, which are a public benefit.

The City confirmed that it has capacity to provide water and sanitary sewer service to the property. The City would also provide police and fire emergency services to the property. Cascade Natural Gas would provide natural gas service, Snohomish County PUD would provide electricity service, Waste Management NW would provide garbage service, and Comcast would provide telecommunications services. Utility services, fire hydrants, and fire protection would be reviewed when civil construction drawings are submitted.

Findings 1–30.

2. **With conditions, the proposal would comply with the unit lot subdivision and conditional use permit requirements of the municipal code.** Unit lot subdivisions are allowed as conditional uses in the RHC zone. Multi-family townhouses are also allowed in the RHC zone, with a conditional use permit. AUDs are also allowed. The project proposes six duplex units, for a total of 12 dwelling units. There would be one 420 square foot attached accessory dwelling unit per unit. Each ADU would be built into the primary structure of each duplex unit as an attached unit. The proposed 12-unit townhome development is an appropriate use in the RHC zone and would meet all but one of the dimensional standards for development in the RHC zone, including standards for minimum lot sizes, minimum lot widths, parking, building setbacks, and maximum building height. The proposal would not, strictly speaking, meet the minimum open space requirement, because the Applicant does not propose 10 percent of the property to be in common, usable open space.

The Hearing Examiner agrees with staff's analysis that the open space requirement can be waived pursuant to AMC 20.52.070. There are hundreds of acres of parks within a relatively short walk of this property, including one park just a block away. It makes little sense to impose a requirement for a communal open space on such a small parcel when so many other recreational opportunities exist nearby. For the same reason, the Hearing Examiner accepts the payment of fees in lieu of the full mini park build-out. It is appropriate to "discount" the in-lieu payment based on the two existing houses to be demolished. Those two houses have already had an impact on parks for many decades. Replacing those two houses with two new dwelling units will not increase the overall impact on parks. The Hearing Examiner will "credit" the Applicant for the two houses to be removed, in a similar manner as credit is applied in the traffic impact context.

The subdivision would not have any adverse impacts on its surroundings. On the contrary, it would complement its surroundings. Other properties in the vicinity are developed in a similar fashion. Indeed, the existing townhouse development kitty corner from the subject property is developed even more densely, without the yards that are proposed here. The project is consistent with the zoning code (except for open space, which can be waived); with the Comprehensive Plan vision, goals, and policies; and with the neighborhood character. *Findings 1–29.*

DECISION

Based upon the preceding findings and conclusions, the request for a unit plot subdivision to create 12 townhouse dwelling units with a further 12 attached accessory dwelling units on a 0.69-acre property located at 416 and 422 East Gilman Avenue, is **APPROVED**, subject to the following conditions:¹

Preliminary Unit Lot Subdivision (Conditional Use Permit):

1. All development shall be in substantial conformance with the approved Preliminary Unit Lot Subdivision and Landscape Plans received on February 28, 2024, subject to any conditions or modifications that may be required as part of the permit review.
2. The Applicant shall meet all local, state, or federal code requirements. Please refer to the Arlington Municipal Code for a complete list of code requirements for your project type.
3. The Preliminary Unit Lot Subdivision shall comply with all permits and conditions thereof from the City of Arlington and other government agencies with jurisdiction.

SEPA Conditions:

4. (B)(1) Earth: The Applicant proposes an estimated total cut and fill of 3,800 cubic yards. To mitigate for potential earth impacts, the Applicant shall implement Best Management Practices

¹ Conditions include those required to reduce project impacts as well as those required to meet City codes.

per Department of Ecology for Stormwater Pollution Prevention and TESC Controls to prevent erosion during and after construction.

5. (B)(2) Air: To mitigate for potential air impacts, the Applicant shall implement dust control measures to reduce fugitive dust emissions during construction. A Construction Management Plan shall be submitted to the City prior to commencement of construction to ensure these measures. Construction equipment emissions shall comply with all State and Federal regulations for emissions.

6. (B)(3)(b) Ground Water: To mitigate potential impacts to ground water the Applicant shall employ best design practices meeting the current Department of Ecology's Stormwater Management Manual for Western Washington.

7. (B)(3)(c) Water Runoff: To mitigate for potential impacts to water runoff the Applicant shall follow the current edition of the Department of Ecology's Stormwater Management Manual for Western Washington and Best Management Practices used to protect groundwater.

8. (B)(4)(b) Plants: To mitigate for the removal of significant trees on the site the Applicant shall replant at a ratio of 3:1 for every significant tree removed. A total of 39 significant trees are proposed to be removed from the site. Tree mitigation is required for 117 trees. The Applicant has proposed planting 38 replacement trees on the site. The remaining 79 trees are required to be mitigated through in-lieu fees of \$2,567.50.

9. (B)(7)(A) Environmental Health: Applicant shall comply with current codes to reduce or control environmental health hazards. A spill prevention plan shall be in place according to local, State and Federal policies.

10. (B)(7)(b) Noise: City of Arlington noise standards found in AMC 9.20.060 shall be complied with. Specifically, in section 9.20.060(8) noises resulting from any construction or development activity or the operation of heavy equipment from 7:00pm to 7:00am Monday through Saturday shall be prohibited. The project will generate short term noise associated with construction activities. Construction hours will conform to City requirements. Noise from vehicle traffic and residential units will be generated after project completion.

11. (B)(8) Land and Shoreline Use: The property is located within Subdistrict D and shall comply with the Federal Aviation Regulations (FAR) Part 77 and complete a Federal Aviation Administration form 7460. An Avigation Disclosure Statement shall be placed on the final unit lot subdivision and recorded with the final document at the Snohomish County Auditor's Office.

12. (B)(10)(c) Aesthetics: The Applicant shall obtain approval for the six duplex units with twelve accessory dwelling units from the Design Review Board. The proposal is required to adhere to the design approved through the Design Review Board (PLN#1116).

13. (B)(11)(a) Light and Glare: To mitigate potential light pollution the Applicant will be required to install light fixtures that are down shielded. The property is located within the Arlington Airport Protection District – Subdistrict D.

14. (B)(12)(c) Recreation: The proposed residential development of six duplexes and twelve accessory dwelling units shall pay the following Community Park Impact Fees and Neighborhood/Mini-Park In-Lieu Fees:

- Community Park Impact Fees:

- o 12 residential units (6 duplexes) = \$19,944.00 (\$1,662 x 12 units)

- o 12 accessory dwelling units = \$9,972.00 (\$831 x 12 units)

- Neighborhood/Mini Park In-Lieu Fees: o 12 residential units (6 duplexes) = \$5,808.00 (\$484 x 12 units)

The Applicant shall pay all community park impact fees and neighborhood/mini-park in-lieu fees prior to building permit issuance.

15. (B)(13) Historic and Cultural Preservation: The Applicant submitted an Unanticipated Discovery Plan. If historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and the find reported as soon as possible to the planning director. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes. The Applicant shall provide ground disturbance notification to the Stillaguamish Tribe of Indians and allow for monitoring on the site.

16. (B)(14)(c) Transportation: The proposal is required to improve the public right of way along N. Talcott Street, E. Gilman Avenue, and the Alley south of the properties. All public improvements shall be approved with the Civil Construction plans.

17. (B)(14)(f) Transportation: The proposal is for duplexes, which are equivalent to single-family homes per the Arlington Municipal Code for calculating traffic impact fees. Each duplex unit is calculated with 1 PM Peak Hour Trip. The proposed accessory dwelling units are calculated at one-half the rate for single family dwelling units per AMC 20.44.042(17).

- Duplexes: \$40,260.00 (\$3,355 x 12 units)

- Accessory Dwelling Units: \$20,130.00 (\$1,677.50 x 12)

The traffic impact fees may be credited for improvements to the public alley, if approved by the Director of Community and Economic Development. If traffic impact fees are due for the project, then the Applicant shall pay the required fees prior to building permit issuance.

18. (B)(15)(b) Public Services: The proposal is within the Arlington School District and will be required to pay \$4,002 for every single-family dwelling unit for 12 units, for a total of \$48,024.00 in school mitigation fees. The Applicant shall provide the City a copy of payment/receipt to Arlington School District prior to building permit issuance.

19. (B)(16)(a) Utilities: The Applicant shall receive approval and connect to the City of Arlington water and wastewater systems, extend utility lines as necessary, and pay water and sewer connection fees. All improvements shall be installed during the Civil Construction phase of the project. All utilities shall be installed underground.

Civil Permit:

20. The Applicant is required to apply for a Civil Construction Permit and receive approval prior to any land disturbance or work commencing on the site.

21. The Applicant shall submit a lighting plan with the Civil Construction Permit.

22. The project is subject to submit a Right-of-Way Permit for all work with public rights-of-way.

23. The project is required to meet the most current version of the Department of Ecology Stormwater Manual for Western Washington and the City of Arlington Engineering Standards for the specific details of the project.

Prior to Final Unit Lot Subdivision Submittal:

24. The Applicant shall submit a copy of the incorporation of the Homeowner's Association and the Covenants, Conditions, and Restrictions with the final major unit lot subdivision application. The CC&Rs shall include the following:

- No parking allowed along the public alley
- No storage of inoperable motor vehicles.
- Maintenance of private lots, buildings and abutting right-of-way for the site.

Prior to Final Unit Lot Subdivision Approval:

25. The Applicant shall complete all required Civil Construction improvements on the subject site.

26. The Applicant shall submit as-builts, acquire all required bonds, and complete the civil construction punch list for the project.

27. The Applicant shall provide the conditions found in AMC 20.44.020N on the face of the final plat document.

28. The Applicant shall provide language to be placed on the final unit lot subdivision that notifies future property owners of possible effects from aviation activities and the proximity of the Arlington Municipal Airport.

Building:

29. The Final Unit Lot Subdivision shall be recorded at Snohomish County Auditor's Office and the recorded document returned to the City of Arlington prior to issuance of any Building Permits.

30. The proposed building plans shall be in compliance with the approved Design Review Board Decision issued on February 23, 2024.

31. The project is subject to applicable water and sewer utility fees. These fees are collected at the time of building permit issuance.

32. Prior to issuance of building permits, all associated impact fees shall be paid.

DECIDED this 8th day of April 2024.

A handwritten signature in black ink, appearing to read "Alex Sidles", with a long horizontal flourish extending to the right.

ALEX SIDLES
Hearing Examiner