

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

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|---------------------------------------|---|----------------------------------|
| In the Matter of the Application of |) | Nos. PLN#633; PLN#634 |
| |) | |
| Paul Woodmansee, on behalf of |) | 51st Avenue Urban Village |
| Arlington 51st Street, LLC |) | |
| |) | |
| |) | |
| For Approval of a Binding Site Plan, |) | |
| Unit Lot Subdivision, and Conditional |) | FINDINGS, CONCLUSIONS, |
| <u>Use Permit</u> |) | AND DECISION |

SUMMARY OF DECISION

The request for approval of a binding site plan, unit lot subdivision, and conditional use permit for development of up to 500 multi-family residential units, 16 live/work units, recreational facilities, on-site amenities, surface parking, and associated improvements, on 20.38 acres at 16612 51st Avenue NE 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 May 6, 2020. The public hearing was conducted using remote meeting technology in light of the COVID-19 pandemic. The Hearing Examiner left the record open to allow the Applicant to file a response to an exhibit¹ that was admitted at the hearing and to allow any member of the public unable to participate at the remote hearing to provide written comments on the proposal. The Applicant provided the requested response (Exhibit 52), no additional public comments were received, and the record closed on May 13, 2020.

Testimony:

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

Josh Grandlienard, City Planner
Marc Hayes, City Community & Economic Development Director
Paul Woodmansee, Applicant Representative

¹ Exhibit 51.

Brian Bookey
Nancy Euken
Chris Holland
Jesse Hannahs

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report & Recommendation
2. Certification of Public Notice, dated April 24, 2020
3. Land Use Application – Conditional Use Permit, received November 8, 2019
4. Project Narrative, received April 21, 2019
5. Vicinity Map, received November 8, 2019
6. Aerial Photograph, received November 8, 2019
7. Water & Sewer Availability Application, dated April 21, 2020
8. Traffic Impact Analysis, Gibson Traffic Consultants, Inc., dated October 2019
9. Memorandum from Brad Lincoln, Gibson Traffic Consultants, Inc., to Marc Hayes, dated January 30, 2020
10. Memorandum from Brad Lincoln, Gibson Traffic Consultants, Inc., to Marc Hayes, dated March 18, 2020
11. Stormwater Site Plan, Sound Development Group, LLC, dated October 28, 2019
12. Critical Areas Report, Bachman Environmental, LLC, dated September 18, 2019
13. Department of the Army Corps of Engineers Letter, dated April 23, 2020
14. Notification of Administrative Appeal Options and Process and Request for Appeal, dated October 28, 2019; U.S. Army Corps of Engineers Interim Approved Jurisdictional Determination Form, received April 23, 2020
15. Cultural Resources Report, Drayton Archaeology, dated November 6, 2019
16. Unanticipated Discovery of Cultural Resources and Human Skeletal Remains Plan, received April 22, 2019
17. SEPA Environmental Checklist, dated November 4, 2019
18. SEPA Environmental Checklist, dated January 30, 2020
19. Complete Streets Checklist, received November 8, 2019
20. Phase I Environmental Site Assessment, Materials Testing & Consulting, Inc., dated September 14, 2018
21. Extended Phase I Environmental Site Assessment – Records Review & Limited Sampling, Materials Testing & Consulting, Inc., dated November 18, 2018
22. Declaration of Covenants, Conditions, Restrictions and Reservations for A51LW, received January 31, 2020
23. Bylaws of A51LW Homeowners Association, received January 31, 2020
24. Exhibit B - Architectural Control Committee, received January 31, 2020
25. Public Notice, 500 Foot Radius Map, received November 8, 2019

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26. Public Notice Mailing List, undated
27. Site Plans (6 sheets), received January 31, 2020, including Cover Sheet (Sheet 1), Existing Conditions Plan (Sheet 2), Binding Site Plan Lot & Dimensional Plan (Sheet 3), Overall Grading & Stormwater Plan (Sheet 4), Preliminary Utility Plan (Sheet 5), and Preliminary Waterline & Sewer Forcemain Extension & Phasing Detail (Sheet 6)
28. Landscape Plans (3 sheets), received January 31, 2020, including Overall Landscape Plan (Sheet PL-1), Live/Work Recreation Area and Typical Building Landscape (Sheet PL-2), and Project Parks (Sheet PL-3)
29. Architectural Plans (5 sheets), received November 8, 2019, including Apartment Plan Concepts (Sheet A-2.0), Apartment Elevations (Sheet A-3.0), Retail Elevations (Sheet A-3.1), Live/Work Studios (Sheet A-3.2), Live/Work Studios (Sheet A-3.3)
30. Color Illustrations (7 sheets), received November 18, 2019
31. Notice of Complete Application, PLN#634, dated December 12, 2019
32. Notice of Complete Application, PLN#633, dated December 12, 2019
33. Notice of Neighborhood Meeting, PLN#634, dated November 19, 2019
34. Notice of Neighborhood Meeting, PLN#633, dated November 19, 2019
35. Notice of Application, PLN#634, dated December 20, 2019
36. Notice of Application, PLN#633, dated December 20, 2019
37. SEPA Threshold Determination - Mitigated Determination of Non-Significance (MDNS), dated December 18, 2019
38. Email from Elbert Esparza, Snohomish County Department of Public Works, to Josh Grandlienard, dated December 20, 2019, with email string
39. Letter from Stephanie Jolivette, Washington State Department of Archaeology & Historic Preservation, to Josh Grandlienard, dated December 31, 2019
40. City of Marysville Public Works Department Memorandum, dated December 30, 2019
41. Letter from Jeff Thomas, City of Marysville Community Development Department, to Marc Hayes, dated January 2, 2020
42. Email from Marc Hayes to Kristen Foster, dated April 28, 2020, with email string and attachments
43. Withdrawal of the Mitigated Determination of Nonsignificance, dated February 21, 2020
44. SEPA Threshold Determination - Mitigated Determination of Nonsignificance (MDNS), dated February 21, 2020
45. City of Marysville Public Works Department Memorandum, dated March 3, 2020
46. Letter from Jeff Thomas, City of Marysville Community Development Department, to Marc Hayes, dated March 4, 2020
47. Email from Chris Holland to Marc Hayes, dated March 13, 2020
48. Email from Paul Woodmansee to Chris Holland, dated April 13, 2020, with email string and attachments
49. Letter from Marc Hayes to Jeff Thomas, City of Marysville Community Development Department, dated April 23, 2020

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50. Notice of Public Hearing
51. Letter from Jeff Thomas, City of Marysville Community Development Department, to Hearing Examiner, dated May 5, 2020
52. Letter from Laura Minton Breckenridge, Skagit Law Group, PLLC, on behalf of the Applicant, to the Hearing Examiner, dated May 12, 2020

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

FINDINGS

Application and Notice

1. Paul Woodmansee, on behalf of Arlington 51st Street, LLC (Applicant), requests approval of a binding site plan (BSP), unit lot subdivision (ULS), and conditional use permit (CUP) for development of up to 500 multi-family residential units, 16 live/work units, and associated improvements on 20.38 acres. The Applicant intends to construct 6 multi-use buildings, a multi-family residential building, 16 live/work housing units, 7 commercial buildings with multi-family housing on the second story, and a large single retail building, which would all have adjoining parking, walks, utilities, parks, and landscaping. The property is located at 16612 51st Avenue NE.² *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 3; Exhibit 4; Exhibit 27.*
2. The City of Arlington (City) determined that the application was complete on December 12, 2019.³ On December 20, 2019, the City provided notice of the application by mailing notice to affected agencies and to property owners within 500 feet of the subject property, posting notice on-site and at designated City locations, and publishing notice in *The Herald*. The City provided notice of the open record hearing associated with the application by mailing notice on April 21, 2020, to affected agencies and to property owners within 500 feet of the subject property and, on April 23, 2020, by posting notice on-site and at designated City locations and by publishing notice in *The Herald*. The City received three agency comments during the notice period. The agency comments provided to the City were specific to the MDNS and are discussed further below. *Exhibit 1, Staff Report, pages 5 and 18; Exhibit 2; Exhibit 3; Exhibit 24; Exhibit 25; Exhibit 26; Exhibits 31 through 36; Exhibit 50.*

² The property is identified by tax identification number 31052800100900. *Exhibit 1, Staff Report, page 3; Exhibit 3.* A legal description is provided on the site plan cover sheet. *Exhibit 27.*

³ On December 3, 2020, a neighborhood meeting was held on the application as required by Arlington Municipal Code (AMC) 20.16.130. *Exhibit 1, Staff Report, page 5; Exhibit 33; Exhibit 34.*

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State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impact of the proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, it issued a Mitigated Determination of Nonsignificance (MDNS) on December 20, 2019. The City used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355 and provided notice of the threshold determination with the notice of application. The City received three agency comments in response to its notice materials. *Exhibit 1, Staff Report, pages 5 through 10, and 16; Exhibits 2 through 8; Exhibits 11 through 13; Exhibit 15; Exhibit 17; Exhibits 19 through 21; Exhibits 37 through 41.*

4. The Snohomish County Department of Public Works commented that the proposed development would not have any impacts requiring mitigation under the County/City interlocal agreement. The Washington State Department of Archaeology and Historic Preservation commented that the project would not require any direct archaeological supervision but that the project should follow an Inadvertent Discovery Plan during all ground disturbing activities. The City of Marysville (Marysville) commented that the Applicant's Traffic Impact Analysis (TIA) failed to analyze the project's impacts to the intersection of 152nd Street NE and 51st Avenue NE, that the TIA trip generation figure should be amended to account for the proposed live/work single-family residential units within the development, and that the Applicant should be required to apply for water service from Marysville. The City responded to Marysville's comments, stating that the TIA would be updated to include analysis of the live/work units as single-family units and of the project's impacts to the intersection at 152nd Street NE and 51st Avenue NE. The City also stated that water service to the property would be provided by the City and not by Marysville pursuant to a 2016 Water Service Area Change Agreement. Gibson Traffic Consultants, Inc., submitted an updated TIA on behalf of the Applicant on January 30, 2020, as part of the additional review process under SEPA, as requested. On February 21, 2020, the City withdrew the MDNS and reissued a new MDNS the same day, with a comment deadline of March 6, 2019. *Exhibit 1, Staff Report, pages 5 through 10, and 16; Exhibit 9; Exhibits 37 through 44.*

5. In response to the reissued MDNS, Marysville commented that the Applicant's updated TIA assumed that future improvements would be made to the intersection of 152nd Street NE and 51st Avenue NE but did not analyze the project's impacts to the intersection without such improvements. Marysville requested that the City withdraw the reissued MDNS and reissue an MDNS requiring the Applicant to mitigate impacts by either

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constructing intersection improvements or paying Marysville \$414,075 in traffic mitigation fees. Marysville submitted a memorandum from Traffic Engineer Jesse Hannahs in support of its request. On April 13, 2020, the Applicant responded to Marysville's comments, explaining that, although the Applicant was not required to pay traffic mitigation fees to Marysville in the absence of an interlocal agreement between it and the City, the Applicant would pay Marysville \$67,625 for intersection improvements in the interest of moving the project forward, believing this amount to represent its "share" of impacts to this extra-jurisdictional intersection. On April 13, 2020, Marysville responded by requesting the Applicant pay it \$83,862.12 in impact fees. On April 23, 2020, the City responded to Marysville, stating that it was declining its request to withdraw the reissued MDNS and that the Applicant was not obligated to pay Marysville traffic mitigation fees because the City did not have an interlocal agreement with Marysville. *Exhibit 1, Staff Report, pages 5 through 10, and 16; Exhibit 10; Exhibits 45 through 49.*

6. The revised MDNS requires the Applicant to:
- Implement Best Management Practices (BMPs) during and after construction in accord with Washington State Department of Ecology (DOE) requirements for Stormwater Pollution Prevention and Temporary Erosion and Sediment Control (TESC).
 - Obtain a construction Stormwater General Permit from DOE.
 - Submit to the City a Construction Management Plan prior to construction ensuring that proper dust control measures would be implemented during construction.
 - Follow the current edition of the DOE Stormwater Management Manual for Western Washington.
 - Follow current DOE stormwater manual and BMPs for protecting groundwater.
 - Plant native grasses and street trees in compliance with Chapter 20.76 of the Arlington Municipal Code (AMC).
 - Comply with Washington State Energy Code requirements.
 - Comply with current code requirements for reducing or controlling environmental health hazards.
 - Comply with City noise ordinances during construction.
 - Comply with City building design standards and street tree requirements.
 - Install light fixtures that are down shielded to mitigate for potential light pollution.
 - Provide on-site usable open space and pay required community park mitigation fees.
 - Submit an Unintended Discovery plan and stop construction and notify authorities if any potential evidence of cultural resources is discovered on the site.

- Construct improvements along 51st Avenue NE and along portions of 168th Street NE and 47th Avenue NE, including installation of drive aisles, sidewalks, and an ADA path.
- Pay required traffic mitigation fees to the City.
- Connect to City water and wastewater systems.
- Place all utility lines underground in accord with the “Public Works Construction Standards and Specification” administrative guidelines and in accord with the specifications and policies of respective utility service providers.

Exhibit 44.

Comprehensive Plan and Zoning

7. The property is designated General Commercial under the City Comprehensive Plan. The purpose of the General Commercial designation is to provide for commercial, office, and professional uses of a moderate-sized format that rely on motor-vehicle traffic. *City Comprehensive Plan, sec. 5.3.* The General Commercial designation is intended to be situated along arterials to serve as a transition area between Highway Commercial and Residential designations, and the designation is generally characterized as an active automobile and pedestrian environment with commercial buildings situated toward high-volume thoroughfares. *City Comprehensive Plan, sec. 5.3.* The General Commercial designation encourages mixed-use development, subject to master plan and design review. *City Comprehensive Plan, sec. 5.3.* City staff reviewed the Applicant’s proposal and determined that it would be consistent with the City Comprehensive Plan. *Exhibit 1, Staff Report, page 18; Exhibit 5.*
8. The subject property is located within the General Commercial (GC) zone. The GC zone is designed to accommodate a mix of intensive commercial activities and high-density residential uses and is intended to be located along arterials to cater to commuters or as a transition in some areas between a highway commercial zone and a residential zone. *AMC 20.36.020(d).* Under Chapter 20.40 AMC, mixed-use, multi-family apartments are allowed in the GC zone with a conditional use permit. *Chapter 20.40 AMC.* Additionally, a conditional use permit is required because the project proposes to develop over 50 dwelling units. *AMC 20.40.020(b).* The subject property is also located within Subdistricts A and B of the Airport Protection (AP) district overlay. The purpose of the AP district 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).* Proposed conditions would ensure that the project would comply with performance standards and restrictions for development within the Subdistricts A and B of

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the AP district overlay.⁴ *AMC 20.38.080. Exhibit 1, Staff Report, pages 3, 11, 20, and 21; Exhibit 5.*

9. The City has adopted mixed-use development regulations to “establish clear policies, implementation strategies, and design standards to guide public and private investment in a coordinated manner.” *AMC 20.110.012(a)*. In doing this, the City has adopted an “alternative approach to conventional zoning called ‘form based code,’” a concept that reinforces “walkable, sustainable mixed-use environments and development that builds upon community character.” *AMC 20.110.012(b)*. The purpose of form-based codes is to “foster predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code.” *AMC 20.110.012(b)*. Under Chapter 20.110 AMC, the project site is located within a “Place Type” that is designated “Mixed Use Urban Center.” Under the form-based code, Place Types are further categorized by “Use Intensity Transects.” The subject project is located within the Transect 5 Flex (T5-F) area, which allows for a mix of medium-density building types with a variety of forms that decrease in size and intensity of use toward the outer boundary of the corridor. *AMC 20.110.012(e); AMC 20.110.014(c)*. The purpose of the T5-F area is to “provide an appropriate transition from a neighborhood main street environment into the residential areas, and to provide flexible buildings in a residential form that can allow a mix of residential and walkable local serving commercial and service uses.” *AMC 20.110.014(c)(4)*. Single-family and multi-family residential housing is allowed within the T5-F area with a CUP. *AMC 20.110.014(c)(4)*.
10. The mixed-use development regulations (*AMC 20.110.014*) provide specific guidelines on appropriate building types and frontages, and on specific standards related to: blocks, rights-of-way, thoroughfares, civic and open spaces, landscaping and screening, low impact design (LID) for stormwater management, outdoor lighting, and architecture. City staff analyzed the proposal and determined that these requirements would be met, noting:
- The landscaping along the frontage to the proposed 168th Street NE and along 51st Avenue NE would serve the general intent of the frontage standards.
 - The proposed apartment building is similar in character to a building form that is acceptable in the T5-F areas: a Stacked-Flat building. A Stacked Flat is a medium-to-large sized structure consisting of multiple dwelling units accessed from a courtyard or series of courtyards with either individual or common entries. It is appropriately scaled to fit adjacent to neighborhoods serving main streets and walkable urban neighborhoods.

⁴ See Conditions 4.n.i through 4.n.viii, below.

- Block, right-of-way, and thoroughfare standards have been reviewed as part of the Binding Site Plan application, which demonstrates that these requirements would be met.
- The site plan shows that the proposed development would meet T5-F area parking standards.
- Several public civic spaces and outdoor amenities would be provided, including multiple courtyards and pocket parks.
- The Applicant proposes landscaping along the frontage, and all property lines would meet screening requirements.
- The Applicant has submitted stormwater plans that indicate that LID techniques would be employed, and the City would review the stormwater plans for compliance with required LID standards.
- The project would be conditioned to meet required outdoor lighting standards.
- The project would be located on 16 parcels submitted under a Binding Site Plan. All parcels would have a condition placed upon them requiring consistency and compatibility of design, including four-sided design, shielding of roof top mechanical structures, and compatible materials.

Exhibit 1, Staff Report, pages 16 through 18.

Existing Site and Proposed Development

11. The project site encompasses 559,777 square feet (20.38 acres) and largely consists of grassy fields, formerly used for small-farm agricultural purposes. The southeastern portion of the site currently contains a gravel driveway leading to an unoccupied single-family residence and several associated outbuildings that would be removed as part of the proposed development. The area near the existing single-family residence also currently contains scattered trees and brush. Property to the north is zoned Highway Commercial and is developed with an operating agricultural processing facility. Property to the east is General Industrial and is developed with an automobile auction business and associated storage yard. Property to the south and west is zoned General Commercial and consists of vacant agricultural fields. *Exhibit 1, Staff Report, pages 2 through 4; Exhibit 5; Exhibit 6; Exhibit 11; Exhibit 12; Exhibit 20; Exhibit 27.*
12. The Applicant proposes to utilize a Binding Site Plan to subdivide the 20.38-acre property into 16 lots that would be developed, in phases, with six multi-use buildings, one multi-family residential building, 16 live/work housing units, seven commercial buildings with multi-family residential units on the second story, and one large retail building. The proposed development would include up to 500 apartment units and 16 live/work units that would be on fee simple lots through the City's Unit Lot Subdivision process to allow for individual homeownership. On-site amenities would include pedestrian trails, picnic areas with seating, formal and informal play areas, sport courts, and surface parking lots

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with enclosed garages interior to the larger apartment structures. The property is bordered to the east by 51st Avenue NE and would be bordered to the north by the proposed construction of 168th Street NE and to the west by the proposed construction of 47th Avenue NE. The Applicant has applied for Design Review Board approval as required under AMC 20.46.020, which would assure that the proposal would comply with all applicable design guidelines for development in the GC zone. *Exhibit 1, Staff Report, page 2; Exhibit 4; Exhibits 27 through 30.*

Critical Areas

13. Bachman Environmental, LLC, performed a Critical Areas Study (CAS) for the proposed development. The CAS determined that no wetlands were present on the site. The CAS identified drainage ditches along the northern, eastern, and southern property lines of the subject property. It also determined that the ditches did not support wetland hydrology indicators and that the ditches would not contain relatively permanent, standing, or continuously flowing water. Bachman Environmental requested an approved jurisdictional determination from the U.S. Army Corps of Engineers for the drainage ditches along northern and southern property lines. The U.S. Army Corps of Engineers determined that both drainage ditches are non-waters of the U.S., and, thus, the proposed development would not require authorization under the Clean Water Act. *Exhibits 12 through 14.*

Stormwater

14. Sound Development Group, LLC, prepared a preliminary stormwater drainage analysis and stormwater site plan for the Applicant. Stormwater on the site currently sheet flows northeast to southwest and is infiltrated into the existing soils or captured within an existing drainage ditch at the south property line. The proposed development would result in approximately 458,149 square feet (10.52 acres) of impervious surfaces from asphalt parking, concrete walks, hardscapes, and rooftops. Stormwater runoff from the proposed development would be completely infiltrated on-site with improvements that include Stormwater Low Impact Development bioretention cells with underlying gravel trench beds along right-of-way street improvements, downspout infiltration systems for the proposed rooftops, and permeable pavement within the proposed parking areas and/or drive lanes. The proposed stormwater system would meet the requirements of 2014 Stormwater Management Manual for Western Washington. Sound Development Group concluded that the proposed stormwater system design would provide for infiltration of stormwater volume greater than the existing site conditions and, thus, any resulting stormwater impact from the proposed development would be negligible. Chapter 13.28 AMC provides City code stormwater utility requirements. Under AMC 13.28.140(b), developers are required to submit stormwater site plans for projects with greater than two thousand square feet of new, replaced, or new plus replaced impervious surfaces. The

City Community and Economic Development Director would review the Applicant's stormwater site plan for compliance with Chapter 13.28 AMC prior to administratively issuing the Applicant a civil permit. *Exhibit 1, Staff Report, page 14; Exhibit 11; Exhibit 27.*

Access and Traffic Impacts

15. The property would be accessed from two locations. The primary access to the property would be from 51st Avenue NE, which is located along the eastern side of the property. Secondary access to the property would be from 168th Street NE, which would be constructed along the northern side of the property. The Applicant would be required to construct frontage improvements along 51st Avenue NE, three-quarter frontage improvements on 168th Street NE, and half frontage improvements on 47th Avenue NE. Additionally, the Applicant would install on-site drive aisles and sidewalks, as well as an ADA path along 51st Avenue NE from the site to 172nd Street NE. City staff determined that the proposed development would comply with City code requirements under Chapter 20.56 AMC pertaining to streets and sidewalks, including requirements related to lot access for vehicles, emergency vehicles, pedestrians, and bicycles; entrances to streets; relationship of streets to topography; street intersections; and right-of-way improvements and dedications. *Exhibit 1, Staff Report, pages 2, 12, and 13; Exhibit 4; Exhibit 5; Exhibit 8; Exhibit 19; Exhibit 27.*
16. Gibson Traffic Consultants (GTC) prepared a Traffic Impact Analysis (TIA) for the Applicant, dated October 2019. The October 2019 TIA determined that the proposed development would generate 3,870 average new daily trips, with 198 new AM peak-hour trips and 344 new PM peak hour trips. The October 2019 TIA studied the proposed development's impact to the intersection of 172nd Street NE (SR-531) and 51st Avenue NE and determined that the intersection would continue to operate at an acceptable level of service (LOS) with the development when accounting for Washington State Department of Transportation (WSDOT) funded improvements. The Applicant would be required to pay traffic impact fees to the City, and a development agreement would be utilized to identify how traffic impact fees would be applied to the project. In response to revisions to the project that would increase the proposed number of multi-family units to 500, GTC prepared a revised TIA memorandum, dated January 30, 2020, to calculate traffic impacts based on treating the live/work units as single-family residential units; to analyze impacts to the intersection of 51st Avenue NE and 152nd Street NE, as requested by the City of Marysville; and to address a request by Snohomish County for a traffic mitigation fee offer. The revised TIA determined that the proposed development would generate 4,210 new average daily trips, with 223 new AM peak-hour trips and 373 new PM peak-hour trips. The revised TIA again concluded that the intersection of 172nd Street NE and 51st Avenue NE would continue to operate at an acceptable LOS with the

proposed development when accounting for WSDOT funded improvements. The revised TIA also concluded that the intersection of 152nd Street NE and 51st Avenue NE would operate at an acceptable LOS with the proposed development when accounting for improvements in the City of Marysville’s 2020-2025 Transportation Improvement Plan. Finally, the revised TIA determined that the Applicant would not be required to pay Snohomish County traffic impact fees under the City’s interlocal agreement with the County based on the project’s anticipated impacts to County improvement projects. *Exhibit 1, Staff Report, page 15; Exhibit 8; Exhibit 9.*

Utilities and Services

17. The City would provide water and sewer service to the property, and the City verified in a signed “Water & Sewer Availability” letter, dated April 21, 2020, that it has capacity to provide water and sanitary sewer services to the site. A development agreement would be utilized to identify how connection fees would be applied to the project. Puget Sound Energy would provide natural gas service to the property, Snohomish County PUD would provide electricity service, Waste Management NW would provide garbage service, and Frontier Communications and Comcast would provide telecommunications services. In addition, the property would be served by the Arlington school district and the City’s police and fire departments. The Applicant would be required to pay school impact fees under AMC 20.90.230. Utility services, fire hydrants, and fire protection would be reviewed when civil construction drawings are submitted, and all utilities must be operational prior to issuance of building certificates of occupancy. *Exhibit 1, Staff Report, pages 3, 4, 13, and 14; Exhibit 7.*

Landscaping and Open Spaces

18. Residential developments are required to provide 65 square feet of recreational space for every person expected to reside in the development. *AMC 20.52.010.* The proposed development would provide housing for 633 people, which would require 41,145 square feet of recreational space. The Applicant would exceed this requirement by providing 104,200 square feet of recreational space. Residential developments are also required to provide at least 5 percent of the total developed area as permanent usable open space. *AMC 20.52.030.* The Applicant would provide 104,200 square feet of permanent usable open space, exceeding the 27,989 square feet of open space required for the 559,777 square feet of area that would be developed. Residential developments consisting of more than 50 dwelling units must also provide at least one recreational facility for every 25 dwelling units. *AMC 20.52.020(c).* The proposed development would exceed this requirement by providing 28 recreational facilities for the 500 multi-family units. The Applicant’s landscape plans demonstrate that the proposed development would comply with City code requirements for screening and parking-area shade trees. *AMC 20.76.050; AMC 20.76.130.* The Applicant’s landscape plans also demonstrate that the proposed

development would comply with City code requirements for tree plantings along dedicated streets by planting trees along both 51st Avenue NE and the proposed alignment of 168th Street NE. *AMC 20.76.100*. The Applicant would be required to comply with the tree retention and replacement requirements of *AMC 20.76.120*. The Applicant proposes to meet this requirement by planting 455 new trees on-site. The Applicant would also be required to pay “Community Parks” impact fees, with fees determined per lot as the project develops in phases. A development agreement would be utilized to identify how Community Parks impact fees would be applied to the project. *Exhibit 1, Staff Report, pages 12, 15, and 16; Exhibit 28*.

Cultural Resources

19. Drayton Archaeology, which conducted a “Cultural Resource Review” of the project site on behalf of the Applicant, found no archaeological evidence of cultural resources on the site during its field investigation. The Cultural Resource Review concluded that the project should proceed without further archaeological oversight. The Applicant would be required to have an “Unanticipated Discovery Plan” in place prior to any ground disturbing activities. *Exhibit 15; Exhibit 16; Exhibit 44*.

Unit Lot Subdivision

20. *AMC 20.44.020A* 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, and cottage housing developments” Unit lot subdivisions are permitted in all commercial zones and must meet certain development standards. *AMC 20.44.020*. City staff reviewed the proposal and determined that it would meet ULS standards, noting:

- All structures utilizing the ULS would have at least one unit and less than 10 units and would meet all setback requirements.
- The parcel is zoned General Commercial.
- All units would have attached open space over 200 square feet and over 15 percent of the total lot area.
- Off-street parking would be provided, meeting the requirements of Chapter 20.72 *AMC* and *AMC 20.44.020G*
- All private access drives are designed to meet City standards.
- All water mains, sewer mains, and fire hydrants are designed to meet City standards and would be dedicated to the City.
- Each unit lot would have adequate means of ingress, egress, and utility access to and from each lot.

- The Applicant submitted a landscape plan showing landscaping along rear and interior lot lines of the parent parcel and that street trees would be from the City-approved tree list.
- The Applicant would be required to incorporate a Homeowner's Association prior to recording of the subdivision.
- The Applicant has submitted a draft of covenants, declarations, and restrictions as required.

Exhibit 1, Staff Report, pages 25 and 26.

Conditional Use Permit

21. Mixed-use, multi-family apartments consisting of over 50 residential units are a permitted use with a conditional use permit in the GC zone. *Chapter 20.40 AMC*. Additionally, under the City's mixed-use development regulations, single-family and multi-family residential housing is allowed within the T5-F area of the Mixed-Use Urban Center with a conditional use permit. *AMC 20.110.014(c)(4)*. As noted above, the Applicant seeks a CUP to allow development of up to 500 multi-family residential units and 16 live/work units. City staff reviewed the application materials and determined that, with conditions, the criteria for a CUP would be satisfied, noting:

- The proposed development as conditioned would be consistent with policies governing mixed-use, multi-family residential uses and would be allowed in the zoning district.
- The application was deemed complete on December 12, 2019. Subject to conditions, the application contains all the information necessary for the permit-issuing authority to decide whether the development would comply with all the requirements of Title 20 AMC.
- The City reissued a MDNS on February 21, 2020, and the requirements of SEPA have been met. The MDNS was not appealed.
- The requested CUP, as conditioned, is consistent with all Title 20 AMC requirements, permit processing procedures, and all other applicable plans, regulations, and policies.
- The proposed development would not materially endanger the public health or safety.
- The proposed development, as mitigated and conditioned, would not materially harm adjoining or abutting property.
- The proposed development would be compatible with the surrounding residential land uses in the area in which it is located.

Exhibit 1, Staff Report, page 18.

Testimony

22. City Planner Josh Grandlienard testified generally about the proposal and how it would comply with the City Comprehensive Plan, zoning ordinances, and criteria of approval for a BSP, CUP, and ULS. He noted that the project would be centrally located in the Cascade Industrial Center and would be designed to provide housing and services for the area workforce, with access to public transit, on-site restaurants, and a grocery store. Mr. Grandlienard also discussed the City of Marysville's request for the Applicant to pay traffic impact fees. *Testimony of Mr. Grandlienard.*

23. City Community & Economic Development Director Marc Hayes testified about the City's disagreement with the City of Marysville regarding the request traffic impact fees. He noted that the City does not have any mechanism in place to impose fees on a developer for another jurisdiction's transportation system and that the City of Arlington lacks authority to impose such fees on development potentially impacting the City of Marysville, as no interlocal agreement exists between the jurisdictions. Mr. Hayes stated that this would be the first mixed-use development within the Cascade Industrial Center and would serve as a model project for the City and its long-term plan for growth in the area. *Testimony of Mr. Hayes.*

24. Applicant Representative Paul Woodmansee, president of BYK Construction, testified generally about the proposal. He noted that the project location would accommodate a walkable and livable commercial area and that he would like to begin construction this summer. Mr. Woodmansee stated that the units would be designed to be high-quality and affordable for working individuals and families. He also stated that the proposal to dedicate 10 percent of the property to recreational space would be unique and would encourage the Arlington community to enjoy the space. Mr. Woodmansee noted the disagreement with the City of Marysville over traffic impact fees, explaining that, in an effort to move the project forward, the Applicant offered the City of Marysville \$67,625 in impact fees based on GTC's calculation of the project's proportionate share of improvement costs to the intersection of 51st Avenue NE and 152nd Street NE but that the City of Marysville rejected the offer. He stated that he agrees with the City of Arlington's position that the Applicant is not obligated to pay the City of Marysville impact fees in the absence of an interlocal agreement between the jurisdictions. He also stated that the Applicant agrees with the City's proposed conditions of approval. *Testimony of Mr. Woodmansee.*

25. Brian Bookey testified that he is the president of a family-owned agricultural business that operates a processing facility on the property immediately north of the subject property. He expressed concern about whether the proposed development would provide adequate screening to shield it from the processing facility. He also expressed concern that the

project is proceeding on the assumption that it would support employees for future industrial uses in the area but that this may not turn out to be the case. *Testimony of Mr. Bookey.*

26. Nancy Euken testified that she and her family own a 20-acre parcel located east of the proposed development and that she did not have any specific concerns about the proposal. *Testimony of Ms. Euken.*
27. Chris Holland, City of Marysville Planner Manager, detailed the City of Marysville's communications with the City of Arlington and the Applicant about Marysville's request for the Applicant to pay a proportionate share of costs for improvements to the intersection of 51st Avenue NE and 152nd Street NE. He stated that Marysville disagrees with the revised TIA's analysis of the project's impacts to the intersection because the TIA assumes improvements would be made to the intersection. Mr. Holland stated his position that SEPA is an appropriate mechanism to address traffic impacts and to collect fees from the Applicant because traffic impacts represent a significant environmental impact and that the MDNS does not become final until the Hearing Examiner issues a decision on the applications. He also confirmed that Marysville does not have an interlocal agreement or memorandum of understanding with the City of Arlington related to traffic impact fees. *Testimony of Mr. Holland.*
28. Jesse Hannahs, City of Marysville Traffic Engineer, testified that he agrees with the testimony of Mr. Holland. *Testimony of Mr. Hannahs.*
29. In response to Mr. Bookey's testimony, Mr. Hayes testified that the proposed development would provide adequate screening by the planting of trees along 168th Street NE. He also explained that several industrial projects were in the process of being developed in the area and that the Applicant's proposed development would be a key component for supporting the workforce for these industrial projects. In response to Mr. Holland's testimony, Mr. Hayes testified that the municipal code does not contain any mechanism for the City to compel the Applicant to pay fees to the City of Marysville and that the City of Marysville does not have any authority to impose fees on the Applicant. *Response Testimony of Mr. Hayes.*
30. In response to Mr. Bookey's testimony, Mr. Woodmansee noted that the proposal does not rely on future industrial development and that the proposal would fully comply with municipal code requirements. He noted that street tree plantings would provide adequate screening and that the proposed development is designed to avoid any issues with farming uses to the north, with a majority of the proposed residential units located at the southern portion of the property. *Response Testimony of Mr. Woodmansee.*

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Additional Materials

31. At the close of the hearing, the Hearing Examiner granted Mr. Woodmansee's request for additional time to respond to a May 5, 2020, letter from City of Marysville Community Development Director Jeff Thomas, which was admitted at the hearing as Exhibit 51. Accordingly, the Hearing Examiner left the record open until May 13, 2020, for that purpose. The May 5 letter details the City of Marysville's communications with the City of Arlington and the Applicant; contends that the February 21, 2020, MDNS was improperly issued because the proposed development was not conditioned to mitigate proportionate share impacts to the intersection of 51st Avenue NE and 152nd Street NE; and requests that the Hearing Examiner either deny the application or impose conditions requiring the Applicant to pay the City of Marysville a proportionate share of fees to improve the intersection. *Exhibit 51.*
32. On May 12, 2020, Laura Minton Breckenridge, Skagit Law Group, PLLC, submitted a response to the City of Marysville's May 5, 2020, letter on behalf of the Applicant, which asserts:
- The City of Arlington's transportation impact fee program is set forth in Chapter 20.90 AMC.
 - Under AMC 20.90.020, "'Service area' means the development impact fee service area of *the city* identified in Section 20.90.030." (Emphasis added).
 - Section 20.90.030 establishes as the applicable service area "all areas in which development may occur that would impact *the city's* transportation facilities." (Emphasis added).
 - The applicable service area does not extend to the City of Marysville, and the City of Marysville and the City of Arlington have not entered into any interlocal agreements or memoranda of understanding regarding reciprocal traffic mitigation.
 - The Court of Appeals held in *Nolte v. City of Olympia*, 96 Wn. App. 944, 982 P.2d 659 (1999), that impact fees may only be imposed by an entity with developmental approval authority over a particular development, which generally rests with the municipality in which the project site is located. As applied here, the City of Marysville does not have authority to impose or condition development, or assess impact fees, on a project outside of its jurisdiction. Nor does the City of Arlington have authority to impose impact fees that relate to another jurisdiction or to conditions projects outside of its jurisdiction.
 - The City of Marysville's alternative basis for imposing fees under SEPA, due to its assertion that the project would have a significant adverse environmental impact on the City of Marysville, should be disregarded because the MDNS comment period has expired and because there has been no evidence presented showing that the project has any adverse environmental impacts.

Exhibit 52.

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Staff Recommendation

33. City staff reviewed the application and recommends that, with conditions, the BSP, ULS, and CUP be approved. *Exhibit 1, Staff Report, pages 18 through 21.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted the authority to hear and decide the application for a conditional use permit. *Revised Code of Washington (RCW) Chapter 36.70.970; Arlington Municipal Code (AMC) 20.12.210(a), 20.16.140(b), 20.16.170.*

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 20.16.170(e).

Subject to Subsection (d) of AMC 20.16.140, 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:

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- (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.

AMC 20.16.140(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 20.16.140(d).

Binding site plans are subject to the following standards:

- (a) The binding site plan shall ensure that the collective lots continue to function as one site with respect to, but not limited to, lot access, interior circulation, open space, landscaping, drainage facilities, facility maintenance and parking
- (b) The binding site plan shall:
 - (1) Identify the areas and locations of all streets, roads, improvements, utilities, open spaces, sensitive areas, parking areas, landscaped areas, surveyed topography (by a Washington State registered land surveyor) for preliminary map, water bodies and drainage features and building envelopes;
 - (2) Contain inscriptions or attachments setting forth such limitations and conditions for the use of the land as are established by the community development director or the hearing examiner;
 - (3) Contain provisions requiring any development or division of land to be conformance with the approved site plan;
 - (4) Contain requirements for street right-of-way realignment, dedication or widening either required by the city or by voluntary agreement; and
 - (5) Adhere to all applicable provisions set forth in the land use code;

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- (c) Both the design and development shall preserve the trees and vegetation, natural drainage, existing top soil, and wetlands/critical areas to the fullest extent that is reasonably possible.
- (d) Conditions of use, maintenance and restrictions on redevelopment of required open space, parking, access and other improvements shall be identified and enforced by covenants, easements, dedications or other similar mechanisms.

AMC 20.16.352.

“Binding site plans follow the standard subdivision, review, resubmittal, final approval process and recording requirements as that of the standard subdivision per Chapter 58.17 RCW.” *AMC 20.16.353.*

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 binding site plan requirements under the municipal code and the preliminary plat requirements under the State Subdivision Act (RCW 58.17.110).** The City provided reasonable notice of the application and opportunity to comment on the proposal. 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, 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

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mitigation measures, the proposal would not have any probable significant adverse environmental impacts.

The Applicant's TIA and revised TIA determined that affected intersections would continue to operate at acceptable levels of service with the proposed development when accounting for planned improvement projects. Although the City of Marysville has requested that the Applicant be required to pay it fees to mitigate proportionate share impacts to the intersection of 51st Avenue NE and 152nd Street NE, it cites no authority for the imposition of such fees or for the City of Arlington to collect such fees from the Applicant on its behalf in the absence of an interlocal agreement or memoranda of understanding. In addition, while SEPA can serve as a mechanism to address substantial environmental impacts—including impacts from traffic—the City of Marysville provided no specific information or documentation concerning how the proposed project would create such impacts and, accordingly, is an inappropriate avenue to address this concern.

The proposed stormwater system would follow the requirements of the 2014 Stormwater Management Manual for Western Washington and would be designed to completely infiltrate stormwater runoff from the site with improvements that include Stormwater Low Impact Development bioretention cells, with underlying gravel trench beds along right-of-way street improvements; downspout infiltration systems for the proposed rooftops; and permeable pavement within the proposed parking areas and/or drive lanes. No critical areas or archaeological evidence of cultural resources were found to be present on the site. The proposed development would provide adequate roads and sidewalks for vehicular and pedestrian access in compliance with City code requirements, and the Applicant would be required to pay school impact fees.

The City confirmed that it has capacity to provide water and sanitary services to the property; the City would also provide police and fire emergency services to the property. In addition, Puget Sound Energy would provide natural gas service to the property, Snohomish County PUD would provide electricity service, Waste Management NW would provide garbage service, and Frontier Communications and Comcast would provide telecommunications services. Utility services, fire hydrants, and fire protection would be reviewed when civil construction drawings are submitted. The proposal includes 104,200 square feet of permanent usable open space, and 28 recreational facilities for the 559,777 square foot site. The Applicant's landscape plans demonstrate that the proposed development would comply with code requirements for tree plantings along dedicated streets, and for tree retention and replacement. The proposed development would also implement landscaping for screening in compliance with code requirements. A development agreement would be utilized to identify how traffic impact fees, utility service connection fees, and Community Parks fees would be applied to the project. Conditions

are necessary, as detailed below, to ensure the proposal complies with all municipal and state requirements related to the preliminary subdivision of land. *Findings 1 – 33.*

- 2. The proposal would comply with the unit lot subdivision requirements of the municipal code.** ULSs are permitted in all commercial zones under AMC 20.44.020A(b). The Applicant has applied for Design Review Board approval of the project. The proposed buildings within the ULS would contain at least one unit and less than 10 units, and each building would have a minimum 10-foot separation from other buildings. All of the units would have attached open space exceeding 200 square feet and over 15 percent of the total lot area. Building setbacks would comply with zoning code requirements as applied to the underlying parent parcel as a whole. City staff reviewed the proposal and determined that it would meet the ULS requirements for off-street parking, private access drives, utility construction standards, and landscaping requirements. Each unit lot would provide adequate means of ingress, egress, and utility access to and from each lot. The Applicant has submitted a draft of covenants, declarations, and restrictions and would be required to incorporate a Homeowner’s Association prior to recording the subdivision. As proposed and conditioned, the development would comply with all requirements for a ULS under AMC 22.44.020A. *Findings 1 – 33.*
- 3. With conditions, the proposal would satisfy the requirements for approval of a conditional use permit.** Mixed-use, multi-family apartments consisting of over 50 residential units are an allowed use in the GC zone with a conditional use permit. And, under the City’s mixed-use development regulations, single-family and multi-family residential housing is allowed within the T5-F area of the Mixed-Use Urban Center with a conditional use permit. The elements necessary for a complete application are defined by the City, and the City has discretion to suit the requirements to the specific project. *AMC 20.16.040.* This application was deemed complete by the City on December 12, 2019. The proposed development of up to 500 multi-family residential units and 16 live/work units, with associated improvements, is an appropriate use in the T5-F area of the Mixed-Use Urban Center and the GC zone. The proposed development would meet the City’s mixed-use development regulations pertaining to building design, setbacks, recreational facilities, open space, streets and sidewalks, utilities, parking, and screening. The City evaluated the environmental impact of the proposed development as required by SEPA and issued a Mitigated Determination of Nonsignificance (MDNS). Compliance with the MDNS conditions has been made a condition of issuance of the CUP. The City gave reasonable notice of the application and the associated public hearing. The proposed use is permitted within the General Commercial designation under the City Comprehensive Plan, which encourages mixed-use development subject to master plan and design review. The development would not endanger the public health or safety, or adversely affect abutting properties. As detailed below, conditions are necessary to ensure the proposal

complies with all requirements associated with approval of a conditional use permit.
Findings 1 – 33.

DECISION

Based upon the preceding findings and conclusions, the request for phased development of up to 500 multi-family residential units, 16 live/work units, recreational facilities, on-site amenities, surface parking, and associated improvements, on 20.38 acres at 16612 51st Avenue NE is **APPROVED**, subject to the following conditions:⁵

1. The Applicant shall record the Binding Site Plan approved as a part of this application, which depicts all dedications and easements as described in this Conditional Use Permit approval.
2. All development shall be in substantial conformance with the site plan received on January 31, 2020, subject to any conditions or modifications that may be required as part of the permit and construction plan review.
3. The development shall meet all Title 20 AMC regulation requirements.
4. The developer shall comply with all conditions of the SEPA MDNS issued on February 21, 2020.
 - a. In order to mitigate for potential earth impacts, the Applicant shall implement Best Management Practices per Department of Ecology’s most current Stormwater Management Manual for Western Washington. In strict adherence to Stormwater Pollution Prevention, all construction activity shall be consistent with the Applicant’s Stormwater Pollution Plan (SWPPP) and Temporary Erosion Sedimentation Control (TESC) which require measures to prevent erosion during and after construction. A Construction Stormwater General Permit is required through the Department of Ecology.
 - b. In order to mitigate for potential air impacts, the Applicant shall implement dust control measures to reduce fugitive dust emissions during construction.
 - c. In order to mitigate for potential impacts to surface water, ground water, and water runoff, the Applicant shall follow the current edition of the Department of Ecology’s Stormwater Management Manual for Western Washington.
 - d. In order to reduce or control surface, ground, runoff water, and drainage pattern impacts, the Applicant shall use methods for detention, conveyance, and treatment of water per the submitted Preliminary Drainage Report dated October 28, 2019.

⁵ This decision reorganizes the condition numbering found in the staff report (Exhibit 1). Other than editing for clarity, there are no changes to the recommended conditions. Conditions include those required to reduce project impacts as well as those required to meet City codes.

- e. The Applicant shall comply with the City of Arlington noise standards found in AMC 9.20.060. Specifically, in section 9.20.060(8) noises resulting from any construction activity or the operation of heavy equipment from 7:00 pm to 7:00 am Monday through Saturday and all day Sunday shall be prohibited.
- f. In order to mitigate for potential impacts to the City's transportation network, the Applicant shall construct frontage improvements along 51st Avenue NE, as well as constructing 3/4th street improvements on 168th Street NE and half street improvements on 47th Avenue NE. New on-site drive aisles and sidewalks will be installed, improving pedestrian, bicycle, and vehicular access to and within the site. An ADA path will be provided from the site to 172nd Street along 51st Avenue NE and 168th Street NE.
- g. In order to mitigate for potential impacts to the City's transportation network, the Applicant shall pay City of Arlington traffic mitigation fees. The current traffic impact fee rate is \$3,355.00 per PM Peak Hour Trip. Per the Traffic Impact Analysis (TIA) dated October 2019 and updated memos from Gibson Traffic Consultants, submitted January 2020, the City will accept the estimate of 373 new PM peak hour trips in the amount of \$1,251,415.00.
- h. The Applicant shall connect to the City of Arlington water and sewer systems. Approval of these utilities will be required with the State Civil Permit.
- i. The Applicant shall construct all existing, extended, and new electrical power lines (not to include transformers or enclosures containing electrical equipment including but not limited to, switches, meters, or capacitors which may be pad mounted), telephone, gas distribution, cable television, and other communication and utility lines in or adjacent to any land use or building permit approved after the effective date of this chapter shall be placed underground in accordance with the specifications and policies of the respective utility service providers and located in accordance with the administrative guideline entitled "Public Works Construction Standards and Specifications." Even in the event the distribution line originates from a point opposite any public roadway from the new construction, the service lines shall be placed beneath said roadway by means of boring or surface excavation across said roadway.
- j. Prior to any construction activities, the Applicant shall file and receive approval of site civil construction plans which comply with all requirements of the Land Use Code, International Building Code, International Fire Code, and Public Works Construction Standards and Specifications. Said plans shall address all site improvements, either required or voluntarily provided.
- k. The developer shall meet all local, state, or federal code requirements. Attached to the City staff report as Attachment C is a list of code requirements that are specifically called to the developer's attention. It is in no way intended to be a

complete list of code requirements, but a general checklist of major steps and issues.

- l. If any archaeological materials are discovered on the site, the State Historical Preservation Officer, the Stillaguamish Tribe, and the City of Arlington shall be contacted and measures taken to preserve the materials and the site. As requested by the Stillaguamish Tribe, the Applicant shall have an Unanticipated Discovery Plan in place prior to any ground disturbing activity and shall also provide the Stillaguamish Tribe with the option to have tribal monitors present during ground disturbance (with adequate notice). See Archaeology Report, dated November 6, 2019.
- m. Prior to issuance of the building permit, the Applicant shall complete all required or voluntary improvements unless otherwise secured and authorized by the City Engineer.
- n. Because the proposal is within Subdistricts A and B of the Airport Protection District, the following is required:
 - i. No structures, devices, or other objects shall be placed or erected that makes it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, take off, or maneuvering of aircraft.
 - ii. No bulk above ground storage greater than six thousand gallons of flammable or hazardous substance will be permitted unless it is associated with an aviation business.
 - iii. Except for aeronautical events such as the NWEAA Fly-in, the public assembly of people and other uses or activities, whether permanent (such as multi-family, hospitals, schools, churches, etc.) or temporary (such as circuses, carnivals, or other outdoor entertainment events or religious assembly not exceeding five days in duration), that allow public concentrations of people shall be prohibited within Subdistrict A, but allowed in all other parts of the AP District so long as such uses do not adversely affect airport operations, safety in air navigation, or penetrate the FAR Part 77 Surfaces.
 - iv. No use, building, or structure shall be permitted or constructed within the Runway Protection Zone 1, except accessory activities such as off-street parking facilities, low growing landscaping or agricultural crops, mini-storage, agricultural storage buildings and/or other similar activities as approved by the airport manager and if they are allow by the underlying zone.
 - v. Densities, both residential and on-residential, shall not exceed those listed in Table 20.38-1: Density Limits within the APD.

- vi. Special function uses shall be prohibited under the airport traffic pattern.
 - vii. The following uses shall be prohibited in the referenced Zones:
 - 1. (A) High Intensity Uses within Subdistrict A RPZ Zone 1, ISZ Zone 2, and ITZ Zone 3. The densities in Table 20.38-1: Density Limits within the APD shall not be exceeded. If the density is averaged over a large parcel the structures shall be located outside the restricted zones.
 - 2. (B) Emergency services such as police stations, fire stations, emergency services operations, and other similar uses within the RPZ Zone 1 and ISZ Zone 2.
 - viii. No use may be made of the premises which can or does interfere with use of the Airport by aircraft by reason of:
 - 1. electrical interference with navigational signals or radio communications at the airport or with radio or electronic communications between the airport and aircraft or aircraft to aircraft;
 - 2. the emission of fly ash, dust, vapor, gases, or other forms of emissions that may conflict with planned operations of the airport; and
 - 3. lighting conditions, height of any structure or appurtenance, or any use which may attract birds.
 - 4. The current owner of the property is required to sign an Airport Disclosure Notice and have that notice recorded with Snohomish County. The recorded notice must be returned to the Airport Office prior to issuance of the land use permit. We require the notice be signed to verify that the property owner is aware of the close proximity of the airport and the effects airport traffic may have on the property.
 - o. Prior to issuance of the building permit, the Applicant shall submit verification that any on-site septic systems, if found, have been decommissioned per Snohomish County Health District standards, have been inspected by City staff, and that any on-site wells have been decommissioned per Department of Ecology standards and have been inspected and approved.
5. The developer shall clear any outstanding Planning Division permit-processing accounts with the City within 60 days of issuance of this permit.
 6. Pursuant to AMC 20.16.220, this permit shall expire two years after the date of issuance.

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7. Any Development Agreement approved by the City Council which addresses the agreement between the parties on impact fees, utility connection fees, and other minor project details shall augment and/or supersede conflicting conditions of this approval.

Decided this 28th day of May 2020.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center