



# CITY OF ARLINGTON NOTICE OF DECISION

## Arlington Townhomes Preliminary Unit Lot Subdivision

The City of Arlington has issued a Notice of Decision for a Conditional Use Permit as required by Arlington Municipal Code. The following project has been **APPROVED**, with the conditions listed in the Hearing Examiner decision.

**Project Name:** Arlington Townhomes Preliminary Unit Lot Subdivision

**Proponent:** Tic Toc, LLC

**Project Number:** PLN #897

**Description of Proposal:** The applicant is proposing an 18-lot preliminary major unit lot subdivision to divide the subject parcel into 18 townhouse fee simple lots. The proposal consists of three buildings with 6-units each. Access to the site includes a paved 20-foot looped private drive road. The project provides private and public open space, along with a mini park, and improvements to 81<sup>st</sup> Drive. City water and sewer will be extended into the site. The site grading includes 300 cubic yards of cut and 300 cubic yards of fill.

**Location:** 606 E. Highland Drive

**Permit Decision: Approved, with Conditions**

**Notice of Decision Date:** October 11, 2022

**End of Appeal Period:** November 1, 2022

**Preliminary Plat Expiration Date:** October 11, 2027

**Appeals:** This decision may be appealed pursuant to AMC 20.20.020. Any aggrieved party of record may file an appeal within 21 days of the Conditional Use Permit Decision. An appeal shall be considered filed when a written notice of appeal, specifying the grounds and arguments, therefore, is made to Snohomish County Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW by close of business on **November 1, 2022**, and the appeal filing fee as set by Snohomish County. An appeal application and filing fee must also be filed with the City of Arlington Community and Economic Development Department at 18204 59<sup>th</sup> Avenue NE, Arlington, WA 98223.

**Staff Contact:** Amy Rusko, Planning Manager, [arusko@arlingtonwa.gov](mailto:arusko@arlingtonwa.gov), 360-403-3550

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

In the Matter of the Application of	)	No. PLN#897
	)	
<b>Greg Stewart, Land Pro Group, Inc.</b>	)	
<b>on behalf of Tic Toc, LLC</b>	)	Arlington Townhomes CUP/ULS
	)	
	)	
For Approval of a Conditional Use Permit	)	FINDINGS, CONCLUSIONS,
<u>and Unit Lot Subdivision</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a preliminary major unit lot subdivision and associated conditional use permit to subdivide a 0.97-acre property into 18 townhome fee simple lots for development of three, 6-unit townhome buildings with associated improvements, at 606 E. Highland Drive, 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 September 27, 2022, using remote access technology.

Testimony:

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

Amy Rusko, City Planning Manager  
Ryan Larsen, Applicant Representative  
Tom Abbott, Project Drainage Engineer

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, undated
2. Land Use Application, dated May 3, 2022
3. Project Narrative, dated May 4, 2022
4. Vicinity Map
5. Preliminary Plat Plans (Sheet No. 1), revised August 23, 2022
6. Preliminary Plat Plans (Sheet No. 2), revised August 23, 2022
7. Preliminary Plat Plans (Sheet No. 3), revised August 23, 2022
8. Landscape Plans (Sheet No. 1), dated November 5, 2021
9. Landscape Plans (Sheet No. 2), dated November 5, 2021

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10. Landscape Plans (Sheet No. 3), dated November 5, 2021
11. Water and Sewer Availability Application, dated November 1, 2021
12. SEPA Environmental Checklist, dated November 1, 2021
13. Complete Streets Checklist, undated
14. Infiltration Feasibility Evaluation, GeoTest Services, Inc., dated August 26, 2016
15. Construction Drainage Report, LDC, dated May 2022
16. Stormwater Pollution Prevention Plan, dated October 28, 2021
17. Traffic Impact Analysis, Gibson Traffic Consultants, Inc., dated May 2022
18. Traffic Mitigation Offer to Snohomish County, dated May 4, 2022
19. Traffic Mitigation Offer to WSDOT, dated May 4, 2022
20. 500 Foot Radius Map with Mailing List, undated
21. Notice of Public Hearing, dated September 9, 2022, with Affidavit of Posting, dated September 9, 2022, Email to Parties of Record, dated September 9, 2022, and Email Request for Publishing Notice in *The Herald*, dated September 7, 2022
22. Neighborhood Meeting Notes, dated June 21, 2022
23. Notice of Neighborhood Meeting, with Affidavit of Posting, dated June 6, 2022, and Email Request for Publishing Notice in *The Herald*, dated June 3, 2022
24. Comment from Beatrice J. Randall, dated May 31, 2022
25. Comment from Susan Ruppert, dated June 14, 2022
26. Comment from Washington State Department of Transportation, dated May 16, 2022
27. Notice of Application and SEPA Mitigated Determination of Nonsignificance, dated May 13, 2022, with Affidavit of Posting, dated May 16, 2022, Agency Routing Email, dated May 16, 2022, and Request for Publishing Notice in the *Everett Herald*, dated May 13, 2022
28. Returned Notice Mailings, dated May 19, 2022
29. Notice of Complete Application, dated May 12, 2022

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. Greg Stewart, Land Pro Group, Inc., on behalf of Tic Toc, LLC (Applicant), requests approval of a preliminary major unit lot subdivision (ULS) and associated conditional use permit (CUP) to subdivide a 0.97-acre property into 18 townhome fee simple lots. Development would involve construction of three buildings with six townhome units within each building. Associated improvements would include installation of a mini-park serving future residents, and the construction of 81st Drive NE, a new public street that would extend south from E. Highland Drive to provide access to the property and through access from E. Highland Drive to any future development to the south. Access to the individual lots would be provided by a paved 20-foot looped road that would connect to

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*No. PLN#897*

81st Drive at two locations. The lots would be served by City water and sewer services. The property is located at 606 E. Highland Drive.<sup>1</sup> *Exhibit 1, Staff Report, pages 1 through 3; Exhibits 2 through 11.*

2. The City of Arlington (City) determined that the application was complete on May 12, 2022.<sup>2</sup> On May 13, 2022, the City provided notice of the application by mailing notice to affected agencies and to property owners within 500 feet of the subject property and by posting notice on-site and at designated City locations, with a comment deadline of May 31, 2022. On May 16, 2022, the City published notice of the application in *The Everett Herald*. On September 9, 2022, the City provided notice of the open record hearing associated with the application by mailing notice to property owners within 500 feet of the subject property, posting notice on-site and at designated City locations, and publishing notice in *The Everett Herald*, with a comment deadline of September 26, 2022. The City received two comments on the proposal from members of the public in response to its notice materials. Beatrice J. Randall raised concerns about the adequacy of E. Highland Drive to accommodate additional traffic, lack of sidewalks on E. Highland Drive, open space, and the compatibility of townhomes with area needs. Susan Ruppert echoed concerns about traffic impacts on E. Highland Drive, pedestrian safety, and the lack of sidewalks on E. Highland Drive. The City also received a comment from the Washington Department of Transportation in response to its notice materials, which stated that it had no comment on the proposal. *Exhibit 1, Staff Report, pages 2, 6, 7, 20, and 21; Exhibit 20; Exhibit 21; Exhibits 24 through 29.*

#### State Environmental Policy Act

3. The City Department of Community and Economic Development (DCED) 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). DCED 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, DCED issued a Mitigated Determination of Nonsignificance (MDNS) on May 16, 2022, with a comment and appeal deadline of May 31, 2022. The City provided notice of the MDNS by sending 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 Everett Herald*. The City did not receive any comments on the MDNS in response to its notice materials.

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<sup>1</sup> The property is identified by tax identification number 31051100407600. *Exhibit 1, Staff Report, page*

2. A legal description is provided with the preliminary plat plans. *Exhibit 6.*

<sup>2</sup> On June 21, 2022, a neighborhood meeting was held on the application as required by Arlington Municipal Code (AMC) 20.16.130. *Exhibit 22; Exhibit 23.*

The MDNS was not appealed and requires the Applicant to comply with the following measures to mitigate for the project's anticipated environmental impacts, which have been included as conditions of the current decision:

- Implement Best Management Practices (BMPs) for stormwater pollution prevention and temporary erosion and sedimentation control (TESC) in accord with Department of Ecology (DOE) requirements.
- Implement dust control measures during construction.
- Follow the current edition of the DOE's Stormwater Management Manual for Western Washington, and use of BMPs for protecting groundwater.
- Replant trees on the site at a three-to-one ratio to mitigate for the removal of significant trees.
- Comply with current code requirements for reducing or controlling environmental health hazards.
- Comply with Washington State Energy Code requirements.
- Comply with municipal noise ordinances during construction.
- Ensure design standards are met.
- Install light fixtures that are down shielded.
- Pay required park, school, and traffic mitigation fees.
- Construct frontage improvements and dedicate right-of-way along 81st Drive NE.
- Connect to municipal water and wastewater systems.

*Exhibit 1, Staff Report, page 6; Exhibit 12; Exhibit 27.*

#### Comprehensive Plan and Zoning

4. The property is designated "Residential High Density" under the City Comprehensive Plan. The Residential High Density designation is characterized as "a very active pedestrian environment with attached multi-family residences on shared lots situated along moderate to high-volume thoroughfares" and is intended to "provide a close-knit residential environment (minimum ten dwelling units per acre) that can consist of detached, single-family residences to multi-family complexes that generally have shared outdoor space." *City Comprehensive Plan, page 5-4.*

City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:

- Site design and building architecture in residential developments should be human scaled (pedestrian friendly) and conducive to social interaction. [PO-6.1]
- Residential plats (subdivisions) should be designed to encourage pedestrian activity through incorporation of amenities such as, but not limited to, sidewalks, street trees, and pedestrian paths connection the plat to adjacent areas. [PO-6.2]

- Mini parks should be required in new residential developments or a “fee-in-lieu of” paid to the City. [PO-6.3]
- Land use developments should be conducive to social interaction. [PO-6.4]
- All land use decisions will be reviewed against these planning goals and policies – including Countywide Planning Policies and Multi-County Planning Policies – to ensure internal and external consistency. [PO-6.7]
- A variety of housing types and densities should be encouraged on lands with a residential land use designation. [PH-1.1]
- Installation of curbs, gutters, sidewalks, landscape strips, and vegetated LID facilities for all developments should be installed unless the permit issuing authority makes specific findings that such improvements would not be consistent with these or other goals or policies. Curb cuts are permitted at bioretention facilities to allow stormwater runoff to enter the facility. [PL-2.2]
- The City should ensure that growth and development is consistent with the City’s Capital Facilities Plan for providing public facilities including streets, sidewalks, lighting systems, traffic signals, water, storm, and sanitary sewer, parks and recreational facilities, and schools. [PL-4.2]
- All new residential plat developments should provide additional transportation infrastructure consistent with the City’s comprehensive transportation plan and development regulations through installation, dedication, fee-in-lieu or some other acceptable form of mitigation. [PL-4.5]
- Kent Prairie has a very diverse range of uses and housing types; such diversity should be protected. [PL-15.43]
- Require Developers to construct those streets directly serving new development and to pay a fair-share fee for specific off-site improvements necessary to mitigate any adverse impacts determined through the review to be created by the development. [PT-1.9]
- All developments in all zoning districts shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development. [PT-4.8]
- All public streets shall be constructed with curb, gutter, sidewalk, landscape strips and street trees unless otherwise approved by the City engineer due to site constraints or where the use of low impact development storm water facilities are to be utilized. [PT-4.13]
- Provide ramps and curb cuts that comply with the Americans with Disabilities Act. [PT-5.6]
- Provide street lighting along sidewalks to encourage nighttime use and for safety. [PT-5.7]

*Exhibit 1, Staff Report, pages 3 through 5.*

5. The property is zoned “Residential High Capacity” (RHC). Properties to the south and east of the property are also zoned RHC. Properties north and west of the property are zoned “Residential Low Capacity” (RLC). 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.” *Arlington Municipal Code (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 Table 20.40-1*. 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 previously recorded a short plat on the property (AFN202105215003) that dedicated an avigation easement over the property to the City. *Exhibit 1, Staff Report, pages 3 and 8*.
6. Dimensional standards applicable to the RHC zone include no minimum lot size, a minimum lot width of 70 feet, a right-of-way building setback of ten feet, a lot line building setback of five feet, a maximum building height of 50 feet, and no maximum lot coverage restrictions. *AMC 20.48.030; AMC 20.48.040*. City staff reviewed the proposal and determined that it would comply with these standards. The property is approximately 42,467 square feet in size with a minimum lot width of at least 169 feet. Setbacks from rights-of-way would be greater than ten feet and setbacks from lot lines would be greater than five feet. The height of the proposed buildings would be 35 feet. Lot coverage would be 33 percent. Design Review Board approval would be required prior to the issuance of building permits. *Exhibit 1, Staff Report, page 13; Exhibits 5 through 7*.

#### Existing Site, Surrounding Area, and Proposed Subdivision

7. The 0.97-acre property is rectangular and relatively flat. The property is currently developed with various unused wooden outbuildings on the northern portion of the property that would be demolished. The southern portion of the property contains a baseball field. The remainder of the site is covered with grasses, and there are trees in the northern, central, and southeastern portions of the site. An approximately 40-foot-tall descending, south-facing slope exists adjacent to the southern boundary line of the property. The property south of the subject lot is vacant. Properties east and west of the site are developed with single-family residences. Properties north of the site are developed with a single-family residence and a duplex. The Applicant proposes to develop 18 lots consisting of three buildings with six townhomes each, private and public open space, a mini-park, a private looped road, and frontage improvements along the new 81st Drive

NE. The property does not contain any critical areas. *Exhibit 1, Staff Report, pages 1, 3, 4, and 19; Exhibit 3; Exhibit 14; Exhibit 15.*

#### *Stormwater*

8. GeoTest Services, Inc., submitted an Infiltration Feasibility Evaluation on behalf of the Applicant, dated August 26, 2016. The evaluation determined that subsurface soil conditions at the site would be suitable for a near-surface infiltration of stormwater. The Applicant submitted a Drainage Report and a Stormwater Pollution Prevention Plan (SWPPP), prepared by LDC, Inc., addressing stormwater on-site. The Drainage Report notes that runoff flows overland through heavy shrubbery into an unnamed stream south of the site that heads west. The proposal would include 27,379 square feet of pollution generating hard surface and 41,251 square feet of impervious surfaces. Stormwater would be collected and conveyed to an infiltration gallery located in the southern portion of the site. The infiltration gallery would be designed to provide flow control and water quality treatment for the proposed development. Where feasible, the proposed development would implement BMPs for post-construction soil quality and stabilization for landscaped areas affected by construction and grading activities. The Applicant would also install a sediment trap near the proposed infiltration gallery, and temporary swales would be used to control flow and sediment during the construction period. The proposed stormwater system would comply with the 2012 Washington State Department of Ecology (DOE) Stormwater Management Manual for Western Washington, as amended in 2014. Under AMC 13.28.070, developers are required to submit stormwater site plans for projects with new development. 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, pages 20 and 24; Exhibits 14 through 16.*

#### *Access and Traffic*

9. Access to the property would be provided by a new public street, 81st Drive NE, which would extend south from E. Highland Drive. Access to individual townhome lots would be provided by a paved 20-foot looped road that would connect to 81st Drive NE at two locations. Gibson Traffic Consultants prepared a Traffic Impact Analysis (TIA) for the proposed development, dated May 2022. The TIA determined that the proposed development would generate 132 new daily trips, with 8 AM peak-hour trips and 10 PM peak-hour trips. The TIA was initially performed for 17 residential units, but Gibson Traffic Consultants determined that the calculated peak PM hour trips would not change with the addition of one residential unit. City staff does not concur with the Applicant's consultant on this point and has determined that the proposed development would generate 11 new PM peak-hour trips. The Hearing Examiner accepts the City's assessment, and any traffic impact fees the City requires the Applicant to pay would be based on the project generating 11 new PM peak-hour trips.

The TIA estimates that 25 percent of the trips generated by the development would travel to and from the north along S. Stillaguamish Avenue and 75 percent of trips would travel along SR-9. The TIA determined that all studied intersections currently operate at acceptable levels of service (LOS) and that all intersections would continue to operate at acceptable LOS during AM and PM peak hours following a full buildout of the proposed development. Accordingly, the TIA suggests that the Applicant should not be required to pay traffic mitigation fees to Washington State Department of Transportation (WSDOT) or Snohomish County. Applicant Representative Ryan Larsen testified at the open record hearing that the Applicant had not heard from WSDOT or Snohomish County about the desire to collect any traffic impact fees related to the proposed development from the Applicant. *Exhibit 1, Staff Report, pages 15, 19, and 24; Exhibits 17 through 19; Testimony of Ryan Larsen.*

10. As noted above, the proposal would include the construction of a new public street and all associated frontage improvements, 81st Drive NE, which would extend south from E. Highland Drive to the property and allow for future road connectivity to the south. The proposal would also involve construction of a looped private drive within the subdivision that would provide ingress and egress for emergency vehicles, passenger vehicles, pedestrians, and bicycles from two points along 81st Drive NE. The Applicant would provide sidewalk connections to E. Highland Drive from 81st Drive NE. Driveway entrances would be accessed from the private road and would be separated by landscaped areas with a tree between each unit. City staff determined that the proposed development would comply with municipal 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 14 and 15; Exhibit 7.*

#### *Utilities and Services*

11. The City would provide water and sewer service to the property, and, as verified in a signed “Water & Sewer Availability” letter, the City has capacity to provide water and sanitary sewer services to the site. Cascade Natural Gas would provide natural gas service to the property, Snohomish County PUD would provide electricity service, Waste Management NW would provide garbage service, and Comcast would provide telecommunications services. All proposed utilities to and on the site would be located underground. 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. City Planning Manager Amy Rusko testified at the open record hearing and confirmed that the property would have safe walking routes to schools and school bus stops serving the site. 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, 12, 16, 19, and 20; Exhibit 11; Testimony of Amy Rusko.*

#### *Parking*

12. AMC 20.72.010 requires two parking spaces per unit and one additional space for every four units for a unit lot subdivision. Each residential unit would have a garage, with two parking spaces, for a total of 36 parking spaces for the 18 residential units. The parking spaces provided within the private garages would be 8.5 feet by 19 feet. Five additional guest parking spaces would be provided by parallel parking spaces with painted lines on 81st Drive NE. The parallel parking spaces would be eight feet wide by 22 feet long. *Exhibit 1, Staff Report, pages 16 and 17; Exhibit 3; Exhibit 6.*

#### *Landscaping and Open Spaces*

13. Residential developments are required to provide 65 feet of recreational space for every person expected to reside in the development. *AMC 20.52.010.* The municipal code assumes that each of the 18 three-bedroom townhomes would house an average of 3.2 persons (per *AMC 20.52.010*) and, accordingly, the proposed development would provide housing for 57.6 people, requiring 3,744 square feet of recreational space. The Applicant would meet this requirement by providing 3,749 square feet of recreational space as a mini-park in the southwestern corner of the property. Subdivided residential development of less than 25 dwelling units are exempt from additional useable open space requirements. *AMC 20.52.030.* The Applicant's landscape plans demonstrate that the proposed development would comply with City code requirements for screening and street trees. *AMC 20.76.020; AMC 20.76.030; AMC 20.76.110.* Screening would be provided by a six-foot solid wood fence and landscaping along the western portion of the property, new and existing landscaping on the south side of the property, existing landscaping to the north, and street frontage on the eastern portion of the property. The Applicant would install street trees every 30 feet along 81st Drive NE with a root barrier on both sides of the root ball facing the right-of-way and sidewalk. The property owner or homeowner's association would be required to maintain the landscaping on the property and within the private right-of-way. The site plan demonstrates that no improvements would obscure sight at any entrance or exit from the property. The Applicant would be required to pay community park impacts fees for 18 residential units. *AMC 20.52.024. Exhibit 1, Staff Report, pages 12 through 14, 17, and 18; Exhibit 3; Exhibits 8 through 10.*

#### Unit Lot Subdivision

14. 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. *AMC Table 20.40-1; AMC 20.44.020A*. City staff reviewed the proposal and determined that, with conditions, the proposal would meet the specific ULS standards, noting:

- The preliminary ULS has proposed townhomes within three buildings of six units each. The buildings would be located in different areas on the site and are greater than ten feet apart.
- The proposal would provide a minimum of 15 percent of private open space per lot and equal to or more than 200 square feet of private open space per unit.
- The parent parcel of the subdivision meets the dimensional requirements under Chapter 20.48 AMC for the RHC zone.
- The proposal complies with development and design standards.
- The proposal includes a private road, a mini-park, and additional open space located on Tracts 997, 998, and 999. These areas are to remain private and owned in common by the owners of the individual lots within the subdivision or by a homeowner's association.
- The proposal complies with Chapter 2.72 AMC for required parking. The proposal would provide one additional parking space for every four units. The proposed parking spaces must be used for residents or guests of residents and not to store inoperable motor vehicles.
- The private drive aisle in Tract 999 is the fire land for the subdivision. There shall be no parking along the private drive aisle. This shall be enforced by the homeowner's association.
- Each townhouse has a garage for bicycle parking. No additional bicycle parking facility is required.
- The proposal would provide a private drive to access the townhomes. The private access drive is 20 feet in width with a five-foot sidewalk on one side. The proposed sidewalk connects to the public sidewalk on 81st Drive NE that the Applicant would construct and dedicate to the City. The private road has provided crosswalks and accessible ramps. No parking on the private street would be allowed.
- Utility installation must comply with construction standards. The final approval of all utilities is completed with the civil permit. All utility installation must be approved prior to final plat approval.
- Access to the site would be provided from 81st Drive NE and then to a private access road in Tract 999. 81st Drive NE, including all necessary frontage improvements along both sides of the road, would be constructed with this project and dedicated as public right-of-way. The private road would remain private and owned and maintained by the homeowner's association.

- The Applicant would install landscaping throughout the site, including in the mini parks and on the south and west property lines. Street trees would be planted on the eastern portion of the property along 81st Drive NE. Existing landscaping on the northern property line would be retained. Trees would be planted on private property along the private drive from the City-approved tree list.

*Exhibit 1, Staff Report, pages 9 through 12.*

#### Conditional Use Permit

15. As noted above, major unit lot subdivisions of more than nine lots are allowed in the RHC zone with a conditional use permit. *AMC 20.40.010*. The Applicant seeks a CUP to allow an 18-lot ULS. City staff reviewed the proposal and determined that, with conditions, the proposal would comply with the specific criteria for a CUP under *AMC 20.16.140*, noting:

- The application for site plan review was deemed complete on May 12, 2022.
- The proposal would comply with all required sections of *AMC Title 20*.
- The proposed project has complied with SEPA, and the City issued a MDNS on May 13, 2022. No comments or appeal were received.
- The proposed development would comply with the City Comprehensive Plan, Transportation Plan, and other applicable plans, regulations, and policies.
- The proposed development would have minimal impact on abutting property owners. The single-family home to the west would be screened with a six-foot solid wood fence and landscaping. The single-family residence and duplex to the north would be screened with existing landscaping. The vacant property to the south is located below a hill. The property to the east would be separated by the new public street, 81st Drive NE.
- The proposed development is compatible with the surrounding neighborhood and the RHC zone.

*Exhibit 1, Staff Report, pages 21 and 22.*

#### Testimony

16. City Planning Manager Amy Rusko testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive Plan, zoning ordinances, and criteria of approval for a ULS and CUP. She noted that Public Works determined that municipal sewer and water are available for the proposed development. Ms. Rusko clarified that the subject lot was part of a short plat of an earlier subdivision and that all three lots created by that subdivision are still owned by the same owner. Ms. Rusko stated that the Applicant would dedicate 81st Drive NE to the City as a public right-of-way. She clarified that there are no tree requirements for private roads, but she explained that the Applicant would provide trees between each unit. Ms. Rusko also noted that the MDNS had not been appealed. *Testimony of Ms. Rusko.*

17. Applicant Representative Ryan Larsen testified that the proposed development would exceed open space requirements. He clarified that the tract containing 81st Drive NE was created during an earlier subdivision, would be deeded to the City, and was not included in open space requirement calculations. He noted that 81st Drive NE would be stubbed just short of the property line but could be extended to provide through access from E. Highland Drive to any future development to the south. Mr. Larsen inquired about whether the Applicant would receive credit to offset traffic mitigation fees because it would be constructing all infrastructure associated with 81st Drive NE, not just half-street improvements as would normally be required. In response, Ms. Rusko testified that the City would be amenable to working out this issue with the Applicant prior to any such mitigation fees being due. *Testimony of Mr. Larsen; Testimony of Ms. Rusko.*
18. Applicant Drainage Engineer Tom Abbott clarified that the proposal would be served by a stormwater infiltration system located near the southern boundary of the site that would collect and treat 100 percent of stormwater from impervious and pervious surfaces. He noted that the application for the proposal was deemed complete when the municipal code required projects to comply with the DOE 2012 Stormwater Management Manual for Western Washington, as amended in 2014.<sup>3</sup> *Testimony of Mr. Abbott.*

#### Staff Recommendation

19. Ms. Rusko testified that City staff reviewed the application and recommend that the ULS and CUP be approved, with conditions. Mr. Larsen testified that the Applicant concurs with the City's recommendation. *Exhibit 1, Staff Report, pages 21 through 25; Testimony of Ms. Rusko; Testimony of Mr. Larsen.*

### CONCLUSIONS

#### Jurisdiction

The Hearing Examiner is granted the authority to hear and decide the application for a unit lot subdivision and 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

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<sup>3</sup> The Hearing Examiner notes, however, that the MDNS requires the project to comply with DOE's most recent stormwater manual and, further, that the Applicant did not appeal the MDNS.

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:

- (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

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- (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).*

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 subdivision 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 City received comments on the proposal from members of the public, which generally raised concerns about the proposal's impacts to traffic and pedestrian safety, as well as about the proposal's compatibility with the existing character of the neighborhood. These concerns were addressed through the submission of necessary studies, including a Traffic Impact Analysis that determined that the proposal would not cause level of service failures in the area. Accordingly, 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, 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

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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 along 81st Drive NE; submit an unanticipated discovery plan; connect to City water and wastewater systems; and pay applicable traffic, school, park impact fees, as determined by the City.

The project site is predominantly flat and does not contain any critical areas. The proposed stormwater system would collect all stormwater from pervious and impervious surfaces and convey runoff to an on-site infiltration system located in the southern portion of the property. As noted above, the Applicant's Traffic Impact Analysis determined that all studied intersections would continue to operate at acceptable level of service during AM and PM peak hours following a full buildout of the proposed development. The City determined that the proposed development would generate 11 new PM peak hours, and that the Applicant would need to pay traffic impact fees based on the newly generated PM peak hour trips, as required by the MDNS, unless the Applicant and City negotiate an appropriate credit related to this traffic mitigation fee related to the Applicant's construction and dedication of all infrastructure associated with 81st Drive NE. The proposed development would provide adequate roads and sidewalks for vehicular and pedestrian access in compliance with City code requirements and would include safe walking routes to schools and school bus stops.

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 to the property, 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. The proposal includes 3,794 square feet of recreational space in an on-site mini-park. The Applicant would plant trees every 30 feet along dedicated streets, trees between each building, and would comply with code requirements for tree retention and replacement. The proposed development would also implement landscaping for screening and parking area shading in compliance with code requirements. Conditions, as detailed below, are necessary to ensure the proposal complies with all municipal and state requirements related to the preliminary subdivision of land. *Findings 1 – 19.*

2. **With conditions, the proposal would comply with the unit lot subdivision requirements of the municipal code.** Unit lot subdivisions are permitted in RHC zone. The proposed development includes three buildings each consisting of six townhomes for

a total of 18 residential units. The proposed building heights would be less than the maximum allowed under City code. The Design Review Board would review and approve the proposed building designs prior to final building permit issuance. The proposal includes provisions meeting requirements for usable open space, including a private mini-park that would be maintained by the homeowner's association. As proposed and conditioned, the development would comply with all requirements for a ULS under AMC 22.44.020A. *Findings 1, 2, 5 – 19.*

3. **With conditions, the proposal would satisfy the requirements for approval of a conditional use permit.** Major unit lot subdivisions of over nine residential units are allowed in the RHC zone with a conditional use permit. City staff determined that the proposed 18-unit townhome development would be an appropriate use in the RHC zone and would meet or exceed all density and dimensional standards for development in the RHC zone, including standards for minimum lot sizes, minimum lot widths, building setbacks, and maximum building height. The Hearing Examiner concurs with the City's assessment.

As noted above in Conclusion 1, the City provided reasonable notice of the application and associated public hearing and received comments from two members of the public who generally expressed concerns about traffic impacts, open space, and pedestrian impacts. As addressed in Conclusion 1 above, the Traffic Impact Analysis determined that all studied intersections would continue to operate at acceptable levels of service following a full buildout of the proposed development. The Applicant would construct and dedicate 81st Drive NE to the City, with full frontage improvements, which would provide sidewalk connections and access to E. Highland Drive. The proposed development would include open space in excess of requirements for 18 residential lots under the ULS standards.

The proposed use would be consistent with the Comprehensive Plan's Residential High Density land use designation for the property and would further several Comprehensive Plan goals and policies related to pedestrian-friendly site design, development of mini-parks, and the provision of a variety of housing types in appropriate locations. The proposed 18-unit townhouse development would meet the City's criteria for building design, density and dimensional standards, recreational facilities and open space, streets and sidewalks, utilities, parking, and screening. The development would be adequately screened from surrounding properties and would not endanger the public health or safety, or adversely affect abutting properties. The existing single-family home to the west would be screened with a six-foot solid wood fence and landscaping, and the existing single-family residence and duplex to the north would be screened with existing landscaping. The vacant property to the south is located downhill of the property, and the property to the east would be separated by 81st Drive NE. As detailed below, conditions are

necessary to ensure the proposal complies with all requirements associated with approval of a conditional use permit. *Findings 1 – 19.*

### **DECISION**

Based upon the preceding findings and conclusions, the request for a preliminary major unit lot subdivision and conditional use permit to subdivide a 0.97-acre property into 18 townhome fee simple lots consisting of three, 6-unit townhome buildings, with associated improvements, at 606 E. Highland Drive, is **APPROVED**, subject to the following conditions:<sup>4</sup>

1. All development shall be in substantial conformance with the approved site plan received on August 24, 2022, subject to any conditions or modifications that may be required as part of the permit and construction plan review.
2. The developer 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 development is subject to the following Community and Mini Park impact fees:
  - City of Arlington Community Park Impact Fees: \$26,946.00These fees are payable at the levels in effect at the time of building permit submittal and will be collected at the time of building permit issuance
4. The development is subject to the following Arlington School District mitigation fees:
  - Two/+ bedroom multi-family dwelling unit: \$62,190.00.
5. In order to mitigate for potential earth impacts, the Applicant shall implement Best Management Practices per Department of Ecology for Stormwater Pollution Prevention and TESC Controls to prevent erosion during and after construction
6. In order 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.
7. In order to mitigate for 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.

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<sup>4</sup> Conditions include those required to reduce project impacts as well as those required to meet City codes.

8. In order 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
9. In order to mitigate for the removal of significant trees on the property the Applicant has proposed to replant trees on the site at a 3:1 ratio.
10. The 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.
11. 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 7:00 PM to 7:00 AM 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 light vehicle traffic will be generated during business hours at project completion.
12. The proposal is required to meet the City of Arlington Development Design Standards of AMC 20.46, through Design Review Board approval prior to building permit submittal.
13. To mitigate for potential light pollution, the Applicant would be required to install light fixtures that are down shielded. The property is located within the Arlington Airport Protection District – Subdistrict D – that is comprised of the Federal Aviation Regulations (FAR) parts 77 Imaginary surfaces.
14. To mitigate the impacts on recreation, the Applicant shall pay Community Park Impact Fees in the amount of \$1,497.00 per dwelling unit.
15. 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 notify the Stillaguamish Tribe and submit an Unanticipated Discovery Plan prior to ground disturbance.
16. The proposal is required to construct frontage improvements and dedicate right-of-way along 81st Drive NE.
17. Trip generation has been calculated by Gibson Traffic Consultants through a Traffic Impact Analysis. The report references Land Use Code 220 for low rise multi-family per

the ITE Trip Generation Manual, 10th Edition and calculates the rate at 0.56 PM trips per unit. The project proposes 18 units, which results in 11 PM Peak Hour Trips. The Applicant is required to pay Traffic Mitigation fees in the amount of \$36,905.00 to the City of Arlington. City traffic mitigation fees shall be paid prior to building permit issuance, unless the Applicant and City staff determine that a credit is appropriate for construction of all infrastructure associated with 81st Street NE.

18. The Applicant shall pay Arlington School District Mitigation Fees in the amount of \$3,455.00 for each multi-family unit. The Applicant shall provide proof of payment prior to building permit issuance
19. The Applicant shall connect to the City of Arlington water and wastewater systems, extend utility lines as necessary and pay water and sewer connection fees. The well and septic shall be removed from the site. All improvements shall be installed during the Site Civil Construction phase of the project. Connection fees shall be paid at the time of building permit issuance. All utilities shall be installed underground.
20. A Civil construction permit shall be applied for and approved prior to any land disturbance on the subject property.
21. A Right-of-Way Permit shall be required for all work within the City of Arlington right-of-way.
22. The Final Landscape Plans shall be approved with the civil plans.
23. The civil plans shall show the parking space area material and striping of parallel parking along 81st Drive NE.
24. The civil plans shall show the following lighting requirements:
  - Provide sufficient pole lighting throughout the site that will illuminate the building, building entrance, and parking areas throughout the site to ensure safety.
  - All lighting shall provide low sodium or similar lamp type outdoor lighting and be down shielded to prevent light pollution.
  - All lighting shall provide down-shielded lighting that illuminates the site but does not shine onto neighboring properties or public rights-of-way.
25. Prior to any construction activities, the Applicant shall file and receive approval of civil construction plans, which comply with all requirements of the Arlington Municipal Code, International Building Code(s), International Fire Code and Public Works Construction Standards and Specifications. Said plans shall address all site improvements, either required or voluntarily provided.

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26. The developer shall comply with AMC Chapter 13.28, Stormwater Management, and the most current City-adopted edition of the Department of Ecology Stormwater Management Manual for Western Washington.
27. The Applicant shall connect to City of Arlington water and sanitary sewer. All proposed improvements shall be shown and approved on the Civil Plans.
28. All proposed utilities to and on the site shall be located underground. All utility lines are required to be shown on the site civil plans and shall be approved by the City of Arlington prior to construction activities on the site.
29. The final approval of all civil infrastructure shall be completed prior to final plat approval.
30. A condition stating the property owner(s) or homeowners' association of the unit lot subdivision are required to maintain the landscaping on the property and within the right-of-way per AMC 20.76.140 shall be placed on the final plat.
31. A condition stating the property owner(s) or homeowners' association of the unit lot subdivision are required to maintain the landscaping on the property and within the right-of-way per AMC 20.76.140 shall be placed on the face of the final plat.
32. A condition stating the proposed parking spaces on the site shall be used for residents or guests of residents and shall not store inoperable motor vehicles shall be placed on the face of the final plat.
33. A condition stating the private drive aisle (Tract 999) is the fire lane for the subdivision, that there shall be no parking along the private drive aisle and shall be enforced by the homeowner's association shall be placed on the face of the final plat.
34. A building permit application shall be reviewed and approved prior to building construction on the site.
35. All building permits shall meet the most current edition of the International Building Code.
36. The proposed development is subject to a water and sanitary sewer utility application and payment of applicable utility connection charges. All fees shall be paid at the time of building permit issuance.
37. All contractors working on the subject site shall obtain a City of Arlington Business License through the Washington State Department of Licensing.

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**DECIDED** this 11<sup>th</sup> day of October 2022.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center