

BEFORE THE CITY COUNCIL  
CITY OF SUMAS, WASHINGTON

IN RE Long Subdivision, Subdivision Variance, and Conditional Use Application of:	)	DRAFT REPORT OF DECISION
	)	
Jason Heutink	)	November 25, 2024 DRAFT
8755 Vedder View Lane	)	
Sumas, WA 98295	)	

The matter having come before the City Council of the City of Sumas for public hearing on November 12, 2024, the hearing having been continued to November 25, 2024, the Council having duly considered all matters in the record and all testimony given for and against the application, makes the following Findings of Fact, Conclusions of Law, and Decision:

**FINDINGS OF FACT**

1. The Applicant is Jason Heutink.
2. The Applicant seeks to subdivide two existing parcels to create 18 residential lots. The proposed subdivision is referred to as the Sumas Residential Preliminary Plat.
3. The subject properties are located on the west side of Sumas Avenue and east side of Highway 9, Sumas, WA 98295. The properties are located in the Residential, High-Density and Business, General Zoning Districts within the NE ¼ of NE ¼ of Section 03, T 40 N, R 04 E of W.M. The Whatcom County Assessor’s parcel numbers are 400403 572521 and 400403 561531
4. The primary parcel is located within the Residential, High-Density zoning district and is, therefore, subject to the regulations set forth in Chapter 20.32 of the Sumas Municipal Code (SMC). The northwesterly parcel is located within the Business, General zoning district and is, therefore, subject to the regulations set forth in Chapter 20.40 SMC.
5. The Site comprises approximately 2.85 acres. The primary parcel is currently undeveloped and the northwesterly parcel includes a single-family home, to be preserved.
6. The Applicant seeks approval of a long subdivision/preliminary plat to allow the properties to be divided into eighteen residential lots, a dedicated public right-of-way, and stormwater pond tract.
7. The Applicant has also requested approval of a subdivision variance to allow approval of a long subdivision that does not conform to all of the requirements set forth in the City subdivision ordinance. The variance is being sought to allow establishment of right-of-way and roadway improvements, below city standards, running east-west through the property. Specifically, the variance would allow:
  - 1) the public right-of-way width to be reduced from fifty feet to thirty feet;

- 2) the paved roadway width to be reduced from thirty-six feet to twenty-four feet; and
  - 3) a sidewalk to be constructed only on one side of the road rather than on both sides.
8. The Applicant has also requested approval of a conditional use permit to allow the construction of six pairs of attached (zero lot line) single-family homes, totaling 12 units.
  9. Applications for approval of a long subdivision, subdivision variance and conditional use permit were submitted on September 19 and October 10, 2024 by the Applicant. The applications were determined to be complete on October 14, 2024.
  10. Pursuant to Chapter 20.08 SMC, the consolidated applications were processed as a Class III action. A *Notice of Application* was issued on October 16, 2024. The notice publicized the public hearing date. A public comment period was held from October 16 through 31, 2024. One comment was received during the public comment period.
  11. Pursuant to WAC 197-11-355 (the Optional DNS Process), the Notice of Application also notified the public that the City anticipated the issuance of a Determination of Nonsignificance (DNS) under the State Environmental Policy Act (SEPA). The SEPA comment period ran concurrently with the comment period identified in the Notice of Application.
  12. Pursuant to WAC 197-11-340, the City, acting as lead agency under RCW 43.21C, the State Environmental Policy Act (SEPA), issued a SEPA Determination of Nonsignificance (DNS) on November 5, 2024. The SEPA comment period was open from November 5 through 19, 2024. No comments were received during the SEPA public comment period.
  13. On October 31, 2024, the City received a public comment letter from Darren Leyenhorst, 1245 Sumas Ave. In the letter, Mr. Leyenhorst expressed concerns about the effect that this development would have on flood elevations for other homes in the area.
  14. The Sumas City Planning Commission met on October 21, 2024 to consider the subject application. After reviewing the application materials and receiving input from City staff, the Planning Commission forwarded a recommendation for approval to the Sumas City Council, but provided a list of concerns for the Sumas City Council to consider.
  15. A public hearing regarding the consolidated applications was held before the Sumas City Council on November 12, 2024 and was continued to November 25, 2024. Opportunity for public comment was provided and testimony was received.
  16. A public hearing was reopened on November 25, 2024. Additional opportunity for public comment was provided and testimony was received.

#### Zoning Requirements

17. Pursuant to Section 20.32.100 SMC, the minimum lot size for a detached single-family residence in the Residential, High-Density zoning district is 6,000 square feet and the minimum lot size for an attached single-family (zero lot line) is 3,000 square feet. There is no minimum lot size in the Business, General zoning district. All proposed detached single-family lots as shown on the preliminary plat contain more than 6,000 square feet of lot area and all proposed attached single-family lots as shown on the preliminary plat contain more than 3,000 square feet of lot area; therefore, the proposed preliminary plat conforms to the minimum lot size standards established in Title 20 SMC.

18. Pursuant to Section 20.32.100 SMC, the minimum lot width for a detached single-family lot in the Residential, High-Density zoning district is 60 feet and the minimum lot width for an attached single-family lot is 30 feet. Condition 15 from Appendix A ensures that all proposed attached and detached lots will meet the minimum lot width requirements established in Section 20.32.100 SMC.
19. Section 20.32.060 SMC establishes that the rear yard setback applicable in the Residential, High-Density district is five feet. Section 20.32.070 SMC establishes that the side yard setback applicable in the Residential, High-Density district is eight feet. Section 20.32.080 SMC establishes that the front yard setback applicable in the Residential, High-Density district is twenty feet. Condition 16 from Appendix A, attached hereto, ensures that all plated lots include sufficient room to accommodate these setback requirements.
20. Section 20.32.120 SMC requires detached single-family residences within the Residential, High-Density zoning district be built with a minimum of 1,100 square feet of enclosed floor space. Section 20.32.120 SMC does not provide any requirement of minimum floor space for attached single-family residences.

#### Long Subdivision

21. Chapter 20.90 SMC sets forth the requirements for approval of a long subdivision / preliminary plat. Chapter 20.96 SMC establishes the design standards applicable to long subdivisions, and Chapter 20.98 establishes the improvement standards applicable to a long subdivision.
22. With the appropriate conditions imposed and as set forth in Appendix A attached hereto, the proposed long subdivision is consistent with the requirements set forth in Chapters 20.90, 20.96 and 20.98 SMC, including design and improvement standards, with the exception of the items addressed through the associated subdivision variance application discussed below.
23. The proposed plat identifies a number of dedications and easements, including utility easements granted in favor of the City of Sumas. Condition 10 from Appendix A ensures that all required dedications and easements will be included on the face of the final plat.
24. Stormwater management facilities meeting City standards shall be constructed to serve the proposed development. Following completion, said facilities shall be deeded to the City. Condition 8 from Appendix A ensures that the proposed stormwater management facilities will be deeded to the City.
25. Chapter 20.92 SMC establishes the requirements for final plat approval. Condition 12 from Appendix A ensures that these requirements will be met.
26. Section 20.90.080 SMC establishes that a final plat that is in conformance with the approved preliminary plat must be submitted to the City Council for approval within five years from the date of preliminary plat approval. Condition 13 from Appendix A ensures compliance with the above timing requirement.
27. As modified and conditioned pursuant to the provisions of Appendix A, the proposed plat makes appropriate provisions for open space, drainage ways, streets and roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools, sidewalks, and other planning features that assure safe walking conditions for students who only walk to and from school.

28. As modified and conditioned pursuant to the provisions of Appendix A, the proposed plat makes adequate provisions for the public health, safety, and general welfare.

#### Subdivision Variance

29. Chapter 20.100 SMC establishes that the City Council may grant a subdivision variance because of unusual shape, exceptional topographic conditions, geological problems, or other extraordinary situation or condition in connection to a specific property when the literal enforcement of Title 20 would impose unreasonable difficulties or result in an undesirable plat.
30. The Applicant has proposed three variances that would be applicable to the minor access road proposed for access to properties along the northern boundary of the plat. These variances include: reducing the right-of-way width from fifty feet to thirty feet; reducing the paved roadway width from thirty-six feet to twenty-four feet; and constructing a sidewalk on only one side of the road rather than on both sides of the road.
31. The Applicant has indicated that the relatively flat nature of the site results in the need to construct an uncharacteristically large storm pond to accommodate the amount of stormwater runoff required by the City's stormwater management requirements. The applicant has also indicated that the relatively large storm pond area, and unique shape of the site, do not leave enough room for residential lots with a right-of-way for access without the granting of this variance. Thus, the requirement of the City's design and improvement standards in full would pose a hardship to the applicant and create an undesirable plat.
32. The City Council finds that the relatively flat nature and unique shape of the site support the granting of the requested variance. Denial of the variance would constitute a hardship and make it impossible to develop the northern portion of the Site and would result in a less desirable plat. The City Council also finds that the granting of the variance will not negatively impact the maintenance of public health and safety.

#### Conditional Use

33. Section 20.32.030 SMC identifies "Attached single-family dwellings on two adjoining lots" as a conditional use within the Residential, High-Density zoning district.
34. Section 20.32.150 SMC gives the City Council broad authority to approve, approve with conditions, or deny an attached single-family project based on unique circumstances such as neighborhood character, comprehensive plan consistency, proximity to other similar projects, proximity to public services, adequacy of parking facilities, etc.
35. With the Conditions of Approval set forth in Appendix A, the Project meets the applicable criteria for issuance of a conditional use permit established at Section 20.66.020 SMC as follows:
- a. The Project is harmonious and in accordance with the general policies and specific objectives of the *Comprehensive Land-Use Plan* as it is allowed under the Residential, High-Density zoning district.
  - b. With the conditions of approval set forth in Appendix A, the Project has been designed to be compatible with the essential character of the neighborhood and is not hazardous or disturbing to persons, property, or existing neighboring uses. The project only single-family residents, which is consistent with the neighborhood.

- c. The Project will be adequately served by public facilities and utilities. Water, sewer, electric, cable TV, and phone utilities are available at the Site.
- d. The Project will not create excessive vehicular congestion on neighborhood, collector, or residential access streets. Adequate provisions have been made to provide off-street parking meeting City parking requirements. Improvements to the pedestrian facilities on all applicable rights-of-way are included in Condition 4 of Appendix A.
- e. The Project will not create conditions substantially detrimental to persons, property, or neighboring uses by reason of the production of excessive amounts of traffic, fumes, glare, electrical interference, mechanical vibration, or odor.
- f. The Project will not result in destruction, loss, or damage to any natural, scenic, or historic feature of major consequence. There are no specific natural or scenic features of importance on the Site, and no adverse comments have been received by the City regarding natural, scenic, or historic features.

#### Other Items

- 36. Although the property is not located within the FEMA regulated floodplain, the City understands that this property has flooded in recent flood events, and has determined that requiring standard City floodplain protection measures is in the best interest of all future residents. Condition 18 of Appendix A ensures that new structures will be elevated at least 2 feet above Base Flood Elevation and include at least 2 flood vents consistent with Chapter 14.30 SMC.
- 37. The City has expressed concerns about the possibility that the proposed pairs of attached single-family dwellings may be sold and constructed separately and thus be built using inconsistent designs and materials. Condition 19 of Appendix A ensures that both sides of the pairs of attached single-family dwellings will be constructed simultaneously and with a consistent design.
- 38. The Applicant submitted a petition to vacate a portion of a plated right-of-way located within the property. It is a small area and has no significance to the City.
- 39. The Applicant also submitted a petition to vacate a utility easement granted to the City, running east and west through the property located overtop of an existing sewer force main. Condition 6 of Appendix A requires that the applicant relocate the force main prior to the recording of the final plat with the Whatcom County Auditor's Office. The new location of the relocated force main will be subject to approval from the Public Works Director. As well, a condition will be included in the ordinance to adopt the vacation requiring that the sewer force main be relocated prior to the recording of the ordinance with the Whatcom County Auditor's Office.

## CONCLUSIONS OF LAW

1. The subject proposal is consistent with the application requirements set forth in Titles 20 SMC.
2. With the conditions of approval incorporated in Appendix A, the Project complies with the requirements established for approval of a long subdivision established in Title 20 SMC and with the criteria for approval of a subdivision variance established at Chapter 20.100 SMC and the criteria for approval of a conditional use permit established at Chapter 20.66 SMC.
3. The conditions of approval set forth in Appendix A are adopted under authority of Title 20 SMC as measures necessary to reach Conclusion 2, above.
4. Any finding of fact that is also a conclusion of law is hereby adopted as such.

## DECISION

Based upon the aforementioned findings of fact and conclusions of law, the consolidated application for approval of a long subdivision is \_\_\_\_\_, subject to the Conditions of Approval established in Appendix A.

Based upon the aforementioned findings of fact and conclusions of law, the consolidated application for approval of a long subdivision variance is \_\_\_\_\_, subject to the Conditions of Approval established in Appendix A.

Based upon the aforementioned findings of fact and conclusions of law, the consolidated application for approval of a conditional use permit is \_\_\_\_\_, subject to the Conditions of Approval established in Appendix A.

City of Sumas, Washington

\_\_\_\_\_  
Bruce Bosch, Mayor

\_\_\_\_\_  
Date

## METHOD OF APPEAL

There is no administrative appeal of the Council's decision. Pursuant to Chapter 36.70C Revised Code of Washington, any land use petition challenging the decision must be filed with the Superior Court and served on the following parties within twenty-one days of the issuance of the decision:

City of Sumas  
433 Cherry Street  
PO Box 9  
Sumas, WA 98295

Jason Heutink  
8755 Vedder View Lane  
Sumas, WA 98295

**APPENDIX A TO REPORT OF DECISION  
PRELIMINARY LONG SUBDIVISION,  
SUBDIVISION VARIANCE, AND CONDITIONAL USE  
CONDITIONS OF APPROVAL**

1. Approval is granted only for the activities described in the Project Application. All mitigation measures described in the Application and the supporting documentation are hereby incorporated as conditions of the Project, unless specifically excluded below. All permits and approvals required for the operation of the Project from either the City of Sumas or other agencies shall be obtained in conformance with the requirements of such agencies.
2. The proposed plat shall be designed, reviewed, permitted and constructed in conformance with the requirements set forth in Chapters 20.90, 20.96 and 20.98 SMC.
3. The proposed minor access road shall be designed and constructed to meet City standards, except as authorized through approval of a variance. The minimum right-of-way width shall be thirty feet and minimum pavement width shall be twenty-four feet. Plans for all roadway improvements shall be prepared by a licensed engineer and submitted to the City Public Works Director for review and approval. Approval of a grading permit shall be required prior to commencing any land disturbing activities.
4. Sidewalks meeting City standards shall be constructed adjacent to the north side of the proposed minor access road. Plans shall be prepared by a licensed engineer and be submitted to the City Public Works Director for review and approval prior to construction.
5. A water system meeting City standards shall be designed and constructed to serve the proposed development. Plans for all water system improvements shall be prepared by a licensed engineer and submitted for review and approval by the City Public Works Director prior to construction.
6. Prior to the recording of a final plat, and prior to the recording of the proposed easement vacation ordinance, a sewer force main located below the subject property shall be removed and a new force main installed as per plans approved by the City Public Works Director
7. A sewer system meeting City standards shall be designed and constructed to serve the proposed development. Plans for all sewer system improvements shall be prepared by a licensed engineer and submitted for review and approval by the City Public Works Director prior to construction.
8. Stormwater management facilities meeting City standards shall be designed and constructed to serve the development. Plans for all stormwater management facilities shall be prepared by a licensed engineer and submitted for review and approval by the City Public Works Director prior to construction.
9. Provision shall be made within the development for the installation of underground electric power, street lighting and other public or private utilities consistent with City standards. Where applicable, plans for installation of such facilities shall be reviewed and approved by the City Public Works Director prior to construction.
10. All easements and dedications, including but not limited to a ten-foot utility easement adjacent to all internal and adjacent rights-of-way, as shown on the proposed plat or otherwise required by City Code, shall be reviewed and approved by the City Public Works Director and included on the face of the final plat prior to recording.

11. The proposed stormwater pond serving the development shall be placed in a separate tract, and said tract shall be deeded to the City.
12. All requirements established in Chapter 20.92 addressing final plats shall be met prior to final plat approval by the City Council of each phase of the development. Each final plat shall be prepared by a registered land surveyor. The plat must be surveyed and monumented as required by the City Public Works Director, and recorded with the County Auditor's office. Following recording, the City shall be provided with an original copy of each recorded final plat.
13. The final plat meeting the requirements set forth in Title 20 and consistent with the project application as approved by the City Council must be submitted to the City Council for approval within five years following the date of preliminary plat approval and thereafter recorded with the County Auditor; otherwise, the approval shall lapse and the preliminary plat shall be considered abandoned, unless a one-year extension is granted by the City Council.
14. A note shall be included on the face of the final plat recorded with the County Auditor identifying the square footage of buildable area, right of way, and critical areas located on the site.
15. The City Public Works Director shall review the proposed preliminary plat to ensure that all properties meet minimum lot size and minimum lot width requirements pursuant to Section 20.32.100 SMC prior to recording of a final plat.
16. The City Public Works Director shall review the proposed preliminary plat to ensure that all properties have sufficient room to meet all setback requirements pertaining to the corresponding zoning district while preserving enough space to accommodate the minimum building square-footage requirements pursuant to Section 20.32.120 SMC prior to recording of the final plat.
17. Ordinances approving the vacation of the right-of-way and easement shall be adopted prior to final plat approval. The vacation applicant shall reimburse the City for all costs of recording the vacations with the County Auditor's office.
18. All newly constructed buildings associated with this project must be built at least 2 feet above the nearest adjacent FEMA Base Flood Elevation (BFE), as provided by a licensed surveyor through submission of an elevation certificate. The crawlspace below each building must include at least 2 flood vents no more than 1 foot above adjacent grade. The sizing and amount of flood vents is subject to approval from the Public Works Director upon submission of a building permit.
19. For each pair of proposed attached single-family dwellings, a note shall be recorded on the face of the final plat Whatcom County Auditor's Office requiring that both sides of the pair be completed simultaneously and shall be consistent in design.
20. Any finding of fact or conclusion of law that is also a condition of approval is hereby adopted as such.