

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

In the Matter of the Application of

**LAWRENCE KNAPP, BUSH, ROED
AND HITICHINGS, INC.**

for approval of a preliminary unit
lot subdivision

Hearing Examiner File:
MUP-18-004 (SD)

Department reference:
3024872

Introduction

The Applicant, Lawrence Knapp of Bush, Roed & Hitchings, Inc.,¹ seeks preliminary approval of an 87-unit lot subdivision of property. The Director of the Department of Construction and Inspections (“Director”) recommended approval of the preliminary subdivision application with a single condition: recording of the approved covenants, conditions and restrictions with King County and providing the recording number on the final plat documents. There were no requests for further consideration of the Director’s recommendation pursuant to SMC 23.76.024.D.

A public hearing on the subdivision application was held before the Hearing Examiner on March 22, 2018. The Applicant was represented by Samuel Jacobs of Helsell Fetterman. The Director was represented by Carly Guillory, Senior Land Use Planner. The record closed on March 27, 2017, following the Examiner’s site visit, and responses from both the Applicant and the Director to the Examiner’s request for clarification.

The Examiner issued its Findings and Decision on March 28, 2018. The Applicant and Director filed a joint motion for reconsideration on April 3, 2018. The Examiner issued an order granting the motion on April 4, 2018, and these Amended Findings and Decision are entered consistent with that order.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record and reviewing the site, the Hearing Examiner enters the following findings of fact, conclusions and decision.

Findings of Fact

Site and Vicinity

¹ Lawrence Knapp is listed as the Applicant for the full unit lot subdivision. The property owner is UTP, LLC of Kenmore, Washington.

1. The address of the proposal site is 2101 NE 88th Street (“site”). The site is approximately 157,750 square feet. The site is largely level except for steep slopes at the southeast corner and along the northwestern edge, adjacent to Lake City Way. The steepest slope on the site approaches 60%. The Applicant submitted a geotechnical report, concurred in by the Director, indicating that the steep slope areas on and adjacent to the site are less than 20 feet in height and more than 30 feet away from the top and bottom of other steep slope areas. The Director also concluded that the current steep slope conditions appeared to be the result of prior, legal grading activities. The site was previously a mobile home park. The site, therefore, qualifies for the Relief from Prohibition on Steep Slope Development. SMC 25.09.090 B. 2. b and c.
2. Over 99% of the site is zoned Lowrise Two. The southwest corner of the site is zoned Commercial 1 with a 65-foot height limit (C1-65). Adjacent property to the north and west is also zoned C1-65. Property to the east and south of the site is zoned Lowrise 1.
3. Vehicular and pedestrian access to the site is currently and will be from NE 88th Street through a permanent access easement. NE 88th is a dedicated city street that runs along the north border of the site. Lake City Way (Highway 522) cuts along the northwest corner of the site.

Proposal

4. On June 26, 2017, the Director issued a SEPA Determination of Non-significance (“DNS”) with conditions for the proposed development on the site (“proposal”) which includes construction of 18 structures containing 87 townhomes with off-street parking for 138 vehicles.² Exhibit 7. The DNS was not appealed. The Director also issued conditional design review approval for the proposal following a conditioned, unanimous recommendation from the Design Review Board. *Id.*
5. No dedications are required by the proposal. Street improvements in the street improvement plan incorporate the requirements of the Applicant’s land use application (Master Use Plan 3023106), and include installation of a concrete sidewalk and gutter on NE 88th Street along the northern border of the site, street trees, planter strips, and curb improvements at the intersection of NE 88th and Lake City Way. Exhibit 18.
6. The Director has determined that private easements for vehicular ingress and egress, pedestrian access, emergency vehicles, and utilities are adequate. Exhibit 8
7. Building permits have been issued for construction of the approved structures, and the Applicant now seeks to subdivide the property into the anticipated 87 unit lots.

² There is a discrepancy in the record as to whether the proposal will have 134 or 138 on-site parking slots. Jim Sprott, a witness for the Applicant, testified at the hearing that the correct number is 138; eight 8 slots are tandem, meaning one car is parked behind the other.

8. Private usable open space or a private amenity area will be provided for each unit on the same lot that it serves, and will be directly accessible to the unit. Exhibit 8.

9. The preliminary plat includes a notation that the unit lots are not separate buildable lots, and that additional development of the individual unit lots may be limited due to application of development standards to the parent lot. Exhibit 11.

10. The preliminary plat also notes the requirement for a Joint Use and Maintenance Agreement for the unit lot subdivision. Exhibit 11 at page 7 of 16. Required and acknowledged easements are found in Exhibit 11 at pages 1, 2, 6 and 7 of 16.

Director's Review of Unit Lot Subdivision

11. The Director issued a public notice of the application for the full unit lot subdivision for the site on August 22, 2016. Exhibit 5 at page 1. The Director accepted public comments thorough September 4, 2016. *Id.* No public comments were received. Exhibit 8.

12. The Director circulated a request for comment on the application to agencies and City departments. SMC 22.22.024. The General Manager and Chief Executive Officer of Seattle City Light, Superintendent of Parks and Recreation, Director of Seattle Public Utilities, King County Metro, DCI Drainage Review, and DCI Structural and Ordinance Review all recommended approval of the subdivision as shown on the preliminary plat with no conditions. The Director of Public Health declined to comment due to lack of jurisdiction since the project is served by sewer. The Director of Housing approved the preliminary plat and recommended construction of a sidewalk with gutters along NE 88th Street due to anticipated increase in vehicular traffic from the site. The Seattle Fire Department approved the proposal and the building permit with the condition that it inspect mandated fire protection measures prior to combustible construction. Sound Transit, and the King County Wastewater Division had no comment on the proposal. Exhibit 8.

13. Seattle Department of Transportation recommended approval on August 16, 2017. Exhibit 8.

14. The site is served with domestic water. Seattle Public Utilities issued a Water Availability Certificate for the project on March 21, 2017. Exhibit 9. The Certificate remains valid for no more than 18 months from the date of certification. *Id.*

15. On February 12, 2018, based upon his evaluation of the application and the comments of other departments and agencies, the Director issued his determination that the subdivision will meet all minimum development standards for the zone and recommended approval of the subdivision with a single condition. Exhibit 8. The Director also published notice of his recommendation for approval and of the public hearing before the Hearing Examiner. Exhibit 5 at page 2.

16. The Hearing Examiner received no comments on the Director's recommendation. The Director received a single comment on February 14, 2018. Exhibit 6. The commenter requested that the City of Seattle stop multi-family housing construction in the proposal area due to traffic congestion, noise, and lack of parking. *Id.* The Hearing Examiner considered the comment received by the Department. As previously stated, no request for further consideration was filed. SMC 23.76.024.

Applicable Code Provisions

17. SMC 23.22.054, entitled "Public use and interest," lists some of the factors the Hearing Examiner must consider in determining whether to approve a subdivision:

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. The Hearing Examiner shall consider all relevant facts to determine whether the public interest will be served by the subdivision and dedication, and if it finds that the proposed plat makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, sites for school and schoolgrounds, sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and that the public use and interest will be served by the platting of the subdivision, then it shall be approved. If the Hearing Examiner finds that the proposed plat does not provide the appropriate elements, or that the public use and interest will not be served, then the Hearing Examiner may disapprove the proposed plat.

18. SMC 23.22.052 provides that:

- A. Every subdivision shall include adequate provision for dedication of drainage ways, streets, alleys, pedestrian access and circulation, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.
- B. Protective improvements and easements to maintain the improvements shall be dedicated at the discretion of the City.
- C. Sidewalks shall be provided on dedicated streets, and must be convenient for pedestrians and contiguous to each other and to any private sidewalks within the subdivision and to existing sidewalks contiguous to the subdivision.
- D. Vehicular access to every lot shall be from a dedicated street unless the Director ... permits access by a permanent private easement [that meets the requirements of SMC 23.22.052.D].

19. SMC 23.22.062 provides for unit lot subdivision of townhouse development as follows:

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B. [L]ots developed or proposed to be developed . . . may be subdivided into individual unit lots. The development as a whole shall meet development standards applicable at the time the permit application is vested. As a result of the subdivision, development on individual unit lots may be nonconforming as to some or all of the development standards based on analysis of the individual unit lot, except that any private, usable open space or private amenity area for each dwelling unit shall be provided on the same lot as the dwelling unit it serves.

C. Subsequent platting actions, additions or modifications to the structure(s) may not create or increase any nonconformity of the parent lot.

D. Access easements and joint use and maintenance agreements shall be executed for use of common garage or parking areas, common open space (such as common courtyard open spaces for cottage housing), and other similar features, as recorded with the Director of the King County Department of Records and Elections.

E. Within the parent lot, required parking for a dwelling unit may be provided on a different unit lot than the lot with the dwelling unit, as long as the right to use that parking is formalized by an easement on the plat, as recorded with the Director of the King County Department of Records and Elections.

F. The fact that the unit lot is not a separate buildable lot and that additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot shall be noted on the plat, as recorded with the King County Department of Records and Elections.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapters 23.76 and 23.22 SMC.
2. The subdivision meets the requirements of SMC 23.22.052, by providing a sidewalk and gutter along NE 88th Street, requiring no dedications, and affording vehicular access that the Director has determined is consistent with SMC 23.33.052.D. Required street improvements are within existing rights-of-way: Lake City Way and NE 88th Street.
3. The proposal also meets the requirements of SMC 23.22.062 for unit lot subdivisions. The development will meet the development standards applicable to the parent lot; the required parking, easements and private, usable open space are provided; and the required disclosures and joint use and maintenance agreement are set forth on the face of the plat.
4. The record shows that the subdivision makes appropriate provision for open spaces, drainage ways, streets, transit stops, potable water, sanitary wastes, fire protection facilities, playgrounds, and sidewalks that assure safe walking conditions for students who

walk to and from school. The subdivision makes appropriate provision for the public health, safety and general welfare.

5. The proposal will promote individual ownership of the 87 residential units which will be constructed in a configuration that is compatible with the surrounding neighborhood. As conditioned, the subdivision will serve the public use and interest.

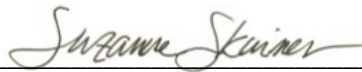
Decision

The application of the Applicant, Lawrence Knapp, for the unit lot subdivision is **APPROVED** subject to the following conditions:

The Applicant must provide the Director the articles of incorporation and bylaws for the homeowners' nonprofit maintenance corporation once the corporation is formed.

The Applicant shall record the approved covenants, conditions and restrictions with King County and provide the recording number on the final plat documents.

Entered this 4th day of April, 2018.



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Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

Applicant/Owner

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