

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF BURLINGTON**

2 Emily Terrell, Hearing Examiner

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<p>4 RE: Sharon Townhomes</p> <p>5 Preliminary Plat</p> <p>6 File No. LUP 5-25</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b></p>
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8 **OVERVIEW**

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10 John Piazza Jr. and Semrau Engineering request approval of a preliminary plat for a total of 54 zero lot line townhome lots on a 2.95-acre site located at 204 and 224 East Sharon Avenue. The site is currently 12 parcels<sup>1</sup> approved as part of a 2017 boundary line adjustment (Skagit recording number 201702150081) (Ex. 3). The site had previously been approved as a 54-unit townhome conditional use permit (CUP), however based on the conditions of approval of the August 30, 2023 CUP decision, the conditional use permit approval expired on August 30, 2025 (Ex. 8a, COA #3). The subdivision as proposed is largely consistent with the prior CUP design but as a subdivision will allow the applicant to sell each unit in fee simple. The application is approved subject to conditions.

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16 One condition added to the staff recommendations, Condition 6, requires that the proposal conform to the regulations in place at the time of preliminary plat vesting. As outlined in Conclusion of Law No. 3 below, that vesting occurred when a complete plat application was filed with the City. City staff based a large part of its project review upon the findings of a conditional use permit that approved the proposed townhomes. That permit has expired. The townhomes have not been constructed. As such, the regulations that applied to the conditional use permit only apply to the extent they remained unchanged at the time of the vesting of preliminary plat application.

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21 The Applicant requested the Examiner strike Staff proposed Condition of Approval #10 (Ex. 1). That request is granted. Staff proposed Condition 10 prohibits the issuance of building permits prior to final plat recordation with the Skagit County Auditor's Office. Specifically, the Applicant wishes to be eligible for building permits to construct units representing each of the existing lots of record or a total of 12 building

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25 <sup>1</sup> Skagit County Parcel Numbers P72722, P72723, P133618, P133619, P133620, P133621, P133622, P133623, P133624, P133625, P133626, and P133627.

1 permits prior to final plat approval. The preliminary plat application has vested to the  
2 MUC-2 zoning district. That zoning district permits townhomes outright.  
3 Consequently, the Applicant is free to build the proposed townhomes to the extent  
4 authorized in the MUC-2 district. Of course, the Applicant cannot sell any individual  
5 units in fee simple until final plat approval as required by RCW 58.17.200.

6 Trudy Zimmerman submitted a public comment (Ex. 7) regarding the type of  
7 ownership, general development patterns in the area and traffic impacts. Neither the  
8 price point of the proposed townhomes nor the overall area density are subject to this  
9 Decision. RCW 36.70B.030(3) prohibits the reconsideration of densities authorized by  
10 the City's zoning code. The density of the project cannot be challenged so long as it is  
11 consistent with that authorized by the zoning code. With respect to traffic, the  
12 Supplemental staff memo (Ex. 9) states the City's engineering staff note traffic calming  
13 and pedestrian safety measures will be included as crosswalk improvements at the  
14 intersection of East Sharon Avenue and South Alder Street. The crosswalks at the  
15 intersection of Cedar Street and South Alder Street will also be improved with signage  
16 and pavement markings. Sidewalks along Alder Street and Cedar Street will be brought  
17 into compliance with the ADA and improved with a solar powered rapid flashing  
18 beacon. Additionally, two streetlights will be installed to illuminate the pedestrian  
19 crossing on Cedar Street.

## 20 **ORAL TESTIMONY**

21 A computer-generated transcript has been prepared of the appeal hearing to provide an  
22 overview of the hearing testimony. The transcript is provided for informational  
23 purposes only as Appendix A. Since the transcript is computer generated, it is not 100%  
24 accurate but does provide a useful indication of what testimony was presented during  
25 the hearing.

## 26 **EXHIBITS**

27 Ex. 1-8b listed on Exhibit 0, Amendment #3 on November 21, 2025 were admitted  
28 into the record at the November 21, 2025 hearing. The following exhibits were admitted  
29 to the record after the close of the oral portion of the hearing:

- 30 Exhibit 9: Burlington Staff Supplemental Memo (December 5, 2025)  
31 Exhibit 10: Applicant Memo and Attachments (December 29, 2025)  
32 a. Revised Preliminary Plat Sheets 1-2  
33 b. Revised Legal Descriptions

34 The Examiner also took judicial notice of Google Maps as no vicinity maps were  
35 entered into the record.

## FINDINGS OF FACT

### Procedural:

1. Applicant. John Pizaaz Jr. Construction, 224 Stewart Road, Suit 130, Mount Vernon, WA 98273 as represented by Semrau Engineering and Surveying, 2118 Riverside Drive, Suite 209, Mount Vernon, WA 98284.

2. Hearing. An in-person and Zoom hearing was held on the application on November 21, 2025 at 10:00 am in Burlington City Hall Council Chambers and the Zoom virtual hearing application. The examiner left the record open for 14 days to allow the City staff to respond to questions brought during the hearing. The record was opened another 14 days (to December 29, 2025) to allow for applicant responses. The record was closed on December 29, 2025.

### Substantive:

3. Project Site/Proposal Description. John Piazza Jr. and Semrau Engineering request approval of a preliminary plat for a total of 54 zero lot line townhome lots on a 2.95-acre site located at 204 and 224 East Sharon Avenue. The site is currently 12 parcels approved as part of a 2017 boundary line adjustment (Skagit recording number 201702150081) (Ex. 3). The site has previously been approved as a 54-unit townhome conditional use permit (Ex. 8a). The subdivision will allow the applicant to sell each unit in fee simple. The site is currently developed with a gravel parking area and pole buildings that house mechanics, storage facilities, contractor offices and body shops.

Development would involve construction of 12 buildings with four to six zero-lot-line horizontally attached townhome units within each building, each on an independent lot. The proposed lots range in size from 1,863sf to 4,498sf (Ex. 10a). The minimum lot width will be 18-feet wide. The properties are zoned Mixed-Use Commercial 2 (MUC-2). There are no minimum lot area, width or depth standards within this zone (BMC 17.50.090.A). Impervious surface coverage is limited to 80 percent (BMC 17.50.090.B.2). There are no minimum setbacks, however there are maximum front and street setbacks for 10 feet (BMC 17.50.090.C and D).

The proposal includes an access road and driveways as well as landscaping, bioretention facilities, and infiltration trenches.

4. Characteristics of the Area. Surrounding uses include public offices, a fire station, police station, municipal court, skating rink, residences, restaurants, a bus station, contractors offices and retailers (Ex. 8a and 8b). The subject properties and parcels to the south and west are zoned MUC-2. The parcel to the north is zoned Residential Attached (RA-1). The property to the east is zoned Public Facilities and Transportation (PFT-1).

1 5. Adverse Impacts. As conditioned and mitigated, there are no significant adverse  
2 impacts associated with the proposal. The City issued a SEPA Mitigated Determination  
3 of Non-Significant Impact (MDNS) on June 8, 2023 as part of Conditional Use Permit  
4 3-23. Though that CUP has expired, the current preliminary plat proposal is  
5 substantially the same proposal. No further environmental review is required.  
6 Conditions of approval require the Applicant to meet all mitigation measures from the  
7 existing SEPA MDNS. Pertinent impacts are addressed as follows:

8 A. Critical Areas. There are no critical areas on or affecting the project site.  
9 As such, no critical areas will be adversely impacted by the project.

10 B. Tree Protection. As conditioned, trees will be adequately protected. BMC  
11 17.81.120.C requires the preservation of existing significant trees whenever  
12 feasible. A condition of approval will require the retention or replacement  
13 of significant trees.

14 C. Lighting. As conditioned, onsite lighting will not create adverse impacts.  
15 Conditions of approval will require lighting to be directed downwards and  
16 fully hooded, screened, or optically focused so the light source is not  
17 directly visible beyond the property boundaries. Further, lighting shall be  
18 designed and located so that light is not directed at residential units.  
19 Freestanding light fixtures shall be limited to a maximum height of 14 feet.  
20 Documentation shall be provided demonstrating compliance with  
21 applicable Washington State Energy Code requirements.

22 6. Adequacy of Infrastructure and Public Services. As conditioned, the proposal will  
23 be served by adequate and appropriate public infrastructure. At the time of hearing,  
24 preliminary infrastructure design had already been evaluated by the City's Public Works  
25 staff and found to comply with City standards except as modified by the recommended  
conditions of approval (Ex. 1). However, after the hearing, the Applicant submitted a  
Memorandum to the Hearing Examiner with attachments (Ex. 10). The Applicant  
altered the proposed legal descriptions (Ex. 10a) to remove the private access and utility  
easements<sup>2</sup>, stating the plat does not require the easements to be included in the legal  
descriptions. The easements are still shown on the face of the plat (Ex. 2 and 10b). The  
Applicant stated these existing private and utility easements were created by deed and  
should be changed by deed prior to final plat approval. This Decision is conditioned to  
ensure the City's development and preliminary plat standards are met, including the  
requirements for access, stormwater, utilities and the required dedications.

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<sup>2</sup> Ex. 2 parcels A-1 through L-1, respectively.

1 Conditions of approval require the Applicant to submit several studies and design plans.  
2 These documents may already exist as part of the CUP 3-23 record. However, neither  
3 the prior exhibits nor the exhibit list from CUP 3-23 were entered into the record for  
4 this Decision. The staff reports and supplemental materials (Ex. 1, 8b and 9) do not  
5 reference the exhibits Staff reviewed. While the City review is reliant on the prior  
6 review and application material from the CUP 3-23 project, that approval has expired  
7 (Ex. 1, Finding #9 and Ex. 8a, Condition of Approval #3). The conditions as placed on  
8 this Decision ensure compliance with state and city codes while recognizing the  
9 requested documentation may already be available and, if so, was reviewed by the City.

10 Final design for streets, sidewalks, storm drainage facilities, and sewer mains will be  
11 required to meet the City's Design Standards during engineering review and to meet  
12 and implement those standards prior to final plat approval. These facilities will be  
13 reviewed as part of the facility extension, grading, and civil plans to be submitted by the  
14 Applicant. The following more specifically addresses infrastructure and services:

15 A. Water and Sewer Infrastructure. As conditioned, the project will adequately  
16 provide public water and sanitary sewer. As noted in the City's  
17 Supplemental Memo (Ex. 9), the project will take potable water and sanitary  
18 sewer services from the Skagit Public Utility District. The Applicant's  
19 Supplemental Memo (Ex. 10) states that the utility easement changes by the  
20 Skagit PUD will occur via deed before the final plat. The Applicant  
21 provided a Water Plan and Profile (Ex. 2, Sheet W2), Water Notes and  
22 Detail (Ex. 2, Sheet W3), a Sanitary Sewer Plan (Ex. 2, Sheet C6) and Sewer  
23 Details (Ex. C, Sheet C9) as part of the civil plan sets. A condition of  
24 approval will require the Applicant to provide civil plans demonstrating  
25 compliance with the utility standards of BMC 16.40.070 prior to issuance  
of a grading permit. A further condition of approval will require dedications  
to be shown on the face of the preliminary plat pursuant to BMC 16.10.100,  
and the requirements identified in Chapter 16.40 BMC. Finally, a condition  
of approval will require that following preliminary plat approval, all  
improvements and infrastructure required as conditions of this Decision  
shall be constructed or installed. No application for a final plat approval  
shall be accepted until all of the required improvements and infrastructure  
have been completed pursuant to BMC 16.10.110.

21 B. Transportation. As conditioned, the project will be served by adequate  
22 vehicle, pedestrian and transit facilities.

23 Ms. Zimmerman expressed concerns related to traffic resultant from the  
24 project (Ex. 7). The staff's supplemental memo (Ex. 9) states the City's  
25 engineering staff had no significant concerns regarding traffic. They note  
traffic calming and pedestrian safety measures will include crosswalk  
improvements at the South Alder Street intersections with Cedar Street and

1 East Sharon Avenue. The record includes a prior, now expired, CUP  
2 decision related to this site (Ex. 8a) but does not include the prior exhibits  
3 used to arrive at the CUP conditions of approval (Ex. 8b is the prior decision  
4 staff report but none of the June 8, 2023 staff report exhibits were included  
5 in the record for this decision). A condition of approval will require the  
6 Applicant to submit a traffic impact analysis and to implement any required  
7 mitigation measures as required by the City Engineer. The Applicant will  
8 be required to pay transportation impact fees at the time of building permit  
9 issuance.

10 The project site is fronted on the north and the south by Sharon Road East  
11 and Cedar Street. The project will create a single north-south internal  
12 connector road with access to the existing public rights of way on the north  
13 and south. The record and exhibits are conflicting as to what the final road  
14 profile will be. Depending on the exhibit, the access and utility easement  
15 ranges from 30 to 40 feet wide and contains either 9- or 10-foot-wide travel  
16 lanes with curb and gutter and a 5-foot wide sidewalk on one or both sides  
17 of the road (Ex. 2, Sheet C3, Ex. 9 and Ex. 10a).

18 BMC 16.10.100 requires dedications to be shown on the preliminary plat in  
19 accordance with the requirements in chapter 16.40 BMC. BMC 16.40.050  
20 access standards requires all plats to provide adequate to access emergency  
21 vehicles and equipment. All public road rights of ways shall be at least 60  
22 feet wide unless warranted by special physical circumstances (BMC  
23 16.40.050.A.5). Streets must also provide low impact design features such  
24 as bioretention areas, rain gardens, and permeable pavement. The  
25 Supplemental Staff Memo states the project will provide bioretention  
facilities but does not describe these proposed facilities (Ex. 9).

The Burlington Municipal Code allows for the creation of private streets at  
the City's discretion provided six criteria are met (BMC 16.40.050.B).  
Neither the City nor the Applicant attempted to demonstrate compliance  
with the private street criteria in BMC 16.40.050.B or with the design  
standards for private streets and roads in BMC 17.85.140 or with the  
alternative street design standards of BMC 17.85.150. Conditions of  
approval require the Applicant to provide civil plans demonstrating  
compliance with the access standards of BMC 16.40.050, BMC 17.70.135  
and BMC 17.85.140 or 17.85.150. All road design shall also be approved  
by the Burlington Fire Marshal.

The City has requested traffic calming and pedestrian safety measures at the  
intersections of South Alder Street with East Sharon Avenue and with Cedar  
Street. This will include new signage and pavement markers. Sidewalks on  
Alder Street and Cedar Street will be upgraded to provide ADA compliance.

1 The Cedar Street and Alder Street intersection will also feature a solar  
2 powered rapid flashing beacon. Finally, two streetlights will be installed to  
3 illuminate the pedestrian crossing on Cedar Street (Ex. 9). With the  
4 proposed internal sidewalk and the above pedestrian improvements,  
5 adequate provision has been made for pedestrian safety and accessibility.

6 There are two transit stops nearby along Burlington Boulevard. As  
7 conditioned, once the project is completed, there will be a school bus stop  
8 at or near the development. The Applicant will be required to pay traffic  
9 impact fees for each unit at the time of building permit issuance.

10 C. Schools. As conditioned, adequate provisions are made for safe routes to  
11 schools and adequate school capacity exists to service the project. The  
12 project site is located within the Burlington-Edison School District (BESD)  
13 boundary. The staff report (Ex. 1) does not mention schools, however at  
14 hearing Staff testified the BESD has adequate capacity to serve the  
15 development. The Supplement Memo from the City (Ex. 9) states a school  
16 bus stop will be created at or near the project site. Burlington High School  
17 is less than a mile from the project site and is accessible via sidewalk.  
18 Lucille Umbarger Elementary School is about 1.3 miles from the  
19 development and will require bussing. A condition of approval will require  
20 the Applicant to work with the BESD to create a school bus stop location  
21 with adequate pedestrian accessibility.

22 D. Parks and Open Space. Adequate and appropriate provisions are made for  
23 parks and open space. The Project is not subject to any park dedication,  
24 open space, or clustering requirements within the City Code. The project is  
25 across the street from an indoor skating rink and within 1.5 miles of the  
Skagit River Parks Sports Complex and Playfields. Park impact fees are  
required and will be paid at the time of building permit issuance. Each  
townhome will have a back porch to provide open space at the rear of the  
unit. Additionally, the Applicant is required to provide landscaping over a  
minimum of 15% of the gross site area.

E. Police and Fire Protection. Police and fire services will be provided by the  
City of Burlington Police and Fire Departments. The project site is adjacent  
to both police and fire stations. Fire impact fees imposed during building  
permit review will mitigate demand placed on fire services and facilities. A  
condition of approval will require the Applicant to implement all fire and  
life safety requirements identified by the Building Official and Fire  
Marshal. As described in Finding of Fact No. 6B and as a condition of  
approval, prior to issuance of a grading permit, the Applicant shall provide  
civil plans demonstrating compliance with the access standards of BMC

16.40.050 and BMC 17.85.140 or 17.85.150. All road design shall also be approved by the Burlington Fire Marshal.

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2 F. Landscaping. As conditioned, the proposal will provide adequate  
3 landscaping and screening. When the CUP application for CUP 3-23 was  
4 submitted, the project was vested to a prior landscaping code. On May 11,  
5 2023, the Burlington City Council adopted Ordinance 1933 which provided  
6 sweeping amendments to the City’s zoning ordinance. Chapter 17.80 BMC  
7 Landscaping was repealed and replaced with new Chapter 17.81 BMC  
8 Landscaping. CUP 3-23 expired in August 2025. As outlined in Conclusion  
9 of Law No. 3, the plat application vested at the time a complete application  
10 was filed. The preliminary plat is vested to Chapter 17.81 BMC which  
11 requires a minimum of 15% of the gross site area in landscaping (BMC  
Table 17.81.060.C-1). A condition of approval will require the Applicant to  
submit a final landscaping plan compliant with Chapter 17.81 BMC.  
Landscaping shall cover a minimum of 15% of the gross site area (Table  
17.81.060.C-1). Pursuant to BMC 17.81.120.C, all significant trees shall be  
retained on site or replaced in compliance with the replacement rates  
specified in Table 17.81.120.C-1 BMC.

12 G. Stormwater. As conditioned, the proposal will be served by adequate and  
13 appropriate stormwater facilities and drainage ways. The City’s  
14 Supplemental Memo (Ex. 9) stated the Applicant submitted a stormwater  
15 report and stormwater site plan on December 22, 2023 and April 4, 2024 as  
16 part of the CUP 3-23 application review. Drainage plans were also  
17 submitted as part of the current civil set (Ex. 2, pages C7, C8, C10 and C11).  
18 The civil plans in Ex. 2 demonstrate the Applicant intends to use catch  
basins and infiltration trenches onsite to manage stormwater runoff. All  
stormwater runoff from the shared access drive, driveways, roof areas,  
walkways and landscaping will be collected and routed to the infiltration  
trenches along the shared access road for treatment and flow.

19 Unfortunately, the documents submitted for review as part of CUP 3-23  
20 were not submitted into the record for this Decision and the CUP Decision  
21 has since expired. To ensure the project provides for adequate stormwater  
22 management and treatment, a condition of approval requires the Applicant  
23 to demonstrate compliance with the 2019 State Department of Ecology  
24 Stormwater Manual for Western Washington, as amended by Sections 1  
25 through 7 of Appendix 1 of the Western Washington Phase II Municipal  
Stormwater Permit and pursuant to BMC 14.05.090. Stormwater plans shall  
include LID measures. Pursuant to the June 8, 2023 SEPA MDNS  
Mitigation measures, total impervious surface coverage of the proposed  
development shall not exceed 80%.

## CONCLUSIONS OF LAW

### Procedural:

1  
2 1. Authority of Hearing Examiner. Preliminary plat applications are Type III permit  
3 decisions (BMC 16.10.050.B and BMC 14A.05.060.C.5). BMC 14A.05.060.C grants  
4 the Hearing Examiner with the authority to review and make a final decision on Type  
III permit decisions.

### Substantive:

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6 2. Zoning and Comprehensive Plan Designation. The site is zoned MUC-2, a mixed  
7 commercial and multiunit residential zone. Its Comprehensive Plan map designation is  
8 Mixed-Use Commercial.

9 3. Vesting. The preliminary plat application vested to applicable regulations in place  
10 at the time a complete preliminary plat application was submitted as governed by RCW  
58.17.033. A condition of approval requires that those standards are applied to the  
application under review.

11 RCW 58.17.033(1) governs vesting as follows:

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13 *“A proposed division of land ...shall be considered under the subdivision*  
14 *..., and zoning or other land use control ordinances, in effect on the land*  
15 *at the time a fully completed application for preliminary plat approval*  
*of the subdivision..., has been submitted to the appropriate county, city,*  
*or town official.”*

16 Unit lot subdivisions often create an awkward vesting situation because the multifamily  
17 buildings under review are often constructed by the time a complete preliminary plat  
18 application has been submitted. In that circumstance, the Applicant’s building has  
19 vested to the laws governing the permit(s) that authorized the building(s). That vesting  
20 in turn is vested to the preliminary plat application. Further, the decisions made under  
21 the prior permits authorizing the buildings can no longer be challenged or revisited  
22 under doctrines of land use finality. *Habitat Watch v. Skagit Cnty.*, 155 Wn.2d 397, 120  
23 P.3d 56 (2005) (challenge to grading permit amounted to untimely collateral attack of  
24 earlier special use permit, where authorization for grading permit came from special  
25 use permit, whose appeal period had passed, and where sole basis for challenging  
grading permit was that extensions of special use permit were improper); *Chelan Cnty.*  
*v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1(2002); *Wenatchee Sportsmen Ass’n. v. Chelan*  
*Cnty.*, 141 Wn.2d 169, 4 P.3d 123 (2000) (challenge to county's approval of plat  
application based on challenge to density of plat was untimely collateral attack where  
petitioner had not challenged rezone decision establishing allowed density for project  
two years earlier); *see also BD Lawson Partners, LP v. City of Black Diamond*, 165  
Wn. App. 677, 690, 269 P.3d 300 (2011).

1 The end result of double-tiered vesting for unit lot subdivisions involving constructed  
2 buildings is a permit application leaving extremely limited authority for permit review.  
3 Almost all code compliance issues have already been completely resolved and cannot  
4 be revisited. The public is then invited to a public hearing to comment on a project that  
5 has already been locked into place and completely approved so far as their issues are  
6 implicated. This is why unit lot subdivision staff reports are often not accompanied by  
7 the reports that are typically associated with preliminary plat review, e.g. drainage  
8 studies, traffic studies, critical area studies and detailed landscaping plans.

6 The Sharon Townhomes project is a somewhat unusual unit lot application because  
7 there is no constructed multifamily building. To exacerbate matters, the conditional use  
8 permit that authorized the building has expired. Consequently, there is no double-tiered  
9 vesting that benefits the proposal. The proposal must conform to the regulations that  
10 were in effect when a complete preliminary plat application was submitted. Since the  
11 staff report was not accompanied by the studies typically presented for preliminary plat  
12 review, it's unclear if the proposal conforms to all the standards in effect when a  
13 complete application was filed. Staff's recommendation for approval is largely based  
14 upon the findings of the expired conditional use permit decision. That decision was  
15 based upon standards that in some cases have changed significantly since the decision  
16 was issued. The Council's changes to the landscaping standards are specifically  
17 addressed in the conditions of approval. A more generic condition has also been added  
18 requiring that proposal to conform to all vested standards.

14 The preliminary plat application was deemed complete in July 2025, and the  
15 conditional use permit application expired in August 2025. One could argue that at the  
16 time the preliminary plat vested, it vested to the live approved conditional use decision.  
17 However, that vesting scheme was premised upon construction at least commencing  
18 prior to plat expiration. Developers cannot selectively apply vested rights to create new  
19 combinations of development rights. *Cf. East County Reclamation Co. v. Bjornsen*, 105  
20 P.3d 94 (2005). The Applicant of this case was vested to its conditional use permit  
21 decision at the time of preliminary plat application, however that vesting was  
22 contingent upon construction prior to expiration. The Applicant failed to meet that  
23 contingency. The Applicant has thus forfeited any vested rights conferred by the  
24 conditional use permit approval.

21 4. Review Criteria. The Burlington Municipal Code does not contain specific  
22 preliminary plat approval criteria except for compliance with the state subdivision code  
23 (RCW 58.17), a requirement for access and utility dedications (BMC 16.10.100  
24 referencing 16.40 BMC) and compliance with the City's critical areas code (BMC  
25 14.15). Relevant criteria for the preliminary plat application are quoted below in italics  
with corresponding conclusions of law.

**Preliminary Plat Standards:**

**RCW 58.17.110(2):** *A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings 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*

5. Criterion met. As identified in Finding of Fact No. 5 and 6, the proposal as mitigated and conditioned provides for 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. As further determined in Finding of Fact No. 5, as mitigated and conditioned, there are no adverse impacts associated with the proposal. Given the absence of any adverse impacts in conjunction with adequate public facilities, it is concluded that adequate provision is made for the public health, safety and welfare.

(b) *the public use and interest will be served by the platting of such subdivision and dedication.*

6. Criterion met. The proposal promotes the public interest because it implements the purpose of the MUC-2 zone and is consistent with the Comprehensive Plan for the reasons identified in Pages 4-6 of the CUP 3-23 decision (Ex. 8a) and Page 4 of the Supplemental Staff Memo (Ex. 9).

*If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.*

*Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property.*

*The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.*

1 7. Criterion met. As conditioned, the Applicant will be required to meet the dedication  
2 requirements of BMC 16.10.100. Dedications shall be shown on the preliminary plat  
3 in accordance with the requirements identified in Chapter 16.40 BMC. Additionally,  
4 the Applicant will be required to pay impact fees for parks, fire and transportation at  
the time of building permit issuance. No release from damages has been requested from  
other property owners.

## 5 **DECISION**

6 The proposed preliminary plat complies with all applicable review criteria for the  
7 reasons identified above and is approved, subject to the following conditions of  
8 approval:

### 9 General Conditions

- 10 1. This approval shall not be construed to authorize any development or site  
11 modifications beyond those described in the application and shown on the  
12 approved plans. The approved plans shall be the plans and other project  
documents attached to, or referenced in, this decision.
- 13 2. Except as otherwise required by the conditions of approval identified in this  
14 decision and the associated SEPA threshold determination, all work,  
15 construction, and development activities shall conform to the approved plans.  
16 The approved plans shall be the plans and other project documents attached to,  
17 or referenced in, this Decision. Minor modifications necessary to implement  
any changes requested by the Building Official, Fire Marshall, or City Engineer  
are permitted when necessary to ensure compliance with established regulatory  
requirements.
- 18 3. This permit does not authorize the location, design, construction or installation  
19 of any signs. No signs may be installed unless authorized by a sign permit.
- 20 4. The property owner, developer, and all contractors shall be responsible for  
21 complying with all applicable laws and regulations pertaining to erosion control  
22 and water quality, including obtaining a Washington State Department of  
Ecology Construction Storm-Water General Permit. Any additional erosion  
23 control or construction management practices prescribed by the City Engineer  
or Building Official shall be immediately implemented.
- 24 5. The Applicant shall comply with the five mitigation measures of the June 8,  
25 2023 SEPA MDNS.

1 Vesting

- 2
- 3 6. The preliminary plat application must conform to all applicable regulations as
- 4 they were adopted at the time a complete preliminary plat application was filed
- 5 by the Applicant. The plat shall be revised as necessary to meet those vested
- standards if any staff finding of compliance was erroneously based upon
- nonvested standards applied during the prior conditional use permit review.

6 Grading Permit and Site Development

- 7 7. A grading permit is required prior to the beginning of any clearing, filling,
- 8 excavation, building, construction or other site development work.
- 9 8. Prior to the issuance of a grading permit, civil engineering plans shall be
- 10 submitted to, and reviewed by, the City Engineer for compliance with
- 11 applicable stormwater, site development and engineering requirements.
- 12 9. Prior to the issuance of a grading permit, the Applicant shall obtain written
- 13 agreement with the Burlington Edison School District regarding the location of
- 14 a school bus stop to serve the project. Prior to final plat approval, the Applicant
- 15 shall complete any required infrastructure improvements to ensure safe routes
- 16 to school.
- 17 10. Pursuant to the June 8, 2023 SEPA MDNS Mitigation measures, any existing
- 18 septic system or onsite wastewater disposal systems shall be decommissioned
- 19 in accordance with Skagit County Health Department requirements.
- 20 11. Prior to issuance of a grading permit, the Applicant shall provide a stormwater
- 21 management plan<sup>3</sup> demonstrating compliance with the 2019 State Department
- 22 of Ecology Stormwater Manual for Western Washington, as amended by
- Sections 1 through 7 of Appendix 1 of the Western Washington Phase II
- 23 Municipal Stormwater Permit and pursuant to BMC 14.05.090. Stormwater
- 24 plans shall include LID measures. Pursuant to the June 8, 2023 SEPA MDNS
- 25 Mitigation measures, total impervious surface coverage of the proposed
- development shall not exceed 80%.

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<sup>3</sup> The Supplemental Staff Memo (Ex. 9) states a stormwater site plan was submitted on December 22, 2023 and on April 4, 2024. This existing plan, if meeting the code requirements, may satisfy this condition. The stormwater report document was not submitted into the record for this Decision.

- 1 12. Prior to issuance of a grading permit, the Applicant shall provide civil plans  
2 demonstrating compliance with the access standards of BMC 16.40.050, BMC  
3 17.70.135 and BMC 17.85.140 or 17.85.150. All road design shall also be  
4 approved by the Burlington Fire Marshal.
- 5 13. Prior to the issuance of a grading permit, the Applicant shall submit a traffic  
6 impact analysis and further implement any required mitigation measures to  
7 restore level of service as required by the City Engineer including, but not  
8 limited to, the payment of transportation impact fees.
- 9 14. Prior to issuance of a grading permit, the Applicant shall provide civil plans  
10 demonstrating compliance with the utility standards of BMC 16.40.070.
- 11 15. Pursuant to BMC 16.10.100, dedications shall be shown on the preliminary plat  
12 in accordance with the requirements identified in Chapter 16.40 BMC.
- 13 16. No grading permit shall be approved or issued until a final landscaping plan has  
14 been submitted to, and approved by, the Community Development Director.  
15 The final landscaping plan shall demonstrate compliance with Chapter 17.81  
16 BMC. Landscaping shall cover a minimum of 15% of the gross site area (Table  
17 17.81.060.C-1). Pursuant to BMC 17.81.120.C, all significant trees shall be  
18 retained on site or replaced in compliance with the replacement rates specified  
19 in Table 17.81.120.C-1 BMC.
- 20 17. Pursuant to the July 8, 2023 SEPA MDNS Mitigation measures, the crosswalks  
21 at the intersections of East Sharon Avenue and South Alder Street and at Cedar  
22 Street and South Alder Street shall be improved with pavement markings and  
23 signage. The City Engineer shall review and approve the proposed  
24 improvements and verify installation as to the approved civil plans prior to  
25 issuance of final plat.

#### Plat Conditions

- 18 18. This approval shall expire if a fully complete final plat is not submitted within  
19 the five-year timeframe specified by RCW 58.17.140(3)(a). The date of  
20 approval for this decision shall be the date the Hearing Examiner's decision is  
21 signed. A fully complete final plat shall be submitted to the City of Burlington  
22 prior to the expiration of this approval. Except as explicitly modified by this  
23 decision, the final plat shall be consistent with the preliminary plat approved by  
24 the Hearing Examiner. In addition, except as explicitly modified by this  
25 decision, the final plat shall address the conditions required by the Hearing  
Examiner's preliminary plat approval.

- 1 19. Following preliminary plat approval, all improvements and infrastructure  
2 required as conditions of this decision shall be constructed or installed. No  
3 application for a final plat approval shall be accepted until all of the required  
4 improvements and infrastructure have been completed pursuant to BMC  
5 16.10.110.
- 6 20. Prior to final plat approval, the Applicant shall demonstrate compliance with  
7 BMC 14A.05.130 Standards to ensure performance and compliance with  
8 conditions.
- 9 21. A fully complete application for final plat approval shall be submitted prior to  
10 the expiration of the preliminary plat approval. The final plat shall be consistent  
11 with the conditions of this permit and shall fully address the requirements of  
12 Title 16 BMC and Chapter 58.17 RCW. In addition, the final plat shall be  
13 consistent with the following:
- 14 a. An access and utility easement or public right of way dedication shall  
15 encompass the full width of the proposed private street, sidewalks, and  
16 utility corridors.
  - 17 b. Appropriate easements shall be provided wherever utilities cross  
18 property lines.
  - 19 c. A plat note referencing the approved LOMA shall be provided.
  - 20 d. An easement allowing City of Burlington staff and contractors to access  
21 stormwater, fiber optic, and sewer infrastructure and improvements  
22 shall be provided. The easement shall allow city staff and contractors  
23 access for purposes of inspecting, maintaining, repairing, replacing, or  
24 altering sewer, fiber optic, and stormwater improvements and  
25 infrastructure.
22. Final civil engineering as-built drawings shall be submitted to the City Engineer  
for approval prior to final plat approval. No final as-built drawings shall be  
approved until all onsite and offsite improvements including but not limited to  
utilities, infrastructure, sidewalks, traffic calming measures, crosswalks,  
lighting improvements, frontage improvements, and signage required by the  
conditions of this decision, the associated SEPA MDNS, and the Burlington  
Municipal Code have been completed and inspected by City Engineer.
23. No final plat shall be approved until the final civil engineering as built drawings  
have been submitted to, and approved by, the City Engineer.

1 24. Prior to final plat approval, the Applicant shall demonstrate and the City  
2 Engineer shall verify compliance with the Survey Requirements of BMC  
3 16.40.080.

3 Building and Occupancy Conditions

4 25. All the landscaping and landscape plantings shown on the approved  
5 landscaping plans shall be installed prior to approval of a final building permit  
6 or occupancy inspection. The “approved landscaping plan” shall be the  
7 landscaping plan signed by the Community Development Department.

7 26. The landscape irrigation system and all required landscaping shall be installed.  
8 The perimeter landscaping and street frontage landscaping shall be completed  
9 prior to the final occupancy of the final residential building. Other landscaping  
10 requirements may be addressed as individual buildings or dwelling units are  
11 completed, if necessary, to avoid construction impacts.

10 27. The following additional outdoor lighting information shall be submitted with  
11 the Building Permit application. No building permit shall be issued until the  
12 outdoor lighting information has been reviewed and approved by the  
13 Community Development Department.

13 a. Manufacturer’s specifications shall be provided for each proposed  
14 outdoor lighting fixture type.

15 b. All exterior lighting shall be directed downwards and fully hooded,  
16 screened, or optically focused so the light source is not directly visible  
17 beyond the property boundaries.

17 c. Lighting shall be designed and located so that light is not directed at  
18 residential units.

19 d. Freestanding light fixtures shall be limited to a maximum height of 14  
20 feet.

21 e. Documentation shall be provided demonstrating compliance with  
22 applicable Washington State Energy Code requirements.

22 28. All clearing, grading, stormwater improvements, and utilities shall be consistent  
23 with the civil engineering plans approved by the City Engineer. No final  
24 occupancy shall be granted until the civil improvements have been inspected  
25 by the City Engineer.

- 1 29. No final engineering inspection or as-built drawings shall be approved until the  
2 Skagit County Health Department has verified, in writing, that all septic  
3 systems and private wastewater disposal systems have been decommissioned.
- 4 30. No final occupancy or final building permit inspections shall be approved for  
5 any residential unit until documentation has been provided showing the finished  
6 floor elevations of the unit is one foot or more above the base flood elevation.  
7 This documentation can be provided in the form of a letter from a licensed  
8 surveyor. This is a City of Burlington requirement and not a requirement of the  
9 National Flood Insurance Program. Therefore, formal FEMA flood elevation  
10 certificates are *not* required.
- 11 31. No final occupancy or final building permit inspection shall be approved until  
12 the civil engineering as-built drawings have been submitted to, and approved  
13 by, the City Engineer. No as-built drawings will be approved until the City  
14 Engineer has inspected the site and verified compliance with the approved civil  
15 plans, the conditions of the approved grading permit, and the conditions of this  
16 decision for all infrastructure shown on the approved civil plans, including but  
17 not limited to fiber optic conduit and vaults, public and private street  
18 improvements, pedestrian access and crosswalk improvements, utilities, and  
19 stormwater management improvements.
- 20 32. Prior to final plat approval, all fire and life safety requirements identified by the  
21 Building Official and Fire Marshal shall be fully addressed.
- 22 33. No final occupancy shall be granted until all impact fees have been paid for the  
23 unit under building permit review.

24 DATED this 15<sup>th</sup> day of January 2026.

25 

Emily Terrell  
City of Burlington Hearing Examiner Pro Tem

### **Appeal Right and Valuation Notices**

This decision is final subject to appeal to superior court as governed by Chapter 36.70C RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.