

**DECISION OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of

James Laughlin

SUB16228

For a Preliminary Subdivision
and HDDP Approval

Introduction

James Laughlin seeks preliminary subdivision approval for a 48 lot preliminary subdivision of a 1.52-acre parcel for town homes at 201 Madrona Way (Madrona Townhomes).

Hearing: An open record public hearing was held on March 14, 2013. The record remained open until March 19th for the addition of a report from the Bainbridge Island Fire Department regarding the requirement for a fire hydrant. Jennifer Sutton, Special Project Planner, and Janelle Hitch, PE, represented the Director, Department of Community Development. The applicant represented himself.

Code References: All references to sections in this decision are to the Bainbridge Island Municipal Code, unless otherwise indicated.

After due consideration of all the evidence in the record, testimony and written submittals, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner on the application.

Findings

1. James Loughlin, hereafter "Applicant", submitted a Preliminary Subdivision application on August 9, 2012. The application sought approval of the division of a 1.52-acre parcel at 201 Madrona Way into 48 townhouse lots ("Madrona Townhomes Subdivision") as a Housing Design Demonstration Project (HDDP).
2. The subject site has frontage on the south side of Madrona Way (at times referred to as Madrona Way NE in the record) and lies to the east of Madison Avenue North. Except for an unused mobile home, the property is vacant. Three private access roads, 1st, 2nd, and 3rd Streets, cross it. The property measures 122 feet deep. It slopes gently

from north to south/southeast. A public pedestrian right of way lies along its western boundary. There are some trees and other vegetation, largely along the western boundary of the site and in the northwest portion. There is no critical area on-site and the site is not within the Shoreline District.

3. The Comprehensive Plan and zoning designations for the site are Mixed Use Town Center (MUTC)/Central Core Overlay (Core) District. Those designations continue to the north, south and west. To the east the property is in an area designated MUTC/Ericksen Avenue Overlay District. Development surrounding to the north, east and west is multifamily residential, commercial and mixed use. Immediately to the south is the Islander Mobile Home Park, which utilizes the private access roads crossing the subject site.

THE PROPOSAL

4. Applicant proposes 48 lots, ranging from 816 to 1,634 square feet in area, aligned along the three private roadways. The actual building designs will be determined later but could vary from one to three stories in height. The design would be intended to have the appearance of a multifamily development. Each home would have at least one parking space and many would have room for a second space in the driveways. Some larger ones could have additional parking within or underneath the unit.

5. Because single family subdivisions are not permitted within in the Core District, approval of the HDDP is required for approval of this preliminary subdivision for single family development. The applicant proposes to qualify as a Tier 1 Housing HDDP for which seven points are required. The proposal achieves ten points for diversity by designating five lots for affordable housing, as defined by Section 18.36.030, for fifty years. A condition of the SEPA Mitigated Determination of Nonsignificance (MDNS) requires documentation showing that the units will be maintained and managed as affordable units.

6. The maximum floor area allowed for each residence is 1,600 square feet for Tier 1 Housing HDDP. Table 2.16.020Q-1.

7. An HDDP proposal may include the modification of the development standards in Chapters 17 and 18. The proposal utilizes the flexible design standard incentives in Section 2.16.020Q6 as to minimum lot size and dimensions, setbacks, and open space provisions. Lot sizes may be reduced below 5,000 square feet with the approval of the Kitsap County health district, which approval has been given. The Core District's minimum lot dimension is 50 feet for width and depth and most of the proposed lots are 18 feet wide. The regular required interior setback is 10 feet and this townhouse proposal would have no building to building setbacks. The regular building to exterior subdivision boundary setback is 15 feet and five feet is proposed. The regular setback from private or public roads (except for arterials and collectors) is 15 feet and ten feet is proposed. The designated open space requirement is eliminated for the HDDP and no designated common open space is proposed.

8. The proposed utilities plan has been reviewed. Water and sewer lines would be upgraded. Stormwater would be collected from roofs, roads and parking areas, which

will have pervious surfaces, and be conveyed to a new drainage line to a catch basin at City Hall. Conditions are required pursuant to SEPA and are recommended (Numbers 18 and 24) to assure that the storm drainage and water and sewer facilities meet City and other regulatory standards. The Kitsap Public Health District gave preliminary approval to the plans for water supply and public sewer.

9. Madrona Way will be reconstructed largely in its current configuration with the addition of a five-foot wide sidewalk on one side extending to Madison Avenue N and new parking spaces.

10. The Floor Area Ratio for residential development in the Core District is .4 and maximum is 1.0. The preliminary subdivision application indicates that 550 square feet is allocated to each lot. A recommended condition (No. 12) addresses keeping track of residential FAR used as development proceeds and describes how additional FAR will have to be purchased or transferred.

11. Applicant proposes development in three phases. Street improvements would be completed in the first phase. A condition is recommended (Number 20) making that a requirement and that phased installation of utilities be subject to approval of the plat utility permit for the project.

VEHICULAR AND PEDESTRIAN ACCESS AND PARKING

12. Madrona Way is a local road with pavement width of about 19 feet. Residents of the mobile home park and local residents and occupants of development on the north side of Madrona described the difficulty of turning in and out of its intersection with Madison Avenue North and expressed concern about adding additional traffic on the street.

13. The City commissioned a traffic impact analysis (TIP) to assess the degree of impact the new development would have on the traffic system. The TIP showed the proposed development is estimated to generate a total of 209 vehicle trips on an average weekday, after the 25 percent trip reduction for location close to the ferry, shopping and other amenities. The morning peak hour generation is estimated to be 16 vehicles per hour, two inbound and 14 outbound, and the PM peak total is estimated to be 19 per hour with twelve inbound and seven outbound. The intersection currently has a Level of Service (LOS) B during the PM peak westbound, D eastbound, and A both north and south bound. In 2017, with expected growth of existing traffic plus the traffic from the proposed development, westbound is estimated to be an LOS C and eastbound an LOS D. The increase in delay for motorists east or westbound on Madrona Way is estimated to be approximately one second during the PM peak hour. LOS D has been determined by the City to be an acceptable LOS.

14. The City's Development Engineer anticipates that once residents become accustomed to the traffic patterns, during peak hours they will access Madrona Way by turning right from Madison Avenue North, rather than attempting a left turn.

15. A Certificate of Concurrency for the development was issued reflecting the determination by the City Engineer that the capacity of transportation facilities affected by the proposal is equal to or greater than the capacity required to maintain the level of service standard and reserving transportation facilities for the volumes shown in the TIP.

16. The proposal, as modified, provides the 48 parking spaces to satisfy the one space per unit requirement allowed within one-half mile of the ferry terminal and the Code requires six guest parking spaces. The Applicant indicates that the proposal is for a total of 76 spaces on-site. The plans show six spaces in easements for parking on the site plus seven guest parking spaces in the Madrona Way right of way for a total of 13 guest spaces. Section 18.15.020D3 allows the additional spaces to be located off-site within 1,000 feet. Many of the units have room for a second car in the driveways. Applicant testified that, depending on eventual design, several of the larger units could have additional parking located underneath the structure not included in the 76 total.

17. Area residents and other occupants expressed concern about whether the proposed development would provide sufficient parking to avoid spillover into the mobile home park, for instance, and described inadequacy of parking in the area. To address this, the MDNS requires at least 10 guest spaces unless there are lots that provide three or more spaces. Those lots would be subtracted from the total used for the ratio of one space for every five units. The on-street spaces would provide additional supply for the area and, though they would not solve the area's parking shortage, the situation would not be exacerbated by the new development in the opinion of the Department. The opinion was mixed as to whether the new spaces should or would be available for overnight parking.

18. Requests were made by the Association of Bainbridge Communities and others to require the project to address the Goals and Policies of the Non-Motorized Transportation Plan and other Comprehensive Plan policies by providing an access path through the site and the mobile home park for a shortcut to the ferry and Winslow Way and by formalizing and maintaining an existing path connecting Madrona to Ericksen Avenue through other properties. Because the proposed paths involve the use of property not subject to this subdivision proposal, the City does not have the authority to require the connections through this preliminary subdivision approval process.

UTILITIES AND PUBLIC SERVICES

19. The City issued a Non-binding Commitment for Water and Sewer System Capacity determining that the property is within the City's service areas and that the City currently has sufficient water and sewer capacity for the proposed development.

20. The Bainbridge Island Fire Department does not require a fire hydrant at the corner of Madrona and 3rd Street but the addition of a fire hydrant at that location would improve the department's response capabilities in the neighborhood. Exhibit 37.

21. The Department of Public Works and the city engineer have reviewed the proposal for consistency with the City's Design and Construction Standards and Specifications and state and federal regulations and have determined that the proposal is in conformance with those that are applicable at this stage and recommended conditions to assure that the subdivision will conform to all applicable standards and regulations.

22. The payment of school impact fees pursuant to Chapter 15.28 is not currently required. A condition (Number 10) is proposed to require fees if the fees are in effect at the time of the issuance of building permits.

23. Kitsap Transit did not recommend any new transit stops relating to this proposal.

COMPREHENSIVE PLAN POLICIES

24. The proposed preliminary subdivision is consistent with the designation in the Comprehensive Plan's land use map for the Mixed Use Town Center (MUTC) which is intended to have a "strong residential component to encourage a lively community during the day and night." LU 1.2 Winslow Goal 1. The area is to have diversity in types of housing, along with other uses. W1.2. In the Central Core Overlay District, residential uses are encouraged. W2.2. The proposal for this high-density development with opportunity for fee-simple ownership along with some affordable homes would contribute to the diversity of housing types sought by this goal and would support the population growth strategy in the Winslow Master Plan.

25. The Housing element policies encourage economic diversity (H1.2), and housing that will remain affordable over time. H4.1. The proposal responds to these policies by offering not only the affordable units, which will remain so for 50 years, but very small lots and modest home sizes that would be expected to be more affordable than units of a more standard size.

26. The goals and policies of the Winslow Master Plan (WMP 2.1) encourage downtown living, efficient use of land and creation of less expensive housing to increase diversity. WMP 2-6.1 that supports the use of FARs and development standards to encourage a diversity of housing sizes and types resulted in regulations that allowed the proposal which will use the land efficiently and adds to the variety of housing sizes and types through the opportunity for fee simple ownership of the individual properties and the small lots and floor areas.

HOUSING DESIGN DEMONSTRATION PROJECTS ANALYSIS

27. The proposed Tier 1 HDDP is to be evaluated against the approval criteria in Section 2.16.020Q5. First, it must qualify as a Tier 1 Housing HDDP by scoring at least seven housing diversity points. The dedication of ten percent or five units in this case with a proposal to ensure continuing affordability for 50 years gave the project ten points.

28. The proposal must demonstrate how utilizing the flexible design standard incentives is needed to achieve the desired innovative design and meet the goals of the chapter. The proposal utilizes that flexibility as to minimum lot size and dimensions, setbacks and open space resulting in the appearance of a traditional multifamily development but with greater setbacks than a standard multifamily development under the Core District standards to harmonize with the character of the area. The record satisfies the requirement for this showing.

29. The resulting project must be harmonious in design and appearance with the intended character and quality of development in its vicinity and with the physical characteristics of the site. The surrounding development is a mix of multifamily, commercial and mixed use and of architectural styles. Its design will resemble a multifamily development that will fit in this mixed area. The design, orienting each grouping along existing roads, also will be in harmony with the site characteristics. Conditions are recommended to assure consistency with design guidelines and retention or replacement of trees along the western boundary.

30. While, as addressed above, the proposed project would add traffic to this small street, the number of trips is not large enough to adversely impact existing public service levels in that the only change in LOS resulting from the new trips combined with overall traffic growth results is to a level determined to be acceptable in this urban area. The proposed provision of parking on- and off-site was shown to be adequate and meets the Code's requirements as interpreted by the Director. The non-binding commitments as to capacity shows there would be no adverse effect on water and sewer.

31. The project is required to comply with all other Code requirements unless modified through this process. With the approved modifications and SEPA and recommended conditions it does comply.

32. The phases of the project must provide adequate infrastructure to be able to stand alone if other phases are not completed. The proposal includes improvements in the first phase necessary to stand alone and a condition (Number 20) is recommended to assure this.

33. The proposal must include sufficient affordable housing to meet diversity standards. The Director has determined that the five units proposed meets the standard and has recommended a condition to assure this consistency.

PROCEDURAL COMPLIANCE

34. The City's responsible official issued a MDNS on January 17, 2013, which was not appealed. The conditions of the MDNS are intended to be listed as conditions of subdivision approval.

35. Notice of the public hearing was published in the official newspaper on February 22, 2013 and posted in the official posting places and on the subject property and mailed to the applicant and to the addresses within 300 ft. of the subject property as required by Section 2.16.020K6. Numerous public comments and a request for a traffic study signed by almost fifty people were received.

36. The requirements that must be met for preliminary subdivision approval are set out in Sections 2.16.125H and 17.12.040 and RCW 58.17.110. The approval criteria for an HDDP are found in Section 2.16.020Q5.

37. The Hearing Examiner is authorized by Section 2.16.125 to hold a public hearing and make a decision on a preliminary subdivision application.

Conclusions

1. The Hearing Examiner has jurisdiction to hear and make a decision on this application.
2. Notice satisfied the requirements of Section 2.16.020K.
3. The findings show that the approval criteria of Section 2.16.020Q5 are satisfied by this application in that:
 - A. It received the necessary score for housing diversity;

- B. Relief from specific development standards was shown to be needed to achieve the design and meet the goals for dense and affordable housing;
 - C. It will be in harmony with the character and quality of development in the vicinity;
 - D. It will not adversely affect public services including availability and quality of water and sewer and transportation, at the level of service defined as acceptable;
 - E. As modified through this process and conditioned as recommended, it complies with all other Code provisions;
 - F. Phases will contain adequate infrastructure to stand alone; and
 - G. The project will meet housing diversity standards.
4. The findings show that the general residential subdivision design standards of Section 17.12.040 are met in that:
- A. Through use of the flexible design standards as modified by the HDDP process, the plat complies with requirements of Title 18; the plat is or is required by recommended condition (Number 30) to comply with RCW Title 56;
 - B. The lots (home sites) are appropriately located to meet the flexible lot design standards as modified through the HDDP process;
 - C. The reconstruction of Madrona Way with a new sidewalk will be done in accordance with the City's Design and Construction Standards and Specifications (Conditions Numbers 18-21) and will not be larger than the minimum required to meet these standards and will maintain its existing character; conditions (Nos. 18 and 22) will assure proper location of mailboxes and signage;
 - D. Provision for pedestrians to and from the site will be provided through the new sidewalk and the maintenance of the existing public easement along the west side of the site;
 - E. The project will provide adequate amenities for each phase to stand alone (Condition No. 30.)
5. The proposal satisfies the decision criteria of Section 2.16.125H for preliminary long subdivisions as well in that:
- A. The applicable subdivision development standards of Title 17 are met as concluded above;
 - B. Appropriate provisions have been made for the public health, safety and general welfare and public use and interest including those listed in RCW 58.17.110. The findings show that the preliminary subdivision is not required to provide any specific common open spaces but has made appropriate provision for drainage, adequate streets and sidewalks, for sanitary waste, and for schools through the condition requiring payment of impact fees if reinstated.

C. The preliminary subdivision has been prepared consistent with the requirements of the flexible lot design process with appropriate modifications for a HDDP.

D. The findings show that the city engineer has determined that preliminary plans demonstrate that the subdivision conforms to regulations concerning drainage, will not cause undue burden on the drainage basin or water quality, the streets and pedestrian ways are properly coordinated with other streets and are adequate to accommodate the traffic anticipated to be generated by the new units, there is adequate capacity in the water and sewer system to serve the subdivision and those services are available at the site, and the subdivision conforms to subdivision chapter requirements and construction standards and specifications or that with conditions of approval recommended will do so.

E. With the recommended conditions, the preliminary plat will comply with applicable provisions of the Bainbridge Island Municipal Code, Chapters 58.17 and 36.70A RCW, and other state and federal regulations.

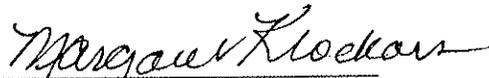
F. The proposed subdivision, with the recommended conditions, will be consistent with the Comprehensive Plan in that it will provide provide high density residential development within the downtown area and thereby promote a vibrant, lively downtown but day and night. Its provision of some units designated for affordable housing and small lots and opportunity for small floor areas keeping the potential cost low will add to the diversity of housing types available in this area.

6. As the findings and conclusions show that the public use and interest would be served by the platting of the proposed subdivision with approval subject to the recommended conditions, the application should be conditionally approved.

Decision

The proposed preliminary subdivision and HDDP is approved subject to the conditions listed in Appendix A below.

Entered this 26 th day of March 2013.



Margaret Klockars
City of Bainbridge Island
Hearing Examiner *pro tem*

Concerning Further Review

This decision is final unless, within 21 days after its issuance, a person with standing appeals the decision to the Kitsap County Superior Court. To be timely a petition for review must be filed within the 21-day appeal period. (See RCW Ch. 36.70).

APPENDIX A

SEPA Conditions:

1. To avoid impacts to archaeological resources, the contractor is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Department of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.
2. All construction activities are subject to the noise regulations in BIMC Chapter 16.16.
3. All outdoor lighting shall comply with BIMC Chapter 15.34.
4. A Temporary Erosion and Sedimentation Control Plan (TESCP) and Stormwater Pollution Prevention Plan (SWPPP) are required prior to building and/ or civil construction activities. Stormwater quality treatment, erosion and sedimentation control shall be designed in accordance with BIMC Chapter 15.20. The TESCP shall include off-street accommodation for construction vehicle parking.
5. A guest parking space ratio of *1 guest parking space for every 5 residential units*, or 10 guest parking spaces, will be required for the subdivision. The final subdivision application shall clearly show compliance with this requirement. This ratio can be accomplished for the Madrona Townhomes development in two different ways:
 - Providing 10 guest parking spaces within the development, where 6 guest parking spaces are currently shown. This would likely result in the subdivision losing one or two lots; OR
 - If a lot/ unit provides three or more spaces then that unit can be subtracted from the total residential units used in the ratio. For example, if 18 units will provide a one-car garage plus a driveway wide enough for 2 parking spaces,

then 30 lot/residential units would be used in the guest parking ratio. Total guest parking spaces required within the development would be reduced to 6.

6. The trees along the western boundary of the subdivision are on the property line between the right-of-way and the subject property. To protect the trees along the property line, the applicant shall submit a tree protection plan, meeting the requirements of BIMC Section 18.15.010.C.3, and prior to construction near the trees. This includes any utility work along the western side of the subject property, and construction of the homes on lots 1 and 3-7. Should removal of any of those trees be unavoidable, and the City concurs, then the applicant will replace the tree at a 3:1 ratio.
7. The final plat shall show the required 5 lots to be designated for affordable housing, pursuant to BIMC Section 2.16.020.Q.4.a. The lots shall remain as affordable housing for 50 years. Building permit applications for the affordable homes shall include documentation demonstrating how the long-term affordability of the lots will be managed. An example would be the options described in the Housing Resources Board memorandum, submitted by the applicant to the City on September 12, 2012. Should the subdivision be constructed in phases, a proportional amount of building permits for affordable units shall be issued and have final inspection at or before the market rate units.

Non-SEPA Conditions

8. Except for modifications reflecting compliance with these conditions of approval, the final plan application and completed development shall substantially conform to the preliminary subdivision survey drawings date stamped November 7, 2012 (pages 1, 2, 5, and 7-9) and September 12, 2012 (pages 3, 4 and 6) and civil drawings received February 7, 2013.
9. Prior to any construction activities, the appropriate permits, including but not limited to right-of-way permits and license agreements, plat utility, road approach permits, clearing, grading, and building permits, shall be obtained from the City.
10. If a school impact fee is in effect at the time of building permit issuance, it shall be the responsibility of an applicant constructing the residential unit to pay the school impact fee (BIMC Chapter 15.28).
11. The maximum floor area allowed for each residence is 1,600 square feet.
12. Pursuant to BIMC Table 18.12.020, each resultant lot is assigned 550 square feet of base residential floor area ratio (FAR), as shown on page 7 of the survey drawings, for a total of 26,411 square feet. A total of 66,028 square feet of maximum residential FAR is available to the development. The applicant for construction of a residence on each of the lots shall obtain bonus FAR should the floor area exceed the share of the base floor area depicted on the plat. That bonus

FAR shall be purchased through the City's bonus FAR program or obtained through a transfer prior to building permit issuance. As building permits for the units are submitted, the owner and the City shall keep track of total residential FAR for the Madrona Townhome development, so that the maximum residential FAR is not exceeded.

13. The Department of Planning and Community Development shall review the building permits for residences for consistency with applicable General and Central Core guidelines contained in the Design Guidelines for the Mixed Use Town Center and High School Road Zoning Districts, BIMC Section 18.18.030.
14. Street trees shall be planted along the projects Madrona Way frontage at 30-foot intervals, consistent with the Mixed Use Town Center- Central Core Design Guidelines. Details about integrating the street trees (i.e. use of tree grates) shall be shown on the plat utility permit civil plans.
15. The building setbacks shall be noted on the final subdivision.

Building to building:	Minimum 0feet*
Building to subdivision boundary:	Minimum 5 feet*
Building to right-of-way & private access	Minimum 10 feet

*Subject to Building Official and Fire Marshal building permit approval.

16. As a Tier 1 Housing Design Demonstration Project, the development is eligible to achieve the maximum building height of 45 feet, as defined in BIMC Table 18.12.020-3.
17. During construction, the applicant shall notify any properties affected by road closure or utility disruption at least 5 days ahead of the disruption.
18. Civil construction plans for all roads, storm drainage facilities, sanitary sewer and water facilities, and appurtenances shall be prepared by a civil engineer licensed in the State of Washington and shall be submitted to the City for review and approval. No building permits shall be issued and no construction shall be started prior to plan approval.
19. Madrona Way shall have half-street improvement, including a 12-foot driving lane, curb and gutter, and 5 foot sidewalk. Street improvements will be along the entire frontage of the subject property and extend westerly to the corner of Madrona Way and Madison Avenue in substantial conformance with the preliminary civil engineering plan dated February 4, 2013. All internal streets shall remain private. All improvements will be subject to the approval of a Plat Utility permit for the project, which will be completed to satisfaction of the City Engineer. The final subdivision application shall not be accepted or approved and no construction shall commence prior to Plat Utility permit approval.
20. If a phasing plan is implemented, all public street improvements shall be completed in the first phase of building development. Phased installation of public and private utilities will be subject to the approval of Plat Utility permit for

the project, which will be completed to the satisfaction of the City Engineer.

21. ADA compliant ramps and signing is required on sidewalks and parking stalls to the satisfaction of the City Engineer.
22. The three ingress/egress locations indicated on the site plan shall be a minimum of 24 feet wide according to the City of Bainbridge Island's Municipal Code Section 18.15.020.J entitled *Parking and Loading*.
23. In accordance with BIMC Chapters 15.20 and 15.21, the site is required to comply with all of the minimum requirements for stormwater quality and control. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of occupancy permits for this development, the person or persons holding title to the subject property for which the storm drainage facilities are required shall record a declaration of covenant that guarantees the City that the system will be properly maintained. Wording must be included in the covenant that will allow the City to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him/ her a reasonable time to do the necessary work. Should City forces be required to do the work, the owner will be billed the maximum amount allowed by law.
24. The site is greater than one acre in size therefore prior to construction activities the applicant shall apply for a Construction Stormwater General Permit thru the WA State Dept. of Ecology.
25. The project received a non-binding commitment for water and sewer service; however, a binding commitment for water and sewer service shall be issued prior to the issuance of the Plat Utility permit.
26. All of the proposed sanitary sewer mains will be dedicated to the City. The mains will be conveyed to the city with a Warranty Bill of Sale and will be located in a minimum 15-foot wide easement benefiting the City with access and maintenance rights.
27. All lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes along with all other applicable survey provisions.
28. A plat certificate shall be provided with the final plat application.
29. The relevant portions of Conditions 1-7, 9-13, 15 and 16 shall be listed on the face of the final plat survey.
30. The applicant shall comply with the applicable requirements for final subdivision and recording as provided in RCW Title 58.