



NOTICE OF DECISION

DATE OF NOTICE OF DECISION: August 29, 2024

APPLICANT: Silver Hawk Partners, LLLP

PROJECT LOCATION: 0 Labounty Drive, Ferndale WA 98248
Parcel Number: 3902333443050000

5094 Labounty Drive, Ferndale WA 98248
Parcel Number: 3902333372320000

PROJECT DESCRIPTION: The proposal comprises 246 multifamily units in eight buildings, 50 townhouse units in 14 buildings, and 14 live/work units in four buildings. Additionally, there's a 4,200 square-foot commercial building, a large commercial pad, and a community building, totaling 28 buildings. The project includes 515 parking stalls and improvements such as stormwater management, utilities, roadways, landscaping, critical areas and open space.

HEARING EXAMINER'S DECISION: Approved Planned Unit Development (PUD) and Variance permit subject to conditions of approval.

DATE OF DECISION: August 28, 2024

APPEAL PERIOD: Information related to requests for reconsideration and/or appeals by parties of record may be found in Sections 14.11.060 - 14.11.100 of the Ferndale Municipal Code.

CONTACT: Jesse Ashbaugh, Associate Planner
P.O. Box 936
Ferndale, WA 98248
(360) 685-2368

The Hearing Examiner made their decision after consideration of written comments and verbal testimony presented at the public hearing; and the recommendations of city staff as presented in the staff report.

The Hearing Examiner based its recommendation on the Findings of Fact and Conditions of Approval contained on the following pages.

FINDINGS OF FACT

See full Hearing Examiner Decision attached (Exhibit 1) with findings of fact.

CONDITIONS OF APPROVAL

See full Hearing Examiner Decision attached (Exhibit 1) with conditions of approval.

CC:

Jesse Ashbaugh, Associate Planner
City of Ferndale

Kevin Renz, Director of Public Works
City of Ferndale

AVT Consulting, LLC
Ali Taysi
Jack Bloss
1708 F St.
Bellingham WA 98225

Walden Haines
PO Box 30072
Bellingham WA 98228

File:
24001-PUD, 24001-VAR, 24002-SE

CITY OF FERNDALE HEARING EXAMINER

<i>re:</i> The application by <i>Silver Hawk Partners, LLLP</i> for a Planned Unit Development and Variance	24001 PUD 24002 SE 24001 VAR
<i>Harrington Place</i>	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The applicant, Silver Hawk Partners, LLLP, has applied for a preliminary plat concurrent with a PUD application to be constructed in four phases of construction and two phases of wetland mitigation. The applicant is proposing 246 multifamily units in eight buildings, 50 townhouse units in 14 buildings, and 14 live/work units in four buildings. Additionally, in the proposal there is a 4,200 square-foot commercial building, a large commercial pad, and a community building, and 515 parking stalls as well as improvements like stormwater management, utilities, roadways, landscaping, and open space. The applicant is also requesting to vary from parking layout and loading requirements set forth in FMC Chapter 18.76.

Decision: The Planned Unit Development Permit with a Preliminary Plat, and Variance, are granted, subject to conditions of approval.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

FINDINGS OF FACT**I.**

Applicant: Silver Hawk Partners, LLLP

Agent: Jack Bloss
AVT Consulting, LLC

Property Address: 5094 Labounty Dr. / 0 Labounty Dr.

Assessor's Parcel Nos. 3902333372320000 / 3902333443050000

Zone: Residential Multifamily Medium Zone (RMM) / General Business (GB)

Primary Authorizing Ordinances

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management Act
 - RCW 36.70B, Local Project Review
 - RCW 43.21C, State Environmental Policy Act (SEPA)
- Washington Administrative Code (WAC) Chapter 197-11, SEPA Rules
- Ferndale Municipal Code (FMC) 1.12, Enforcement
 - FMC Title 14, Development Review and Application Procedures
 - FMC 14.05.030, Hearing Examiner
 - FMC 14.09, Review and approval processes
 - FMC 14.15, Public Notices
 - FMC 14.17, Procedural Rules for The City of Ferndale Hearings Examiner
 - FMC, Title 16, Environmental Policy and Critical Areas Ordinance
 - FMC, Title 17, Subdivisions
 - FMC 17.24, Final Plats
 - FMC, Title 18, Zoning Ordinance
 - FMC 18.12.180, Variance Procedures
 - FMC 18.35, Residential Multifamily (RMM)
 - FMC 18.49, General Business Zone (GB)
 - FMC 18.69, Planned Unit Development (PUD)
 - FMC 18.74, Ferndale Landscape Standards
 - FMC 18.76, Parking
 - FMC, Title 19, Development Standards
- City of Ferndale Comprehensive Plan, adopted June 2016

Legal Notices:

- Notice of Application and SEPA, May 8, 2024
- Affidavit of Publication SEPA, May 8, 2024
- Affidavit of Posted on site SEPA, May 7, 2024
- Affidavit of Posted City Hall & Library and mailings SEPA, May 7, 2024
- Notice of Public Hearing, August 7, 2024
- Affidavit of Publication of Notice of Public Hearing, August 7, 2024
- Affidavit of Posted on site Notice of Public Hearing, August 5, 2024
- Affidavit Posted City Hall & Library and mailings Notice of Public Hearing, August 7, 2024

Hearing Date: August 23 and August 26, 2024

Parties Testifying at Hearing:

Jesse Ashbaugh, Assistant Planner
City of Ferndale
P.O. Box 936/2095 Main St.
Ferndale, WA 98248

Kevin Renz, Director of Public Works
City of Ferndale
P.O. Box 936/2095 Main St.
Ferndale, WA 98248

Ali Taysi
AVT Consulting, LLC
1708 F St.
Bellingham, WA 98225

Admitted Exhibits

- 1** Master Land Use Cover Sheet, dated January 19, 2024
 - 1-1 Planned Unit Development Application Form, dated January 19, 2024
 - 1-2 Receipt, dated April 17, 2023
 - 1-3 Receipt, dated January 26, 2024
 - 1-4 Master Land Use Cover Sheet, January 26, 2024
 - 1-5 Variance Application, dated January 24, 2024
 - 1-6 Receipt, dated January 26, 2024
- 2** Floor Plans and Elevations, dated January 19, 2024
- 3** Preliminary Stormwater Site Plan, dated January 19, 2024
- 4** USPS Approval, dated January 19, 2024
- 5** SSC Approval, dated January 19, 2024
- 6** Staff Support for Variance Requests, dated January 19, 2024
- 7** Stormwater Infiltration Assessment, dated January 19, 2024
- 8** Record of Survey, dated January 19, 2024
- 9** Project Narrative - Variance, dated January 24, 2024
- 10** Neighborhood Meeting Notes, dated February 19, 2024
- 11** Neighborhood Meeting Audio Recording, dated February 19, 2024
- 12** Approved Critical Areas Assessment, dated February 27, 2024
- 13** Aerial Map
- 14** Comprehensive Plan Map
- 15** City of Ferndale Critical Areas Map
- 16** Zoning Map
- 17** Cultural Resources Report, dated January 19, 2024
- 18** Mitigation Plan, dated January 19, 2024
- 19** Landscape Plan Revised, dated April 29, 2024
- 20** Phasing Plan, dated April 29, 2024
- 21** Request for Additional Information Response Letter, dated April 29, 2024
- 22** Kimley Horn Traffic Impact Analysis, dated May 01, 2024
- 23** SEPA Checklist, dated January 19, 2024

- 24** Notice of Application and Notice of Intent, dated May 02, 2024
 - 24-1 Affidavit of Mailing and Posting City Hall and Library, dated May 07, 2024
 - 24-2 Affidavit of Posting On-site, dated May 07, 2024
 - 24-3 Affidavit of Publication Ferndale Record, dated May 08, 2024
- 25** Comment #1 SEPA – Lummi Nation, dated May 07, 2024
- 26** Comment #2 SEPA – WTA, dated May 10, 2024
- 27** Comment #3 SEPA – Whatcom County, dated May 16, 2024
- 28** Comment #4 SEPA – Hickock, dated May 21, 2024
- 29** Comment #4 SEPA – Applicant Response, dated June 3, 2024
- 30** Comment #5 SEPA – WSDOT, dated May 22, 2024
- 31** Comment #5 SEPA – Kimley Horn Response, dated May 22, 2024
- 32** Applicant email correspondence with WTA, dated June 03, 2024
- 33** SEPA Checklist Revised, dated June 04, 2024
- 34** SEPA Comment Response Letter, dated June 03, 2024
- 35** MDNS, dated July 17, 2024
- 36** Plat Map Revised, dated June 03, 2024
- 37** Project Narrative Revised, dated June 03, 2024
- 38** Site Plan Revised, dated June 03, 2024
- 39** Notice of Public Hearing, dated August 07, 2024
 - 39-1 Affidavit of Mailing and Posting City Hall and Library, dated August 05, 2024
 - 39-2 Affidavit of Posting On-site, dated August 05, 2024
 - 39-3 Affidavit of Publication Ferndale Record, dated August 07, 2024
- 40** Draft CC&R's, dated January 19, 2024
- 41** Staff Report, dated August 16, 2024
- 42** Staff Report Revised, dated August 23, 2024
- 43** Comment #1 Haines, dated August 22, 2024

II.

The applicant, Silver Hawk Partners, LLLP, is proposing 246 multifamily units in eight buildings, 50 townhouse units in 14 buildings, and 14 live/work units in four buildings. Additionally, in the proposal there is a 4,200 square-foot commercial building, a large commercial pad, and a community building, and 515 parking stalls as well as improvements like stormwater management, utilities, roadways, landscaping, and open space.

Additionally, the applicant is requesting to vary from parking layout and loading requirements set forth in Chapter 18.76. The project proposes dimensions of 8.5 feet x 17 feet, 8.5 feet x 19 feet, and 8 feet x 22 feet for different surface parking stalls; and a width for driveway aisles for 90-degree parking to be 24 feet.

III.

FMC 14.17.060 and .170 grants parties the right to object to evidence and for the Hearing Examiner to rule on such objections. In the case at hand, with full knowledge of the

evidence being admitted by the Hearing Examiner, no objection was made by any party to any of the exhibits that were admitted into the record.

IV.

FMC 14.17.150 allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness or any public comment provider to appear in person and be cross examined by the parties.

V.

The City of Ferndale’s Community Development Department (“CDD”) made a written specific recommendation that the application can be approved as meeting the FMC criteria and did also review and reference the applicable facts and laws with proposed necessary conditions in a revised report entitled “Staff Report” *dated* August 23, 2024 (herein “Staff Report” entered into the record as **Exhibit 42**).

The Applicant has indicated that the Staff Report is factually correct and agreed with all the recommended conditions put forward by the CDD.

The findings of fact as set forth in the Staff Report are supported by the record as a whole. Any factual or legal findings set forth in the Staff Report, a copy of which is attached hereto, that are not contradicted by specific findings made in this decision are hereby adopted as findings of fact and law by the Hearing Examiner and incorporated herein by this reference.

VI.

The required Public Notices have been given.

VII.

Outside of the SEPA comments which were addressed in the SEPA decision and also annotated in the Staff Report, there was one public written comment received prior to the hearing. The comments in that additional comment focused on traffic, and other issues which were adequately addressed by the findings in the Staff Report or were not considerations under the law, like property values, that the Hearing Examiner cannot take into consideration.

The CDD responded to all comments stating they were received and entered into the

record for consideration.

Both Mr. Ashbaugh and Mr. Taysi gave testimony regarding the parking considerations. Mr. Taysi and Director Renz testified about the closed loop water system and its immediate or eventual implementation pursuant to testing conditions associated with Phase 1 of proposed construction.

VIII.

The proposal's parking plans do not meet the sizing requirements outlined in FMC 18.69.210.

IX.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

In Ferndale, the planned unit development (PUD) code provides a method by which the City may permit a variety of development types, designs or arrangements that may not be permissible under traditional or existing zoning techniques yet still provide for the protection of public health, safety and welfare.¹ For Residential PUDs, the policy of the City specifically is to achieve the following criteria:

- 1.** Encourage both innovative and time-tested development and design techniques that promote affordable development options with a variety of housing types compatible with surrounding areas, including clustering, zero lot line construction, reduced and/or consolidated parking, reduced road widths, and shared open space;
- 2.** Provide increased flexibility beyond the prescriptive subdivision standards;
- 3.** Provide opportunities for a wide range of housing choices;
- 4.** Encourage new housing projects to be compatible with existing neighborhoods;
- 5.** Require that all housing projects provide appropriate infrastructure

¹ FMC 18.69.010

and mitigation to ensure that adequate provisions are made for streets, parks, schools and other public facilities;

6. Encourage a variety of densities, consistent with the underlying zoning.²

In order to approve a PUD and the underlying preliminary plat, the project must additionally meet both the goals of the City's Comprehensive Plan, meet the requirements outlined in FMC 18.69, et. al. generally, and meet the procedural requirements outlined in FMC 18.69.130:

- A. A preliminary pre-application conference has been held between the applicant and the City.
- B. The applicant has consulted with surrounding property owners prior to submittal of the application.
- C. The applicant has filed a proper application and followed the procedural steps required by FMC 14.09.050.
- D. The proposed PUD will not result in a significant adverse impact on the environment, as evidenced by an appropriate threshold determination under SEPA, and the project will incorporate in its design any mitigation measures identified during the SEPA review.
- E. The project will result in the protection, preservation, or enhancement of critical areas and their associated buffers that may exist on the property, or mitigation of critical areas and their associated buffers.
- F. The project design includes buffers where necessary and development patterns adjacent to established developments consistent with the requirements of this chapter.
- G. The project design includes active open space in an amount that meets the requirements of this chapter.
- H. The applicant has proposed and demonstrated that there will be sufficient legal mechanisms put in place to guarantee the continued operation and/or maintenance of all commonly owned elements of the PUD in perpetuity.

The CDD has concluded that the proposed Planned Unit Development, subject to their recommended Conditions of Approval, is consistent with the comprehensive plan, the

² FMC 18.69.010 (B)

guidelines in FMC 18.69, *et. al.*, and the procedural criteria of FMC 18.69.130; but that it is not consistent with the criteria outlined in FMC 18.69.210.

The Hearing Examiner independently concurs in the conclusions reached by the Community Development Department. Consequently, the PUD cannot be approved as it does not meet all the FMC 18.69 criteria, unless a variance is also granted. If the proposal had met the requirements of FMC 18.69.210, then the Hearing Examiner should have approved the requested Planned Unit Development.

II.

FMC 18.69.210 requires the PUD proposal to meet the parking requirements outlined in FMC 18.76, which it does not. Chapter 18.76.130.A.1 mandates parking spaces to be 9 feet wide and 19 feet long. The project proposes dimensions of 8.5 feet x 17 feet, 8.5 feet x 19 feet, and 8 feet x 22 feet for different surface parking stalls. Further, the project seeks to reduce the width of driveway aisles for 90-degree parking from the mandated 25 feet to 24 feet.

Without a variance, the PUD cannot be approved as it does not meet the required criteria. A variance in zoning can be granted if the following criteria are met:

1. The variance is consistent with the spirit and intent of this title;
2. The notice of public hearing has been duly published;
3. The variance, either as applied for or with appropriate conditions imposed, will not have significant adverse effects on the environment or on other uses, or the variance as applied for or with appropriate conditions imposed will mitigate to the greatest extent practicable all significant adverse effects on the environment;
4. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located;
5. The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;
6. The granting of the variance will not be materially detrimental to the

public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;

7. Denial of the variance would result in unnecessary and undue hardship to the applicant; and
8. Such a variance would be properly granted to any applicant upon an identical showing of special circumstance relating to the subject property and the property or improvements in the vicinity in which the subject property is situated.

The Hearing Examiner independently concurs in the conclusions contained in the Staff Report and consequently should grant the requested variance subject to the conditions outlined below which are modified from staff recommendations. The reasoning by staff as to how the request meets each of the various criteria, as set forth in the staff report, is adopted by the Hearing Examiner by this reference.

Subject to the proposed Conditions of Approval outlined below, the proposal would be consistent with the Variance criteria. Consequently, the Variance should be granted, subject to the Conditions of Approval listed below.

III.

With the granting of the variances, the Hearing Examiner was satisfied that the applicant has complied with the code and restrictions on development promulgated by City Council and the State, in particular with regards to the expressed public concerns regarding traffic, density, and notice to neighbors. Dissatisfaction with such level of development is dissatisfaction with the state of the zoning laws and allowances, and the applicant has complied with what has been allowed.

IV.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner now enters the following:

Decision

The Hearing Examiner for the City of Ferndale hereby grants Silver Hawk Partners, LLLP, a Planned Unit Development permit and Variances to construct a mixed-use Planned

Unit Development, addressed as 5094 and 0 Labounty Drive, Ferndale, WA, APN(s) 3902333372320000 and 3902333443050000, subject to the following conditions:

Prior to Land Disturbance Approval:

1. State and Federal approvals, as applicable, shall be evidenced by appropriate permits or other qualifying documentation prior to issuance of any City permit for construction. Responsibility for compliance with other agency requirements shall be solely the applicant. A note to this effect shall be placed on the civil plans **prior to Land Disturbance approval.**
2. For all remaining identified critical areas and mitigation areas (after on-site mitigation), the applicant is required to place a deed restriction (or other acceptable legal mechanism, approved by the City) on all remaining critical areas to protect the critical area from future development, and to place signage consistent with City of Ferndale requirements to identify these protected areas. Final documents shall be presented to the Zoning Administrator for review and approval prior to recordation. Documents shall be recorded and physical improvements in place **prior to issuance of a grading permit and/or approval of a building permit.**
3. The applicant has proposed a phasing plan with 4 phases of development and 2 phases of mitigation. In conformance with FMC 18.69.280, the project "shall be designed such that each phase can 'stand alone' so that if subsequent phases are not constructed, the completed portion of the project constitutes a coherent development logically interconnected with surrounding areas."
4. Phase 1 mitigation must be installed prior to land disturbance permit final for Phase 1 development. Phase 2 mitigation must be installed prior to land disturbance permit final for Phase 2 development.
5. In conformance with FMC 16.08.240 and Development Standards Chapter 5, section 504 Maintenance Securities, a maintenance security in the amount of 150% of the approved estimate of the total cost of work within and adjacent to the subject property is required for all mitigation/maintained activities associated with the critical areas for each phase of mitigation. Separate securities may be provided for each phase of mitigation. Portions of the maintenance bond will be released after each annual inspection or inspection timeline proposed by the critical areas professional. **Prior to land disturbance permit final.**
6. Open space areas, buffers, or other tracts of land not suitable as building lots, together with any associated facilities or equipment shall be privately owned and maintained in perpetuity.
7. The applicant is required to submit a final PUD plan **prior to Land Disturbance Permit approval.**
8. A detailed landscape plan that meets the requirements of the City of Ferndale landscaping standards and reflecting the conditions contained in this preliminary plat

shall be submitted for review and approval by the City of Ferndale Planning Division **prior to issuance of the Land Disturbance Permit.**

9. All trails and sidewalks, whether publicly or privately owned and maintained, shall be available for the public's use and benefit. Trail signage reflecting the public nature shall be posted on-site. A note to this effect shall be placed on the final landscaping plan **prior to Land Disturbance Permit approval.**
10. A demo permit will be necessary for the removal of the existing buildings on-site and shall be completed **prior to Land Disturbance Permit approval.**
11. A performance surety shall be executed for wetland mitigation in accordance with the approved wetland mitigation plan **prior to Land Disturbance Permit approval.**
12. All Phase 1 wetland mitigation shall be complete, and a maintenance bond executed **prior to issuance of the Land Disturbance Permit final for Phase 1 Development.**
13. All Phase 2 wetland mitigation shall be complete, and a maintenance bond executed **prior to issuance of the Land Disturbance Permit final for Phase 2 Development.**
14. Addressing shall be approved by the City of Ferndale **prior to Land Disturbance permit final for each respective phase.**
15. A three (3) year maintenance surety shall be required for required landscaping on the site and posted with the City of Ferndale per FMC 19.25.040 **prior to land disturbance permit final approval.**
16. City shall require easements over the property granted to the City necessary to serve and maintain all property and utilities owned and/or maintained by the City **prior to land disturbance permit final approval.**

Prior to Final Plat Approval

17. Prior to submission of a final plat application, the applicant shall submit to the Subdivision Administrator copies of a final plat preapplication containing all the final plat requirements of FMC 17.24.020, The Final Plat, when submitted, shall be in substantial conformance with the approved Preliminary Plat, reflect any and all conditions of approval, and be consistent with the requirements of Chapter 18.68 and Title 17 of the Ferndale Municipal Code, together with City Development Standards.
18. Street names and addressing shall be approved by the City of Ferndale prior to final plat approval.
19. One half of traffic and park impact mitigation fees for each unit shall be paid prior to recording of the final mylars, the remaining half shall be paid pursuant to building permit conditions of approval.

20. The City shall require CC&Rs and/or other legal mechanisms (stormwater maintenance covenant/access easement with the O&M manual attached, development agreement, signed and recorded) to guarantee continued operation and maintenance of common areas and facilities within the PUD in perpetuity. These document shall be reviewed and approved prior to recording the final plat.
21. The City requests that all recorded plats show the gross and achieved densities on the face of the plat. The revised Preliminary Plat plan shall reflect this requirement.
22. All landscaping shall be installed and bonded for prior to recording of the Final Plat.

Prior to Building Permit Approval:

23. Final color elevations demonstrating compliance with these conditions of approval will need to be submitted along with the final PUD Plan **prior to building permit approval.**

Prior to final Occupancy:

24. The applicant shall provide covenants, conditions, and restrictions (CC&Rs) consistent with those requirements described in FMC 18.69.260.
25. In accordance with FMC 18.69.250 the applicant shall provide preliminary bylaws for an owners' association and, upon and shall convey by deed all private streets, sidewalks, walkways, curbs, gutters, stormwater drainage facilities, utilities, and all other common areas and open space areas to an owners' association

Public Works Conditions:

26. A Land Disturbance Permit Application, together with civil drawings associated with proposed grading, utilities installation, and drainage improvements shall be submitted to the Public Works Department and approved prior to issuance of Building Permits. Additionally, an encroachment permit(s) will be required for any work within a City right-of-way.
27. All proposed earthwork, drainage improvements, and utilities to each development phase must be designed and installed to comply with all current applicable state and local development standards to the satisfaction of the Department of Public Works prior to issuance of Occupancy Permits for any building in the subject development phase.
28. All access connections and general site access must also be approved by Fire District 7. Any changes from the approved plans related to access connection and general site access or other Fire related components of the plan will require subsequent approval by Fire District 7.

- 29.** All onsite existing dwellings will require a separate demolition permit prior to construction. All onsite septic and/or wells will be abandoned appropriately through the WCHD with verification prior to final project or plat approval.

Road:

- 30.** The applicant shall construct a modified city standard $\frac{3}{4}$ R-1 road improvement and section on Labounty Rd. before any final plan is approved. The required road improvement shall be a 24-foot-wide total paved section with curb, gutter and sidewalk on the east side road frontage allowing similar to existing lane width of 12 feet for both lanes while preparing for added width when future development occurs on the west side of Labounty. Minor engineer's adjustments will be required on the north end of the proposed project to match the new existing extended road widths and slopes. 2% cross slopes as requested on the entire roadway will be required. A 10-foot dedication will also be required within this project proposal frontage to facilitate the required improvements equal to the existing apartment site to the north of this location. Relocation of existing power poles may be required to facilitate road improvements and off site, and on-site street lighting will be required to meet city development standards. Existing gas mains in Labounty have been found in conflict with Labounty infrastructure and may require relocation prior to placement of designed infrastructure.
- 31.** The driveway location as proposed is acceptable. All access to buildings and parking off of the main 36-foot-wide private street access must provide a minimum width of 24 feet and minimum turn radius of 28 feet. Sidewalk connectivity and stormwater collection will be designed as needed to facilitate future structures and provide adequate space for fire and emergency vehicles.
- 32.** The city has determined that the primary entrance and access as demonstrated on the proposal will be designated as a local street providing a 36 foot road section with curb, gutter, and sidewalk on both sides. This road section must also provide enough room for on-street parking and room for public and private utilities with adequate separations as required.
- 33.** All fire turnaround proposals must meet the city standard detail R-5A specifications or as approved otherwise by the Fire District. 120-foot overall length, 24-foot minimum width with 28-foot radiuses. All end-of-phase proposals must demonstrate or illustrate conformance with this requirement.
- 34.** All access connections and general site access must also be approved by Fire District 7.
- 35.** The applicant shall provide and/or create private and public utility easements as required throughout the development as needed. All public sewer extensions require 20-foot-wide easements and all public water extensions require 24-foot-wide easements.

Sanitary Sewer:

- 36.** According to City records the existing elevation of the sewer main conveyance is at or around 6.6 feet deep from finished grade at the assumed tie in locations. Obviously, this information should be verified prior to design. The city does not advocate for onsite pump stations if it can be avoided due to obvious maintenance and repair concerns and believes with a mixture of upsized sewer mains allowing reduced slopes and creative building extension locations with possible minor structural fills on the northeast corner of the site pump station use could possibly be avoided and is highly recommended. All new building sewer service size and location will be determined by the Engineer of record appropriate for each building and estimated usage, Minimum of one six-inch service per building is required. All proposed buildings, townhouses, and live work units must be individually serviced with a minimum of four-inch service. A larger or multiple services approach for the larger multifamily structures or undetermined commercial locations is advised. A sewer service must be provided to each lot appropriately prior to all phased final plat approvals. The proposed configuration for sewer and connection to existing SSMH's looks feasible; however, some modifications within the proposed development design will be required to enhance drivable access for repair and or maintenance by the city.
- 37.** All or any existing sewer services not utilized for new construction shall be abandoned appropriately as needed at the main or through the Health Department.
- 38.** The applicant shall extend sewer service to the existing adjacent parcels if feasible depth and location can be provided.
- 39.** All public sewer main extensions will require a 24-foot-wide easement in favor of the City of Ferndale.
- 40.** Sewer extensions and configuration shall be designed to best facilitate full connection within each phase and easy and efficient connection for future phases.

Stormwater:

- 41.** All storm water must comply with the most current DOE storm water design manual.
- 42.** Due to site topography and project design the applicant has proposed multiple stormwater pump stations to facilitate these conditions. Stormwater pump station discharge proposals are not preferred by the city due to obvious maintenance and failure concerns and therefore must be only used or proposed as a last resort. Should this be the only path forward, the applicant must first propose a variance request to the Public Works Director for consideration prior to Public Works approval. All required storm conveyance and facilities must be complete, fully functional and certified by the engineer of record for each phase prior to Public Works approval.

Water:

- 43.** The Engineer of record will design the site appropriately to facilitate onsite water main extension, hydrant spacing, domestic water service and individual fire suppression systems for all proposed buildings. All public water main extensions with hydrants installed on or over private property will require 24-foot-wide easement. All commercial development located near Labounty and at the far easterly section of the project will require a 12-inch main extension and supply and all other connections to

residential development may require 8 inch main or as fire flow requirements dictate. A 12-inch water main connection will be required at the existing southeast corner of adjacent apartment complex water main and at the northwest corner of Sunset Park development water main to provide the 12-inch extension required for the easterly commercial portion of the property and loop connection vital for the system. One additional connection will be required at Labounty Rd. and the site access location to complete the three-way loop. A 12-inch main extension from the existing 12-inch main located on the northwest frontage location through the Labounty frontage south will be required to provide an adequate water supply and project water main loop connection replacing the existing 4" AC line obviously inadequate for this required connection. Fire hydrant locations must be spaced at 500 feet in residential areas and 300 feet in commercial areas to meet city standards; however, more hydrants may be required to meet Fire District approval and must be approved and verified by the Fire District prior to final project design.

- 44.** The engineer of record shall provide domestic meter sizing appropriate for the estimated usage for the site and/or individual buildings. The proposed meters will be located as close to the main possible or within City easement. DCVA protection will be required for all commercial meter assemblies and on residential meters if the highest fixture exceeds 35 feet in elevation above the meter location. DCVA protection will be located within three feet of the meter.
- 45.** All new building fire suppression systems will require DCVA protection. DCVA devices for fire suppression will be located within vaults unless deemed otherwise by the director. Vault assemblies include PIV and FDC within the same location. Vaults will be located as close to the main as possible and out of the drive path or paved section for enhanced protection.
- 46.** All or any existing water services or waterlines not utilized for new construction will be abandoned appropriately at the main. Existing wells if present must be abandoned appropriately through the WCHD and verified prior to final plat acceptance. Applicant to extend the proposed 8" water main to the existing boundary of 5044 Labounty if feasible with final project design creating a future loop connection.
- 47.** If the fire flow testing completed by the City's third-party engineer determines there is insufficient flow, then fire flow for projects in this area is believed to be adequate but still needs to be confirmed for all sites this large. 3,000 GPM. required for commercial and 2,000 GPM. for multifamily. Deposit will be required to initiate City third party engineer fire flow testing.
- 48.** The applicant will conduct required fire flow testing; should that testing reveal that adequate fire flow and or water supply can be achieved without the required loop connection or with a reduced water loop system the applicant at their discretion may apply to the Public Works Director for an administrative variance to reduce or eliminate city Phase One water loop requirements. Otherwise, full installation of the required water loop and connections will be required for phase one construction to ensure adequate service and fire flow; and, in any other case, full installation of the required water loop and connections will be required prior to completion of the final phase of the project.

Stormwater Conditions:

49. Stormwater management review and approval by the City is required when any proposed development or redevelopment meets or exceeds the threshold conditions. Plans may be subject to review by local environmental protection officials to ensure that established water quality standards will be maintained during and after development of the site and that post-construction runoff levels are consistent with any local and regional watershed plans. (13.34.040) Requirements for development or redevelopment applications are determined by the type and size of the proposed project as defined by the Manual. (13.34.070)

50. When any new stormwater facility is installed on private property, or when any new connection is made between private property and a public stormwater drainage system, the property owner shall grant to the City of Ferndale the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection to ensure that the facility is maintained in proper working condition to meet design standards. (13.34.130) To ensure future maintenance and allow access for inspection by the City of Ferndale, any LID, Flow Control, and Runoff Treatment BMPs for which the applicant identifies operation and maintenance to be the responsibility of a private party must have a declaration of covenant and grant of easement. After approval by the City of Ferndale, the declaration of covenant and grant of easement, or other legal agreement or recordable document, must be signed and recorded at the appropriate records office of the local government. (13.34.110)

51. It is unlawful for any person to discharge any contaminants into surface water, ground water, or the City's stormwater system if such discharge will cause or contribute to a violation of (a) water quality standards, or (b) the City's municipal stormwater permit (13.35.020). Applicable source control BMPs shall be required for all pollutant generating sources associated with new development, redevelopment, land disturbing activities, and existing land uses and activities (13.35.040).

52. The applicant shall provide a determination regarding applicability of the Department of Ecology NPDES Construction General Stormwater Permit prior to issuing the land disturbance permit.

53. Per FMC 13.40.140, upon a division of land or upon the development of a lot, tract, parcel, or portion thereof, the owner of the land shall pay a fee of \$0.05 per square foot upon the gross property area being divided, or the gross square footage being developed, including undevelopable portions such as, but not limited to, reserve tracts, stormwater tracts, open space tracts, and critical areas, for the purpose of mitigating the impact or potential impact of such division or development upon the existing storm sewage system of the City. This fee shall be paid prior to issuance of the Land Disturbance Permit for Phase I.

Fire District No. 7 Conditions:

54. The Fire District shall determine the number and locations of all required fire hydrants, including the locations of their tie-ins with water mains, size of water mains, and/or extensions and inter-ties with existing water mains. These improvements shall be indicated on the civil construction drawings, one set of which shall be submitted to the Fire Chief of Fire District #7 for review prior to approval of the drawings by the Public Works Department. Documentation that the civil drawings have been approved by the Fire Chief shall be provided prior to issuance of permits for construction.
55. All fire protection equipment and facilities, and emergency services requirements shall be provided to the satisfaction of the Fire District.
56. Adequate fire protection infrastructure, of a type and location approved by the Fire District shall be included in the civil construction plans. All access shall meet the requirements of the fire code. No buildings may be constructed until adequate fire flow and emergency access is provided.
57. An approved fire suppression sprinkler system shall be provided per the requirements of the International Fire Code (IFC). The size of the water mains, type of FCD and location, of the fire department connection (FDC) to the structures fire suppression sprinkler system shall be approved by Fire District No. 7. These improvements shall be indicated on the civil construction drawings, on (1) set of which shall be submitted to the Fire Chief of Fire District No. 7 for review prior to approval of the drawings by the Public Works Department of the City of Ferndale. Documentation that the civil drawings have been approved by the Whatcom Fire District No. 7 Technical Review Official shall be provided prior to issuance of permits for construction.
58. All drive aisle lanes shall be 24-feet wide with an inner diameter turn radius of 25-feet.

Building Division Conditions:

59. If any buildings are four stories or more, an elevator shall be required in addition to a NFPA 13 sprinkler system and full occupant notification.
60. A NFPA 13R sprinkler system is required throughout the project (as long as all buildings are three stories or less). This includes decks, stairways corridors, etc.
61. Fire alarm monitoring systems shall be required in all buildings.
62. Fire alarm occupant notification and pull stations may be required in other buildings. Not enough information was submitted to determine code compliance.
63. Draft stopping shall be required in the attic if one-hour fire rated assembly for ceiling is proposed. If the applicant does not choose a rated ceiling, then fire rated walls are required to go to the underside of the roof.

64. A one-hour fire-rated corridor is required for all levels and all buildings, including doors.
65. Americans With Disabilities Act (ADA) accessible type A and B units are required on the first level of each building. All units on the site count towards the required number of type A and B units.
66. ADA units will be required to be wired for audible alarm system devices.
67. All construction shall conform to the requirements of the latest adopted edition of the International Building Code (IBC), and all other applicable state and local codes and requirements to the satisfaction of the Building Division. The buildings must comply with the Washington State residential energy code. The energy work sheet shall be provided at the time of plan review.
68. In accordance with the 2021 Washington State building code, Buildings and accessory structures shall be provided with electric vehicle charging stations, EV-Ready parking spaces, and EV-capable parking spaces in accordance with Table 429.2.

Planning Division Conditions:

69. Once action on the PUD is taken by the Hearings Examiner. The application shall be revised to include any revisions or additional conditions of approval imposed by the Hearings Examiner or noted in the Conditions of Approval. A digital copy of the revised application shall be submitted to the City for review and approval.
70. Should significant modifications to the PUD be identified during the course of civil review, creating a substantial change to the PUD proposal and/or layout, the Hearings Examiner may be required to re-review the proposal. The Community Development Director shall determine if modifications require review pursuant to FMC 18.69.320.
71. The PUD shall expire after a period of five years from the date of the decision pursuant to FMC 17.20.090. Submittal of a Land Disturbance Permit must commence within this time period.
72. The commercial uses are unknown at this point. Future uses shall be in conformance with FMC 18.69.070.B, subject to staff approval.
73. Future buildings proposed for the undeveloped commercial pad site in the GB zone shall be reviewed and approved by the City prior to their constructions.
74. Any future signs shall be reviewed and approved by the City prior to their installation and be subject to FMC 18.80.
75. The City shall require easements over the property granted to the City necessary to serve and maintain all property and utilities owned and/or maintained by the City.

- 76.** The owners' association may not be dissolved nor may it convey any property within the PUD without the express written approval of the Ferndale City Council. If an owners' association becomes inactive, the City shall be authorized to assess the costs of performing maintenance on the individual property owners based on the pro rata share of the maintenance costs.
- 77.** All setbacks shall comply with the underlying zoning, unless otherwise modified by this decision.
- 78.** No building, parking, outside storage, or driveways are permitted within the buffers that are required along the perimeter of the proposed PUD that is adjacent to the residential zoned land (RMM)
- 79.** Future buildings shall be reviewed and approved by the City prior to their construction and shall comply the height requirements of the underlying zone.
- 80.** No buildings, vehicle parking or outdoor storage shall be permitted within any PUD buffer.
- 81.** The applicant will be required to provide easements in favor of the City for buffer access and compliance verification as a required condition of approval
- 82.** All stormwater facilities shall comply with landscaping standards set forth in FMC 18.74.
- 83.** Water and sewer connection fees, traffic, park, and school impact fees shall be paid at the time of Building Permit issuance for each building.
- 84.** FMC 18.74.080 requires an automatically controlled irrigation system for all landscape areas. The use of drought tolerant plant species may preclude the need for irrigation. The City may allow the maintenance of landscaping through existing systems if it can be demonstrated that those systems are sufficient.
- 85.** Lighting shall be installed in all parking and driving areas. Exterior lighting shall be so installed that the surface of the source of light shall not cast a direct glare on surrounding uses. The lighting shall be shown on the civil drawings for review and approval.
- 86.** SEPA mitigation measures, as identified in the project SEPA checklist and SEPA Mitigated Determination of Non-Significance (July 17, 2024) shall be reflected in the project design and civil construction plans and made a condition of this approval.
- 87.** The applicant shall comply with all applicable City, Army Corps of Engineers, and Ecology regulations. The applicant shall indicate whether the following permits are required or exempt upon submitting the Land Disturbance Permit. Department of Natural Resources (DNR) forest clearing permit, Hydraulic Project Approval (HPA) and Cultural Study.

- 88.** All wetland impacts and mitigation shall be in accordance with the approved wetland mitigation plan.
- 89.** Inadvertent Discovery of Archaeological Resources: Should archaeological resources (e.g. shell midden, animal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Stephanie Jolivette, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
- 90.** Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055): "If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains" (DAHP).

Modifications

Pursuant to FMC 18.69.320, this approval may be modified upon written request of the property owner(s). Minor modifications as defined by the code shall be processed administratively, while Major modifications as defined by the code shall be considered a PUD amendment and shall be processed in the same manner as a PUD application, including a noticed public hearing and Hearings Examiner review, and potential City Council review.

Appeals

Pursuant to FMC 14.11.080, appeals from the final decision of the Hearings Examiner involving FMC Titles 14 through 18 or other development-related portions of this code, and for which all other appeals specifically authorized have been timely exhausted, shall be made

to Whatcom County Superior Court within 21 days of the date the notice of decision, unless another time period is established by state law or local ordinance.

Notice of the appeal and any other pleadings required to be filed with the court shall be served on the City Clerk, Community Development Director and City Attorney within the applicable time period.

The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the City Clerk prior to the preparation of any records an advance fee deposit equal to the full estimated cost of such preparation. Any overage will be promptly refunded to the appellant.

Lapse Of Approval

Under FMC 18.69.330 approval of any PUD shall expire and shall be considered invalid five years from the date of such approval unless an extension of the approval period is granted by the approving authority pursuant to the FMC. Upon expiration of PUD approval or any extension granted pursuant to this section, all construction work shall cease except any work required by the city for the purpose of public safety and/or protection of the environment.

Notice of Potential Revocation and Penalties

This Approval is subject to all the above-stated conditions. Failure to comply with them may be the cause for its revocation or penalty and enforcement of code violations or prosecution of crimes under BMC 1.12 and 18.69.340.

Complaints regarding a violation of the conditions of this permit should be filed with the City of Ferndale Community Development Department.

DATED this 28th day of August 2024.



Rajeev D. Majumdar
City of Ferndale Hearing Examiner