

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of)	No. PLN51836 SUB/SPR/CUPA
)	
Central Highlands, Inc.)	Wintergreen Townhomes
)	Subdivision
For Approval of a Preliminary Plat,)	
an Amendment/Major Adjustment to a)	
Site Plan and Design Review Permit, and)	
an Amendment/Major Adjustment to an)	FINDINGS, CONCLUSIONS,
<u>existing Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for approval of a preliminary plat, an amendment/major adjustment to a site plan and design review permit, and an amendment/major adjustment to an existing conditional use permit to allow the subdivision of the two remaining parcels within the Visconsi Master Plan into 73 lots for single-family townhomes (31 of which would be sold as affordable housing units), with associated site improvements, at 1320 and 1343 Wintergreen Lane, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing:

The Hearing Examiner held an open record hearing on the request on December 9, 2021, using remote access technology.

Testimony:

The following individuals testified under oath at the open record hearing:

Kelly Tayara, City Senior Planner
Paul Nylund, City Engineering Manager
David Greetham, City Planning Manager
David Smith, Applicant Representative
Robert Weschler
Betsy Braun
Denise Stoughton
Dawn Janow
William O'Neill

Attorney Hayes Gori represented the Applicant at the hearing.

*Findings, Conclusions, and Decision
City of Bainbridge Island Hearing Examiner
Wintergreen Townhomes Subdivision
No. PLN51836 SUB/SPR/CUPA*

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated November 3, 2021
2. Preapplication Conference Summary Letter, revised February 17, 2021
3. Master Land Use Application, submitted February 10, 2021
4. Notice of Incomplete Application, dated March 9, 2021
5. Notice of Complete Application, dated April 15, 2021
6. Notice of Application, SEPA Comment Period, and Hearing, published April 30, 2021
7. Notice of Application Postcard Mailers
8. Affidavit of Publication, dated April 30, 2021, with Legal Invoice and Classified Proof, *Bainbridge Island Review*, published April 30, 2021
9. Certificate of Posting, dated April 29, 2021
10. Notification to Extend Decision Deadline, dated April 29, 2021
11. SEPA Environmental Checklist, dated March 18, 2021
12. Preliminary Plat Plan Set (8 Sheets), dated March 25, August 27, and October 7, 2021
13. Civil Plans (7 Sheets), revised October 8, 2021
14. Landscape Plan, revised October 10, 2021
15. Tree Retention Plan, revised October 10, 2021
16. Trip Generation Evaluation, Transpo Group, dated February 2, 2021
17. Utility Report, Brown Wheeler Engineers, Inc., dated February 18, 2021
18. Lot Closures, dated March 25, 2021
19. Tree Valuation, dated March 24, 2021
20. Title Report, submitted April 12, 2021
21. Non-Binding Water and Sewer Availability Letter, dated April 15, 2021
22. Ordinance No. 2021-03, effective April 21, 2021
23. Comment from Washington State Department of Ecology, dated September 14, 2021
24. Comment from Kitsap Public Health District, dated September 28, 2021
25. Bainbridge Island Fire Department (BIFD) Memorandum, dated March 3, 2021
26. Comment from BIFD Deputy Fire Marshal Jackie Purviance, dated October 19, 2021
27. City Development Engineering Manager Memorandum, dated October 25, 2021
28. Design Review Board June 21, 2021, Meeting Minutes; Design Review Board Recommendation, dated June 21, 2021
29. Planning Commission September 2, 2021, Meeting Minutes
30. Planning Commission September 9, 2021, Meeting Minutes
31. Planning Commission September 23, 2021, Meeting Minutes; Planning Commission Recommendation, dated September 23, 2021
32. Mitigated Determination of Nonsignificance, dated August 31, 2021
33. Public Comments:
 - a. Comment from Janaea Barnard, dated September 1, 2021
 - b. Comment from Catherine Freudenberg, dated August 31, 2021
 - c. Comment from Billie Nash, dated September 1, 2021
 - d. Comment from Mary Coupland, dated September 1, 2021

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- e. Comment from Tina Gilbert, dated September 2, 2021
- f. Comment from Val Tollefson, dated September 2, 2021
- g. Comment from Amy Chamberlain, dated September 7, 2021
- h. Comment from Cary Foster, dated September 7, 2021
- i. Comment from Mary Clare Kersten, dated September 7, 2021
- j. Comment from Janet Kragen, dated September 6, 2021
- k. Comment from Ron Peltier, dated September 7, 2021
- l. Comment from Kent Scott, dated September 7, 2021
- m. Comment from Amy Aspell, dated September 7, 2021
- n. Comment from Sharon Gilpin, dated September 8, 2021
- o. Comment from Stefan Goldby, dated September 8, 2021
- p. Comment from Michael Kessler, dated September 8, 2021
- q. Comment from Linda Lincoln, dated September 7, 2021
- r. Comment from Peter Perry, dated September 8, 2021
- s. Comment from Karla Sammons, dated September 7, 2021
- t. Comment from Jordan Tappero, dated September 8, 2021
- u. Comment from Kathleen Thorne, dated September 7, 2021
- v. Comment from Sherrie Zollinger, dated September 8, 2021
- w. Comment from Taya Hall, dated September 9, 2021
- x. Comment from August Janow, dated September 8, 2021
- y. Comment from Jim McCulloch, dated September 9, 2021
- z. Comment from Jennifer Smith-Gori, dated September 9, 2021
- aa. Comment from Linda Andrews, dated May 10, 2021
- bb. Comment from Linda Andrews, dated May 10, 2021
- cc. Comment from Stephanie Steele, dated May 7, 2021
- dd. Comment from Barry Andrews, dated May 11, 2021
- ee. Comment from Paul Hausmann, dated May 11, 2021
- ff. Comment from Elizabeth Doran, dated May 14, 2021
- gg. Comment from Cyndi Merritt, dated May 14, 2021
- hh. Comment from Debra Sherbina, dated May 14, 2021
- ii. Comment from Stephanie Steele, dated May 14, 2021
- jj. Comment from Lisa Neal, dated August 17, 2021
- kk. Comment from Nancy Rudman, dated May 14, 2021
- ll. Comment from Tiana Gallagher, dated July 13, 2021
- mm. Comment from Shari Hinshaw, dated July 13, 2021
- nn. Comment from Barb McKenzie, dated July 13, 2021
- oo. Comment from Suzanne Miller, dated July 13, 2021
- pp. Comment Susan Munter, dated July 13, 2021
- qq. Comment from Lisa Paxon, dated July 13, 2021
- rr. Comment from Anne Reichard, dated July 13, 2021
- ss. Comment from [name unclear], dated July 13, 2021
- tt. Comment from [name unclear], dated July 9, 2021

- uu. Comment from [names unclear], dated July 9, 2021
- vv. Comment from [name unclear], dated July 13, 2021
- ww. Comment from [names unclear], dated July 9, 2021
- xx. Comment from [names unclear], dated July 9, 2021
- yy. Comment from [name unclear], dated July 13, 2021
- zz. Comment from Marie Sinclair-Bennett, dated July 9, 2021
- aaa. Comment from [names unclear], dated July 9, 2021
- bbb. Comment from Dominique Kinsey, Amy Pearson, Somer Shields, and Jillian Worth, undated
- ccc. Comment from Matt Paige, dated February 22, 2021
- ddd. Comment from Carl Sussman, dated February 22, 2021
- eee. Comment from Georg Syvertsen, dated February 22, 2021
- fff. Comment from Steve and Kerry Sutorius, dated February 23, 2021
- ggg. Comment from James Beatie, dated February 24, 2021
- hhh. Comments from Linda Andrews, dated August 31, 2021
- iii. Comment from Cyndi Merritt, dated August 31, 2021
- jjj. Comment from Richard Potter, dated August 31, 2021
- kkk. Comment from Georg Syvertsen, dated August 31, 2021
- lll. Comment from Betty Wiese, dated August 31, 2021
- 34. Visconsi Master Plan Hearing Examiner Report and Decision (No. SPR/CUP 17734), dated March 27, 2014
- 35. Visconsi Master Plan Hearing Examiner Order on Reconsideration (No. SPR/CUP 17734), dated May 5, 2014
- 36. Wintergreen Medical Building (No. PLN50231 SPRA) Notice of Administrative Decision and Mitigated Determination of Nonsignificance, dated June 10, 2016
- 37. Declaration of Easements, Covenants, Conditions, and Restrictions (Visconsi CC&Rs), dated June 16, 2014
- 38. Visconsi CC&Rs – First Amendment, dated December 1, 2016
- 39. Visconsi CC&Rs – Second Amendment, dated October 23, 2021
- 40. Additional Public Comments:
 - a. Comment from Betsy Braun, dated December 8, 2021
 - b. Comment from Vicki Clayton, dated December 5, 2021
 - c. Comment from Catherine Freudenberg, dated December 8, 2021
 - d. Comment from Phedra Elliott, dated December 8, 2021
 - e. Comment from Jeffrey Jelinek, dated November 24, 2021
 - f. Comment from Barry Andrews, undated
 - g. Comment from Linda Andres, undated
 - h. Comment from Karen Conoley, dated November 23, 2021
 - i. Comment from Karen Conoley, dated December 3, 2021
 - j. Comment from Joseph Dunstan, dated December 4, 2021
 - k. Comment from Bob Russell, dated December 6, 2021
 - l. Comment from [name withheld], dated November 23, 2021

- m. Comment from Karla Sammons, dated November 23, 2021
- 41. Certificate of Posting (Notice of Public Hearing), dated November 19, 2021

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Background

1. On March 27, 2014, the former City of Bainbridge Island Hearing Examiner (Stafford L. Smith) approved a request for a conditional use permit (CUP) and for site plan and design review (SPR) to develop a commercial complex comprised of seven buildings on five parcels totaling 8.16 acres, hereafter referenced as the “Visconsi Master Plan” (No. SPR/CUP 17734). Proposed uses within the Visconsi Master Plan included retail sales and services, restaurants, professional services, and health care facilities. The SPR was required to allow the new construction of nonresidential buildings, and the CUP was required to allow the construction of a retail building with a footprint between 5,000 and 14,000 square feet in the “High School Road II” zoning district. A major adjustment to the 2014 Visconsi Master Plan SPR permit was approved in 2016, which added 7,585 square feet of commercial floor area and 40 parking spaces (No. PLN50231 SPRA). Apart from the two subject parcels, all property within the Visconsi Master Plan has been developed with commercial buildings and associated parking lots consistent with the approved (and later amended) master plan. *Exhibit 1, Staff Report, page 1; Exhibits 34 through 35.*

Application and Notice

2. Central Highlands, Inc. (Applicant), requests approval of a preliminary plat, an amendment/major adjustment to a site plan and design review permit, and an amendment/major adjustment to an existing conditional use permit to allow for the two remaining parcels within the Visconsi Master Plan, totaling 2.95 acres, to be subdivided into 73 lots for single-family townhomes, 31 of which would be sold as affordable housing units. Associated site improvements would include drive lanes, parking stalls, pedestrian walkways, natural area tracts, community spaces, and landscaping. The property is located at 1320 and 1343 Wintergreen Lane.¹ *Exhibit 1, Staff Report, pages 1 through 5; Exhibit 3; Exhibit 4; Exhibits 12 through 15.*
3. The City of Bainbridge Island (City) determined that the application was complete on April 15, 2021. On April 29, 2021, the Applicant posted notice of the application and the associated open record hearing at the subject property. On April 30, 2021, the City

¹ The property is identified by tax parcel numbers 232502-3-092-2001 and 232502-3-094-2009. *Exhibit 1, Staff Report, page 3.* A legal description of the property is included with the preliminary plat plan set. *Exhibit 12.*

provided notice of the application and the associated open record hearing by mailing notice to property owners within 500 feet of the subject property, posting notice at City Hall kiosks and on the City website, and publishing notice in the *Bainbridge Island Review*, with a comment deadline of May 14, 2021. On November 19, 2021, the Applicant posted notice at the subject property of the rescheduled hearing date. *Exhibit 1, Staff Report, page 3; Exhibits 5 through 10; Exhibit 41.*

4. The City received three reviewing agency comments in response to its notice materials. The Washington State Department of Ecology (DOE) provided a comment specific to the environmental review of the proposal, which is discussed in detail below. The Kitsap Public Health District recommended approval of the proposal subject to a condition that each townhome would require a sewer building clearance with binding water and non-binding sewer availability commitments prior to building permit issuance. The City Deputy Fire Marshal noted that the project would be required to comply with all provisions of the adopted fire code, that the Applicant would be required to install fire sprinklers and a fire alarm system to monitor the fire sprinkler system, that necessary fire flow would be met through existing hydrants, and that dead-end access roads over 150 feet in length would require a turn-around. *Exhibit 1, Staff Report, page 6; Exhibits 23 through 26.*

5. The City also received numerous comments on the proposal from members of the public in response to its notice materials.² Several of the comments expressed support for the proposal, particularly in regard to the affordable housing aspects of the proposed development. These comments generally related to the following topics:
 - **Affordable Housing:** Comments on this topic noted that the proposal would meet a current need for affordable housing options in the city, which could attract needed workers supporting businesses, school, and health care facilities in the area. Some comments urged expeditious approval of the request, and other comments requested that a greater number of units be dedicated for affordable housing, due to the City's current need for affordable housing options.
 - **Project Design:** Comments on this topic expressed support for the proposed design of the townhome units and noted that the proposal would not require significant removal of existing trees and vegetation on the site. Other comments noted that the Applicant had corrected all the items noted as deficiencies by the Design Review Board.
 - **Location of Proposed Development:** Comments on this topic noted that the proposal would be located on an already developed site that would not require

² Due to the voluminous number of comments received on the proposal, this decision summarizes the general nature of the comments without providing a detailed description of each comment received. The Hearing Examiner has reviewed all submitted comments and, where discernible, has provided, in the exhibit list, the name of the person who submitted the comment and the date the comment was submitted. *Exhibit 33; Exhibit 40.*

significant tree removal and that the resulting residential development would be conveniently located near amenities such as schools, goods and services, transit stops, a bike trail, and parks.

- **Comprehensive Plan Goals and Policies:** Comments on this topic noted that the proposal would further Comprehensive Plan goals and policies promoting the provision of affordable housing option within the city.

The City also received comments expressing concerns about certain aspects of the proposal. These comments generally related to the following topics:

- **Streets, Traffic, and Pedestrian and Bicycle Safety:** Comments on this topic expressed concerns about the proposal's traffic and safety impacts to High School Road NE. Some comments on this topic suggested that the Applicant be required to install a roundabout to mitigate for these impacts. Other comments noted that traffic associated with surrounding commercial development would create a safety issue for residents walking and bicycling to and from their homes.
- **Compatibility with Surrounding Development:** Comments on this topic expressed concerns that the project site would not be suitable for dense residential development, noting the existing commercial and health care facility developments and associated large parking areas surrounding the project site, as well as associated commercial traffic in the area. Some comments provided suggestions on locations that would be more suitable for the proposed development. Other comments raised concerns that access to the subdivision would be provided through the nearby commercial parking areas. In addition, some comments raised concerns that noise from a generator serving the nearby Virginia Mason health care facility could impact people residing in the subdivision.
- **Parking:** Comments on this topic expressed concerns that the proposal would not provide adequate parking space for residents and guests. Other comments noted that some parking for guests would be provided from existing parking spaces associated with nearby health care facility development within the Visconsi Master Plan, which would result in a loss of parking available for health care staff and patients.
- **Impacts to Nearby Properties and Services:** Comments on this topic expressed concerns that the project should be required to provide a 50-foot screening buffer from the SR 305 right-of-way. Some comments raised concerns about stormwater from the site impacting an offsite wetland. Other comments raised concerns that a proposed trash collection area serving the development would attract rats and would result in noise and odor impacts. In addition, some comments raised concerns that the proposed residential units would not have a backup source of heat and would therefore potentially impact City emergency resources during an emergency power failure.

- **Project Design:** Comments on this topic expressed concerns that the proposal would not satisfy applicable design review criteria. Some comments on this topic inquired about whether the proposed housing units would be designed to accommodate disabled or elderly residents. Other comments raised concerns that the small square footage of the residential units or locating residential housing within an area surrounded by commercial development could have mental and physical health impacts on people residing in the subdivision. In addition, some comments raised concerns about whether the proposal would provide safe and sufficient play areas for children residing in the subdivision.

Exhibit 1, Staff Report, pages 6 and 7; Exhibits 33; Exhibit 40.

State Environmental Policy Act

6. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a comment deadline of May 14, 2021. The notice materials stated that the City expected to issue a Determination of Nonsignificance (DNS) for the proposal. The City reviewed the Applicant’s environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) on August 31, 2021, with a comment and appeal deadline of September 14, 2021. As noted above, the City received a comment on the MDNS from DOE, which noted that a contaminated site containing hydrocarbons and related compounds in the soil and groundwater is located approximately 600 feet southwest of the proposed development site. Any potential impacts associated with this contaminated site would be addressed during further site development review. The MDNS was not appealed. *Exhibit 1, Staff Report, pages 3, 28, and 29; Exhibits 6 through 9; Exhibit 11; Exhibit 23; Exhibit 32.*
7. The MDNS requires the Applicant to comply with the following measures to ensure that the proposal would not result in probable adverse environmental impacts:
 - To mitigate air impacts, all sources and emission units are required to meet the emission and ambient air quality standards specified in Chapter 173-400 WAC and administered by the Puget Sound Clean Air Agency (PSCAA) and shall apply to all air contaminants listed in that regulation. The Applicant shall submit with application for construction associated with this approval a management plan which is consistent with PSCAA Fugitive Dust Controls.
 - To reduce noise impacts for those living within the proposed units along SR305, the units shall be constructed with noise reduction mitigation

measures as found in Mitigation Measures Environmental Noise Study dated February 16, 2021, and include the following:

- Windows are required to have a fixed sash or an efficiently weather-stripped, operable sash. The sash shall be rigid and weather-stripped with material that is compressed airtight when the window is closed, so as to conform to an infiltration rate not to exceed 0.5 cubic foot per minute per foot of crack length in accordance with ASTM E-283-65-T.
- Glass shall be sealed in an airtight manner with a non-hardening sealant or a soft elastomeric gasket or gasket tape.
- The perimeter of window and door frames shall be sealed airtight to the exterior wall construction with a sealant conforming to one of the following Federal specifications: TT-S-00227, TT-S-00230 or TT-S-00153.
- In case the ventilation is achieved through slots within the window case, offset vents that maintain the STC rating of the window is recommended.
- Exterior trash receptacles/recycling facilities shall be fully screened with solid walls and gates and fully contained with masonry enclosure. The eastern wall of the facilities shall be at least 30 feet from the eastern site property line. The screening enclosures shall be architecturally consistent with the facilities approved in the Visconsi Master Plan. All enclosures serving associated buildings shall be constructed and inspected prior to final inspection of the associated building.

Exhibit 32.

Comprehensive Plan and Zoning

8. The property is designated “High School Road” by the City Comprehensive Plan and is within an area commonly referred to as Winslow. City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
- Winslow is the urban core of the Island while the Neighborhood Centers are smaller-scale mixed-use centers. In order to achieve the goals of the Growth Management Act, this Plan: encourages development in areas where public facilities and services exist or can be provided in an efficient and effective manner; provides a vibrant, pedestrian-oriented core; reduces sprawl; provides choice of housing location and lifestyle; maintains and protects environmentally sensitive and resource lands; encourages the retention of open space; and maintains and enhances fish and wildlife habitat. [Policy LU 5.1]
 - Encourage residential uses in a variety of forms and densities as part of the use mix in Winslow and neighborhood centers. [Policy LU 5.3]
 - Sustainable development and redevelopment will be focused in the designated centers through a combination of intergovernmental and public-private

partnerships, affordable housing programs, “green” capital projects, and low impact development standards. [Policy LU 5.4]

- Encourage the design of buildings in designated centers for a long life and adaptability to successive uses over time. [Policy LU 5.7]
- Ensure a development pattern that is true to the vision for Bainbridge Island by reducing the conversion of undeveloped land into sprawling development. Encourage improvement of aging or underutilized developments over development of previously undeveloped property. [Goal LU-6]
- Promote dense residential and commercial development and encourage human activity within Winslow, the heart of Bainbridge Island. In order to create a vibrant City center direct growth where infrastructure exists, reduce reliance on the automobile, provide opportunities for affordable housing, and absorb growth that would otherwise be scattered in outlying areas. Plan for adequate parking in Winslow to accommodate residents and visitors who drive downtown for shopping, participation in local government, attendance at cultural events and centers, and to use other resources in Winslow. [Policy LU 6.2]
- The High School Road district is intended to provide mixed use and commercial development in a pedestrian-friendly retail area. [Goal LU-8]
- Promote pedestrian-oriented mixed use and residential development to offer a variety of housing types and sizes. [Policy LU 8.2]
- To visually screen development year-round, properties with frontages along SR 305 shall provide a vegetated buffer along the highway that includes the preservation and protection of existing vegetation. Access to these properties should not be directly from SR 305. [Policy LU 8.4]
- Promote and maintain a variety of housing types to meet the needs of present and future Bainbridge Island residents at all economic segments in a way that is compatible with the character of the Island and encourages more socio-economic diversity. Partner with community non-profit organizations and local and regional private and public entities in carrying out the following policies. [Goal HO-3]
- Encourage innovative zoning regulations that increase the variety of housing types and choices suitable to a range of household sizes and incomes in a way that is compatible with the character of existing neighborhoods. Examples of innovative approaches are cottage housing development, conservation villages, stacked or common-wall housing, tiny houses, and accessory dwelling units. [Policy HO 3.1]
- Partner with non-profit housing organizations, churches, the development community, local lending institutions, elected officials and the community at large to assist in meeting affordable housing goals and implementing strategies. [Policy HO 3.4]

- Support the efforts of community non-profit housing organizations and local and regional public and private entities in developing and managing affordable housing on Bainbridge Island. [Policy HO 3.5]
- Facilitate the provision of a diverse affordable housing stock in all geographic areas of the community. [Goal HO-6]
- Maintain an innovative housing program and clarify or adopt new flexible permit processes in all designated centers to promote an increase in the supply, diversity and access to housing including affordable housing. [Policy HO 6.3]

Exhibit 1, Staff Report, pages 3, 9, and 10.

9. City staff determined the proposal would be consistent with the goals and policies of the Comprehensive Plan, noting:
- The development would be within an area served by public facilities and services and is surrounded by conveniences easily within walking distance, including a medical center, banks, drug stores, a hardware store, a grocery store, and restaurants.
 - The project would provide internal sidewalks, as well as a public sidewalk connecting users to SR 305 crosswalks and transit stop and the Sound-to-Olympic Trail leading to the ferry terminal.
 - The project would increase the variety of available housing, utilizing a partnership between the developer and a community non-profit organization.
 - The location of the project would reduce the conversion of undeveloped land into sprawling development and would address underutilized development of an existing site.
 - The project would provide growth where infrastructure exists; reduce reliance on automobiles due to proximity to surrounding commercial development and public transit, including buses and the ferry; provide affordable housing; and provide for growth that would otherwise be scattered in outlying areas.
 - The project would provide a vegetated buffer from SR 305 to visually screen the development year-round.

Exhibit 1, Staff Report, page 10.

10. The property is within the “High School Road II” (HSR II) zoning district. “The purpose of the High School Road I and II zones is to provide commercial uses that complement downtown Winslow and benefit from automobile access near the highway, while creating a pedestrian-friendly retail area. A variety of commercial uses are allowed that offer goods and services for the convenience of Island residents and that may have an auto orientation and a drive-through facility.” *Bainbridge Island Municipal Code (BIMC) 18.06.040*. Single-family and multifamily residential uses are allowed in the HSR II zoning district. *BIMC Table 18.09.020*. The proposal is for a zero-lot-line subdivision, with townhome units to be located on individual lots but sharing common structural elements, such as a roof. The City Planning Director determined that the proposed

townhome units would constitute single-family dwellings under the municipal code, which defines *single-family dwelling* in relevant part as “a structure containing one dwelling unit on one lot and having a permanent foundation.” *BIMC 18.36.030. Exhibit 1, Staff Report, pages 2 through 5, and 13.*

11. BIMC Table 18.12.020-3 provides dimensional standards applicable to development in the HSR II zone. The standard maximum Floor Area Ratio³ (FAR) generally applicable to residential development in the HSR II zone is 0.3. The Applicant proposes to have a 0.48 FAR, exceeding this standard maximum. The Applicant would be eligible, however, for an additional 0.3 bonus FAR through the provisions of BIMC 18.12.030.E by providing 31 of the 73 proposed townhome units as affordable housing. The 31 units reserved for affordable housing would be sold through the Homeownership Program administered by Housing Resources Bainbridge and the self-help program administered by Housing Kitsap. Accordingly, the proposal would comply with the municipal code’s FAR requirements along with all other dimensional standards of the HSR II zone. *Exhibit 1, Staff Report, page 13; Exhibit 12.*

Existing Site, Surrounding Development, and Critical Areas

12. As noted above, the subject property consists of the two remaining, undeveloped parcels within the Visconsi Master Plan. The property is generally flat, and existing development on the site includes a paved private roadway (Wintergreen Lane), which runs through the middle of the site and provides access to adjacent commercial development to the north and south of the subject property. The eastern parcel also contains paved parking areas. Adjacent property to the north is within the Visconsi Master Plan and is zoned “HSR II” and developed with a Virginia Mason health care facility. Adjacent property to the southwest is within the Visconsi Master Plan, is zoned “HSR I” and “HSR II,” and is developed with a Walgreens retail store. Adjacent property to the southeast is zoned HSR II and is developed with a KeyBank. Property to the east is zoned Residential 8 and contains a multifamily townhome development (Stonecress Townhomes). The property is bordered by SR 305 to the west. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 12.*
13. Property to the east contains a wetland with a protective buffer and setback that extends onto the northeast corner of the site. The portion of the wetland buffer and setback extending onto the site would be protected within a natural area tract. The entirety of the city is classified as an aquifer recharge area. The proposed residential use is not identified as having the potential to generate any pollutant identified as a potential source of driving water contamination. *BIMC 16.20.100.B.3.b.* No other critical areas or associated buffers were identified on the property, and City staff has determined that the

³ BIMC 18.12.050 defines *Floor Area Ratio* in relevant part as “a figure that expresses the total floor area as a multiple of the lot area. This figure is determined by dividing the floor area of all buildings on a lot by the lot area prior to removal of lot area for dedication.”

project would comply with all critical area requirements. *Exhibit 1, Staff Report, pages 11, 20, 23, and 26; Exhibits 12 through 15.*

Traffic, Parking, and Access

14. Access to the subdivision would be provided by Wintergreen Lane, a private road that runs through the middle of the site and connects to High School Road NE to the south. Egress would also be provided at the southeast corner of the site through a connection to Polly's Lane, which extends to High School Road NE to the south. Previous land use approvals for the Visconsi Master Plan were subject to concurrency review, and a traffic impact analysis (TIA) was prepared for the original Visconsi Master Plan proposal, which was later revised in 2016 in association with the previous request for a major SPR adjustment to allow for additional commercial floor area. The revised TIA analyzed the traffic impacts the Visconsi Master Plan proposal as revised in 2016, which had then included plans to develop the two subject parcels with restaurant and shopping center spaces totaling 21,700 square feet, and determined that the proposal would generate 242 new weekday PM peak-hour trips. A concurrency certificate was issued based on the total build out projection of 242 PM peak-hour trips. Transpo Group prepared an updated trip generation evaluation, dated February 2, 2021, which determined that the proposed change to develop the subject parcels with townhome units would reduce the anticipated traffic generated within the Visconsi Master Plan by 40 PM peak-hour trips. The City Development Engineer reviewed the proposal and determined that the projected increase in pedestrian traffic generated from the proposed residential use would not warrant the installation of a signalized crossing across High School Road NE and that, with conditions, the streets and pedestrian ways as proposed would be adequate to accommodate the project's anticipated traffic. In addition to the pedestrian pathways proposed within the site, as conditioned and subject to approval from the Washington State Department of Transportation, the Applicant would be required to construct a pedestrian/non-motorized pathway from the southwest corner of the site to the signalized intersection at High School Road NE and SR 305, which would ensure safe walking conditions for students residing within the subdivision. *Exhibit 1, Staff Report, pages 3, 11, 19, 20, 22, 25, and 32; Exhibit 12; Exhibit 13; Exhibit 16; Exhibit 17; Exhibit 27.*
15. BIMC Table 18.15.020-2 provides off-street parking requirements for development in the HSR II zoning district. Residential uses within the HSR II zone are required to provide a minimum of one off-street parking space for each studio or one-bedroom dwelling unit, and two off-street parking spaces for all other dwelling units. The Applicant proposes to develop up to 24 of the 73 proposed townhomes as two-bedroom units, which would require the provision of 97 off-street parking spaces. Because the site is located within one mile of the Bainbridge Island Ferry Terminal, however, this minimum off-street parking requirement may be reduced by 25 percent, for a total of 73 required off-street parking spaces. *BIMC Table 18.15.020-2, note 3.* In addition, the City Planning Director may require up to 0.5 additional guest parking spaces per dwelling unit if there is

inadequate guest parking on the subject property. *BIMC Table 18.15.020-2*. The Applicant proposes to provide a total of 96 off-street parking spaces on the site, with the 23 spaces exceeding the 73 minimum space requirement being proposed for use in cross-parking agreements with adjacent commercial lots within the Visconsi Master Plan. City staff reviewed the Applicant's parking plan and determined that it would comply with applicable parking standards under the municipal code and in accord with the Visconsi Master Plan. The Applicant would provide parking lot landscaping in accord with the requirements of *BIMC 18.15.010.F*. Single-family residential developments are not required to provide bicycle parking facilities. *BIMC 18.15.030.B*. The Applicant, however, proposes to provide two bike barns in accord with the recommendations of the City Planning Commission. *Exhibit 1, Staff Report, pages 12, 15, and 16; Exhibits 11 through 14*.

Landscaping and Trees

16. Residential subdivisions within the HSR II zoning district are required to provide natural areas amounting to a minimum of five percent of the total site area. *BIMC 17.12.050.A; BIMC Table 17.12.070-1*. The Applicant's site plans demonstrate that the project would exceed this requirement by providing a total of 24,981 square feet of natural areas on the 128,502 square foot site, which amounts to 19.47 percent of the total site area. These natural areas would be contained in natural area tracts, largely located along the eastern and western boundaries of the site. Residential subdivisions within the HSR II zone are also required to provide community space amounting to a minimum of 10 percent of the total site area. The Applicant's site plans demonstrate that the project would exceed this requirement by providing a total of 21,569 square feet of community space, which amounts to 16.8 percent of the total site area. *BIMC 17.12.050.B*. The Applicant proposes amenities within the community space that would include a pea patch, art installations, and picnic areas. City staff reviewed the proposal and determined that, with conditions, it would meet the applicable natural areas and community space requirements, as well as all other applicable subdivision standards. *BIMC 18.15.010.G* requires that parcels within the HSR II zone have a minimum of 40 tree units per acre following development. City staff reviewed the Applicant's tree retention plan and determined that the project would meet this requirement by providing a minimum of 118 tree units on the property. *Exhibit 1, Staff Report, pages 11 through 15; Exhibits 12 through 15; Exhibit 19*.

Stormwater

17. Browne Wheeler Engineers, Inc., prepared a preliminary stormwater report for the proposal, dated February 18, 2021. The report notes that a stormwater mitigation system was constructed on the eastern parcel (Lot D) as part of the Visconsi Master Plan, which consists of multiple Stormfilter treatment units and two sets of detention tanks; that the existing stormwater mitigation system on this parcel was designed to accommodate more impervious surface area than would be created with the proposed residential development

on that parcel; and that stormwater runoff from the parcel would be managed by utilizing the existing stormwater system, with some changes that would replace one of the larger existing Stormfilter treatment units with two smaller Stormfilter treatment units. The report also indicates that stormwater runoff from the western parcel (Lot A) would be routed to an under-drained rain garden for water quality treatment before discharging to a new detention system consisting of two concrete vaults for flow control, which would be constructed in the landscape space to the west of the east units. The City Development Engineer reviewed the Applicant's preliminary stormwater report and stormwater site plan and determined that they demonstrate conformance with applicable drainage regulations. City Engineering Manager Paul Nylund testified at the hearing that additional details regarding the final stormwater system design would be submitted and reviewed at later permitting stages to ensure compliance with all applicable drainage requirements, including requirements of the Washington State Department of Ecology 2012 Stormwater Management Manual for Western Washington, as amended in 2014. *Exhibit 1, Staff Report, page 19; Exhibit 17; Exhibit 27; Testimony of Mr. Nylund.*

Utilities and Services

18. The City would provide water and sewer service to the property. The City issued a non-binding commitment for water and sewer system capacity letter for the proposal on April 15, 2021. The property would be served by the Bainbridge Island Police Department and the Bainbridge Island Fire District. Students residing within the subdivision would be served by the Bainbridge Island School District. *Exhibit 1, Staff Report, page 4; Exhibit 17; Exhibit 21.*

Site Plan and Design Review

19. A proposal requiring site plan/design review must be reviewed by the City's Design Review Board (DRB), as well as by the City's Planning Commission, to ensure the proposal complies with City design review guidelines. *BIMC 2.16.040.*⁴ Major adjustments to a previously approved SPR permit require a new or amended SPR application. *BIMC 2.16.040.H. Exhibit 1, Staff Report, page 21.*

⁴ Ordinance 2021-03, effective April 23, 2021, amended the site plan/design review procedures of BIMC 2.16.040, BIMC 2.16.110, and BIMC 2.16.125. Notably, these amendments now require that both the City Planning Director and the Hearing Examiner adopt the Planning Commission's recommendation to deny an application unless the Director or Hearing Examiner concludes that the recommendation: reflects inconsistent application of design guidelines, the Comprehensive Plan, or applicable provisions of the municipal code; exceeds the authority of the Design Review Board or Planning Commission; conflicts with SEPA conditions or other applicable regulatory requirements; or conflicts with requirements of local, state, or federal law. *Exhibit 22.* The current application before the Hearing Examiner, however, was deemed complete on April 21, 2021, prior to the effective date of the ordinance. Accordingly, this decision applies the site plan/design review procedures in effect when the application was deemed complete.

Design Review Board

20. The DRB reviewed at least five earlier iterations of the proposal and, on June 21, 2021, issued its recommendation to deny the application. In recommending denial of the application, the DRB determined that the proposal would be inconsistent with applicable City design review standards based on the following deficiencies:
- The proposal does not meet the 50-foot buffer requirement from SR 305.
 - Lack of updated landscaping plan.
 - The unit floor should be on the landscape plan to assess exit and entrance questions.
 - Without substantial screening on both the north and south side of the development, this project lacks a sense of community and feels like it is existing in the middle of a parking lot.
 - The articulation on all building ends remains incomplete.
 - Final colors and materials never chosen. All drawings need to consistently reflect new color and material selections and would be the final plans used.
 - Acknowledging the Visconsi Master Plan, the DRB is still concerned with the traffic flow in and out of the development through commercial parking lots; it meets what has been approved with the Visconsi Master Plan for commercial use. This is not acceptable for a housing project.

The DRB also provided the following additional comments with its recommendation to deny the application:

- E-bike storage and charging systems are required.
- Charging abilities for automobiles are required.
- Add bike lane working with other property owners to implement safe non-motorized uses.
- Solar wiring; all buildings should be pre-wired to allow solar panels to be installed at a later date.
- More clarity and location on design of garbage/recycling bins.
- The High School Road and Wintergreen intersection remains a concern due to traffic use.

Exhibit 1, Staff Report, pages 6, 7, 11, 18, and 19; Exhibit 28.

Planning Commission

21. Following DRB review, the Applicant further revised the proposal, and the Planning Commission reviewed the revised proposal at three meetings on September 2, 9, and 23, 2021. The Planning Commission ultimately recommended approval of the application, determining that a deviation from the DRB's recommendation was warranted because the deficiencies identified by the DRB were satisfactorily addressed by the revised proposal, subject to 17 recommended conditions. Notably, a primary concern identified by the Planning Commission during its review was the project's consistency with the Visconsi

Master Plan, specifically the approved Plan's requirement for an averaged 50-foot, full-screen buffer from the SR 305 right-of-way. The Planning Commission therefore included with its recommended conditions a requirement that the Applicant provide the equivalent of a 50-foot fully vegetated buffer along SR 305, which could be achieved through buffer averaging provided that no portion of the buffer would be less than 35 feet wide. Following the Planning Commission's review, the Applicant submitted a final revised plan, which depicted an average 50-foot buffer along the Visconsi Master Plan area's frontage with SR 305, consistent with the Planning Commission's recommendation. The City Planning Director reviewed the application, the information provided by the Kitsap Public Health District and the City Development Engineer, and the recommendations of the DRB and Planning Commission, and recommends approval of the application with conditions recommended by the Planning Commission. *Exhibit 1, Staff Report, pages 2, 3, 7, 8, 20, and 21; Exhibits 12 through 15; Exhibits 29 through 31.*

Site Plan/Design Review Criteria

22. City staff analyzed the proposal and determined that, with conditions, the proposal would meet the site plan and design review criteria of former BIMC 2.16.040.F, noting:
- The proposed development, as conditioned, would comply with all applicable provisions of the municipal code, including applicable dimensional standards, design standards, and landscaping and parking requirements.
 - The location of buildings, structures, community spaces, and landscaping would meet municipal code requirements and the recommendations of the Planning Commission.
 - The Kitsap Public Health District recommends approval with a condition that each townhome would require a sewer building clearance with binding water and non-binding sewer availability commitments prior to building permit issuance.
 - The City Development Engineer determined that, as conditioned: the streets and pedestrian ways would be adequate to accommodate anticipated traffic; the preliminary stormwater site plan demonstrates conformance with applicable drainage regulations; the site plan would not cause an undue burden on the drainage basin or water quality and would not unreasonably interfere with the use and enjoyment of downstream properties; the proposed residential uses are projected to result in a reduction in peak PM trip counts from 242 to 214 and, therefore, additional traffic impact analysis is not required; the anticipated additional pedestrian traffic generated by the proposed residential use does not warrant a signalized pedestrian crossing; the site would be adequately served by public water and sewer services; the site does not contain any geological hazard areas; the proposal would conform with City design and construction standards and specifications; and the site plan and associated design would conform with applicable portions of the Comprehensive Plan pertaining to streets, roads, and utilities.

- The Planning Commission recommended approval of the application with conditions to ensure that the project would comply with applicable design standards, and these conditions are incorporated in the City Planning Director’s recommendation.
- Recommended conditions, including conditions addressing transportation and access, pedestrian and emergency service access, water, sanitation, and stormwater, would ensure that the proposed redevelopment would not endanger the public health, safety, or welfare. In addition, SEPA mitigation measures are imposed to address fugitive dust and noise for homes along SR305, along with impacts to the neighboring Stonecress community from solid waste containers.
- The proposed redevelopment would be consistent with the Comprehensive Plan and other applicable adopted community plans.
- The city of Bainbridge Island is classified as an aquifer recharge area. Public Works conditions incorporate protections for aquifer recharge and groundwater protections. The required wetland buffer and setback that encumber the property are depicted on the plat and within a protected vegetation area. The buffer and setback comply with critical area requirements.
- The Fire Marshal recommends approval subject to recommended conditions.
- The site plan and design were prepared consistent with the purpose of the site design review process pursuant to BIMC 2.16.040.

Exhibit 1, Staff Report, pages 19 through 23.

Conditional Use Permit

23. Major adjustments to a previously approved CUP required an amended application and are processed in the same manner as a new CUP. City staff analyzed the proposal and determined that, with conditions, the proposal would meet the CUP criteria of BIMC 2.16.110.F, noting:

- The Planning Commission recommended approval of the application with conditions to ensure that the project would comply with applicable design standards, and these conditions are incorporated in the City Planning Director’s recommendation.
- With conditions, the proposal would not be materially detrimental to uses or property in the vicinity of the subject property. These conditions would ensure that the project adequately provides for transportation and access, including pedestrian and emergency services access, in addition to water, sanitation, and stormwater facilities. SEPA mitigation measures are imposed to address fugitive dust and impacts to the neighboring Stonecress community from solid waste containers. Cooperative parking agreements are proposed to ensure adequate facilities and use.
- The proposed redevelopment would be consistent with the Comprehensive Plan. The City Development Engineer determined that the project, as conditioned,

would be consistent with applicable portions of the Comprehensive Plan pertaining to streets, roads, and utilities.

- The proposed development, as conditioned, would comply with all applicable provisions of the municipal code, including applicable dimensional standards, design standards, and landscaping and parking requirements.
- Recommended conditions, including conditions addressing transportation and access, water, sanitation, and stormwater, would ensure that the conditional use would not endanger the public health, safety, or welfare. SEPA mitigation measures address fugitive dust and impacts to the neighboring Stonecress community from solid waste containers. Cooperative parking agreements are proposed to ensure adequate facilities and use. As conditioned, the adverse impacts from the project would be reduced or eliminated to the greatest extent possible.
- All activities on the property would be required to comply with current noise regulations.
- The City Development Engineer determined that the streets and pedestrian ways, as conditioned, would be adequate to accommodate anticipated traffic and that the proposed use would meet all other applicable decision criteria, including criteria related to drainage, traffic, public water and sewer services, and City design and construction standards and specifications.
- The Kitsap Public Health District recommends approval with a condition that each townhome would require a sewer building clearance with binding water and non-binding sewer availability commitments prior to building permit issuance.
- The Fire Marshal recommends approval subject to the recommended conditions.
- City staff recommends approval subject to the recommended conditions.

Exhibit 1, Staff Report, pages 24 through 26.

Testimony

24. City Senior Planner Kelly Tayara testified generally about the proposal and how, with conditions, it would be consistent with the Comprehensive Plan and would meet the criteria for approval of a preliminary subdivision, a major adjustment to an SPR permit, and a major adjustment to an existing CUP. She provided an overview of the history of the Visconsi Master Plan, the current proposal for townhome development on the remaining two parcels within the Visconsi Plan, and the review process by the DRB and the Planning Commission, consistent with the findings above. Ms. Tayara explained that the DRB recommended denial of the application and that, although the DRB recommendation holds substantial weight in the consideration of the application by the Planning Commission, the Planning Commission recommended approval of the application after determining that the deficiencies identified by the DRB would be adequately addressed by the Applicant's revised plans and through the Planning Commission's recommended conditions of approval. She stressed that, in reviewing the

application and providing its recommended conditions of approval, the Planning Commission considered the project's conformity with requirements of the Visconsi Master Plan, including the Plan's requirement for a landscape buffer along SR 305. Ms. Tayara stated that the City received several comments on the proposal from members of the public, many of which expressed support for the project, particularly with regard to the affordable housing aspects. She explained that there have been recent amendments to the municipal code's design review procedures but that the project vests to the design review procedures in effect prior to the amendments. Ms. Tayara stated that the project would exceed the minimum requirements for the provision of natural areas and common space, noting that the amount of natural areas and common space required to be provided was calculated based on the total area of the subject parcels, rather than the total area within the Visconsi Master Plan. She explained that the FAR and parking requirements for the proposal were also calculated based on the size of the subject parcels, rather than the total area within the Visconsi Master Plan. Ms. Tayara stated that a recommended condition to require that a minimum of 73 parking spaces on-site, inclusive of garages, be designated for the sole use of townhome residential units would ensure that adequate provisions for resident parking would be provided. *Testimony of Ms. Tayara.*

25. City Engineering Manager Paul Nylund testified that the Visconsi Master Plan had included a proposed requirement for a mid-block crosswalk across High School Road NE. He noted, however, that a mid-block crosswalk would not be warranted due to existing, underutilized signalized crosswalks at the intersection of High School Road NE and SR 305 and the presence of adjacent uncontrolled driveways. Mr. Nylund explained that a proposed pedestrian path extending from the southwest corner of the development to the intersection would funnel pedestrian traffic to the signalized crosswalk. He stated that the path would be required to be located within the WSDOT right-of-way or on private property, and therefore the Applicant would need to acquire permission to construct the proposed path and would be required to make a good faith effort to obtain such permission. Mr. Nylund noted that the language of a condition recommended by the Planning Commission mandating that the Applicant obtain a right-of-way permit from WSDOT could be problematic because WSDOT approval of a right-of-way permit is not within the control of the Applicant or the City. *Testimony of Mr. Nylund.*
26. In response to Mr. Nylund's testimony regarding potentially problematic language within the Planning Commission's recommended conditions, Ms. Tayara explained that the Hearing Examiner has flexibility to make minor changes to the language to ensure that the intent of the conditions is effectuated in a manner not conflicting with local, state, or federal law. *Testimony of Ms. Tayara.*
27. City Planning Manager David Greetham concurred with Ms. Tayara that it would make sense for the Hearing Examiner to make minor changes to the language of the Planning

Commission's recommendations to ensure that intent of the conditions is achieved while avoiding unnecessary conflicts. *Testimony of Mr. Greetham.*

28. Attorney Hayes Gori represented the Applicant at the hearing. He stated that the Applicant has agreed to provide an averaged 50-foot buffer along the property's frontage with SR 305, as recommended by the Planning Commission. Mr. Gori further stated that the project would provide adequate parking spaces for residents and guests of the subdivision by including 73 parking spaces on-site that would be designated for the sole use by townhome units, as well as an additional 23 spaces on-site that could be used for parking by adjacent commercial development through a cross-parking agreement. He stressed that several iterations of the proposal underwent extensive review, noting that there were five DRB meetings during the conceptual preapplication phase and an additional meeting following submittal of the application, and that the Applicant responded to the DRB's concerns through later iterations of the proposal, which the Planning Commission ultimately approved with conditions. Mr. Gori also stressed that the Applicant voluntarily agreed to several conditions recommended by the Planning Commission that are not required under the municipal code, including conditions related to affordable housing and a pedestrian trail extending to the intersection at High School Road NE and SR 305. He stated that the Applicant has reached out to WSDOT about obtaining a right-of-way permit to construct the trail but that it could be some time before WSDOT acts on the request. Mr. Gori noted that there are numerous other agencies that could step in if the affordable housing program administered by Housing Kitsap defaults and suggested that the Hearing Examiner modify the language of the Planning Commission's recommended conditions to allow Housing Kitsap to be replaced in the event of a default by another agency deemed acceptable by the City Council. He also noted that the proposal has received overwhelming support from the community and that the Applicant has worked hard to design the project to include affordable housing options. *Statements of Mr. Gori.*

29. Robert Weschler testified that he, both personally and as a member of the City of Bainbridge Island Sustainable Transportation Task Force, proposes a downtown circulator bus as a means to mitigate both potential traffic problems and the perceived need for additional parking spaces to support the Wintergreen Townhomes project. He stated that funds devoted to the provision of parking spaces could be allotted to the circulator bus, which would connect the ferry terminal, downtown Winslow, and a Safeway complex with a stop at High School Road NE and Wintergreen Lane. Mr. Weschler noted that there have been arguments in the past that there is not enough density in the area to support a downtown circulator bus but that the increased density resulting from the proposed development would now justify a circulator bus. *Testimony of Mr. Weschler.*

30. Betsy Braun, Director of Planning and Real Estate for Virginia Mason Franciscan Health,

testified that Virginia Mason strongly supports the proposal but has concerns about shared parking within the development. She noted that when Virginia Mason invested considerable resources in developing a medical center within the Visconsi Master Plan, it was understood that commercial development would have a shared parking arrangement along all of the developed units and, therefore, that the amount of parking developed on the Virginia Mason site would not be the limit of parking available to serve the medical center. Ms. Braun stated that the amount of shared parking that would be available to the medical center on the Wintergreen Townhomes site may not be sufficient to meet the medical center's parking needs during business hours. She noted, however, that a shared parking agreement could be created in a manner meeting the needs of all properties within the Visconsi Master Plan but that there would have to be written agreement containing an enforcement mechanism to ensure that unauthorized parking would be sufficiently addressed. *Testimony of Ms. Braun.*

31. Denise Stoughton testified that she is an interior designer, board member of Arts and Humanities Bainbridge, member of the public art committee, and a columnist for the *Bainbridge Review*. She stated that she strongly supports the aesthetics of the proposed development, noting that, in addition to the project being located near existing homes and businesses, the townhome sites appear to be logical and sensitive to neighbors. Ms. Stoughton stated that the project would provide attractive green spaces and landscaping for the enjoyment of residents. She noted that locating smaller townhomes near the street with larger townhomes stepped back would create the feeling of openness from the street view and that the Applicant has set aside a budget to incorporate public art into the project, which would enhance and elevate the exterior aesthetics. Ms. Stoughton stated that Arts and Humanities Bainbridge is in the process of contracting with the Applicant to facilitate the procurement and implementation of art within the proposed development. *Testimony of Ms. Stoughton.*
32. Dawn Janow testified that she is a Bainbridge Island Park Commissioner and believes that the project location is well suited to provide access to recreational and nature opportunities in the area. *Testimony of Ms. Janow.*
33. William O'Neill testified that he is a resident of the Stonecress community located immediately adjacent to the project site. He expressed concerns that the proposed development would not provide adequate off-street parking, noting that there is a current issue with overflow parking from the medical center. *Testimony of Mr. O'Neill.*
34. Mr. Gori acknowledged concerns raised about the adequacy of off-street parking to serve the proposed development but stated that the project would meet all off-street parking requirements of the municipal code. He noted that the Covenants, Conditions, and Restrictions (CC&Rs) for the Visconsi Master Plan development provide an enforcement mechanism for unauthorized parking. Mr. Gori also noted that the Applicant is currently

in negotiations with Virginia Mason for a shared parking agreement. *Statements of Mr. Gori.*

35. Applicant Representative David Smith of Central Highlands, Inc., also addressed concerns about parking. He noted that existing parking issues could be the result of ferry employees utilizing parking spaces on the site, which could be alleviated by appropriate signage. Mr. Smith also pointed out that some parking spaces serving Virginia Mason are currently occupied by COVID tents. *Testimony of Mr. Smith.*

Staff Recommendation

36. Ms. Tayara testified that the City Planning Director reviewed recommendations from City staff, the Design Review Board, and the Planning Commission; determined that, with conditions, the project would comply with municipal code requirements and with the City Comprehensive Plan; and recommends approval of the application subject to conditions. Mr. Gori stated that the Applicant has reviewed and agrees to comply with the recommended conditions. *Exhibit 1, Staff Report, pages 28 through 33; Testimony of Ms. Tayara; Statements of Mr. Gori.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and approve, approve with conditions, or deny applications for preliminary subdivisions and for amendments/major adjustments to a previously approved major conditional use permit. *BIMC 2.14.030; Former BIMC 2.16.110; Former BIMC 2.16.125.* The Hearing Examiner is also granted jurisdiction to hear and approve, approve with conditions, or deny applications for an amendment/major adjustment to a site plan and design review permit through a consolidated review process under former BIMC 2.16.040 and BIMC 2.16.170.

In a major conditional use permit or major adjustment application, the Planning Commission reviews the application prior to the review and final decision. The Planning Commission recommends approval, approval with conditions, or denial of an application. *BIMC 2.16.110.E.3.*

The Planning Commission's recommendation is given substantial weight in the consideration of the application by the Director when preparing a staff recommendation to the Hearing Examiner. The Director must review the application materials, staff report, and recommendations of the Planning Commission and prepare a report to the Hearing Examiner recommending approval, approval with conditions, or disapproval of the application. *Former BIMC 2.16.110.E.4.*

The Hearing Examiner is directed to consider the application materials and the Director's recommendation at a public hearing. The Hearing Examiner must "make compliance with the

recommendations of the planning commission a condition of approval,” unless the Hearing Examiner concludes that the recommendations:

- i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;
- ii. Exceed the authority of the design review board or planning commission;
- iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project
- iv. Conflict with requirements of local, state, or federal law.

BIMC 2.16.110.E.5.

Criteria for Review

Preliminary Subdivision

A preliminary long subdivision may be approved or approved with modification if:

1. The applicable subdivision design guidelines and development standards of BIMC Titles 17 and 18 are satisfied; and
2. The preliminary long subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and
3. The preliminary long subdivision has been prepared consistent with the requirements of the four-step design process; and
4. Any portion of a long subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and
5. Any portion of a long subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and
6. The city engineer’s recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:
 - a. The long subdivision meets the requirements of Chapter 17.12 BIMC related to streets and pedestrian access, and water, stormwater, and septic facilities; and
 - b. The long subdivision conforms to regulations concerning drainage in Chapters 15.19, 15.20, and 15.21 BIMC; and
 - c. The long subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and
 - d. If the long subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the long subdivision, and the applicable service(s) can be made available at the site; and

7. The proposal complies with all applicable provisions of this code; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and
8. The proposal is consistent with the city's comprehensive plan; and
9. Appropriate provisions for maintenance in perpetuity of natural and/or community space have been made; and
10. The preliminary subdivision design is compatible with the physical characteristics of the proposed subdivision site.

Under former BIMC 2.16.125.E.7:

- a. The hearing examiner shall consider the application materials and the director's recommendation at a public hearing following the procedures of BIMC 2.16.100.C and applicable provisions of BIMC 2.16.020.
- b. The hearing examiner shall make compliance with the recommendations of the planning commission a condition of approval, unless the hearing examiner concludes that the recommendations:
 - i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;
 - ii. Exceed the authority of the design review board or planning commission;
 - iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project; or
 - iv. Conflict with requirements of local, state, or federal law.

The state subdivision criteria for review and approval are codified at Chapter 58.17 RCW as follows:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislature 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 (b) the public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110(2).

Conditional Use Permit

A major conditional use permit is a mechanism by which the city may require specific conditions on development or the use of land to ensure that designated uses or activities are compatible with other uses in the same zone and in the

vicinity of the subject property. If imposition of conditions will not make a specific proposal compatible the proposal shall be denied.

BIMC 2.16.110.A.

A conditional use may be approved or approved with conditions if:

1. The conditional use is consistent with applicable design guidelines in BIMC Title 18. The conditional use is compatible with the established and intended character of the neighborhood, considering factors that include, but are not limited to, hours of operation, the type of activities generated by the use, and the predictable levels of any adverse impacts; and
2. The conditional use will not be materially detrimental to uses or property in the vicinity of the subject property; and
3. The conditional use is consistent with the comprehensive plan and other applicable adopted community plans, including the Island-Wide Transportation Plan; and
4. The conditional use complies with all other provisions of the BIMC; and
5. All necessary measures have been taken to eliminate or reduce to the greatest extent possible the impacts that the proposed use may have on the vicinity of the subject property; and
6. Noise levels shall be in compliance with BIMC 16.16.020 and 16.16.040.A; and
7. The streets and nonmotorized facilities as proposed are adequate to accommodate anticipated traffic; and
8. The city engineer has determined that the conditional use meets the following decision criteria:
 - a. The conditional use conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and
 - b. The conditional use will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use of properties downstream; and
 - c. The streets, nonmotorized facilities, locations of buildings, structures, and vehicular circulation systems as proposed align with and are otherwise coordinated with streets and nonmotorized facilities serving adjacent properties and are adequate, safe, efficient and consistent with the Island-Wide Transportation Plan; and
 - d. If a traffic study shows that the use will have an adverse impact on traffic, including nonmotorized traffic, the impact shall be mitigated as required by the city engineer; and

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- e. If the conditional use will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the conditional use, and the required service(s) can be made available at the site; and
 - f. The conditional use conforms to the “City of Bainbridge Engineering Design and Construction Standards and Specifications” unless the city engineer has approved a deviation to the standards; and
9. The Kitsap public health district has determined that the conditional use meets the following decision criteria:
- a. The proposal conforms to current standards regarding domestic water supply and sewage disposal; or if the proposal is not to be served by public sewers, then the lot has sufficient area and soil, topographic and drainage characteristics to permit an on-site sewage disposal system; and
 - b. If the health district recommends approval or disapproval of the application the health district shall so advise the director; and
10. The Bainbridge Island fire department has reviewed the application and determined that the conditional use will ensure fire protection.

BIMC 2.16.110.F.

Under former BIMC 2.16.110.E.5:

- a. The hearing examiner shall consider the application materials and the director’s recommendation at a public hearing following the procedures of BIMC 2.16.100.C and applicable provisions of BIMC 2.16.020.
- b. The hearing examiner shall make compliance with the recommendations of the planning commission a condition of approval, unless the hearing examiner concludes that the recommendations:
 - i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;
 - ii. Exceed the authority of the design review board or planning commission;
 - iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project; or
 - iv. Conflict with requirements of local, state, or federal law.

Site Plan and Design Review

The stated purpose of the City’s site plan and design review code provisions is: to establish a comprehensive site plan and design review process that ensures compliance with the adopted plans, policies, and ordinances of the city. The overall goal of this chapter is to minimize land alteration, provide greater site development flexibility and consequently provide more creative and imaginative

design than generally is possible under conventional zoning regulations. It is further intended to provide for the review of development proposals with respect to overall site design and to provide a means for guiding development in a logical, safe, attractive, and expedient manner, while also allowing property to be developed in phases. An additional purpose is to promote those specific purposes for each zoning district stated in Chapter 18.06 BIMC.

BIMC 2.16.040.A.

As applicable to this proposal, the following criteria apply to decisions on site plan and design review:

1. The site plan and design is consistent with all applicable provisions of the BIMC; and
2. The locations of the buildings and structures, open spaces, and landscaping result in a context-sensitive design; and
3. The Kitsap public health district has determined that the site plan and design meets the following decision criteria:
 - a. The proposal conforms to current standards regarding domestic water supply and sewage disposal; or if the proposal is not to be served by public sewers, then the lot has sufficient area and soil, topographic and drainage characteristics to permit an on-site sewage disposal system; and
 - b. If the health district recommends approval of the application with respect to those items in subsection F.3.a of this section, the health district shall so advise the director; and
 - c. If the health district recommends disapproval of the application, it shall provide a written explanation to the director; and
4. The streets and nonmotorized facilities, as proposed, are adequate to accommodate anticipated traffic; and
5. The city engineer has determined that the site plan and design meets the following decision criteria:
 - a. The site plan and design conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and
 - b. The site plan and design will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use of properties downstream; and
 - c. The streets, nonmotorized facilities, locations of buildings, structures, and vehicular circulation systems as proposed align with and are otherwise coordinated with streets and nonmotorized facilities serving adjacent properties and are adequate, safe, efficient and consistent with the island-wide transportation plan; and

- d. If a traffic study shows that the use will have an adverse impact on traffic, including nonmotorized traffic, the impact shall be mitigated as required by the city engineer; and
 - e. If the site will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the conditional use, and the required service(s) can be made available at the site; and
 - f. The site plan and design conforms to the “City of Bainbridge Engineering Design and Construction Standards and Specifications” unless the city engineer has approved a deviation from the standards; and
- 6. The site plan and design is consistent with applicable design guidelines in BIMC Title 18; and
 - 7. No harmful or unhealthful conditions are likely to result from the proposed site plan; and
 - 8. The site plan and design is consistent with the comprehensive plan and other applicable adopted community plans; and
 - 9. If the subject property contains a critical area or buffer, as defined in Chapter 16.20 BIMC, the site plan and design review permit conforms to all requirements of that chapter; and
 - 10. If the subject property is within the shoreline jurisdiction, as defined in Chapter 16.12 BIMC, the site plan and design review permit conforms to all requirements of that chapter; and
 - 11. If the applicant is providing privately owned open space and is requesting credit against dedications for park and recreation facilities required by BIMC 17.20.020.C, the requirements of BIMC 17.20.020.D have been met; and
 - 12. The Bainbridge Island fire department has reviewed the application and determined that the site plan has been properly designed to ensure fire protections; and
 - 13. The site plan and design has been prepared consistent with the purpose and review procedures of this chapter.

Former BIMC 2.16.040.F.

“The director may approve, approve with conditions, or disapprove the application for site plan and design review. Conditions may be imposed to enable the proposal to meet the standards of the decision criteria.”

BIMC 2.16.040.G.

The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City

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development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

Preliminary Plat

- 1. With conditions, the proposed preliminary plat satisfies the requirements of BIMC 2.16.125.F.** The 2.95-acre subject property consists of the two remaining parcels within the Visconsi Master Plan and is located within the “High School Road II” (HSR II) zoning district. Single-family residential uses are allowed in the HSR II zone, and the proposed townhome development would meet all applicable dimensional standards for the HSR II zone, including standards for maximum Floor Area Ratio (FAR) through the zoning code’s bonus FAR provisions allowing additional FAR for development proposals that provide affordable housing options. The proposal would also meet the general residential subdivision standards of Chapter 17.12 BIMC, including standards for natural areas and community space, as well as the tree retention, protection, and replacement requirements of BIMC 18.15.010.

The City provided reasonable notice and opportunity to comment on the proposal and to testify at the open record hearing. The City received numerous comments from members of the public in response to its notice materials, which largely supported the proposal but also raised concerns regarding traffic, off-street parking, project design, pedestrian and bicycle safety, impacts to nearby properties and services, and compatibility with surrounding development. A traffic analysis has previously been conducted to evaluate the anticipated traffic impacts of the original development proposed within the Visconsi Master Plan, as revised in 2016, which determined that a buildout of the Plan would generate 242 new weekday PM peak-hour trips. An updated trip generation study prepared for the current residential development proposal determined that it would result in 40 fewer PM peak-hour trips than would be generated under the original Visconsi Master Plan. The Applicant would comply with applicable off-street parking requirements by providing 97 off-street parking spaces on-site, with 73 of the on-site parking spaces to be designated for the sole use of the townhome units and the remaining spaces to be made available for adjacent commercial uses within the Visconsi Master Plan through a shared parking agreement. Vehicular access to the subdivision would be provided by Wintergreen Lane, a private road that runs through the middle of the site and connects to High School Road NE to the south. Egress would also be provided at the southeast corner of the site through a connection to Polly’s Lane, which also connects to Wintergreen Lane NE to the south. The proposal includes pedestrian walkways that would provide safe walking conditions for students residing in the subdivision. In addition, pending approval by WSDOT, the Applicant would construct a pedestrian pathway extending from the southwest corner of the property to the signalized intersection at High School Road NE and SR 305.

The City Development Engineer reviewed the proposal and determined that the projected increase in pedestrian traffic generated from the proposed residential use would not warrant the installation of a signalized, mid-block crosswalk across High School Road NE and that, with conditions, the streets and pedestrian ways as proposed would be adequate to accommodate the project's anticipated traffic. The City Development Engineer also determined that the Applicant's preliminary stormwater site plan demonstrates conformance with applicable drainage regulations; the site plan would not cause an undue burden on the drainage basin or water quality and would not unreasonably interfere with the use and enjoyment of downstream properties; the site would be adequately served by public water and sewer services; the site does not contain any geological hazard areas; the proposal would conform with City design and construction standards and specifications; and the site plan and associated design would conform with applicable portions of the Comprehensive Plan pertaining to streets, roads, and utilities. The Kitsap Public Health District recommended approval of the proposal subject to a condition that each townhome would require a sewer building clearance with binding water and non-binding sewer availability commitments prior to building permit issuance. The City Deputy Fire Marshal noted that the project would be required to comply with all provisions of the adopted fire code, that the Applicant would be required to install fire sprinklers and a fire alarm system to monitor the fire sprinkler system, that necessary fire flow would be met through existing hydrants, and that dead-end access roads over 150 feet in length would require a turn-around.

The property is designated "High School Road" by the City Comprehensive Plan. The proposed development would be consistent with several goals and policies of the Comprehensive Plan by providing residential development on underutilized land served by existing public facilities and services and other amenities and by providing needed affordable housing options for Bainbridge Island residents. The City analyzed the environmental impacts of the proposal; determined that, with mitigation measures, it would not have a probable significant adverse impact on the environment, and issued an MDNS, which was not appealed. The mitigation measures of the MDNS would address concerns about potential noise impacts to residents from surrounding commercial uses, as well as impacts to an adjacent residential development from the trash and recycling facilities serving the proposed development. An offsite wetland on property to the east of the project site has protective buffer and setback that extends onto the northeast corner of the subject property, which would not be impacted by the proposal and would be protected within a natural area tract.

The DRB reviewed several earlier iterations of the proposal and issued a recommendation to deny the proposal based on several identified deficiencies. The Planning Commission reviewed a later iteration of the proposal and recommended approval of the application after determining that the revised proposal and several recommended conditions would address the deficiencies identified by the DRB. The Hearing Examiner concurs with the

Planning Commission's assessment. Notably, the Applicant would provide an averaged 50-foot fully vegetated buffer along SR 305, consistent with requirements of the Visconti Master Plan and addressing concerns about the design of the proposal identified by the DRB, as well as members of the public commenting on the proposal. The proposed development would be adequately served by public utilities and services, and the platting of the subdivision is in the public interest. Conditions, as detailed below, are necessary to ensure that the proposal satisfies the specific criteria for subdivision approval under BIMC 2.16.125.F and meets all other applicable local and state requirements. *Findings 1 – 36.*

2. **With conditions, the requirements of RCW 58.17.110 have been met.** Compliance with the subdivision requirements under RCW 58.17.100 is specifically listed as a criterion for approval under the Bainbridge Island Municipal Code, and the project's compliance with this criterion has been addressed above in Conclusion 1. With conditions, as detailed in full below, the proposal would satisfy all local and state requirements for plat development. *Findings 1, 2, 8 – 36.*

Site Plan Review

3. **With conditions, the proposed development would comply with the criteria for site plan and design review approval.** As addressed in Conclusion 1, above, the proposed development, as conditioned, would comply with all applicable provisions of the municipal code, including applicable dimensional standards, design standards, and landscaping and parking requirements. The Planning Commission reviewed the proposal and issued a recommendation to approve the application, with conditions incorporated in this decision designed to ensure that the project would comply with all applicable design standards. The Kitsap County Health District and the City Fire Marshal recommend approval of the proposal subject to conditions. The City Development Engineer reviewed the proposal and determined that, as conditioned, the streets and pedestrian ways would be adequate to accommodate anticipated traffic; the preliminary stormwater site plan demonstrates conformance with applicable drainage regulations; the site plan would not cause an undue burden on the drainage basin or water quality and would not unreasonably interfere with the use and enjoyment of downstream properties; the proposed residential use is projected to result in a reduction in peak PM trip counts and, therefore, additional traffic impact analysis is not required; the anticipated additional pedestrian traffic generated by the proposed residential use does not warrant a signalized pedestrian crossing; the site would be adequately served by public water and sewer services; the proposal would conform with City design and construction standards and specifications; and the site plan and associated design would conform with applicable portions of the Comprehensive Plan pertaining to streets, roads, and utilities. Mitigation measures required by the MDNS issued for the proposal would ensure that no harmful or unhealthful conditions would likely result from the proposed site plan. As addressed above in Conclusion 1, the proposed site plan and design would further several goals and policies of the Comprehensive Plan. Conditions, as detailed below, are necessary to

ensure that the proposal satisfies the requirements for site plan and design review approval and to ensure that it complies with all other applicable local and state requirements. *Findings 1, 2, 8 – 13, 19 – 22, and 24 – 36.*

Conditional Use Permit

- 4. With conditions, the proposed development would comply with the criteria for CUP approval.** Several of the criteria for CUP approval mirror the criteria for site plan and design review approval and, as conditioned, the proposal would meet those criteria as detailed in Conclusion 3 above. In addition, the mitigation measures required by the MDNS and the conditions recommended by the Planning Commission and City staff, which are incorporated in this decision, would ensure that the proposed development would not have a materially detrimental impact on use or property in the vicinity. All activities on the property would be required to comply with the City noise regulations. Conditions, as detailed below, are necessary to ensure that the proposal meets the requirements for CUP approval and to ensure that it complies with all other applicable local and state requirements. *Findings 1 – 13, and 23 – 36.*

DECISION

Based on the preceding findings and conclusions, the request for approval of a preliminary plat, an amendment/major adjustment to a site plan and design review permit, and an amendment/major amendment to an existing conditional use permit to allow the subdivision of the two remaining parcels within the Visconsi Master Plan into 73 lots for single-family townhomes, 31 of which would be sold as affordable housing units, with associated site improvements, at 1320 and 1343 Wintergreen Lane, is **APPROVED**, with the following conditions:⁵

SEPA Mitigation Measures:

1. To mitigate air impacts, all sources and emission units are required to meet the emission and ambient air quality standards specified in Chapter 173-400 WAC and administered by the Puget Sound Clean Air Agency (PSCAA) and shall apply to all air contaminants listed in that regulation. The Applicant shall submit with application for construction associated with this approval a management plan which is consistent with PSCAA Fugitive Dust Controls.
2. To reduce noise impacts for those living within the proposed units along SR305, the units shall be constructed with noise reduction mitigation measures as found in Mitigation Measures Environmental Noise Study dated February 16, 2021, and include the following:
 - Windows are required to have a fixed sash or an efficiently weather-stripped, operable sash. The sash shall be rigid and weather-stripped with material that is

⁵ Conditions include both ordinance requirements applicable to all developments and requirements to mitigate the specific impacts of this development.

compressed airtight when the window is closed, so as to conform to an infiltration rate not to exceed 0.5 cubic foot per minute per foot of crack length in accordance with ASTM E-283-65-T.

- Glass shall be sealed in an airtight manner with a non-hardening sealant or a soft elastomeric gasket or gasket tape.
 - The perimeter of window and door frames shall be sealed airtight to the exterior wall construction with a sealant conforming to one of the following Federal specifications: TT-S-00227, TT-S-00230 or TT-S-00153.
 - In case the ventilation is achieved through slots within the window case, offset vents that maintain the STC rating of the window is recommended.
3. Exterior trash receptacles/recycling facilities shall be fully screened with solid walls and gates and fully contained with masonry enclosure. The eastern wall of the facilities shall be at least 30 feet from the eastern site property line. The screening enclosures shall be architecturally consistent with the facilities approved in the Visconsi Master Plan. All enclosures serving associated buildings shall be constructed and inspected prior to final inspection of the associated building.

Project Conditions:

4. The authorization for construction activities automatically expires and is void if the Applicant fails to file for construction permit or other necessary development permit within three years of the effective date of the decision on this application.
5. Plans submitted for construction shall substantially comply with the site, architectural, landscape, and civil plans approved through this consolidated land use permit, as modified by these conditions.
6. Prior to any construction, the Applicant shall obtain the appropriate permits from the City, including but not limited to clearing, grading, and/or building permits.
7. Lot coverage in compliance with BIMC Table 18.12.020-3 shall be depicted on the final plat.
8. FAR bonus density shall comply with bonus density provisions of BIMC 18.12.030.E, and general provisions for optional affordable housing in BIMC 18.21.020
- A. Affordable housing lots shall be identified on the final plat.
 - B. Per-unit and common area floor area bonus shall be allocated on the final plat.
 - C. Construction of affordable units should be roughly proportional to construction of market-rate units. The project shall follow an approved phasing schedule that

provides for construction and certificate of occupancy for affordable housing units in proportion to market rate units.

D. Affordable housing must comply with the following ratios: 0.1 of bonus for extremely low, very low, or low income groups; 0.6 of bonus for moderate income group; and 0.3 of bonus for middle income group.

E. Affordable housing must comply with preservation of affordability for the following time periods:

- Affordable rental housing units created as a result of the provisions of BIMC 18.21 shall remain affordable for a period of at least 50 years from the time of first occupancy and shall be secured by a recorded agreement and covenant in accordance with BIMC 18.21.020.C.*
- Affordable home ownership units created as a result of the provisions BIMC 18.21 shall be sold to income-qualified households and shall remain affordable for a period of 99 years from the time of first occupancy. The affordable housing unit(s) shall be secured by a recorded agreement and covenant in accordance with BIMC 18.21.020.C.*

* A unit that is owned or sponsored by a public or private nonprofit agency that already restrict benefit and resale is exempt from these requirements.

- If the Applicant sells the individual lots created as a result of the provisions of this chapter, it is the responsibility of the Applicant to arrange for the affordable units to be built.

9. Parking lots serving commercial development (i.e., parking lots being used through a shared development agreement) must provide a minimum of four bicycle spaces for each lot or the equivalent thereof in terms of bike huts.
10. If any historical or archaeological artifacts are uncovered during excavation or construction, work shall immediately stop and the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.
11. Required plantings shall be installed or installation financially assured in accordance with BIMC 18.15.010.H. prior to occupancy of any of the new buildings. After installation

approval by the Planning Department, maintenance financial assurance shall be required in accordance with BIMC 18.15.010.H.

12. The project shall comply with the following condition to the satisfaction of the Kitsap Public Health District: each townhome will require a sewer building clearance with binding water and non-binding sewer prior to building permit issuance.
13. The project shall comply with the following conditions to the satisfaction of the Fire Marshal:
 - A. The project shall comply with all applicable provisions of the adopted Fire Code.
 - B. Fire sprinklers and a fire alarm system to monitor the fire sprinkler system will be required.
 - C. Fire flow may be met through existing hydrants. Developer to verify available fire flow for the site.
 - D. Dead-end access roads over 150' in length require a turn-around.
14. The project shall comply with the following conditions to the satisfaction of the City Engineer:
 - A. Every lot corner shall be staked by a three-quarter-inch galvanized iron pipe or equivalent approved by the City, driven into the ground and marked or tagged with the certificate number of the surveyor setting said monument. The position and type of every permanent monument shall be noted on the plat. Perimeter and public street monuments (if required) shall be twenty-four inches long, set in concrete, or shall be constructed of an equivalent approved by the City.
 - B. Civil improvement plans, reports, and computations prepared by a civil engineer registered in the State of Washington shall be submitted with the application to the City for a plat utility review and associated Commercial Grade and Fill or Building Permit(s). Plans to construct all necessary infrastructure including site drainage, grading, and utilities serving the divided lots will be reviewed and approved by the City Engineer prior to issuance of any construction permit.
 - C. On-site water and sanitary sewer main extensions shall be publicly owned and maintained. Water and sanitary sewer main extensions shall be located in 15-foot-wide easements and shall be accessible by maintenance vehicles to the satisfaction of the City Engineer.

- D. Developer Extension Agreements (DEA) pursuant to BIMC §13.32 shall be executed prior to or in conjunction with the plat utility review and associated construction permits. Agreements required for any public road extensions are separate from those for utility (water/sewer/storm) extensions and both (if necessary) will include the 3% fee and any potential latecomer agreement application as desired by the Applicant as part of the utility extension(s).
- E. The final utility report/plans shall reflect conditions on utility service imposed under the non-binding Water/Sewer Availability commitment letter issued April 15, 2021, by COBI Public Works under designated file number PW21 0016.
- F. The final Civil plan design and supporting drainage report submitted with construction permitting documents shall demonstrate project compliance with all applicable minimum requirements (1-9) as required by BIMC 15.20. The report shall include evaluation of the design capacity of the existing stormwater system as it relates to the proposed hard surfaces of this project. An off-site analysis to assess the potential impacts to the storm conveyance downstream regarding issues with capacity, erosion, water quality threats, localized flooding, etc. is required consistent with BIMC §15.20.060(H).
- G. Site Plan indicates that greater than one acre will be disturbed during construction. To comply with Department of Ecology Phase II NPDES Permittee requirements, coverage under the Construction General Stormwater Permit (CGSP) from Department of Ecology is required for the duration of the project and shall be in place prior to any clearing, grading, or other land disturbing activities.
- H. A Construction Stormwater Pollution Prevention Plan (SWPPP) is required prior to construction activities resultant from the plat utility review approval, including clearing, grading, or civil improvements. Stormwater quality treatment and erosion and sedimentation control shall be designed in accordance with BIMC 15.20. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington.
- I. The face of the plat shall indicate that all on-site stormwater facilities serving the divided lots resulting from the proposed subdivision shall remain privately owned and operated/maintained. The owner shall be responsible for maintenance of the stormwater facilities following construction per BIMC 15.21 to include annual inspection and maintenance reports provided to the COBI NPDES Coordinator.

- J. A Declaration of Covenant for Maintenance and Operation of Storm Drainage facilities shall be recorded prior to issuance of any certificate of occupancy. Required text for the Declaration of Covenant is found in BIMC 15.21, Exhibit A.
- K. The face of the plat shall indicate that on-site stormwater runoff resulting from future development on individual resultant lots shall be managed in a manner compliant with BIMC 15.20 and DOE Stormwater Management Manual for Western Washington (2014) pursuant to issuance of follow-on building permits.
- L. The face of the plat shall indicate that all internal roadways shall remain privately owned and maintained. Roadway plans, sections, and alignment requirements submitted by the Civil Engineer of Record shall be consistent with HEX conditions for the original Visconsi approvals unless modifications are approved by the City Engineer.
- M. Resultant lots will be subject to Transportation Impact Fees per BIMC 15.30 and in accordance with the TIF Rate Schedule (or the optional independent calculation method) in effect at the time of permit issuance. Transportation Impact Fees shall be due in full at the time of building permit issuance.
- N. The primary walkways throughout the development shall meet accessibility requirements and be surfaced with nonskid hard surfaces, providing a minimum of 5 feet of unobstructed width.
- O. A mid-block pedestrian crossing across High School Road NE to the south was not warranted nor recommended by the consulting Traffic Engineer (Transpo Group), primarily due to existing signalized crosswalks at the intersection of High School Road NE and SR 305 and the presence of adjacent uncontrolled driveways. In lieu of a mid-block crosswalk, Applicant shall make a good faith effort to install a pedestrian connection from the southwest corner of the west parcel to the sidewalk within the High School Road NE right-of-way (ROW) adjacent to the signalized intersection with SR 305, aligned west of the Walgreens and Key Bank lots and located within WSDOT ROW (A WSDOT ROW permit would be required). This good faith effort shall be documented to the satisfaction of the City Engineer prior to the issuance of permits to complete proposed civil improvements under a plat utility review.
- P. A right-of-way construction permit (ROW) or road approach application (RAA) is required prior to construction activities within the right-of-way (primarily utility connections). The ROW/RAA permit will be subject to separate conditions and bonding requirements.

- Q. Installation of improvements and creation of as-built engineered plans must be completed prior to approval of final plat. In lieu of completion of those improvements and as-builts consistent with the conditions of a preliminary short plat approval, the City Engineer may accept an assurance device, in an amount and in a form determined by the City, but not to exceed 125 percent of the established cost of completing the infrastructure that secures and provides for the actual construction and installation of the improvements or the performance of the conditions within one year, or such additional time as the City Engineer determines is appropriate, after final plat approval.
 - R. Mailbox locations, relocations, and clustering shall be approved by the local postmaster and shall conform to the Standards for mailbox placement per standard drawings DWG. 8-220, DWG. 8-230, DWG. 8-240, and DWG. 8-250. Mailbox relocations shall be the financial responsibility of the developer if required.
15. The project shall comply with the conditions of the Planning Commission (as amended by the Hearing Examiner) as follows:
- A. The Applicant shall place all 31 of the affordable units into the Housing Resources Board (HRB) Community Land Trust (CLT) – or comparable agency later approved by the City Council – to be offered to low-income households in perpetuity. This commitment will be a covenant on title on each of the affordable units prior to the first City permit approval for any activity on the project site. The City will determine what constitutes a “low income” household pursuant to BIMC Sections 18.12.030.E, 18.21 and 18.36, or as thereafter amended. The final plat will include a covenant on the face of the plat stating, “Affordable Housing as defined in BIMC 18.36” and including a phasing plan identifying the affordable-to-market rate unit completion proportions.
 - B. Upon the first sale of each of the 31 affordable units, Applicant will pay \$10,000 to HRB and Housing Kitsap (or any comparable agency later approved by the City Council), with \$5,000 paid to each agency per unit. This commitment will be a covenant on title on each of the affordable units prior to the first City permit approval for any activity on the project site.
 - C. Upon the first sale of each of the 73 units, Applicant will pay \$1,500 per unit to HRB (or a comparable agency later approved by the City Council). This commitment will be a covenant on title on each of the units prior to the first City permit approval for any activity on the project site.

- D. Applicant will provide up to \$10,000 per parcel for restoration/augmentation of a buffer tree screen along SR 305 in the Walgreen's and Key Bank lots, as determined and arranged by the City.
- E. Consistent with Condition 14.O above, the Applicant will make a good faith effort to provide a pedestrian/nonmotorized trail from the SW corner of the west parcel of the Wintergreen Project to the High School Road NE/SR 305 intersection and will obtain a right-of-way permit from Washington State Department of Transportation (WSDOT) to construct the trail at Applicant's expense.
- F. Applicant will plant trees in the SR 305 buffer to create a full tree screen to eliminate visual impacts. Tree selection will be included in the Landscape Plan in coordination with the City arborist.
- G. Applicant will construct a 10-foot high fully vegetated berm along the SR 305 buffer to dampen noise impacts. Selection of native plants to be included in the berm will be included in the Landscape Plan.
- H. Applicant will provide full disclosure of all SR 305 mitigation measures to potential buyers of units that abut the SR 305 buffer and will obtain written acceptance of these mitigation measures in purchase and sale agreements. The mitigation measures will be noted in the final plat and included in the Community Space Management and Maintenance Plan, Landscape Plan, and all building permits that incorporate noise mitigation measures.
- I. Applicant will provide the equivalent of a 50-foot fully vegetated buffer along SR 305. The width of the buffer may be averaged, but no portion of the buffer may be less than 35 feet wide. This condition is consistent with the Comprehensive Plan, the existing averaged 50-foot fully vegetated buffer along SR 305 required as part of the 2014 Visconsi Master Plan HEX decision for the site, the DFB standard in Chapter 5 for a 25-50 foot fully vegetated buffer along SR 305, and applicable provisions of BIMC Title 17 and 18. If the Applicant determines that the equivalent of a 50-foot fully vegetated buffer is not feasible or requires redesign of the site plan, the project must return to the Planning Commission for additional review and recommendation. Planning Commission Recorded Motion Wintergreen Townhomes PLN51836 SPR CUPA SUB.
- J. Applicant will provide for City approval a parking plan identifying how many parking spaces are provided on each of the properties that make up the Visconsi Master Plan, how many parking spaces are proposed for the Wintergreen Project properties and their location, and how many handicapped parking spaces are being provided and their location. The parking plan must satisfy parking

requirements of the 2016 amendment to the Wisconsin Master Plan HEX decision and City code requirements and standards applicable to a residential subdivision.

- K. Applicant will provide for City approval a plan for bike parking spaces that is adequate for the proposed residential development as well as installation of a bike barn in the common area provided for Phase I and Phase II.
 - L. Applicant will provide at least 5 motorcycle parking spaces adequate for the proposed residential development.
 - M. Applicant will fence townhome yards to allow safe use by children and pets.
 - N. All SEPA mitigation measures included in the August 27, 2021 (Revised August 31, 2021) Staff Report shall be incorporated into the project as amended by these conditions.
 - O. All project conditions included in the August 27, 2021 (Revised August 31, 2021) Staff Report shall be incorporated into the project as amended by these conditions.
 - P. The Planning Commission recommendation with conditions applies only to the project as proposed. Any subsequent substantive changes to the project will require additional Planning Commission review and recommendation.
 - Q. The Applicant will properly screen with vegetation the project at the north and south boundaries.
16. Of the total 73 units, a maximum of 24 two-bedroom units is allowable, and a minimum of 73 parking spaces (inclusive of garages) must be designated for the sole use of the townhome residential units.

DECIDED this 23rd day of December 2021.



ANDREW M. REEVES
Hearing Examiner

