

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

2 Phil Olbrechts, Hearing Examiner

<p>3 RE: Main Brook Town Homes</p> <p>4 Preliminary Plat Major</p> <p>5 Amendment</p> <p>6 PL2019-01</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p>
--	---

7

8 **SUMMARY**

9 The Applicant has applied for approval of a major amendment to the approved
10 Preliminary Plat of Main Brook Townhomes. The original approval was for a 19-lot
11 subdivision containing eighteen (18) zero lot-line townhome lots and one (1)
12 commercial lot to be developed in two (2) phases on approximately 1.42 acres in the
13 Mixed-Use Commercial (MUC) zoning district. The major amendment proposes to
change the use of lot 19 from commercial to residential for a 10-unit apartment
building. The proposal is approved subject to conditions.

14

15 **ORAL TESTIMONY**

16 Annette Marrero, City of Monroe Senior Planner, summarized the proposal. In
17 response to the public comment letters, Ms. Marrero noted that the traffic concerns
18 were addressed in the revised traffic report. The traffic report concluded there would
19 be less traffic than the traffic estimated for the commercial use of the lot. She
confirmed that Public Works had reviewed the proposed access and found it compliant
with City standards. The City has access spacing standards that apply to West Main
Street and Public Works has found it complies.

20 Rick Hanson, Applicant, noted all the improvements are in for the building site. He
21 noted he’s been building homes in Puget Sound for 30 years and Monroe for 8 years.
22 He plans on retaining ownership and managing the apartments as part of his retirement
23 plan. The fact that residents will be tenants instead of owners won’t create any adverse
24 impacts. Mr. Hanson will be responsible for maintenance and if there are any problems
25 neighbors can contact him. It’s much easier for him to control the behavior of a tenant,
who can be evicted, as opposed to an owner. Another factor, unlike most apartment
buildings, the proposed apartment building will be part of a homeowners association
and will pay monthly dues and the homeowner’s association will be able to levy fines
etc. if the common areas are not maintained or other covenants are not followed. As
for traffic and parking, the project complies with all requirements and the plat provides

1 park and recreational use for tenants to use. The project will provide much needed
2 housing for the city while creating minimal impacts.

3 **EXHIBITS**

4 Exhibits 1-17 in the “List of Exhibits” attached to the May 3, 2019 staff report were
5 admitted into the record during the May 3, 2018 hearing. The staff PowerPoint was
6 admitted as Ex. 18.

7 **FINDINGS OF FACT**

8 **Procedural:**

- 9 1. Applicant. The Applicant is Rick Hanson, Hanson Homes at Main Brook, LLC,
10 PO Box 2289, Snohomish, WA 98291.
11 2. Hearing. The examiner held a hearing on May 3, 2019 at 4:00 pm at the Monroe
12 City Hall in the Council Chambers.

13 **Substantive:**

- 14 3. Site Proposal/Description. The Applicant has applied for approval of a major
15 amendment to the approved Preliminary Plat of Main Brook Townhomes (City File
16 No. PLN2017-02, approved on March 13, 2018). The original approval was for a 19-
17 lot subdivision containing eighteen (18) zero lot-line townhome lots and one (1)
18 commercial lot to be developed in two (2) phases on approximately 1.42 acres in the
19 Mixed-Use Commercial (MUC) zoning district. The major amendment proposes to
20 change the use of lot 19 from commercial to residential for a 10-unit apartment
21 building¹.

22 ¹ In his application narrative, Ex. 5, the Applicant also requested that Condition 39 of
23 the original plat approval be stricken as in conflict with Condition 30 of the same
24 approval. This request was not addressed in the staff report and not mentioned by the
25 Applicant during the hearing. Given these circumstances, the request is considered
abandoned but can be brought up in a request for reconsideration. If staff and the
Applicant file a joint request for reconsideration on Condition No. 39, it will be stricken
as it applies to the apartment building. However, the Applicant should be aware that
Condition 39 cannot be removed as it applies to the townhomes. An amendment to
the plat is limited to changes in plat design and cannot be used to collaterally attack a
permitting decision with expired appeal and reconsideration periods. Since Condition
39 was not timely challenged via an appeal or reconsideration request, it cannot be
revisited in this plat amendment except to the extent that plat design and use is changed
by the amendment.

1 4. Characteristics of the Area. The project area is surrounded by Mixed Use
2 Commercial (MUC) zoned property. Adjoining lots to the north and south are
3 developed with single-family homes. The lot to the west has a nursing home and
4 property to the east is composed of a mix of a single-family home, multi-family
development (including the townhomes of the Main Brook Townhome plat) and
commercial use.

5 5. Adverse Impacts. As conditioned, there are no adverse impacts associated with the
6 development. As determined in Finding of Fact No. 6, the proposed subdivision will
7 be served by adequate infrastructure. The SEPA Responsible Official issued a
8 Determination of Non-significance on December 15, 2017 for the original plat
application and City staff determined no additional SEPA review was necessary.
Pertinent impacts are addressed more specifically below:

9 A. Critical Areas. There are no critical areas on the project site.

10 B. Compatibility. The proposed multi-family use, which directly abuts West Main
11 street, is compatible with the mixed-use character of that street as well as the
12 mixed uses directly abutting the project site to the east and west along West
Main Street.

13 One public comment letter, Ex. 8-A, expressed concern over the use of the
14 property by tenants as opposed to landowners, asserting that such occupants
15 would be more likely than landowners to commit crimes, trespass, property
16 destruction, noise and lack of maintenance. As evidence the writer compared
the maintenance of one low income housing building with a tri-plex
development. The writer asserted that the tri-plex was much better maintained.

17 Rick Hanson, Applicant, addressed the issue of tenant verses landowner. He
18 pointed out that he has greater control over tenants since he can evict them if
19 they do not act responsibly. He also noted that the common areas of the
20 apartment complex will be owned by the homeowner's association for the entire
plat and that the property owners will have a vested interest in assuring that the
common grounds are properly maintained.

21 There is no reasonable basis to conclude that tenants will be a source of crime,
22 noise or poor maintenance as alleged in the Ex. 8-A letter. The fact that the
23 apartment complex will be part of a plat managed by a homeowner's association
24 makes the situation distinguishable from the one tenant/landowner comparison
25 noted in the Ex. 8-A letter. In any event, the one comparison cited in Ex. 8-A
is not probative of the conduct of future tenants in general or that of the tenants
of this subject project specifically.

The public comment letter of Ex. 8-B questioned the adequacy of planning for
an apartment complex that is added after the fact as opposed to planned in

1 advance as an integral part of the preliminary plat application. While it may
2 have been possible to devise a better integrated design had the apartment
3 building been proposed up-front in the original application, the City would have
4 had no authority to require a design that differs from what is proposed in the
5 amendment. Since the proposal is not a planned unit development, the City
6 doesn't have the discretion to mandate improvements to project integration.
7 Consequently, the fact that design options are more limited in the sequence of
8 applications for this proposal does not create any legal basis for denial or further
9 conditioning.

6 6. Adequacy of Infrastructure/Public Services. The project will be served by adequate
7 and appropriate infrastructure and public services. As noted in page 6 of the staff report
8 the proposal does not lower level of service below adopted levels for any public
9 infrastructure or services. Appropriateness is more specifically addressed as outlined
10 below:

10 A. Water and Sewer Service. The City of Monroe will provide water and sewer
11 service. According to City of Monroe staff as noted in the staff report, there is
12 sufficient capacity available in the City's public water and sanitary sewer
13 system to serve the proposed subdivision. All lots will connect to the City's
14 water and sewer system.

13 B. Fire and Police Protection Fire District No. 7 will provide fire protection. The
14 City of Monroe Police Department will provide police protection. Neither the
15 Fire District nor the police chief expressed any concerns when they reviewed
16 the proposal.

16 C. Drainage. As part of the civil plan review process, the Applicant will install
17 improvements to the stormwater system. Stormwater management will be
18 designed to meet the requirements of the 2014 Department of Ecology Storm
19 Water Management Manual for Western Washington as administered by the
20 City Engineer. Any future permitted activities, such as building permits, will
21 also have to comply with the provisions of the Storm Water Management
22 Manual in effect at the time of the vesting of the permit application.

21 D. Parks/Open Space. Per MMC 18.78.080, for each proposed dwelling unit in a
22 multifamily structure, complex or development, recreational space shall be
23 provided per the following table:

Type of dwelling unit	Open space
Studio and one bedroom	90 square feet per unit

Two bedrooms	130 square feet per unit
Three or more bedrooms	170 square feet per unit

The proposed subdivision provides a private neighborhood park within the development. Tract 998 (2,036 sq. ft.) is open space and Tract 999 (2,417 sq. ft.) will contain a play structure, bench, landscaping, and fencing (Exhibit 17). The development is required to provide 4,360 square feet of recreation space. The total recreation space provided is 4,453 square feet. Maintenance of the park and recreation tract shall be the responsibility of the homeowner's association.

Impacts to the City park and recreation system from the anticipated additional public park users will be mitigated. In accordance with the City's park impact mitigation fees established under MMC Chapter 20.10, impact fees require a standard fee amount per dwelling unit as a condition of residential development within the city. Park impact fees shall be paid in accordance with Chapter 20.10 MMC. Park impact fees shall be based on the fee amount in effect at the time of payment.

E. Schools. Impacts to the Monroe Public Schools and the Snohomish School District in the form of additional students are addressed through mitigation programs. The City of Monroe has adopted the Monroe and Snohomish School District 2016 - 2021 Capital Facilities Plan and imposes impact fees for schools in accordance with those plans and MMC Chapter 20.07. School mitigation fees require a standard fee amount per dwelling unit as a condition of residential development within the city. School impact fees are based on the amount in effect at the time of payment.

RCW 58.17.110(2) requires the City to make a finding that the proposed subdivision assures "*safe walking conditions for students who only walk to and from school.*" Students will walk from the development to Frank Wagner Elementary School and Park Place Middle School. Students will be bussed from the development to Monroe High School by the Monroe School District. Sidewalks will be installed on one side of Road 'A' and will extend to West Main Street providing safe walking conditions. The public streets fronting on and/or adjacent to the subdivision include sidewalks on all sides of the street as well as sidewalk along the property frontage along West Main Street.

F. Streets and Traffic. Access to the subdivision is proposed via West Main Street. Internal access to individual lots will be provided through a private road 'A' and 'B' (Tract 997). Road 'A' is 30', 2-10' travel lanes and a 5' sidewalk on one

1 side. Road 'B' is 20', 2-10' travel lanes. The proposed private road design was
2 approved by the Public Works Director. Frontage improvements along West
3 Main Street are already installed which includes curb and gutter, and a five foot
4 wide sidewalk along the entire length of the site frontage. An ADA ramp and
5 new driveway approach will be installed at the entrance of West Main Street.

6 Traffic control devices and street signs shall be installed prior to final plat
7 approval, and all private roads within the subdivision shall be constructed in
8 accordance with the City's Public Works Design and Construction Standards
9 and installed by the developer to the satisfaction of the City Engineer prior to
10 final plat approval.

11 Based on the updated Traffic Impact Study dated January 21, 2019 (Exhibit 13),
12 the development is anticipated to generate approximately 12.88 AM peak-hour
13 trips and 15.68 PM peak-hour trips. The trip generation results in a lower trip
14 generation than what was analyzed in the September 2017 TIA. The level of
15 service analysis shows that all of the study intersections in the TIA are
16 anticipated to operate within acceptable level of service thresholds.

17 Impacts to the City's transportation system are mitigated through the collection
18 of traffic mitigation fees. In accordance with the City's traffic impact fee
19 program under MMC Chapter 20.12, impact fees require a standard fee amount
20 per dwelling unit as a condition of residential development within the City.
21 Traffic impact fees shall be paid in accordance with MMC Chapter 20.12 and
22 shall be based on the amount in effect at the time of payment. Frontage
23 improvements and paving, including curb, gutter, sidewalk, and street trees shall
24 be installed along all private streets within the subdivision in accordance with
25 the City's Public Works Design and Construction Standards.

As noted in Ex. 8-B, concerns were raised about turning movements at the
project site's access point to West Main Street. However, as testified by Ms.
Marrero, the City's Public Works department has reviewed the proposal and
found it to comply with all applicable development standards, which would
include the City's access point separation standards and the like. Given the
expertise of the public works department and the absence of any concern on their
part over Main Street access, it is determined that the proposal will not create
any significant adverse vehicular access or turning movement problems.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. MMC 21.20.050(F) provides that the Examiner shall hold hearings and make final decisions on applications for preliminary plat approval.

1 **Substantive:**

2 2. Zoning and Comprehensive Plan Designation. The project site is zoned Mixed Use
3 Commercial (MUC). The Comprehensive Plan land use designation is Mixed Use.

4 3. Review Criteria and Application. The MMC does not address what criteria apply to
5 subdivisions for major amendments. In the absence of any express requirements for
6 major amendments, it is concluded that a major amendment should be treated as a re-
7 application subject to the original review criteria for the subdivision. Subdivision
8 criteria are specifically governed by MMC 17.12.030(H). In addition, MMC
9 21.50.030(C) imposes standards that apply to all development reviewed by the hearings
10 examiner. Applicable code provisions are quoted below in italics and applied through
11 corresponding Conclusions of Law.

12 **Subdivision Criteria**

13 **MMC 17.12.030(H):** ... *The hearing authority shall inquire into how the public interest*
14 *of future residents of the preliminary plat are to be served by the subdivision and its*
15 *dedications. It shall determine if provisions are made to protect the public health, safety*
16 *and general welfare by the provision of open spaces, drainage ways, streets, alleys,*
17 *other public ways, water supplies, sanitary waste, parks, playgrounds, sites for schools*
18 *and school grounds and shall consider all other relevant facts and determine whether*
19 *the public interest of the future residents of the subdivision will be served by the*
20 *dedications therein:*

- 21 *1. The hearing authority shall consider if the proposed subdivision conforms to the*
22 *comprehensive plan and the Shoreline Master Program;*
23 *2. The hearing authority shall consider the physical characteristics of a proposed*
24 *subdivision site and may recommend disapproval of a proposed plat because of*
25 *improper protection from floods, inundation or wetland conditions;*
3. All identified direct impacts must be mitigated or meet concurrency as set forth
in MMC Title 20.

4. The criterion is met. Adequate provisions are made for infrastructure and there are
adequate public services available as determined in Finding of Fact No. 6. Beyond
infrastructure and public service needs, the project adequately provides for the public
health, safety and general welfare because there are no significant adverse impacts
associated with the proposal as determined in Finding of Fact No. 5. The proposal
serves to satisfy the City's obligations to accommodate its growth population targets

1 assigned by Snohomish County under the Growth Management Act, Chapter 36.70C
2 RCW. The project is consistent with the comprehensive plan for the reasons identified
3 at page 6 of the staff report. The project is more than 200 feet from any shoreline of
4 the state or associated wetland and is, therefore, not subject to the jurisdiction of the
5 Shoreline Management Act. The site is not in a floodplain and no other critical areas
6 are present at the site as noted in Finding of Fact No. 5. The proposal meets all
7 applicable level of service standards as determined by staff in page 7 of the staff report
8 and will be served by adequate and appropriate infrastructure as determined in Finding
9 of Fact No. 6.

7 **MMC 21.50.030(C): Required Findings.** *In drafting a recommendation, the hearing
8 examiner shall address the following, as required in the findings of fact:*

- 9 *1. The development is consistent with the comprehensive plan and meets the
10 requirements and intent of this code.*
- 11 *2. The development makes adequate provisions, if appropriate, for open space,
12 drainage ways, streets and other public ways, transit stops, water supply, sanitary
13 wastes, parks and recreation facilities, playgrounds, sites for schools and school
14 grounds.*
- 15 *3. The development adequately mitigates impacts identified under Chapters 17.12,
16 18.84, and 20.04 MMC, and the sensitive area guidelines adopted by resolution.*
- 17 *4. The development is beneficial to the public health, safety and welfare and is in
18 the public interest.*
- 19 *5. The development does not lower the level of service on the following public
20 facilities and services below the minimum standards established within the
21 comprehensive plan:*
 - 22 *a. Potable water;*
 - b. Wastewater;*
 - c. Storm water drainage;*
 - d. Police and fire protection;*
 - e. Parks and recreation;*
 - f. Arterial roadways; and*
 - g. Public schools.*

23 *If the development results in a level of service lower than those set forth in the
24 comprehensive plan, the development may be approved if improvements or
25 strategies to raise the level of service above the minimum standard are made
concurrent with the development, subject to the requirements of Chapter 20.06
MMC.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

6. The area, location, and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of development, and are proportional to the impacts created by the development.

5. The criterion is met. As determined in Finding of Fact No. 6, the proposal does not lower level of service standards for public services below adopted levels and the proposal will be served by adequate and appropriate public infrastructure and services. The proposal is consistent with the comprehensive plan as determined in Conclusion of Law No. 4. As conditioned, there are no significant adverse impacts associated with the proposal as determined in Finding of Fact No. 5. Since there are no significant adverse impacts associated with the proposal and the proposal helps to accommodate GMA required growth targets, the proposal is beneficial to public health, safety and welfare and is in the public interest. There are no dedications of public land associated with the proposal. Staff have assessed compliance of the amendment against all applicable zoning code requirements as detailed in the staff report and found no inconsistencies. As no inconsistencies are apparent from the record, it is concluded that the proposal is consistent with the zoning code.

DECISION

The proposed major amendment to the Main Brook Town Homes preliminary plat is found to be consistent with all applicable development regulations for the reasons identified in the Conclusions of Law above. The proposed major plat amendment is approved, subject to the following conditions:

- 1. All improvements shall be constructed in accordance with the approved preliminary plat map with the date stamp of February 11, 2019. Minor modifications of the plans submitted, as described in MMC 18.84.210 (e.g. BLA or reduction in total number of lots), may be approved by the Community Development Director or his/her designee if the modifications do not change the Findings of Fact or the Conditions of Approval.
- 2. All development shall be subject to the conditions of the original preliminary plat approval contained in Exhibit 10 to the extent consistent with Condition No. 1.

Dated this 4th day of May 2019.


Phil A. Olbrechts

City of Monroe Hearing Examiner

Appeal Right and Valuation Notices

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MMC 21.50.120 provides that the final decision of the Hearing Examiner is subject to appeal to superior court. Appeals of final land use decisions to superior court are governed by the Land Use Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal deadlines with strict service requirements. Persons wishing to file LUPA appeals should consult with an attorney to ensure that LUPA appeal requirements are correctly followed.

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