

1 **BEFORE THE HEARING EXAMINER FOR THE CITY**
2 **OF PORT TOWNSEND**

3 Phil Olbrechts, Hearing Examiner

4 RE: Habitat for Humanity "Landes South" 5 Preliminary Plat/Plat Alteration 6 LUP22-076	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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8 **INTRODUCTION**

9 Habitat for Humanity has applied for approval of a 14-lot preliminary plat/plat alteration for
10 the single-family residential development of a 1.05-acre site located. at a site that lies west of
Landes Street between 14th and 16th Streets. The application is approved subject to conditions.

11 A main focus of concern was the opening of the alley between 14th and 16th Streets. This
12 currently undeveloped alley is heavily treed and functions as a wildlife and open space corridor.
13 Though unfortunate for the loss of the informal trail and open space, opening the alley provides
14 for the safest alternative with respect to traffic given the busy nature of Landes Street.
Associated drainage issues, especially with respect to existing stormwater issues and discharge
into the nearby Kah Tai Lagoon, have been resolved.

15 **TESTIMONY**

16 A computer-generated transcript accompanies this decision as Appendix A. The transcript is
provided for informational purposes only.

17 **EXHIBITS**

18 The August 16, 2023 staff report in addition to attachments A-S identified at page 29 of the
19 staff report were admitted during the hearing as Exhibit 1.

20 **FINDINGS OF FACT**

21 Procedural:

22 1. Applicant. The applicant is Habitat for Humanity East Jefferson County c/o Jamie
Maciejewski, Executive Director, P.O. Box 658, Port Townsend, WA 98368.

23 2. Hearing. A hearing was held on August 29, 2023 at 3 pm in the Port Townsend Council
24 Chambers.

25 Substantive:

26 3. Site and Proposal Description. Habitat for Humanity of East Jefferson County submitted a
Preliminary Plat application to replat fifteen (15) vacant platted lots in Block 29 of the First
Supplemental Plat of Eisenbeis Addition (Ex. A). The 1.05 site is situated on a gentle slope at

1 the southwest corner of Landes and 16th Streets (Ex. B and C). As proposed, “Landes South”
2 will result in fourteen lots for construction of fourteen (14) dwelling units arranged as seven
3 (7) side-by-side, single-story, duplexes. Each dwelling unit will be on its own lot and share one
4 common wall through a zero-lot line arrangement (Ex. D). Some lots will have a “pipestem”
5 configuration. Each side of the duplex will be sold as an individual home with a 99-year ground
6 lease to ensure long term affordability.

7 Access to the new units is proposed via development of 16th Street between Landes Street and
8 the platted alley in Block 29 and development of the alley between 16th and 14th Street. A 20-
9 foot-wide alley runs north-south between the two groups of lots.

10 Vegetation on site consists of mixed forest with a dense understory of native shrubs and
11 invasive species including English Ivy, Himalayan blackberry and Spurge Laurel as further
12 described in the arborists report (Ex. F).

13 Site topography primarily consists of gentle slopes between 0 and 7 degrees (0-12 percent) with
14 the exception of a cut slope along the eastern edge of the property. The cut slope ranges in
15 height from approximately five feet near the northern and southern property boundaries to a
16 maximum of 9.5 feet in the central portion of the cut slope. A gentle east-southeast swale is
17 located on the northern portion of the property. The swale has a maximum depth of
18 approximately 3 to 4 feet deep. No indication of recent surface water flow or pooling was
19 observed in the swale. The swale is an old stream channel that is no longer active due to a
20 culvert intercepting the stream at the intersection of 16th Street and Hill Street to the northwest
21 of the subject property (Ex. C and G).

22 Vegetation on site consists of mixed forest with a dense understory of native shrubs and
23 invasive species including English Ivy, Himalayan blackberry and Spurge Laurel (Ex. F).

24 4. Surrounding Uses: The area is currently characterized by low density, single-family,
25 detached residences and undeveloped forested land. One exception is the four detached
26 condominium units at the south-west corner of Block 29 (562-568 14th Street). Habitat is
currently constructing three duplex units (6 units) on Block 28 to the north. Landes Street, on
the project’s eastern boundary, is developed as a two-lane major collector with sidewalk on the
west side. Surrounding properties are zoned residential, either R-II (minimum lot size 5,000sf)
or R-III (minimum lot size 3,000sf); Kah Tai Lagoon Nature Park across Landes Street to the
east is zoned P/OS (Ex. N).

5. Adverse Impacts. As mitigated, there are no discernible adverse impacts that will be
created by the proposal. The project is SEPA exempt. The alley between 14th and 16th Streets
is currently undeveloped and heavily treed. Many members of the public, including Goldrick
et al, Gariss, L. Huber, R. Huber, Ellison, Clow, McClean, Kelley, Neubauer and Bachman
expressed significant concern about the loss of habitat, forest, and open space that will
accompany the development of the alley as the primary access for the proposed project. There
were also concerns about the width of the alley being inadequate to accommodate two-way
traffic without conflict. There were concerns related to the quality and quantity of stormwater
drainage feeding the nearby Kah Tai Lagoon. Infrastructure impacts, including access, parking,
and drainage are addressed in Finding of Fact No. 6. Other impacts are more specifically
addressed as follows:

A. Compatibility. The proposal is compatible with surrounding development. The project
will be developing 14 homes in the form of seven side by side duplexes. The project
will conform to all zoning density, lot sizes, and bulk and dimensional standards of the

1 underlying zone. Surrounding development is also residential in character. While
2 several members of the public expressed a desire to see homes that are more in keeping
3 with the historic design of the neighborhood, the City staff note the adopted design
4 standards are simply the International Residential Code rather than a design standard
5 that might affect the appearance of the homes. The City has no authority to require the
6 project to exceed these standards. Several members of the public also expressed
7 concerns regarding the concentration of affordable housing units within the localized
8 area. The City's response is that the production of affordable housing promotes
9 Comprehensive Plan Goal 4. The City does not appear to have any goals, policies or
10 codes that would support the spreading of affordable housing throughout various
11 portions of the City, though staff notes the proximity to shopping and other amenities
12 is an important benefit of this location.

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14 B. Critical Areas. Critical areas concerns in this area include aquifer recharge,
15 seismic/tsunami hazards, steep slopes, fish and wildlife priority habitat, flooding,
16 wetlands and critical drainage corridors.

- 17 1. Aquifer Recharge: Though portions of the site are mapped as aquifer recharge
18 areas, no additional standards apply when, as is the case here, the residential
19 project will connect to sewer.
- 20 2. Seismic/Tsunami Hazard: A condition of approval will require the applicant
21 to include a note on all future building plans stating the homes are being
22 constructed in a tsunami hazard/liquefaction prone area (PTMC 19.05.100(d)
23 and (E). There are no other additional setbacks or other requirements within
24 the code regulating the structural design.
- 25 3. Steep Slopes: According to the applicant's Geologic Hazard Assessment (Ex.
26 G), there are no critical areas slopes on or adjacent to the subject property.
- 1 Fish and Wildlife Priority Habitat: Kah Tai Lagoon is a priority habitat.
2 However, the City does not consider the subject project to be adjacent to the
3 lagoon because developed Landes Street lies between the two. The site is
4 within a mapped Blue Heron seasonal nesting buffer. The closest lot within
5 the proposed development is 300 feet from the nest. Based on a 2020
6 consultation between staff and Washington Fish and Wildlife Biologist
7 WDFW Bryan Murphie, staff recommended conditions of approval regarding
8 the timing of construction. That recommendation is reflected in the conditions
9 of approval herein and should protect the nesting site during the nesting season
10 from any impact. Though many members of the public testified to other types
11 of songbirds, owls and wildlife in this area, this is not a protected area that
12 must remain open space.
- 13 5. Frequently Flooded Areas: The site is not located within a mapped FEMA
14 Special Flood Hazard Area. Drainage from the site to Kah Tai Lagoon is
15 discussed in Finding of Fact No. 6.
- 16 6. Wetland: Kah Tai Lagoon is a mapped wetland. However, the lagoon lies east
17 across developed Landes Street. The applicable City code exempts this project
18 from wetland buffer restrictions because Landes Street separates the project
19 from the wetland by more than 16-feet of paved areas (PTMC

1 19.05.110(G)(7)(b). Therefore, no additional wetlands protections measures
2 are required.

3 7. Critical Drainage Corridor: There is a swale on the property that is an old
4 stream bed. The stream is no longer active due to a culvert intercepting the
5 stream at the intersection of 16th Street and Hill Street. Therefore, the swale is
6 a dry stream that no longer functions as a critical drainage corridor supplying
7 Kah Tai Lagoon. The applicant's Engineering Geologist has recommended
8 filling the remaining swale to reduce the risk of stream overflow in the event
9 of a culvert blockage (Ex. G, H and M).

10 C. Open Space/Wildlife Corridor. The alley between 14th and 16th Streets is currently
11 undeveloped and heavily treed. Many members of the public, including Goldrick et al,
12 Gariss, L. Huber, R. Huber, Ellison, Clow, McClean, Kelley, Neubauer and Bachman
13 expressed significant concern about the loss of habitat, forest, and open space that will
14 accompany the development of the alley as the primary access for the proposed project.
15 As noted in Finding of Fact No. 3, the project site is within the Potential Park and Open
16 Space overlay (P/OS(A)). However, staff have determined the site is not suitable for
17 open space purchase (See Ex. 1, Item 10, page 5) because the drainage corridor in this
18 location has been undergrounded and there are no other public needs for parks, utilities,
19 or transportation purposes within the property itself. Additionally, the public funds are
20 not available to purchase this property.

21 With respect to the alley, staff notes the area was considered for a Potential Park and
22 Open Space overlay and was ultimately rejected (See FOF 4) because of the lack of
23 critical areas (See FOF 5B) and the lack of City funds to purchase the subject property.
24 The alley is platted right of way. A discussion of access is found in Finding of Fact
25 No. 6.

26 With respect to useability as a pedestrian connection to other open space, a condition
of approval will require the construction of a non-motorized connection between the
proposed sidewalk at eth alley to existing trails on Hill Street.

D. Landscaping and Tree Preservation within the Plat. The proposal provides for adequate
retention/replacement of trees as required by City tree retention standards. The City
required a tree conservation plan (Ex. D, Sheet A2.0). The City's tree conservation
standards require 33 tree units be retained on this site. Ex. D shows there will be 34
tree units retained, thus meeting the standard within the plat. Staff have determined
that conditioned in this manner, the proposal will be able to conform to the City's tree
retention requirements. A condition of approval will require field marking and a
watering plan notation on the face of the final Plat/Plat Alteration map to provide future
purchasers with reference to the Tree Conservation/landscaping requirements within
the plat.

E. General Nuisance Impacts: light and shadow; noise, smoke, dust, odor, glare, vibration
or other undesirable impacts. Beyond the other nuisance impacts identified in FOF 5A-
D, no other nuisance impacts are found to exist due to the inherent nature of the
proposed/allowed residential use. The greatest impacts of concern would be parking
and those associated with the construction of the proposed homes and infrastructure.
The City's Engineering Design Standards adequately minimize these impacts by
regulating construction hours, erosion control and construction traffic control.

1 Ordinance 3271 requires street lighting to be installed concurrent with development in
2 a manner to minimize light pollution. The project proposal does not include street
3 lighting. A condition of approval will require the applicant to add one light at the
4 intersection of 16th Street and Landes to comply with this ordinance.

5 F. Affordable Housing. The project sponsor is Habitat for Humanity. The project will
6 provide 100% affordable, owner-occupied housing units in the form of attached,
7 owner-occupied zero lot line duplex units on a 99-year ground lease. The ground lease
8 ensures long term affordability. This project is affordable housing that meets all City
9 policies related to this topic. It's important to note, especially in the context of
10 compatibility (FOF 5A), the applicant could have developed more housing in this
11 location by using affordable housing density credits. The scale of the development
12 could have been more impactful with denser housing than what is proposed. City staff
13 testified the City has affordable housing incentives in terms of bonus densities.
14 However, the project is not taking into account bonus density and is therefore more
15 compatible with the surrounding low density residential neighborhood than it could
16 lawfully be.

17 G. Parking. Two on-site parking spaces are required for each new single-family dwelling
18 (which can be arranged in either a serial or tandem configuration). Several members
19 of the public were concerned there would be inadequate parking and that overflow
20 might block area roads and other properties' driveways (Clow, L. Huber, Neubauer).
21 The project will comply with the minimum parking requirements (Ex. D, Sheet A1.0).
22 Given the project complies with the standard, no unusual parking impacts are
23 anticipated.

24 6. Infrastructure. The proposal will be served by adequate and appropriate infrastructure.
25 Infrastructure impacts are specifically addressed as follows:

26 A. Water and Sewer. The proposal will be served by adequate and appropriate water and
27 sewer.

28 1. Water. Water mains currently exist in Landes, 16th, 14th, and Hill Streets.
29 Submitted plans show water service to each lot via connection to the mains in
30 Landes and 16th Streets. There are four existing fire hydrants within 250 feet
31 of the property. There is adequate provision for domestic water and fire service
32 to serve the proposed development. The project as proposed meets the intent
33 of the Engineering Design Standards.

34 2. Sewer. Sewer mains currently exist in abutting Landes and 16th Streets. As
35 illustrated on the Preliminary Drainage and Utility Plan (Ex. D. Sheet C2.0),
36 the applicant is proposing that the shared 6" sanitary sewer laterals connect to
37 public mains in Landes Street. The laterals will be privately owned and
38 maintained.

39 A condition of approval will require all private shared utility lines to be maintained by
40 the homeowner's association.

41 B. Drainage. The proposal will be served by adequate and appropriate drainage facilities.
42 No impact from drainage is anticipated. Several members of the public expressed
43 concerns regarding drainage and stormwater including Bachman, Goldrick, R. Huber,
44 and Neubauer. The submittal includes a preliminary engineered drainage plan and
45 report (Ex. D and I). Proposed stormwater facilities account for runoff related to both
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1 the private residential lots and the public and private roadways. The engineered
2 stormwater plan and resulting stormwater facilities account for runoff related to both
3 lot coverage on the residential lots and the public and private roadways. City
4 stormwater regulations, PTMC 13.32.010, pursuant to state mandate, require the
5 applicant's stormwater plan to establish that post development off-site flows onto
6 adjoining properties (other than Puget Sound) generated by the proposal not exceed
7 those from pre-developed, forested conditions. The stormwater plans have established
8 to the satisfaction of staff that the proposal can meet these types of standards.

- 9 1. Water Quality and Treatment: Water quality and treatment will be
10 accomplished via a Perfilter treatment cartridge in a catch basin vault for the
11 alley. No treatment is proposed for 16th Street.
- 12 2. Conveyance: New private pipes will connect to the public stormwater system.
- 13 3. Detention: On-site flow control, detention, is not proposed, given Puget Sound
14 is a receiving water and does not require flow control. Stormwater will be
15 piped through existing conveyance pipes under Landes and discharge to the
16 Kah Tai Lagoon and ultimately to Puget Sound. Stormwater discharge to Kah
17 Tai Lagoon is encouraged for environmental health to maintain water levels in
18 the summer months as well as flush brackish water to the Sound.
- 19 4. Berm: A berm will be constructed to protect the site from flooding should an
20 upstream storm system fail (Ex. D, Sheet C2.0). The berm will channel flow
21 within the 16th Street right-of-way and away from proposed structures per
22 plan. The City will install a beehive or equivalent inlet structure at the 16th
23 street culvert inlet and quarry spall protection for overflow events given this is
24 a pre-existing stormwater problem. The berm and the pavement will protect
25 16th against damage from overflow events.
- 26 5. Temporary Erosion and Sediment Control: To prevent erosion and sediment
transport during construction, the project will implement best management
practices in accordance with the submitted drainage plan (Exhibit D)
stormwater report (Exhibit I) and TESC plan (Ex. D). Public Works staff have
reviewed the stormwater report and TESC and found them to be in
conformance with the Engineering Design Standards.
6. Special Conditions: City staff have found the plans to be in conformance with
the Engineering Design Standards and stormwater standards with the
following exceptions and conditions:
 - i. Extending a paved street west of the alley will be required. A condition
of approval will require treatment to be evaluated to determine if
treatment on 16th Street is required consistent with the 2005 Western
Washington Stormwater Management Manual or equivalent per
Chapter 13.32 PTMC. If required, inclusion of treatment best
management practices will be necessary.
 - ii. The applicant's stormwater engineer evaluated each street as a
separate Threshold Discharge Area (TDA). The 2005 Western
Washington Stormwater Manual considers the entire site one project
area. Counting these areas together, as one site, conditions of approval
will require:

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1. Water quality treatment on both the alley and 16th Street since the project site exceeds 5,000 sf of new impervious area.
2. Flow Control is not required. Projects discharging to Kah Tai are exempt from flow control.

C. Transportation. The proposal will be served by adequate and appropriate roads and pedestrian transportation facilities. By far the most controversial aspect of the proposed project is transportation. Members of the public expressed concern about increased traffic, reduced privacy due to new traffic, pedestrian safety, the opening of the unopened alleyway, vehicular safety within the alley, and emergency services access (Clow, Goldrick, Gariss, R. Huber, L. Huber, McClean, Kelley, Neubauer and Bachman). Individual issues are discussed below.

1. Access and Safety: The applicant proposes access via an alley off of 16th Street running north-south through Block 29 between 14th and 16th Streets. The alley is a 20' wide public right-of-way. This access is proposed as an alternative to direct access to Landes and Hill Streets. Staff proposed alley access because Lander is a Major Collector. The City's Engineering Design Standards (Chapter 6, Section 5) discourage individual curb cuts onto Major Collector routes because there are significant safety issues.

Project neighbors felt very strongly that a curb cut onto Landes Street instead of opening the alley between 14th and 16th Streets would significantly help to preserve the residential character of their neighborhood. Public Works Director King testified there are two issues with having the lots directly access Lander. It's unsafe, especially for motorists or pedestrians and bicyclists because oftentimes they're in blind spot and people backing out. Also, Lander is a primary pedestrian and bicycle route to the Safeway Transit Center area and backing cars out is unsafe nor pedestrians and bicyclists. The City code says if there's options other than accessing an arterial street, then the development should access the alternative street.

Public Works Director King also testified that if the access was not off the alley, then there would have to not only be driveways on Landes Street, but the applicant would have to develop Hill Street with full street improvements including pavement and sidewalks. The safest and most efficient solution and least destructive to the area, is to come in off the alley in this situation. The alley access is 16 feet wide, which complies with minimum road standard.

With respect to one way access or a gate for emergency access only, Public Works Director King testified the area should not be closed off for only emergency vehicle access because if there's a fire the City does not want residents to be trapped by the activity.

Unfortunately, the localized interests of the neighbors on this issue must give way to the city-wide interest of doing everything it can to minimize traffic congestion and improve safety. As the state legislature continuously throws one mandate after another to cities to increase density, city residents must put up with more and more traffic congestion. Measures such as minimizing unnecessary curb cuts can significantly reduce traffic delays and unsafe turning movements and slow traffic pulling out into fast moving and congested

1 roadways. For these reasons, the policies of the Public Works department on
2 this issue must be held paramount and the circulation system as proposed and
recommended by City staff must be sustained.

- 3 2. 16th Street Paving, Parking and Pedestrian Improvements: 16th Street is an
4 existing gravel Local Access Street. Given the R-III zoning, the City's
5 Engineering Design Standards require a T-8 standard with sidewalk on one
6 side to and through the property frontage. Submitted plans show sidewalk
7 along a portion of the 16th Street frontage and stopping on the east side of the
8 proposed alley driveway. According to the applicant, the sidewalk did not
9 extend beyond this point to preserve a large tree west of the driveway. The T-
10 8 paving stops slightly west of the alley per the submitted plans and does not
11 extend through the frontage to the centerline of the Hill Street right-of-way as
12 required by the Engineering Design Standards (EDS).

13 Considering the lack of potential future development beyond the alley on 16th
14 Street, a deviation will extend the equivalent of a T-9 street from the west side
15 of the alley to the centerline of Hill Street right-of-way. Extending the street
16 to and thru addresses the impact of the project but the narrower street lessens
17 the environmental and financial impact as compared to building a full T-8
18 standard. This approval does not preclude the option of constructing a T-8
19 standard street west of the alley if the applicant desires to install on-street
20 parking. Paving is also required to control erosion from potential overflow
21 events of the 16th Street drainage pipe. A condition of approval will require
22 paving to blend into the drainage control berm with a wedge curb or equivalent
23 to protect against erosion.

24 16th Street is shown with striped parking on both sides, per Ex. D, Sheet A1.0.
25 Parked vehicles need approximately an eight-foot width. The 26' wide T-8
26 street does not typically have striped parking. All T-8 streets may utilize
pocket parking, created by pinch points or bulbs, to minimize total impervious
surfaces and reduce vehicle speeds, see the T-8 detail in the Engineering
Design Standards.

Given the density of the development, a condition of approval will require that
on street parking shall not be painted to minimize City maintenance. A further
condition of approval will require the homeowner's association to address
adding "no parking" signs if parking becomes a barrier to emergency vehicle
access to the alley.

With respect to emergency services concerns, a condition of approval will
require the applicant to work with East Jefferson Fire Rescue (EJFR) to ensure
safe access for emergency vehicles entering the alley from 16th Street.

A condition of approval will require the applicant to provide a non-motorized
connection to the existing Hill Street trails from the end of paving limits on
16th Street. The applicant must also install City provided "Public Trail" signs
for Hill Street trails on 16th Street with boulders to deter parking in front of
the trails.

With respect to sidewalks, 16th Street terminates where an inlet structure and
a series of rock check dams are located for the upstream drainage way. The
proposed deviation from the code requirements for extending sidewalk to and

1 thru the project on 16th Street is warranted given the drainage control work
2 proposed and the existing grades sloping toward the property from 16th Street.

- 3 3. Landes Street: Landes Street is an existing Major Collector with two travel
4 lanes, ditch and sidewalk along the subject frontage. Given the R-III zoning,
5 the Engineering Design Standards and Code specifies the frontage needs to
6 meet the T-4 cross section for Multi-Family and Commercial Areas.

7 Bike lanes do not exist on the frontage of the subject property and are not
8 included in the submitted plans. However, an existing southbound bike lane
9 begins within the subject site frontage and extends to the transit center entrance
10 at between 12th and 14th. A deviation from the requirement for bike lane
11 additions is appropriate as a relocation of the entire street to the east would be
12 required to preserve the ditch or alternatively a stormwater conveyance system
13 would need to be installed to allow removal of the ditch. Neither option for
14 accommodating bike lanes is proportional to the impact of the development.

15 Finally, the City is considering Landes Street for installation of an Edge Lane
16 Road (ELR), similar to Kuhn Street near North Beach, in the future for traffic
17 calming and non-motorized safety which would negate the need for widening
18 the pavement.

- 19 4. Hill Street: While no access is proposed from Hill Street, the project does have
20 approximately 117 feet of frontage on Hill Street. Currently, Hill Street is
21 paved for approximately 200-feet north of 14th Street. Beyond the pavement
22 and along the project frontage, Hill Street is an existing gravel Local Access
23 Street that is not maintained by the City and functions as a shared driveway.
24 The gravel drive stops approximately 70 feet south of 16th Street, but a trail
25 extends to 16th.

26 The Engineering Design Standards and Chapter 12 PTMC require street
frontage to be developed to and through the proposed development including
Hill Street. However, constructing a paved street that connects Hill Street to
16th Street would be challenging given the topography and would add little
benefit to the proposed development given its proximity and access to Landes
Street. While this project does have units backing to the Hill Street right-of-
way, frontage improvements are not required since the number of daily trips
on Hill Street along the subject frontage will be less than 70. Therefore, the
gravel street may remain per Chapter 6 of the Engineering Design Standards.

The City does not desire to build any additional infrastructure that is
unnecessary for the proposed development and for future development. In this
case, Hill Street is in an R-II zoning district and has the potential for only one
additional housing unit in the vicinity of this project. Consistent with the
submitted plans, the project will take access from the alleyway instead of Hill
Street. Given, Hill Street does not provide access to this proposed project and
there is limited development potential on Hill Street, deviation from the
standard is warranted based on the lack of nexus to the project.

5. Alley Section: The existing alley in Block 29 is graveled from 14th Street to
the north side of lots 9 and 24, approximately 200 feet. The remainder of the
unopened alley right-of-way is vegetated to 16th Street, approximately 280
feet. Submitted plans show a 16-foot-wide paved alley fronting the proposed

1 residential lots and then narrowing to 12.5 feet wide to 14th Street. The alley
2 will be shared by pedestrians, bikes and vehicles. Ex. D, Sheet A1.0 says the
3 alley will be “MEW pavers”, however, based on recent communication with
4 the applicant, the city understands that the project will use pavement instead
5 to limit construction costs. There are no requirements for alley construction
6 per the Engineering Design Standards or Chapter 12 PTMC.

7 The applicant is using the alley as primary access to the proposed units.
8 Therefore, a 16ft wide paved street from 16th Street through the home
9 frontages is required as proposed to provide safe access to the units. South of
10 the proposed homes the narrowed alley meets historical minimums of a 12 ft
11 wide street with 2 ft shoulders. The project proposal meets the intent of the
12 code by providing safe fire access by improving the alley to 14th Street. The
13 alley is within public right-of-way and will be maintained by the City.

14 CONCLUSIONS OF LAW

15 Procedural:

16 1. Authority of Hearing Examiner. PTMC 20.01.040 classifies preliminary plats/plat
17 alterations as Type III applications, which requires a hearing before the Hearings Examiner,
18 who must issue a final decision.

19 Substantive:

20 2. Zoning Designation. The size is zoned R-III (Medium Density Multi-Family). The project
21 site is within the Potential Park and Open Space overlay (P/OS(A)). However, staff have
22 determined the site is not suitable for open space purchase (See Ex. 1, Item 10, page 5).

23 3. Review Criteria. PTMC 18.16.060(A) governs the criteria for preliminary plat approval.
24 PTMC 20.01.235(D) requires the Examiner to make a specified set of findings for all Type III
25 (quasi-judicial) applications. All the governing criteria identified in this paragraph are quoted
26 in italics and addressed below.

4. Affordable Housing. The City cannot legally compel the applicant to provide affordable
housing units. Developers can only be made to mitigate problems they create. *See, e.g.,*
Douglass Props. II, LLC v. City of Olympia, 16 Wash. App. 2d 158 (2021). In constitutional
takings analysis, affordable housing is not considered a problem created by developers. *See*
Sintra, Inc. v. Seattle, 119 Wn. 2d 1 (1992)¹. As determined in Finding of Fact No. 5E, the
proposal is not exacerbating or creating a need for affordable housing. In fact, as also noted in
FOF 5E, the project is creating affordable housing in that 100% of the units are intended to be
long-term affordable, owner-occupied housing.

Subdivision Criteria:

¹ *Sintra* held that Seattle’s housing preservation ordinance, which required property owners to replace
any low-income housing they destroyed or to pay a fee, potentially created a takings. As stated by the
court: “*this burden [replacing loss of affordable housing] was unfairly allocated to individual property
owners, rather than equally distributed among all citizens.*” 119 Wn.2d at 15-16.

1 **PTMC 18.16.060(A)(1):** *The proposed subdivision conforms to all applicable city, state and*
2 *federal zoning, land use, environmental and health regulations and plans, including, but not*
3 *limited to, the following:*

- 4 a. *Port Townsend Comprehensive Plan;*
- 5 b. *Port Townsend Zoning Code;*
- 6 c. *Engineering Design Standards;*
- 7 d. *Environmentally Sensitive Areas Ordinance (Chapter 19.05 PTMC):*

8 5. Criterion met. The criterion is met. As determined in prior conclusions of law, the proposal
9 is consistent with all of the standards identified above.

10 **PTMC 18.16.060(A)(2):** *Utilities and other public services necessary to serve the needs of*
11 *the proposed subdivision shall be made available, including open spaces, drainage ways,*
12 *streets, alleys, other public ways, potable water, transit facilities, sanitary sewers, parks,*
13 *playgrounds, schools, sidewalks and other improvements that assure safe walking conditions*
14 *for students who walk to and from school;*

15 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No. 6.

16 **PTMC 18.16.060(A)(3):** *Conservation of existing trees, and/or the planting of new trees, shall*
17 *be provided consistent with Chapter 19.06 PTMC, Article III, Standards For Tree*
18 *Conservation;*

19 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No. 5C.

20 **PTMC 18.16.060(A)(4):** *The probable significant adverse environmental impacts of the*
21 *proposed subdivision, together with any practical means of mitigating adverse impacts, have*
22 *been considered such that the proposal will not have an unacceptable adverse effect upon the*
23 *quality of environment, in accordance with Chapter 19.04 PTMC and Chapter 43.21C RCW;*

24 8. Criterion met. As identified in Finding of Fact No. 5, the project is SEPA exempt.
25 Conditions of approval (See Condition of Approval #14) mitigate for all potential adverse
26 impacts. There are no critical areas on site and the project is separated from critical areas by
developed infrastructure. The project conforms with Chapter 19.04 PTMC and Chapter 43.21C
RCW. The review process included the required consideration of probable significant adverse
environmental impacts.

PTMC 18.16.060(A)(5): *Approving the posed subdivision will serve the public use and*
interest and adequate provision has been made for the public health, safety, and general
welfare.

9. Criterion met. As previously discussed, all significant adverse environmental impacts have
been fully mitigated and several public benefits are associated with the project that would not
be required of a standard subdivision including the provision of 100% long term, owner-
occupied affordable housing that will be built to high energy standards. All infrastructure needs
are also met for the project. For these reasons the criterion above is satisfied.

PTMC 18.16.060(B): *Notwithstanding approval of criteria set forth in subsection a of this*
section, in accordance with RCW 58.17.120, as now adopted and hereafter amended, the
proposed subdivision may be denied because of flood, inundation or swamp conditions . . .

1 10. Criterion met. There is no evidence of flood, inundation or swamp conditions. The project
2 is within an aquifer recharge zone but no additional standards apply. Though the Kah Tai
3 Lagoon is a potential Seismic/Tsunami Hazard Area and is both a listed Fish and Wildlife
4 Priority Habitat and a wetland, the project is separated from the Kah Tai Lagoon by Landes
Street. No additional standards apply. The site is not within a frequently flooded area per the
FEMA Special Flood Hazard Areas Maps. As conditioned, the proposal will address potential
tsunami issues (See Condition of Approval #14).

5 **Type III General Permitting Criteria:**

6 **PTMC 20.01.235(D)(1):** *The development is consistent with the Port Townsend*
7 *Comprehensive Plan and meets the requirements and intent of the Port Townsend Municipal*
Code;

8 11. Criterion met. As previously discussed, the project satisfies all applicable development
standards and comprehensive plan policies.

9 **PTMC 20.01.235(D)(2):** *The development is not detrimental to the public health, safety and*
10 *welfare;*

11 12. Criterion met. The criterion is met because it doesn't create any significant adverse impacts
12 as determined in Finding of Fact No. 5 and provides for appropriate infrastructure as
determined in Finding of Fact No. 6.

13 **PTMC 20.01.235(D)(3):** *The development adequately mitigates impacts identified under*
14 *Chapters 19.04 (SEPA) and 19.05 (Environmentally Sensitive Areas) PTMC;*

15 13. Criterion met. As previously determined, the proposal is consistent with the City's critical
areas ordinance. The proposal is SEPA exempt.

16 **PTMC 20.01.235(D)(4):** *For subdivision applications, findings and conclusions shall be*
17 *issued in conformance with PTMC Title 18 and RCW 58.17.110.*

18 14. Criterion met. The findings and conclusions have been issued in conformance with these
19 applicable regulations. The primary focus of PTMC Title 18 and RCW 58.17.110 is adequate
20 infrastructure, which is met as outlined in Finding of Fact No. 6.

21 **DECISION**

22 The proposed preliminary plat/plat alteration is approved for the reasons identified in the
23 Conclusions of Law, subject to the following conditions:

24 **GENERAL**

25 1. Development shall be carried out in substantial conformance with the submitted plans and
26 reports (Ex. D-K) except where modified by these conditions of approval or by the
subsequent Street and Utility Development permit (SDP). The Plat Alteration portion this
approval includes the alley in Block 29 of the First Supplemental Plat of Eisenbeis
Addition.

CONDITIONS RELATED TO THE FINAL PLAT

- 1 2. Per RCW 58.17.140(3)(a), the applicant shall have applied for final Plat/Plat Alteration
2 approval within five (5) years of date of preliminary approval.
- 3 3. Final Plat/Plat Alteration approval shall be presented by the applicant as required by City
4 code and shall indicate the precise location of all required dedications and easements per
5 these conditions of approval. The applicant's surveyor shall be responsive to comments
6 from the County Assessor (Ex. L).
- 7 4. The applicant shall provide a mylar reproduction of the Plat/Plat Alteration to Port
8 Townsend Planning and Community Development for review and approval (5 paper copies
9 and one electronic .pdf version) as part of the final Plat/Plat Alteration approval process.
10 Said mylar shall contain the acknowledged signatures of all parties having an ownership
11 interest in the subject property as evidenced by a plat certificate prepared by a local title
12 company. Said plat certificate, or any update provided, shall be less than 30 days old.
- 13 5. As part of the Final Plat application, the applicant shall prepare and submit a Final
14 Landscaping and Tree Conservation Plan (TCP) for review and approval by the PCD
15 Director. The submitted Final Landscaping and TCP must be prepared by a landscape
16 design professional, arborist, or tree service professional and shall include a watering plan
17 to be installed as part of the construction. The applicant shall provide a watering plan for
18 proposed new trees. The plan must provide for adequate watering of the newly installed
19 trees at the time of planting and through the dry periods (typically May through September)
20 for a minimum of three years in compliance with PTMC 19.06.110(A)(14). The Final TCP
21 must include a commitment to planting at least 33 tree unit credits.
- 22 6. A notation on the face of the final Plat/Plat Alteration map as required by PTMC 19.0 will
23 provide future purchasers with reference to the resulting Landscaping and Tree
24 Conservation Plan (TCP) requirements.
- 25 7. To receive final Plat/Plat Alteration approval, all required improvements set forth in the
26 subsequent Street and Utility Development permit (e.g., street, driveway and utility
improvements) and the approved Final Landscaping and Tree Conservation Plan must be
installed (with conveyance and acceptance by the City as applicable) or bonded for. The
amount of the performance security for any bonded items shall be based upon the current
cost estimate of all materials and construction costs, including applicable tax. The
performance security shall consist of a performance bond in a form acceptable to the City
Attorney and in an amount acceptable to the Director and consistent with city code. Cash
deposited in an escrow account may also be accepted by the city. All required landscaping
plantings shall be installed within six months of approving the performance security unless
a longer time period is agreed to by the PCD Director.
8. The approved Plat/Plat Alteration shall not become effective until the mylars required for
recording have been filed with the Jefferson County Auditor. While the City will assist in
recording the Plat/Plat Alteration mylar, the Applicant is responsible for all fees associated
with recording. All property taxes due and owing on the subject property must be paid in
full prior to obtaining the signature of the Jefferson County Treasurer.

24 PRIOR TO ISSUANCE OF DEVELOPMENT PERMITS

- 25 9. The power plan, which can be obtained from the PUD, will be submitted with the Street
26 and Utility Development Permit Application.

1 10. To ensure compliance with City Engineering Design Standards, together with the street
2 and utility installations required by this decision, the following plans must be prepared and
submitted with a completed application for a Street and Utility Development Permit (SDP).

3 a. Engineered plans for the public streets, serving this project including but not
4 limited to the location of all driveways, turn around areas, sidewalks, and
drainage facilities.

5 b. Engineered plans for water and sewer mains and services for the project.

6 c. Final engineered stormwater drainage plan and report including construction
7 drawings complying with the requirements of the 2005 Department of Ecology
8 Stormwater Manual for Western Washington and the Port Townsend
9 Engineering Design standards must be submitted to PCD and approved by the
Public Works Department. Said plan and report shall include detailed
operation and maintenance (O & M) provisions for the completed facilities.

10 11. Revised CC&Rs: Once approved by City engineering staff, O&M provisions must be
11 formatted by the applicant (or their engineer) and incorporated into the required CC&R for
12 review and approval by city staff prior to recordation. The CC&R shall clearly indicate
13 those items that may not be amended without City approval. This includes stormwater
facilities, parking, shared utility lines, cleaning of the 16th Street and Landes sidewalks,
and maintenance of street trees and all frontage vegetation. Healthy trees on the slope at
the rear of lots 3B, 4B, 5B, 6B, 7B abutting the Landes Street right-of-way shall be retained.
Trees may be selectively limbed but not topped.

14 12. The following conditions augment the submitted application. The materials in the
15 application are included as conditions of approval except as provided below.

16 Transportation

17 a. 16th Street: Provide a T-8 street section including sidewalk from Landes to the
18 alley. Extend paving with a T-9 Street west of the alley thru the frontage to the Hill
Street right-of-way. Paving of the street shall be incorporated into the drainage
control berm design proposed.

19 b. 16th Street: The applicant shall evaluate parking on 16th during design and shall
20 assess:

21 i. turning templates showing alley access by East Jefferson Fire Rescue.

22 ii. passing of two passenger vehicles on 16th given the short block length and
proximity to Landes.

23 iii. need for provisions in the CC&R to place “no parking” signs.

24 iv. On-street parking shall not be painted.

25 16th Street Option: If the applicant desires parking on both sides of 16th and a
26 continuous width for two vehicles to pass one another, a wider street width is
required.

- 1 c. 16th Street: Provide a non-motorized connection to the existing Hill Street trails
2 from the end of paving limits on 16th Street. Install city provided “Public Trail”
3 signs for Hill Street trails on 16th with boulders to deter parking in front of the
4 trails.
- d. Landes Street: One streetlight at the intersection of 16th Street and Landes per the
5 City's Street lighting policy (Ordinance 3271) is required.
- e. Alley: The alley shall be paved asphalt and constructed to a minimum width of 16
6 feet consistent with the application materials within the property and then 12.5 feet
7 wide with 2 ft shoulders from the property line to 14th Street. Trees shall be limbed
8 to provide a minimum 15 foot of clearance for emergency vehicles.
- f. Emergency Access: The applicant shall work with East Jefferson Fire and Rescue
9 to ensure safe emergency vehicle access. The applicant shall also maintain the
10 street trees to ensure unobstructed emergency vehicle access.

11 Water and Hydrants

- 12 g. No exceptions or conditions to the submitted plans are required.

13 Sanitary Sewer

- 14 h. All private shared utilities lines shall be maintained under the homeowner's
15 association. City approval of the homeowner’s association language is required.

16 Stormwater

- 17 i. Water quality treatment is required for the project site. New impervious areas for
18 the alley and 16th Street shall be counted together as one site to determine if water
19 quality thresholds are exceeded. Basic Treatment shall be provided per the 2005
20 Stormwater Management Manual for Western Washington.
- j. Flow control is exempt for projects that discharge to Kah Tai Lagoon given its
21 connectedness to the Salish Sea.
- k. The project may use the cartridge type filters for stormwater treatment, but the City
22 will not maintain or replace filters, as required per the manufacturer's operations
23 and maintenance guidelines. If used, the homeowner’s association shall maintain
24 the filters. See the stormwater manual for other basic treatment options.
- l. The applicant shall not be required to improve the overflow controls in the 16th
25 Street right-of-way west of Hill Street as this is a City responsibility. Plans shall
26 reflect City to install a beehive or equivalent inlet structure at the 16th street culvert
inlet and quarry spall protection for overflow events.

PRIOR TO ISSUANCE OF BUILDING PERMITS

13. The Applicant shall apply for and receive final Plat/Plat Alteration approval prior to the
issuance of building permits.

1 14. Pursuant to PTMC 19.05.100(E)(1)(c) Critical Area 4 Geologically Hazardous Area and
2 E Performance Standards – Tsunami Hazard Areas, building permits shall include a note
3 indicating the plans are being made in a tsunami hazard/liquefaction prone area.

4 ALL CONSTRUCTION PLANS SHALL INCLUDE THE FOLLOWING NOTES:

5 15. To prevent erosion and sediment transport during construction, the project will implement
6 best management practices in accordance with the submitted drainage plan (Ex. D, Sheet
7 C2.0) stormwater report (Ex. I) and TESC plan (Ex. D, Sheet C1.0).

8 16. Trees to be preserved shall be marked in the field with construction fence barriers at the
9 drip line per the final approved Landscape and Tree Conservation Plan. Healthy trees on
10 the slope at the rear of lots 3B, 4B, 5B, 6B, 7B abutting the Landes Street right-of-way
11 shall be retained.

12 17. To minimize impacts to Blue Heron nests in the vicinity, outdoor construction shall be
13 limited to:

14 a. The non-breeding season (October 1st through January 31st), or

15 b. If construction is to occur within the breeding season (February 1st-September
16 30th), the applicant shall either demonstrate that the activity will not exceed 92
17 decibels at the outer edge of the colony and/ or shall provide and adhere to written
18 recommendations from WDFW.

19 Dated this 13th day of September 2023.

20 *Phil Olbrechts*

21

Phil Olbrechts
22 City of Port Townsend Hearing Examiner

23 **Appeal Right and Valuation Notices**

24 This land use decision is final and subject to appeal to superior court as governed by Chapter
25 36.70C RCW. Appeal deadlines are short, and procedures strictly construed. Anyone wishing to
26 file a judicial appeal of this decision should consult with an attorney to ensure that all procedural
requirements are satisfied.

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