

**TUMWATER HEARING EXAMINER
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CONVENE: 7:00 p.m.

CASE NUMBER: TUM-19-1583 & TUM-20-0241

NAME OF PROJECT: Bradbury Division 4 Preliminary Plat & Planned Unit Development

APPLICANT: Evergreen Heights LLC
1868 State Avenue NE
Olympia, WA 98506

DESCRIPTION OF PROPOSAL: The applicant is requesting preliminary plat and planned unit development approvals to subdivide 9.57 acres into 53 single-family lots, one storm drainage/open space tract, one tree/open space tract, one open space/active recreation tract, one private road tract, and one easement tract.

PUBLIC HEARING: Hearing Examiner Andrew Reeves with Sound Law Center convened the hearing at 7:00 p.m. The matter under consideration is TUM-19-1583 & TUM-20-0241, a request for preliminary plat and planned unit development to subdivide 9.57 acres into 53 single-family lots, one storm drainage/open space tract, one tree/open space tract, one open space/active recreation tract, one private road tract, and one easement tract.

Examiner Reeves said the purpose of the hearing is to collect evidence in the form of exhibits and testimony to determine whether the proposal complies with the City's Comprehensive Plan, zoning ordinances, Critical Areas Ordinances, and the specific criteria for approval of a preliminary plat under Chapter 17.14 of the Tumwater Municipal Code (TMC) and a planned unit development (PUD) under Chapter 18.36 of TMC. Because the proposal involves the subdivision of land it must comply with the State Subdivision Act in Chapter 58.17 of the Revised Code of Washington (RCW).

Examiner Reeves reported that prior to the public hearing he received and reviewed the following 23 exhibits:

1. Staff Report, dated January 4, 2021
2. Site Aerial Photo Map
3. Preliminary Plat Application, dated December 3, 2019
4. Planned Unit Development Application, dated February 5, 2020
5. Preliminary Plat/Planned Unit Development Map
6. Conceptual Utility Plan

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7. Certification of Public Notice
8. Comprehensive Plan Map
9. Zoning Map
10. Environmental Checklist, dated February 25, 2020
11. DNS, dated April 9, 2019
12. Notice of Application, dated March 9, 2019
13. Mazama Pocket Gopher Report, dated August 1, 2019
14. Forester's Report, dated November 26, 2019
15. Preliminary Storm Drainage Report/Geotechnical Report, dated November 18, 2019
16. Transportation Concurrency Application and Site Trip Generation and Distribution Diagram, dated February 25, 2020
17. Tumwater Transportation Manager Concurrency Ruling, dated June 17, 2020
18. Tumwater Public Works Department Water and Sewer Availability Ruling, dated December 18, 2020
19. Department of Ecology Comments, dated March 24, 2020
20. Department of Ecology Comments, dated April 24, 2020
21. Squaxin Island Tribe Comments, dated March 12, 2020
22. Tumwater School District Comments, dated January 4, 2021
23. Squaxin Island Tribe Comments, dated January 4, 2021

Examiner Reeves admitted the 23 exhibits into the record.

Examiner Reeves reported all testimony is under oath or affirmation because should the decision be appealed under the state's Land Use Petition Act, the audio recording of the hearing and admitted exhibits would serve as a foundation for any appeal.

Examiner Reeves reviewed the order of testimony.

Examiner Reeves administered the oath to Tumwater Permit Manager Chris Carlson.

STAFF REPORT:

Tumwater Permit Manager Chris Carlson reported the matter under consideration is from Evergreen Heights LLC, represented by Jeff Pantier, PLS with Hatton Godat Pantier. Mr. Pantier serves as the surveyor for the company. The applicant is requesting preliminary plat and planned unit development approvals to subdivide 9.57 acres into 53 single-family lots, one storm drainage/open space tract, one tree/open space tract, one open space/active recreation tract, one private road tract, and one easement tract. The property is located at 1630 93rd Avenue SE, Tumwater.

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Manager Carlson displayed an aerial illustration of the site, which is located in the southern area of the City adjacent to *The Preserve* subdivision located west of the site of over 550 residential lots. The City boundary is located on the southern side of 93rd Avenue.

Manager Carlson reviewed the preliminary plat map. City staff reviewed the project for compliance with a number of policy documents and regulatory requirements in the TMC and state law under the State Environmental Act and RCW 58.17, the state platting statute. Policy documents reviewed for conformity included the Comprehensive Plan Land Use Plan, Parks, Recreation and Open Space Plan, Transportation Plan, Thurston Regional Trails Plan, and the Sustainable Thurston Plan.

The Transportation Plan includes transportation concurrency requirements, which is a level of service standard to ensure traffic generated by new projects does not degrade the level of service along corridors or at intersections below adopted standards. The applicant submitted a concurrency application for the project, which was reviewed by the City's Transportation Manager and the Public Works Department. The review determined the project would not degrade the level of service standard.

Staff reviewed the proposal for compliance with Chapter 14 of the TMC for project permitting and processing and public noticing requirements. The applicant completed the City's presubmission conference process prior to submitting the preliminary plat application. The presubmission conference includes various staff members representing planning and land use, public works, and the fire department.

The City publicized three notices for the project that included posting the notices on site and publishing the notices in *The Olympian* newspaper. The first notice was the Notice of Application after the application was deemed complete by the City. The second notice was the SEPA Determination issued by the City's Responsible Official. The third notice was the public hearing notice.

Examiner Reeves questioned whether the date of the SEPA Determination of April 9, 2019 was accurate. Manager Carlson advised that the date of the determination should reflect April 9, 2020.

Manager Carlson reported staff reviewed the project for compliance with the zoning ordinance. The property is zoned Single-Family Medium Density Residential. The zoning requires a minimum of 6 dwelling units per acre to a maximum of 9 dwelling units per acre. The

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Single-Family Medium Density designation is also the land use designation in the Tumwater Comprehensive Plan Land Use Plan. The proposed density for the project is 7.4 dwelling units per acre after subtracting public rights-of-way. The proposal complies with the zoning ordinance.

The zoning ordinance includes an overlay affecting the entire City. The Aquifer Protection Overlay protects the City's sources of potable water from underground aquifers. The regulation restricts some land uses from locating within the City because of the need to protect the City's drinking water supply. The proposal is not a prohibited or restricted use in the overlay zone.

Additionally, the applicant submitted a planned unit development application with the preliminary plat application. The zoning ordinance includes a prescriptive requirement for density regulations pertaining to minimum lot widths. The zoning district applicable to the proposal requires a minimum lot width of 50 feet. The applicant proposes several deviations of the minimum lot width by designating 25 lots at 40 feet, 7 lots at 45 feet, and 1 lot at 48 feet. The planning and development application provides some flexibility to some prescriptive requirements of the zoning ordinance. The applicant would like to take advantage of that flexibility.

Staff completed the SEPA process for the application under RCW 43-21 and TMC 16.04. Staff evaluated tree protection for the removal of trees under the requirements outlined in TMC 16.08. The applicant hired a professional forester to complete a tree inventory and a report for the site. The site is heavily wooded and includes one home and a detached garage shop on the property. With the exception of the structures and paved driveway, the lot is forested. The forester documented the existence of 395 trees. The proposal is to maintain 45 trees with a number of the trees saved in Tract B as a designated tree tract and some trees retained on the western portion of the site behind Lots 49 through 53. The City's tree protection ordinance requires developers that do not meet the prescriptive standard of maintaining 12 trees per acre to mitigate the loss of trees. The applicant is required to replant three trees for every tree removed in excess of the requirement. For this proposal, 210 trees would need to be planted on the site.

Because many areas in the City are encumbered by the Mazama pocket gopher that is regulated under federal law and the City's Critical Areas Ordinance Chapter 16.32, the applicant commissioned a Mazama pocket gopher survey following the City's protocol. The protocol requires a

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minimum of two site visits during the months from June 1 through October 31 with the site visits timed 30 days apart. The applicant's consultant conducted the survey. The results reflected no gopher occupation on the site mainly because the gophers prefer prairie areas rather than forested areas.

Staff reviewed regulatory requirements for compliance with TMC 17 Land Division Ordinance and Chapter 58.17 RCW – platting statute. The analysis revealed the proposal meets the criteria of the City and state's platting statutes for general health, safety, and welfare.

Staff received no public comments. However, staff received a number of phone calls during the application review process. No written comments were submitted for the project from the public. Staff received comments from the Department of Ecology pertaining to construction stormwater general permit under the National Pollutant Discharge Elimination System as part of the Clean Water Act. The project is subject to the City's 2018 Drainage Design and Erosion Control Manual. The applicant has submitted a preliminary drainage report affirming the possibility of designing a system under the requirements of the manual to comply with the standards.

The Department of Ecology also commented about the existing well located on the property on Lot 33. Current residents on the site are served by the well and a septic system. Department of Ecology conveyed that if use of the well is discontinued, the well should be properly abandoned.

Other agency comments include the Squaxin Island Tribe. The tribe said there was no specific concerns surrounding cultural resources for the proposal and deferred to the Department of Archeology and Historic Preservation for additional information. Staff never received any comments from the Department of Archeology and Historic Preservation.

The Tumwater School District submitted a letter on the requirements for "safe walk" routes within the platting statute. The site is located some distance from any elementary, middle, or high school. Children living in the new subdivision would be attending East Olympia Elementary School at a distance of 3.5. Bush Middle School is located approximately 3.5 miles and Tumwater High School located 4 miles away. The school district's policy guiding the distance from schools for students to walk applies to the proposed subdivision. The school district requires providing safe walking routes to the nearest bus stop. An

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existing bus stop meets the requirement. Additionally, the school district recently purchased property located to the east of the site. A common easement serves a number of residences to the north. The school district and the developer have agreed for the developer to dedicate Tract E for public right-of-way in exchange for credit of school impact fees for the project.

Staff recommends approval of the project subject to the proposed conditions included in the Staff Report.

Examiner Reeves inquired about the potential of a new school built on the property recently purchased by the school district. Manager Carlson said he understands from his conversations with a staff member of the school district that the property will be the site of a future elementary school. The school district owns another property located at the intersection of 93rd Avenue and Old Highway 99; however, he understands that the school district might surplus the property as the site of the new proposed elementary school is in a more preferable location.

Examiner Reeves asked whether an area located directly to the west is built-out. Manager Carlson reported the aerial photograph of the site was taken in 2018. The project to the west has since been developed as the City issued 258 new single-family permits and of those, 200 were located in the development to the west of the proposed site.

Examiner Reeves asked whether access from the site is located in the southwest area of the parcel. Manager Carlson said that at this time, that location serves as the access point for the development. However, the City does require a continued review of future connections. Another adjacent property is undeveloped. The developer is proposing to install a stub-out and barricades. A driveway is located in the area that is used only for emergency access.

Examiner Reeves asked whether staff or the applicant could verify that public access is the planned access for 53 lots from the west to the adjacent neighborhood. To the north is undeveloped property and the stub. Manager Carlson affirmed the Examiner's interpretation for access. Examiner Reeves said it appears some type of barricade is located to the east with an existing private road and Tract E would be dedicated to the City with the applicant receiving credit toward school impact fees. He anticipates that at some point in the future, the combination of Tract E and the private road would become another public road providing a second access point; however, in the interim that location would serve only as an access for emergency/fire response.

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Manager Carlson affirmed the Examiner's understanding.

Examiner Reeves asked whether the Comprehensive Plan or the Zoning Code have been amended in any way since the application was deemed complete that would impact the proposal. Manager Carlson said no changes have occurred that would affect the proposal.

Examiner Reeves asked whether the initial notice application lacked any reference to the PUD because the option for the PUD was considered later in the process. Manager Carlson affirmed his interpretation. Examiner Reeves said the original notice also referenced 54 lots whereas the final proposal is for 53 lots, which is less than the lots proposed in the notice in the application.

Examiner Reeves noted the comment letter from the Tumwater School District was dated January 4, 2020. He asked whether the date was accurate or whether it should have been January 4, 2021. Manager Carlson explained that the accurate date should reflect January 4, 2021.

Examiner Reeves asked for confirmation that the City is using its 2018 Drainage Design and Erosion Control Manual rather than the 2019 manual by the Department of Ecology that some cities have adopted. Manager Carlson said the City is currently utilizing its manual from 2018 as staff continues to update to the 2019 Department of Ecology manual.

Examiner Reeves referred to specific conditions relating to fire; however, the fire department did not offer any specific comments. He asked whether the comments from the Tumwater Fire Department were incorporated within the proposed conditions. Manager Carlson confirmed that the City's Building Official also serves as the Fire Marshal and coordinates development proposals with the Fire Chief to ensure fire department needs are addressed.

Examiner Reeves cited proposed condition #15 stating, "A slope easement shall be granted to the City of Tumwater over the eastern 50 feet of Tract B to accommodate a potential future public street intersection at the existing driveway along the eastern boundary of the property that serves several properties to the north and east." He asked for clarification of the location, as it is confusing as described in the condition. Manager Carlson responded that Tract E and Tract B intersect and the City is requesting a slope easement that affects the eastern portion of Tract B (Tree Tract) because of the vertical geometry of the road and to enable the City to meet sight distance in the future

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when the public street is constructed along that boundary. Examiner Reeves asked for additional clarification on how the City defines a “slope easement” under the code. Manager Carlson said the requirement pertains to traffic safety at an intersection rather than topography. There also could be some additional fill requirements to ensure the intersection functions properly and meets all design criteria in the Washington Department of Transportation Manual for roads and the City’s Development Guide. Some grading work may be required to ensure the intersection functions safely. Examiner Reeves pointed out that it appears the City wants the applicant to grant the City an easement or the right to access the property to address potential issues in the future. Manager Carlson affirmed it would either be the City or a third party that might be responsible for constructing the public road.

**APPLICANT
TESTIMONY:**

Examiner Reeves administered the oath to Jeff Pantier.

Jeff Pantier, Hatton-Godat-Pantier, 3910 Martin Way E, Ste. B, Olympia, Washington 98506, thanked staff for providing a thorough Staff Report and Examiner Reeves for his thoroughness in reviewing the report.

Mr. Pantier referred to an illustration of the plat, comprised of 53 lots. The original proposal was for 54 lots. Following a mid-stream revision to expand some open space areas, the number of lots was reduced to 53.

Mr. Pantier introduced Rob Rice, Principal, Evergreen Heights. Mr. Rice is the owner and the developer of the proposal. Mr. Rice is currently constructing homes in two Bradbury subdivisions located to the north of the proposed plat. Mr. Pantier said he is also working on *The Preserve*, a development located west of the Bradbury proposal. *The Preserve* is approximately 75% completed. Final plat approval is pending for *The Preserve* for the last phase of that development.

Within the proposed plat, Tract C is identified as an active recreation area that will be improved with playground amenities for the neighborhood. The homeowners association (HOA) will be responsible for maintaining the site and all other community tracts. Until Tract E is dedicated to the City for future public purposes, the HOA will own the tract. The owner is amendable with the current conditions as presented and agrees with the request from the school district to transfer Tract E to the City for a future street. At that point, the HOA would no longer be involved with Tract E.

Stormwater for the proposal will be handled in Tract A. Soil on the site

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is sandy and granular and has high infiltration capabilities. Drainage from the development will be collected in catch basins along street curbs and piped to Tract A for stormwater treatment and infiltration. Amended soils will be used for the treatment with treated water infiltrating below the treatment element into high infiltration soils.

Examiner Reeves said that based on the preliminary report, stormwater from roofs on the lots would be collected and infiltrated on each lot. He asked whether that is an accurate description for treatment of stormwater from roofs. Mr. Pantier affirmed that the goal of a development containing good soils is to infiltrate close to where stormwater is generated. All lots will have stormwater from roofs infiltrated into a dry well located in the rear of each lot. Examiner Reeves said it appears based on the report that pollution-generated surfaces would be collected and transferred to the northwest corner to Tract A for treatment and infiltration. Mr. Pantier affirmed that was the proposal.

Examiner Reeves asked for clarification of information in the preliminary stormwater report that spoke to an overflow potential that would be directed offsite to a location to the southeast, which is the site that might be purchased by the school district. Mr. Pantier advised that the proposal for stormwater is 100% containment through infiltration on the site with no discharge off site. Examiner Reeves further explained that the report includes a reference to an off-site basin and he wants to ensure there is no alternative plan for discharging stormwater off site. Mr. Pantier referred to an illustration and explained that the topography includes some tributary area located to the southeast of the project that slopes onto the property. The stormwater calculation is based on accounting for off-site drainage from that area entering the site and conveyed to the infiltration facility. The calculation for sizing the infiltration facility is based on that area remaining in a forested condition.

Mr. Pantier explained that the purpose of the planned unit development does not include any type of density bonus. The PUD will provide for a variety of housing types within the development.

All City streets will be constructed to the City's streets standards to include sidewalks on both sides of the roads. Sidewalks in the development will provide connectivity to the existing bus waiting area in the neighboring development to fulfill the safe walk requirements.

The primary access for the development is from the neighboring

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development at the southwest corner of the site with emergency access provided at the southeast corner with a stub to the north.

Examiner Reeves asked whether the basic infrastructure of the plat has been developed. Mr. Pantier said all streets within the development have been platted, constructed, paved, and include sidewalks, and curbs in all public right-of-ways.

Mr. Pantier reported that following consultation with City staff regarding Condition 15, the owner has no objections to creating the slope easement and will include the easement as part of the final plat to along the portion of Tract B that abuts Lot 14 (easterly 50 feet of Tract B).

Examiner Reeves asked whether the applicant has any issues with any of the proposed conditions proposed by City staff. Mr. Pantier said the Staff Report was reviewed in detail and staff has accurately described the proposal. The findings articulated in the Staff Report are clear and the applicant has satisfied all the required findings that are necessary to render a favorable decision. He and the owner reviewed Conditions 1-44 and concur with the recommended conditions.

Examiner Reeves asked whether an existing home and outbuildings have been demolished or are scheduled to be demolished if the proposal is approved. Mr. Pantier said the structures have not been demolished but would be demolished.

**PUBLIC
TESTIMONY:**

A member of the public was invited to offer comments. The unidentified individual declined to offer any comments.

Examiner Reeves advised that he would consider the matter and issue a decision within 10 business days. He thanked everyone for participating.

ADJOURNMENT

Examiner Reeves closed the record and adjourned the meeting at 7:50 p.m.