

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF TUMWATER**

In the Matter of the Application of	)	Nos. TUM-19-1583; TUM-20-0241
	)	
<b>Jeff Pantier, Hatton Godat Pantier,</b>	)	<b>Bradbury Division 4 Preliminary Plat</b>
<b>on behalf of Evergreen Heights, LLC</b>	)	<b>and Planned Unit Development</b>
	)	
	)	
For Approval of a Preliminary Plat and	)	FINDINGS, CONCLUSIONS,
<u>Planned Unit Development</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a preliminary plat and planned unit development to subdivide 9.57 acres into 53 single-family residential lots, with associated improvements, at 1630 93rd Avenue SE is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on January 11, 2021, using remote technology due to the COVID-19 pandemic.

Testimony:

The following individuals provided testimony under oath at the open record hearing:

Chris Carlson, City Permit Manager  
Jeff Pantier, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated January 4, 2021
2. Site Aerial Photograph Map, published December 21, 2020
3. Preliminary Plat Application, received December 3, 2019
4. Preliminary Planned Unit Development Application, received February 25, 2020
5. Preliminary Plat and Planned Unit Development Map, dated February 21, 2020
6. Site Plans, dated November 19, 2019
  - a. Preliminary Cover Sheet (Sheet 1 of 8)
  - b. Preliminary Temporary Erosion & Sediment Control Plan (Sheet 2 of 8)
  - c. Preliminary Overall Grading & Drainage Plan (Sheet 3 of 8)
  - d. Preliminary Grading & Drainage Details (Sheet 4 of 8)
  - e. Preliminary Utility Plan (Sheet 5 of 8)
  - f. Preliminary Water Details – 1 (Sheet 6 of 8)

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- g. Preliminary Water Details – 2 (Sheet 7 of 8)
- h. Preliminary Sewer Details (Sheet 8 of 8)
- 7. Certification of Public Notice, dated December 31, 2020
- 8. Comprehensive Plan Map, dated December 17, 2020
- 9. Zoning Map, dated December 17, 2020
- 10. Environmental Checklist, dated February 26, 2020
- 11. Determination of Nonsignificance, dated April 9, 2020
- 12. Notice of Application, dated March 10, 2020
- 13. Mazama Pocket Gopher Screening, EnviroVector, dated August 1, 2019
- 14. Tree Plan, Professional Forestry Services, Inc., dated November 26, 2019
- 15. Preliminary Drainage Report, Helena Gubbels, EIT, revised February 25, 2020; Geotechnical and Stormwater Investigation, Insight Geologic, Inc., dated November 14, 2019; Groundwater Screening Evaluation, Insight Geologic, Inc., PLLC, dated June 19, 2006; Supplemental Ground Water Monitoring Letter Report, Insight Geologic, Inc., dated April 11, 2007
- 16. Transportation Concurrency Application, dated February 25, 2020, with PM Peak Trip Distribution diagram
- 17. Transportation Concurrency Memorandum, dated June 17, 2020
- 18. Water and Sewer Availability Letter, dated December 18, 2020
- 19. Comment from Department of Ecology, dated March 24, 2020; Comment from Department of Ecology, dated March 9, 2018
- 20. Comment from Department of Ecology, dated April 24, 2020
- 21. Comment from Squaxin Island Tribe, dated March 12, 2020
- 22. Comment from Tumwater School District, dated January 4, 2020
- 23. Comment from Squaxin Island Tribe, dated January 4, 2021

The Hearing Examiner enters the following findings and conclusions based upon the admitted testimony and exhibits:

## **FINDINGS**

### Application and Notice

1. Jeff Pantier, Hatton Godat Pantier, on behalf of Evergreen Heights, LLC (Applicant), requests approval of a preliminary plat and planned unit development (PUD) to subdivide 9.57 acres into 53 single-family lots, a storm drainage/open space tract, a tree/open space tract, an open space/active recreation tract, a private road tract, and an easement tract. Associated improvements would include mass grading for public roads and lot pads, frontage improvements along 93rd Avenue SE to the south of the property, utility extensions, stormwater management features, and street lighting. Access to the property would be provided from the west through an extension of 92nd Way SE. All existing structures on-site, including an existing single-family residence and detached garage, would be removed during development. The property is located at 1630 93rd Avenue

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SE.<sup>1</sup> *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 10.*

2. The City of Tumwater (City) determined that the applications were complete on March 9, 2020. On March 10, 2020, the City posted notice of the applications on-site and mailed notice to property owners within 300 feet of the subject property and to reviewing government agencies, with a comment deadline of March 24, 2020. The next day, the City published notice of the applications in *The Olympian*. On December 29, 2020, the City mailed notice of the open record hearing associated with the applications to property owners within 300 feet of the subject property and published notice in *The Olympian*. On December 31, 2020, the City posted notice of the associated hearing on-site. *Exhibit 1, Staff Report, pages 1, 2, and 6; Exhibit 2; Exhibit 3; Exhibit 7; Exhibit 12; Testimony of Mr. Carlson.*
3. The City did not receive any written public comments in response to its notice materials. The City received comments, however, from three reviewing agencies in response to its notice materials. Specifically:
  - The Squaxin Island Tribe commented that it does not have specific concerns over cultural resources related to the project site but stated that it would concur with recommendation by the Washington State Department of Archaeology and Historic Preservation (DAHP) to conduct a cultural resources survey. The Squaxin Island Tribe also commented that, if any archeological or cultural resources are discovered on site, work should halt and DAHP and the tribe should be contacted. DAHP did not comment on the proposal.
  - The Tumwater School District commented that East Olympia Elementary, Bush Middle School, and Tumwater High School would serve the project site. The district noted that the elementary and middle schools are considered non-walking schools under district policy and that the high school is too far away from the proposed development for students to walk. The district stated, however, that it has two future school sites in the area and that installation of public sidewalks and paths to the east edge of the proposed development and requiring dedication of the Tract E easement as a public right-of-way for a walking route would ensure safe walking conditions for students. School impact fees for three lots in the development would be waived by the district in exchange for the right-of-way dedication.
  - The Washington State Department of Ecology (DOE) provided general comments about required erosion control measures during construction activities and about the potential need for a Construction Stormwater General Permit. DOE also noted that, if toxic contamination is suspected, discovered, or occurs during

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<sup>1</sup> The property is identified by Tax Assessor Parcel No. 12713311500. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included with the preliminary plat and planned unit development map. *Exhibit 5.*

development, the Applicant must test the potential contaminated medium and notify DOE. In addition, DOE commented that the Applicant must locate all existing wells, decommission any unused wells, and submit decommission reports to DOE.

*Exhibit 1, Staff Report, pages 11 through 16; Exhibit 19; Exhibits 21 through 23.*

#### State Environmental Policy Act

4. The City Community Development Department (CDD) acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington RCW (RCW). CDD reviewed the Applicant's environmental checklist, and other information on file, and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, CDD issued a Determination of Nonsignificance (DNS) on April 9, 2020, with a comment deadline of April 23, 2020, and an appeal deadline of April 29, 2020. Notice of the DNS was mailed and posted on-site on April 10, 2020. Notice of the DNS was published on April 13, 2020. DOE provided comments in response to the DNS, which incorporated its comments provided in response to the notice of the applications, as described above. DOE also noted that the environmental checklist submitted for the proposal mentions an existing well on the property, that use of the well would be subject to water right permit requirements, and that the decommissioning of the well would be subject to DOE requirements. The City did not receive any other comments specific to the DNS, and the DNS was not appealed. *Exhibit 1, Staff Report, page 6, 7, and 11; Exhibit 7; Exhibit 10; Exhibit 11; Exhibit 20.*

#### Comprehensive Plan and Zoning

5. The property is within the Airport Neighborhood and is designated Single-Family Medium Density under the City Comprehensive Plan, which provides for a density of 6 to 9 dwelling units per acre. The Single-Family Medium Density Designation in the Comprehensive Plans states that the density of new development "should be averaged over the entire site in order to reach the maximum densities required to accommodate future population" and that it "is not the intent of the City to require that lots be a specific size but that densities are met as an average of the overall site." *City Comprehensive Plan, Land Use Element, pages 34 and 35.* In addition, within the Airport Neighborhood, the Single-Family Medium Density designation provides for alternative single-family housing types in the southeastern portion of Tumwater to help enable citizens of various income levels to find appropriate housing close to places of employment and transit routes. *City Comprehensive Plan, Neighborhood Appendix, pages 16 and 17.* The overall density of the proposed subdivision would be 7.39 dwelling units per acre. City staff determined that the proposal would be consistent with the Comprehensive Plan. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 8.*
6. The property is located in the Single-Family Medium-Density Residential (SFM) zoning district, which allows a minimum net density of six units per acre and a maximum net density of nine units per acre. *Tumwater Municipal Code (TMC) 18.12.050.* The intent

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of the SFM zoning district is provide for a high standard of development for residential areas of moderate density in which single-family housing is the primary form of development; promote the efficient use of land; encourage and plan for the availability of public services and community facilities, such as utilities, police and fire protection, streets, public transit, schools, and parks and recreation; encourage development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere, and contain a variety of housing types; and ensure that development without municipal utilities is at a density and in a configuration that enables cost-effective urban density in-fill development when municipal utilities become available. *TMC 18.12.010*. Single-family residences are a permitted use in the SFM zone. *TMC 18.12.020*. *TMC 18.12.050* provides density regulations applicable to SFM zoning district, which includes a 50-foot minimum lot width requirement. As noted above, and discussed in detail below, the Applicant proposes to develop the property as a planned unit development, which is allowed in the SFM zone and would exempt the proposal from the 50-foot minimum lot width requirement. *TMC 18.12.020; Chapter 18.36 TMC*. The proposal would comply with all other density regulations applicable to the SFM zoning district. *Exhibit 1, Staff Report, pages 7 and 8; Exhibit 4; Exhibit 6; Exhibit 9; Testimony of Mr. Carlson; Testimony of Mr. Pantier*.

7. The property is also located in the Aquifer Protection overlay zoning district (AQP). The AQP overlay district is an overlay zone covering the entire city: it is intended to “protect vulnerable and/or critical aquifer recharge areas within the city and urban growth area” by “preventing future pollution from new or different land uses or activities.” *TMC 18.39.010*. The proposed residential subdivision is not a restricted use within the AQP overlay district. *Exhibit 1, Staff Report, page 7*.

#### Existing Site

8. The project site is rectangular, relatively flat, and mostly forested, with an open grassed area immediately around an existing home and detached garage, which would be removed as part of the development. The property is bounded by 93rd Avenue SE to the south, residential development to the north and west, and undeveloped forested areas to the east. *Exhibit 1, Staff Report, page 2; Exhibit 5; Exhibit 6; Exhibit 15*.

#### Critical Areas

9. Mazama pocket gophers are known to inhabit the geographic area where the subject property is located. The Mazama pocket gopher is listed as a protected species under both Washington State and federal threatened and endangered species lists. EnviroVector submitted a Mazama Pocket Gopher Screening report on behalf of the Applicant, dated August 1, 2019. The report noted that a United States Fish and Wildlife Service (USFWS) certified biologist conducted site visits on June 3, 2019, and July 22, 2019, and performed screenings in compliance with USFWS and City requirements, which did not identify any mounds characteristic of the Mazama pocket gopher on-site. The report concluded that the property is within 182 feet of known Mazama pocket gopher

occurrence and primarily contains soils that are less preferred by the Mazama pocket gopher, with more preferred soils located in the northeastern corner of the site. With no gopher occupation observed on the property subject to the preliminary plat and planned unit development applications, City staff determined that the project is consistent with the applicable environmental protection ordinances for the City of Tumwater. No other critical areas were identified on-site. *Exhibit 1, Staff Report, pages 2 and 9; Exhibit 13.*

#### Trees

10. TMC 16.08.070.R requires that, when land clearing is performed in conjunction with a specific development proposal, not less than 20 percent of the trees, or not less than 12 trees per acre (whichever is greater), must be retained. When this tree retention standard cannot be met, not less than three replacement trees for each tree cleared in excess of the standard must be planted on-site. Professional Forestry Service, Inc., prepared a Tree Plan on behalf of the Applicant, dated November 26, 2019, which determined that the property contains 395 trees. Based on the size of the property and the number of existing trees, TMC 16.08.070.R would require that a minimum of 115 trees be retained on the project site. City staff determined that it would not be possible to retain the minimum 115 trees on-site due to the minimum densities required under the zoning code and due to filling activity that would be required to facilitate the proposed development. The Applicant's tree plan proposes to retain a total of 45 trees on-site, with 27 trees to be retained in a 0.39-acre tree tract (Tract B) located along the southern property line adjacent to 93rd Avenue SE, along with 14 trees along the west boundary and four trees along the north boundary. The Applicant would therefore be required to plant 210 replacement trees on-site. City staff recommends requiring a minimum of 210 replacement trees be planted on the site within Tracts B and C to ensure that that the project would comply with the City's tree protection and replacement requirements. Street trees are required to be installed along 93rd Avenue SE and the proposed interior public streets in accordance with the Tumwater Development Guide and Comprehensive Street Tree Plan. City staff also recommends requiring the Applicant to submit a landscape and irrigation plan for the proposed street planter strips, the proposed open space tracts, and the storm water facilities, showing proposed plantings, tree types and heights, and other vegetation. This plan must be submitted and approved prior to final plat approval. *Exhibit 1, Staff Report, pages 8, 9, and 16; Exhibit 6; Exhibit 14.*

#### Stormwater

11. The Applicant submitted both a preliminary drainage report, revised February 25, 2020, prepared by Helena Gubbels, EIT, and a geotechnical and stormwater report, dated November 14, 2019, prepared by Insight Geologic, Inc. These reports determined that stormwater infiltration at the site would be feasible. Stormwater runoff from pollution-generating surfaces would be collected and conveyed to a bioretention cell located in a storm drainage/open space tract (Tract A) at the northwest corner of the property for enhanced water quality treatment before fully infiltrating on-site. In addition, the proposed stormwater would be designed to manage runoff flowing to the site from

forested areas on adjacent property to the east. Stormwater runoff from roofs would be collected via catch basins and conveyed to individual roof drain trenches sized for 100 percent infiltration. The Applicant's final stormwater management design would be required to comply with the City's 2018 Storm Drainage Manual. *Exhibit 1, Staff Report, page 11; Exhibit 6; Exhibit 15; Testimony of Mr. Pantier.*

#### Utilities

12. The Applicant would extend private utilities (power, gas, cable, and telephone) to the project site. Water and sewer would be provided by the City of Tumwater. Electricity and natural gas would be provided by Puget Sound Energy, telephone and cable service would be provided by Comcast, and garbage collection would be provided by LeMay. All utilities on-site would be underground, in accordance with TMC 17.12.200. The City issued a Certificate of Water and Sewer Availability for the proposed development on December 18, 2020. *Exhibit 1, Staff Report, page 10; Exhibit 6; Exhibit 10; Exhibit 18.*

#### Access, Parking, and Traffic

13. Access to the property would be provided from the west through an extension of 92nd Way SE. The roadway of 92nd Way SE would be extended through the southern portion of the property and would be stubbed at the eastern border of the property to facilitate a potential future extension. Access to the individual lots would be provided by the 92nd Way SE extension and by two new internal roadways that would be designed in accordance with the Tumwater Development Guide design requirements and would be dedicated to the City as public rights-of-way. One of the proposed new public roadways would be stubbed at the northern border of the property to facilitate a potential future extension. Access to three of the lots at the northeastern corner of the property would be provided by a private road tract connecting to one of the new internal public roadways. The Applicant would be required to provide two off-street parking spaces for each lot. The Applicant submitted a Transportation Concurrency application as required by Chapter 15.48 TMC. The City's Transportation Manager issued a transportation concurrency ruling for the project, which indicates that traffic generated from the project would not cause the level of service, at any impacted corridor or intersection, to fall below the City's level of service standard. City staff also determined that, by connecting to 92nd Way SE to the west and providing street stubs to properties to the east and north for future extensions of public streets and sidewalks, the project would not adversely affect level of service standards and would be consistent with the Tumwater Transportation Plan. *Exhibit 1, Staff Report, pages 4, 5, and 15; Exhibit 16; Exhibit 17.*
14. The City has adopted a Sustainable Development Plan for the Thurston Region to reduce vehicle miles traveled and to preserve sensitive areas, farmland, forestland, prairies, and rural lands. The project site is located approximately 0.6 miles west of properties located at the southwest intersection of Old Highway 99 and 93rd Avenue SE that are zoned Neighborhood Commercial (NC). Although these properties are currently undeveloped, the NC zoning designation would allow the properties to be developed with a mix of

retail and service business uses that could serve residents of the proposed subdivision who walk or use bicycles. City staff determined that the project would not conflict with the Sustainable Development Plan for the Thurston Region. *Exhibit 1, Staff Report, pages 5 and 6.*

#### Schools and Parks

15. As noted above, children residing within the proposed subdivision would attend East Olympia Elementary, Bush Middle School, and Tumwater High School. The Tumwater School District indicated that these schools would be too far away from the project site to be walkable but that it has two future school sites in the area that would require safe walking routes. To ensure safe walking routes to the future schools, the Applicant would dedicate an area along the eastern border of the property (Tract E) for a public right-of-way. School impact fees for three lots in the development would be waived by the district in exchange for this right-of-way dedication. *Exhibit 1, Staff Report, pages 10, 12, and 13; Exhibit 22.*
16. The Parks and Recreation element of the Tumwater Comprehensive Plan expresses the desire to acquire and develop a future community park in the South/Southwest portion of the city, within the service area of the proposed development. Impact fees for traffic, community parks, and schools would be assessed for each dwelling unit in the subdivision as building permits are issued. In addition, TMC 17.12.210 requires that a minimum of 10 percent of the gross site area be provided as private open space. The code requires that both passive and active recreation elements be included in the open space areas. The open space area for the proposed subdivision is 0.95 acres. This amounts to approximately 10 percent of the gross site area, which meets the minimum open space requirement. City staff determined that, with payment of community park impact fees for each single-family residence proposed in the subdivision, and by setting aside the minimum amount of private open space with both passive and active recreation elements, the proposed preliminary plat is consistent with the Comprehensive Parks Plan and with the park and open space requirements of the municipal code. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 6.*
17. The City participates in the Thurston Regional Planning Council, which adopted a Thurston Regional Trail Plan in December 2007. City staff determined that the proposed project would not affect implementation of this plan. *Exhibit 1, Staff Report, page 5.*

#### Planned Unit Development

18. As noted above, the Applicant requests approval to develop the property as a planned unit development (PUD). The intent of PUDs is to encourage new development that would not be limited by strict application of the City's zoning code. *TMC 18.36.010.A.* More specifically, the purpose of PUDs is to encourage flexibility in design and development that will result in a more efficient and desirable use of land; permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, off-street



parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; provide for maximum efficiency in the layout of streets, utility networks, and other public improvements; produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and provide a guide for developers and City officials who review and approve developments meeting the standards and purposes of this chapter.

*TMC 18.36.010.B.* PUDs achieve these purposes by providing relief from the minimum requirements of the underlying zone, with the following exceptions:

- A. Minimum Project Size. There is no minimum project size for a planned unit development.
- B. Project Densities. Densities established by the underlying zone district shall prevail.
- C. Setbacks. Project setbacks as required by the underlying zoning district shall prevail on all perimeter boundary lines.
- D. Land Coverage. Maximum land coverage, as established by the underlying zone district, may be exceeded by no more than 25 percent.
- E. Uses Allowed. The use of the development shall be limited to those allowed either as permitted, accessory, or conditional uses in the underlying zones.
- F. Open Space/Park. The open space/park dedication requirements of the underlying zoning district shall prevail.

*TMC 18.36.080.* The Applicant requests approval to develop the property as a PUD to provide relief from the minimum lot width requirement applicable to the SFM zone. Of the 53 proposed lots, 33 are proposed to have lot widths below the 50-foot minimum with PUD approval. Specifically, 25 lots are proposed to be 40 feet wide, seven lots are proposed to be 45 feet wide, and one lot is proposed to be 48 feet wide. *Exhibit 1, Staff Report, pages 7 and 8; Exhibit 5.*

19. Under TMC 18.36.050, all PUDs must (1) substantially conform to the Comprehensive Plan, (2) harmonize with the surrounding area or its potential future use, and (3) ensure the size of the proposed overlay can accommodate the proposed development. City staff analyzed the proposal for consistency with the requirements for a PUD and determined:
  - The proposal would be consistent with the Tumwater Comprehensive Plan.
  - The proposal would be consistent with the surrounding residential area that is developed at urban densities.
  - The proposal would comply with the densities allowed in the SFM zoning district.*Exhibit 1, Staff Report, pages 7 and 8.*

#### Testimony

20. City Permit Manager Chris Carlson testified generally about the application review process, explaining that the City reviewed the application for consistency with the Comprehensive Plan, zoning requirements, and critical areas ordinances. He explained that the City's Transportation Manager reviewed the Applicant's transportation

concurrency application and determined that the project would meet the City's concurrency requirements. Mr. Carlson described how the City provided notice of the application, associated public hearing, and DNS, consistent with state and local requirements, noting that the City did not receive any written public comments in response to its notice materials. He stated that the Applicant submitted a planned unit development application with the preliminary plat application to be afforded relief from the 50-foot minimum lot width requirement applicable to the SFM zoning district. Mr. Carlson explained that the subject property is largely forested, and that the Applicant would mitigate for the removal of trees in excess of the City's tree retention requirement by planting replacement trees on-site at a three-to-one ratio. He also explained that the Applicant provided a preliminary drainage report demonstrating that a stormwater management system for the site meeting requirements of the City of Tumwater 2018 Storm Drainage Manual would be feasible. Mr. Carlson stated that there are no critical areas on-site, apart from the property being located with the AQP overlay district, noting that the proposed residential subdivision is not a restricted use within the AQP overlay. *Testimony of Mr. Carlson.*

21. Applicant Representative Jeff Pantier testified that the Applicant would improve a proposed active recreation/open space (Tract C) with playground amenities. He noted that a homeowners association would be created to maintain the open space/active recreation tract, as well as the proposed storm drainage/open space tract, tree/open space tract, and other community amenities within the neighborhood. Mr. Pantier explained that the Applicant has agreed with the Tumwater School District to dedicate the area along the eastern property line (Tract E) to the City for a public right-of-way in exchange for school impact fees being waived for three of the lots within the subdivision. He described how stormwater would be managed on the property, explaining that stormwater from roofs would be collected and infiltrated on the individual lots and that stormwater from pollution-generating surfaces would be routed to a bioretention cell on Tract A for water quality treatment before being fully infiltrated on-site. Mr. Pantier further explained that runoff flowing to the property from an off-site basin on adjacent property to the east would also be collected and conveyed to the bioretention cell on Tract A, which would be designed and sized to accommodate this additional off-site runoff. He stated that all streets would be constructed to City public street standards, including the requirement that sidewalks be installed on both sides of the streets, which would ensure safe walking routes to an existing bus stop in a neighboring development. *Testimony of Mr. Pantier.*

#### Staff Recommendation

22. Mr. Carlson testified that City staff determined that, with conditions, the proposed plat would be consistent with the City's Comprehensive Plan, municipal code, and development standards and that City staff recommends approval of the application, with conditions. Mr. Pantier testified that the Applicant understands and agrees with the

City's proposed conditions. *Exhibit 1, Staff Report, pages 6 through 14; Testimony of Mr. Carlson; Testimony of Mr. Pantier.*

## **CONCLUSIONS**

### Jurisdiction

The Hearing Examiner has authority to hear and decide applications for preliminary plats and planned unit developments. The Hearing Examiner may grant, deny, or grant with such conditions, limitations, modifications, and restrictions as the Hearing Examiner finds necessary to make the application compatible with applicable laws and regulations, including but not limited to compatibility with the environment, the Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. *TMC 2.58.090.A; TMC 2.58.130.A.2.*

### Criteria for Review

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the proposed land division. *TMC 17.14.040.A.* Under TMC 17.14.040.A, the Hearing Examiner shall determine whether

appropriate provisions are made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, other grounds, transit stops, potable water supplies, sanitary wastes, parks and recreation playgrounds, schools and school grounds, fire protection and other public facilities, and shall consider all other relevant facts, including the physical characteristics of the site, and determine whether the public interest will be served by the land division. Further, consideration shall be given for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school.

If the Hearing Examiner finds that the proposed division of land makes appropriate provisions, and makes written findings to that effect, then it shall be approved. If the Hearing Examiner finds that the proposed land division does not make such appropriate provisions or that the public use and interest will not be served, then the Hearing Examiner shall disapprove the proposed division of land. *TMC 17.14.040.A.*

Dedication of land, provision of public improvements to serve the land division, and/or payment of impact fees allowed by state law, to any public body, may be required as a condition of land division approval. The Hearing Examiner shall not, as a condition of approval, require an Applicant to obtain a release from damages from other property owners. The Hearing Examiner will consider the physical characteristics of a proposed land division site and may disapprove a proposed division because of flood, inundation, or wetland conditions. Construction of protective improvements may be required as a condition of approval. *TMC 17.14.040.B, .040.C, and .040.D.*

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The subdivision provisions of the Tumwater Municipal Code are substantially similar to RCW 58.17.110(2), which provides:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.

In addition, TMC 18.36.050 provides the following specific to planned unit developments:

The application for a planned unit development shall be heard before the hearing examiner of the city at a duly published public meeting. The hearing examiner's decision to approve or deny the development shall be based on at least, but not limited to, the following criteria:

- A. Substantial conformance to the Tumwater comprehensive plan;
- B. The proposal's harmony with the surrounding area or its potential future use; and
- C. The adequacy of the size of the proposed overlay to accommodate the contemplated developments.

The criteria for review adopted by the Tumwater City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions Based on Findings

1. **With conditions, the preliminary subdivision would make appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, and schools and school grounds.** The property is designated Single-Family Medium Density under the City Comprehensive Plan and is located in the Single-Family Medium-Density Residential (SFM) zoning district, which allows a density of six to nine dwelling units per acre. The

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proposal is for a subdivision with a net density of 7.39 dwelling units per acre. The Applicant would set aside the required amount of open space to meet the recreational needs of the future residents of the subdivision and the open-space requirements of the municipal code. There are three open space tracts proposed within the subdivision: Tract A would be designated as a storm drainage/open space tract, Tract B would be designated as a tree/open space tract, and Tract C would be designated as an active recreation/open space tract. All three tracts would be owned and maintained by a homeowners association. The intended use for each lot within the proposed subdivision is for one single-family detached dwelling unit, which is consistent with the uses and densities allowed in the SFM zoning district. The property is also located in the Aquifer Protection overlay zoning district (AQP) and would meet all requirements of the overlay district. The preliminary plat is not a restricted use within the AQP overlay zone. The proposed subdivision would be compatible with the neighboring vacant and residential uses that surround it.

There are a total of 395 existing trees on the site, of which 45 are proposed to be retained. Because the Applicant would not be able to retain the minimum 115 trees required to meet the 20 percent retention required by the City code, due to development constraints and density requirements of the zoning code, the Applicant would plant replacement trees on-site at a three-to-one ratio, for a total of 210 replacement trees, consistent with code requirements. Proposed improvements include construction of a bioretention cell within a separate storm drainage/open space tract (Tract A) that would treat stormwater runoff from pollution-generating surfaces on the property, including runoff entering the property from an adjacent property to the east, before fully infiltrating on-site. Stormwater runoff from roofs would be collected via catch basins and conveyed to individual roof drain trenches before fully infiltrating on-site. The proposed development would include street frontage improvements along 93rd Avenue SE and along an extension of 92nd Way SE and would include the construction of two new public roadways within the subdivision, all of which would be required to comply with design requirements of the Tumwater Development Guide, including the requirement for installing sidewalks along the streets. The required installation of sidewalks within the development and along the frontage of 93rd Avenue SE would ensure safe routes for students walking to school bus stops. In addition, the Applicant has agreed with a request from the Tumwater School District to dedicate to the City an area along the eastern property line for a public right-of-way to facilitate safe walking routes for students that would be served by future school sites in the area. In exchange for the dedication, the district would waive school impact fees for three of the lots in the subdivision. The remaining school impact fees, as well as impact fees for traffic and community parks, would be assessed and collected at the time of issuance of building permits.

Conditions are necessary to ensure that the project proceeds in conformance with the plans on file and with the requirements of the municipal code. In addition, conditions, as detailed below, are necessary to ensure that the Applicant: submits a detailed

landscaping and irrigation plan; satisfies the requirements of DOE and ORCAA, as well as the requirements of Thurston County Environmental Health; installs improvements along the frontage of 93rd Avenue SE, including sidewalks, curbs and gutters, street lighting, bike lanes, landscaping, and necessary storm drainage; constructs the 92nd Way SE extension and internal public streets in compliance with the Tumwater Development Guide; obtains all necessary permits; pays all required impact fees; satisfies open space and park area requirements; satisfies all tree retention and replacement requirements; and creates a homeowners association for the neighborhood. *Findings 1, 3 – 22.*

2. **With conditions, the proposed subdivision would be consistent with development regulations, considering land use type, development level, infrastructure, and development characteristics, such as development standards, as required by Chapter 58.17 RCW and Title 17 TMC.** The City provided reasonable notice and opportunity to comment on the proposed preliminary plat. The City did not receive any written public comments or testimony on the proposal. City staff addressed comments from reviewing government agencies with its recommended conditions. Environmental impacts of the proposed plat were considered, as required by SEPA, and the City issued a DNS that was not appealed. The preliminary plat would provide single-family residential development consistent with applicable development regulations. City staff determined that, with conditions, the proposal would be consistent with all applicable City, county, and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards. The public interest would be served by the platting of the subdivision. Conditions, as noted in Conclusion 1 and detailed below, are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1 – 22.*
  
3. **With conditions, the proposal would be consistent with the requirements for a planned unit development under TMC 18.36.050.** Under TMC 18.36.010, the intent of using a PUD overlay is to encourage flexibility in design and development that would result in a more efficient and desirable use of land; permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, off-street parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; provide for maximum efficiency in layout of streets, utility networks, and other public improvements; produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and provide a guide for developers and City officials who review and approve developments. The proposed development would satisfy the required densities of the SFM zoning district. The Applicant has sought approval of a PUD to create 33 of the 53 proposed lots with lot widths below the 50-foot minimum usually required in the SFM zone. As discussed above in Conclusions 1 and 2, the proposal, with conditions, would be consistent with all applicable City, county, and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards, and would be harmonious with surrounding residential development. City staff reviewed the proposal and determined that the PUD overlay would be adequate in size to

accommodate the contemplated development. The Hearing Examiner concurs with the City's assessment. The public interest would be served by the platting of the subdivision and planned unit development. As discussed above in Conclusion 1 and detailed below, conditions are necessary to ensure that the proposal meets all criteria required for plat approval and approval of a planned unit development. *Findings 1 – 22.*

### DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat and planned unit development to subdivide 9.57 acres into 53 single-family residential lots, with associated improvements, at 1630 93rd Avenue SE is **APPROVED**, with the following conditions:<sup>2</sup>

1. Storm water from impervious surfaces associated with the project shall be managed in accordance with the City of Tumwater 2018 Storm Drainage Manual.
2. Erosion and sediment control measures that comply with the City of Tumwater 2018 Storm Drainage Manual shall be implemented during construction of the project to prevent sediment laden runoff from entering surface waters.
3. A Site Development/Grading Permit shall be obtained from the City for grading, street, sidewalk and utility construction, tree removal and construction of storm drainage facilities.
4. Should contaminated soils be encountered during construction, all of the following shall apply:
  - A. Construction activity shall be immediately suspended;
  - B. The contractor shall immediately notify the Washington State Department of Ecology;
  - C. Contaminated materials shall be properly handled, characterized, and disposed of consistent with applicable regulations.
5. Should archeological artifacts be encountered during construction, all of the following shall apply:
  - A. Construction activity shall be immediately suspended;
  - B. The contractor shall immediately notify the City of Tumwater Community Development Department;
  - C. The contractor shall immediately notify the Washington State Department of Archeology and Historic Preservation; and

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<sup>2</sup> Conditions include legal requirements applicable to all developments as well as requirements designed to mitigate the specific impacts of this development.

- D. The contractor shall immediately notify potentially affected tribal nations including, but not limited, to the Squaxin Island Tribe, Chehalis Tribe, and Nisqually Tribe.
6. Fill for the project shall be clean material, void of solid waste or organic debris.
  7. Disposal of construction debris and overburden associated with construction and grading activity that is not suitable for fill is required to be disposed of at an approved location.
  8. The Applicant shall secure a National Pollutant Discharge Elimination System (NPDES) Construction Storm Water General Permit from the Washington State Department of Ecology.
  9. The proposed public streets within the subdivision shall comply with the Tumwater Development Guide design requirements in place at the time the preliminary plat application was vested. The public streets shall be dedicated to the City of Tumwater.
  10. 92nd Way SE shall be stubbed to the adjacent property to the east, as shown on the preliminary plat map for future extension. Street barricades complying with the Tumwater Development Guide shall be installed and contain a sign that reads "Future Public Street Extension".
  11. The north/south street on the west side of the property shown on the preliminary plat map shall be stubbed to the property to the north. Street barricades complying with the Tumwater Development Guide shall be installed and contain a sign that reads "Future Public Street Extension".
  12. Street frontage improvements including curb and gutter, sidewalk, landscape strip, bike lane, street illumination and storm drainage facilities complying with the design requirements of the Tumwater Development Guide shall be constructed along the property frontage on 93rd Avenue SE. Seven feet of additional right-of-way shall be dedicated to contain the improvements.
  13. The City's water and sewer utilities shall be extended to serve the needs of the subdivision. The utility extensions shall be in accordance with the Tumwater Development Guide requirements in place at the time the preliminary plat application was vested. All necessary right-of-way and/or easement will need to be dedicated.
  14. Tract E as shown on the Preliminary Plat/PUD map shall be dedicated for public right-of-way on the face of the final plat for extension of a public street to serve a future school proposed by the Tumwater School District on property immediately east of the project site.



As compensation for the dedication, the Tumwater School District has agreed to waive school impact fees for 3 lots within the development.

15. 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.
16. The minimum fire flow requirement for the project shall be 1,000 gallons per minute at 20 pounds per square-inch. The system shall also be designed for a maximum velocity of 8 feet per second. If the required fire flow cannot be achieved, residential fire sprinklers shall be required in the dwelling units.
17. A separate permit and engineered design is required for any retaining walls on-site if the height of the wall is over 4 feet measured from the bottom of the footing or if the wall is supporting a surcharge.
18. A final geotechnical engineering report shall be submitted for the grading and site work. The report shall include conclusions and recommendations for grading procedures, soil design criteria for structures or embankments required to accomplish the proposed grading and recommendations and conclusions regarding the site geology.

All grading and filling work shall be conducted in accordance with the approved geotechnical report. Compaction testing of the soils under the building foundations and utility trenches shall be verified by the geotechnical engineer of record and the Washington Association of Building Officials (WABO) registered special inspection agency and inspectors.

19. Fire hydrants shall be provided at all intersections and at approximately 600-foot spacing along the internal streets.
20. Demolition permits are required to be issued by the City prior to removal of existing structures on the property. A separate permit is required for each structure.
21. A demolition permit is required to be issued by the Olympic Region Clean Air Agency for each structure proposed to be removed from the property. Olympic Region Clean Air Agency (ORCAA) regulations require an asbestos survey for all demolition projects. Prior to any demolition project, the following must be completed:
  - A. A good faith asbestos survey must be conducted on the structure by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector;

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- B. If asbestos is found during the survey, an Asbestos Removal Notification must be completed and all asbestos-containing material must be properly removed prior to the demolition; and,
  - C. If the structure is larger than 120 sq. ft., a Demolition Notification must be submitted regardless of the results of the asbestos survey.
22. All water wells on the site shall be abandoned in accordance with Washington State Department of Ecology requirements. A permit from the Department of Ecology shall be obtained for each well to be abandoned.
  23. All septic systems on the property shall be abandoned in accordance with Thurston County Environmental Health requirements. A permit shall be obtained from Thurston County Environmental Health for each separate system that will be abandoned.
  24. The project proponent shall be responsible for providing the City with all costs associated with the installation of water, sewer, street, and storm drainage systems that are dedicated to the City of Tumwater.
  25. All engineering designs and construction will need to be in accordance with the City of Tumwater's Development Guide and WSDOT standards.
  26. All street construction, utility installation and storm drainage work requires engineered plans certified by a professional engineer licensed to practice in the State of Washington. The plans shall be submitted for review and approval by the City.
  27. Any public or private utility relocation necessary to construct the project is the sole responsibility of the project proponent.
  28. The Applicant is required to submit a performance surety and surety agreement prior to release of the Site Development/Grading Permit to ensure successful completion of the required public improvements. The amount of the surety shall be 150% of the proponent engineer's estimate of completing the required public improvements.
  29. The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety and surety agreement for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Public Works Director.
  30. Maintenance of the on-site storm water system will be the responsibility of the project proponent, their successors, or assigns. A storm water maintenance agreement will be recorded against the property prior to or concurrent with final plat approval.

31. A sanitary sewer pump station latecomer of \$634.00 per dwelling unit shall be paid prior to final plat approval.
32. A water main is required to be extended across the frontage on 93<sup>rd</sup> Avenue SE. A minimum 16-inch main shall be installed. The Applicant may pursue an oversizing agreement with the City to share in the cost of the water main.
33. Back flow prevention is required on all irrigation services in accordance with the AWWA Cross Connection Control Manual.
34. A landscape and irrigation plan must be submitted for the proposed street planter strips, proposed open space tracts and the storm water facilities showing proposed plantings, tree types and heights, and other vegetation. Street trees are required to be installed along 93<sup>rd</sup> Avenue SE and the proposed interior public streets in accordance with the Tumwater Development Guide and Comprehensive Street Tree Plan. This plan must be submitted and approved prior to final plat approval.
35. Lot size requirements, lot coverage, and setbacks: Each residential lot shall have a building site no less than 1,600 square feet in area within which a suitable building can be built and served by utilities and vehicular access unless dedicated or restricted by covenant for open space, park, recreation, or other public use. The maximum lot-coverage for impervious surface shall be 87.5 percent of the total area of the lot.
36. Two off-street parking spaces are required for each lot. Driveways and off-street parking spaces must be hard-surfaced (asphalt, concrete, or turfstone).
37. Impact fees for traffic, community parks, and schools will be assessed to each dwelling unit in the subdivision as building permits are issued. The impact fees will be in accordance with the most current fee resolution adopted by the City at the time of vesting of the building permit applications.
38. An integrated pest management plan approved by the Thurston County Environmental Health must be submitted to the City of Tumwater prior to final plat approval.
39. All legal descriptions on documents submitted to the City must be accompanied with an appropriate drawing that the City can use to verify the legal description.
40. The Professional Land Surveyor responsible for the surveying of the project must obtain a permit from Department of Natural Resources before any existing survey monuments are disturbed.
41. The Applicant must maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.

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42. Property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Plat can be recorded.
43. In order to comply with the City's Tree Protection and Replacement Standards, a minimum of 210 replacement trees must be planted on the site. The replacement trees must be planted in the proposed tree protection open spaces on the project site, tracts B and C, shown on the Preliminary Plat/PUD map. The size of the tree protection open space area(s) associated with the project is required to be a minimum of 5% of the buildable area of the site.
44. A Homeowners Association is required to be formed for the project. Prior to final plat approval, the project proponent shall supply the City with copies of the grantee organization's articles of incorporation and bylaws, and with evidence of a binding commitment to convey. The articles of incorporation shall provide that membership in the organization shall be appurtenant to ownership of land in the land division; that the corporation is empowered to assess such land for costs of construction and maintenance of the improvements and property owned by the corporation, and that such assessments shall be in lien upon the land.

DECIDED this 25<sup>th</sup> day of January 2021.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center