

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

CASE NUMBER: **TUM-21-1887 and TUM-21-1889**

DESCRIPTION OF PROPOSAL: The Applicant is requesting preliminary plat and planned unit development (PUD) approvals to subdivide 10.43 acres into 41 single-family lots, one storm drainage/open space tract, one tree/open space tract, one wetland/open space tract, one tract for future BLA, and two private road tracts.

PROJECT NAME: Kirsop Crossing Division 3 Preliminary Plat and Preliminary Planned Unit Development (TUM-21-1887 and TUM-21-1889)

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

**PROJECT PROPONENT/
REPRESENTATIVE:** **Hatton Godat Pantier**
Jeff Pantier, PLS
3910 Martin Way East Suite B,
Olympia, WA 98506

PUBLIC HEARING: Hearing Examiner Andrew Reeves with Sound Law Center convened the public hearing at 7:00 p.m. to consider the Applicant's request for preliminary plat and planned unit development approvals to subdivide 10.43 acres into 41 single-family lots, one storm drainage/open space tract, one tree/open space tract, one wetland/open space tract, one tract for future BLA, and two private road tracts for property located at 6139 Kirsop Road SW, Tumwater, WA 98512.

Examiner Reeves reported 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 requirements for approval of a planned unit development and preliminary plat under Tumwater Municipal Code (TMC).

Examiner Reeves reported that prior to the public hearing he received and reviewed the following 15 exhibits:

1. Staff Report
2. Plat Map
3. Vicinity Map
4. MDNS w/attachments

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5. Public Hearing Notice
6. Applications & Narrative
7. Notice of Application Exhibit
8. Zoning Map Exhibit
9. Public Notice Certification
10. Notice of Application Comments
11. Concurrency Ruling
12. SEPA Comments
13. Forestry Plan
14. Critical Areas Report
15. Gopher Report

Examiner Reeves admitted the following exhibits into the record during the public hearing:

16. Preliminary Civil Plans (9 Sheets), dated November 2021 17
17. City of Tumwater Water and Sewer Availability Letter, dated December 10, 2021
18. Preliminary Drainage Report, Jared Crews, EIT, dated November 15, 2021
19. Winter Groundwater Monitoring Report, Insight Geologic, Inc., dated April 5, 2021
20. Supplemental Soil Evaluation Report, Insight Geologic, Inc., dated October 7, 2020 21
21. Thurston County Hearing Examiner Decision (No. PLAT/PUD 2003103430), dated April 13, 2005
22. Kirsop Crossing Final Plat Map (4 Sheets), recorded July 27, 2018
23. Correction to Staff Report Memorandum, dated June 10, 2022

Examiner Reeves reported all testimony will be under oath or affirmation because should the decision should be appealed, the audio recording of the hearing, admitted exhibits, and the decision would serve as the foundation for an appeal. The order of testimony begins with the City of Tumwater providing an overview of the proposal and any recommendations, testimony by the Applicant to present any additional information, testimony from the public, and closing arguments by the City of Tumwater and the Applicant.

CITY TESTIMONY: Examiner Reeves administered the oath to Tumwater Permit Manager Tami Merriman.

Manager Merriman reported the Applicant is requesting preliminary plat and planned unit development approvals to subdivide 10.43 acres

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into 41 single-family lots, one storm drainage/open space tract, one tree/open space tract, one wetland/open space tract, one tract for future BLA, and two private road tracts. The property is located at 6139 Kirsop Road SW, Tumwater, WA 98512, Section 05, Township 17N, Range 2W, Parcel # 79900002400. The property is zoned Single Family Low Density Residential.

Public notice for the application reflecting that the application was submitted and deemed complete was mailed to property owners within 300 feet of the subject property, affected agencies, posted on-site, and published in *The Olympian* newspaper on January 3, 2022. The City of Tumwater Community Development Department reviewed a SEPA Environmental Checklist and other information submitted by the applicant and issued a Mitigated Determination of Non-significance (MDNS) on February 18, 2022. The SEPA MDNS was mailed to property owners within 300 feet of the site, affected agencies, post on-site, and published in *The Olympian* newspaper on February 18, 2022. Public notification of the Hearing Examiner public hearing was mailed to property owners located within 300 feet of the subject property and various agencies, posted on-site, and published in *The Olympian* newspaper on May 27, 2022, in conformance with Tumwater Municipal Code (TMC) 14.06.

The site is relatively flat, and mostly pasture with some trees. A wetland is located in the northwest corner. An existing manufactured home and miscellaneous outbuildings are located on the property and will be demolished to construct a single-family residential subdivision.

The site is surrounded by residentially zoned property. The properties to the north and northeast are zoned Residential/Sensitive Resource. The parcel to the south is zoned Multi-Family Medium Density Residential and was developed as Kirsop Crossing Div I. The parcels to the west are zoned Single Family Low Density. The area is developed with older residential uses. A large wetland complex exists to the northeast, as well as to the southeast of the site.

Improvements will include grading for public roads and lot pads, construction of approximately 540 lineal feet of frontage improvements on Kirsop Road SW and Kirsop Extension Road, and at the intersection of Kirsop Road SW & Kirsop Extension Road SW. Other improvements include the extension of City water and sewer utilities to serve the project, storm water systems to treat and detain/retain storm water generated from new pollution generating impervious surfaces, street lighting, and extension of private utilities.

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Manager Merriman noted that the Staff Report incorrectly references Patio Drive rather than Patio Street, which is a public street and not a private street as depicted in the Staff Report on page 2. The proposal includes the continuation of Lanai Street SW through the subdivision to Kirsop Road SW, as well as a public street connection to Patio Street to the south.

Water and sewer will be provided by the City of Tumwater, electricity, and natural gas by Puget Sound Energy, telephone and cable by Comcast and CenturyLink, and garbage collection by Pacific Disposal. All utilities on the site will be underground pursuant to Tumwater Municipal Code (TMC) 17.12.200.

The Application was reviewed against plans within the City. Staff found that the project is consistent with the following plans, which is documented within the Staff Report:

- Tumwater Comprehensive Plan
- Parks and Recreation Plan
- Tumwater Transportation Plan
- Thurston Regional Trail Plan
- Sustainable Development Plan for the Thurston Region

The findings are documented within the Staff Report.

Title 14 of the Washington State Growth Management Act (GMA) requires public notice. As noted earlier, the Notice of Application was issued and the City received comments from several individuals and a local tribe. The Squaxin Island Tribe requested a Cultural Resource Survey, which was completed. Several property owners provided comments reflecting concerns about increased traffic, vehicle speed, existing conditions on Kirsop Road, as well as increased development in the area of existing farms near environmental areas. The Staff Report includes findings addressing all those concerns. The project was reviewed by the City's Transportation Manager, who issued a concurrency determination. The applicant is required to provide frontage improvements and off-site improvements to include improving the intersection of Kirsop Road and Kirsop Extension Road. Additionally, the Applicant must include internal connections to other streets and mitigate for vehicle trips that are disbursed to the Tumwater Boulevard interchange.

One of the concerns addressed the poor condition of Kirsop Road.

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When the property was annexed to the City, Kirsop Road was in poor condition. The City is responsible for the maintenance of Kirsop Road and not the Applicant. Another concern centered on additional traffic generating more vehicles speeding on roads. Unfortunately, the situation is prevalent in many rural areas when development occurs. Residents observing speeding vehicles beyond the posted speed limit should contact the Tumwater Police Department.

Several other comments addressed whether the existing road could carry heavy equipment and construction vehicles. The City exempts construction vehicles at the time of construction. Staff proposes including a condition requiring construction equipment and heavy equipment to use 70th Avenue from the south to access the subject property.

Other comments speak to the surrounding rural area home to various wildlife species. One of the tenants of the GMA is to require specific densities within the City, which protects lands outside the City for agriculture and preservation of rural lands. As the property is located within City limits requiring development at urban densities, some property surrounding the subject property is considered rural sensitive area with wetlands that serve to protect against heavy development in the surrounding area.

Additional comments spoke to the importance of protecting trees on the subject property as much as possible. The Applicant provided a Tree Forestry Plan. Because of construction requirements for infrastructure, the developer was able to retain trees in the area around the wetland totaling approximately 35 trees. However, retention of the trees by the developer did not meet the City's minimum retention of 12 trees per acre. The City requires mitigation for tree replacement at a ratio of 3:1 comprised of 270 new trees planted on the site. The existing trees will provide habitat for birds and other wildlife. A neighboring property owner also requested play areas for children. The application provides for a tot lot and play area on Tract C, which meets both the neighbor's request and the City's minimum requirement for open space. Another concern by neighbors was an existing wetland and whether the City reviewed the wetland to ensure it would not flood onto the site. The Wetland Report is detailed and speaks to the functions of the wetland. The wetland is fed by a stream located further north. The proposed development is located outside of the wetland system and outside of any riparian buffers. The likelihood of flooding is negligible possible as prior flooding occurring in the area was located to the east in lower lying areas.

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The City issued a MDNS in February 2022 to include a Transportation Concurrency ruling by the City's Transportation Manager. The ruling indicated the Applicant meets concurrency by completing frontage improvements, off-site improvements at the intersection, connections to the adjoining subdivision, and mitigation for trips to Tumwater Boulevard. No appeals were filed for the MDNS; however, the City received some comments. The Olympic Region Clean Air Authority requires an asbestos survey for demolition of existing structures, which is included as a Condition of Approval. The Squaxin Island Tribe requested a Cultural Resource Survey. The survey has been completed. The Department of Ecology provided comments on solid waste, toxic clean up, and requirements for a construction stormwater permit. Another citizen was concerned about the existing condition of Kirsop Road and heavy equipment traffic, and assurance that the sewer line would be extended. Staff provided information to the citizen. As noted earlier, the condition of Kirsop Road is the City's responsibility and heavy equipment traffic is requested to access the development site through 70th Avenue during construction. The sewer line will be extended.

The environmental review included tree protection requirements in Title 16 of the Tumwater Municipal Code. The Applicant is required to retain trees. The Applicant is able to retain 35 trees of the 157 required trees. The Applicant is mitigating the difference by replanting trees at a 3:1 ratio resulting in 270 new trees planted on the site. The Wetlands critical Areas Report confirmed a wetland on the site as a Category IV wetland, which requires a 150-foot buffer. The Applicant has satisfied the requirement by providing a much greater buffer. The Applicant provided a pocket gopher study concluding no gopher mounds were observed on the property. The Culture Resource Study recommends compliance with a Standard Inadvertent Discovery Plan which is also required by the City. The Department of Archeology & Historic Preservation concurred with the City's recommendation.

The property is zoned Single Family Residential Low Density allowing a density of four dwelling units per acre and a maximum of six dwelling units per acre. The Single Family Residential Low Density zone allows up to seven dwelling units; however, any density over six dwelling units requires a transfer of development rights. The Applicant has not requested an increase in density and the subdivision as proposed meets the density requirement of six dwelling units per acre.

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The zoning district requires a minimum lot size of 3,200 square feet and a minimum lot width of 50 feet, except for alley load lots requiring a minimum of 40 feet. Lots adjacent to the wetland or wetland buffer are encouraged to be as large as possible. The maximum building height is 35 feet. Front yard setbacks are 10 feet and side setbacks are 5 feet with the rear yard setback of 20 feet. The minimum open space requirement is 10% of the total land area. The plat meets the requirements through a request for a planned unit development (PUD) zoning overlay. The PUD overlay is to encourage development by enabling flexibility in zoning requirements. The Applicant submitted a PUD Application to seek relief from the minimum lot widths and to enable private streets within the single family zoning district. Nine of the 41 lots are less than the minimum required 50 feet when not adjacent to an alley. The plat includes two private streets.

Staff recommends approval of the PUD. The preliminary plat with conditions conform with the subdivision regulations, the Comprehensive Plan and zoning ordinance, wetland ordinance, planning and development standards of the City. Adequate provisions have been included for public health, safety, and general welfare. Staff recommends approval of the Preliminary Plat and Planned Unit Development with 37 conditions.

Manager Merriman reported the list of conditions include a requirement for grading, water, sewer, fire coverage, storm, streets, and other development requirements. The conditions include specific requirements for heavy equipment to use 70th Avenue for access to the property during construction, it includes specific requirements to work with ORCA to obtain the asbestos permit and City demolition permit, requires well and septic abandonment pursuant to state and county regulations, and includes specific tree requirements. She noted one proposed correction to Condition 10 and a clarification to two other conditions. The reference in Condition 10 of “Kirsop Road” should be changed to reflect “Lanai Street.” Within Condition 34, information on the maximum lot coverage for impervious surface of 60% should be amended to reflect that with the PUD an increase in lot coverage up to 25% is allowed.

Examiner Reeves asked whether that correction is reflective of lot coverage that could increase to 85%. Manager Merriman advised that the maximum lot coverage would be 75% but she would need to review the code to confirm the total coverage. Examiner Reeves suggested the Applicant could provide additional clarification.

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Manager Merriman cited a change to Condition 38 reflecting that the Citywide Design Guidelines allow garages to occupy up to 65% of the façade as opposed to 50% as stated in the condition.

Examiner Reeves said the Staff Report specifies a tract for future BLA. He asked whether the acronym refers to a boundary line adjustment. Manager Merriman responded that she assumed there was a discrepancy between owner fence lines and actual property boundaries. Including a notation for a future BLA would address that issue.

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 Merriman said no changes have occurred that would affect the proposal.

**APPLICANT
TESTIMONY:**

Examiner Reeves administered the oath to Chris Carlson representing Hatton Godat Pantier.

Mr. Carlson introduced Jeff Pantier, a professional land surveyor and the Applicant, Rob Rice with Rob Rice Homes.

Mr. Carlson thanked Manager Merriman for the thorough staff report.

With respect to Condition 34, the PUD code allows a 25% increase in lot coverage, which equates to 25% of 60% or 15% additional coverage for maximum lot coverage of 75%. Examiner Reeves thanked Mr. Carlson for the clarification.

Mr. Carlson noted that in Condition 39 for impact fees, the Applicant requests an amendment to the condition acknowledging that there are two existing residences on the site (mobile homes) and the City's Impact Fee Ordinance allows for a credit of impact fees for those existing uses. Essentially, the condition should specify a credit for two traffic impact fees, two park impact fees, and two school district impact fees.

Examiner Reeves administered the oath to Jeff Pantier.

Mr. Pantier addressed the question surrounding the notation of "BLA." The proposed plat design represents a culmination of up to five different concepts that have been in review with the City resulting in the proposed design including the configuration of the four-way

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intersection. Both the City and the Applicant expended much work on the process. Rob Rice is the developer of the project. Mr. Rice is also the builder/developer for an adjacent project located to the south of the property. Essentially, the proposal is a continuation of a development currently constructing homes. In terms of compatibility, both developments are essentially the same.

In terms of potential flooding, the lots are all elevated. The lowest lot in the development is elevated seven feet above the wetland. The wetland elevation of 160 feet is lower than the pad elevation of 167 for the lowest lot in the subdivision.

The tract on the north side of an existing fence reflects an encroachment of an old fence. The Applicant is not debating the placement of the fence and the intent is to create a tract through the final plat process to avoid a boundary line adjustment and another land use process. The tract will be part of the final plat document, which could be conveyed by a deed to the adjacent property owner to maintain harmony within the neighborhood. The area is located north of lots 31 and 32. The proposal would create Tract D to address encroachment by the fence and simplify the transfer of ownership of that strip of land. The practice has been initiated several other times on other plats.

Examiner Reeves said he understands the idea and because it is a separate tract identified on the plat, the impacts have been addressed.

Mr. Carlson offered several exhibits for the record. The exhibits were included within the application submitted to the City. The first proposed exhibit is a nine-page Preliminary Civil Engineering Plan Set completed for the project. Additionally, as previously mentioned, the Squaxin Island Tribe requested a cultural resource assessment for the project. Mr. Carlson requested inclusion of the report into the record.

Examiner Reeves admitted the nine-page Preliminary Civil Engineering Plan Set as Exhibit 16 and the Cultural Resource Assessment as Exhibit 17.

Manager Merriman advised that the City has been instructed by DAHP and the Squaxin Island Tribe that the Cultural Resource Survey is not open to public records and should not be part of the public record. The survey was previously attached to the SEPA Checklist on the SEPA Register and the City was asked to remove the survey. Essentially, to follow the codes and RCWs regarding the cultural study, the City

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requested DAHP or the Squaxin Island Tribe affirm through a written confirmation that the survey sufficed. The letter attached as an exhibit from the Department of Archaeology & Historic Preservation affirms the department's concurrence of the Cultural Resources Study and that the recommendation to complete an Inadvertent Discovery Plan was adequate.

Examiner Reeves said he does not believe the report would need to be admitted as part of the record. The information in terms of exposure of the information to public records is new to the extent that he has observed that during the last several years, the request for a survey has been applied to most projects throughout western Washington.

Mr. Carlson noted that the report indicated no cultural resources were discovered. He agreed to withdraw the request to include the report as an exhibit. Mr. Pantier supported the withdrawal as well. Examiner Reeves noted that his decision would refer to the completion of the survey and that DAHP affirmed the survey was completed.

Examiner Reeves asked the Applicant about other exhibits to admit.

Mr. Carlson requested admittance of the Water and Sewer Availability Letter issued by the City's Public Works Department attesting to the ability and willingness to serve the plat with potable water and sewer service for the proposed 41 lots. Examiner Reeves admitted the letter as Exhibit 17.

Mr. Carlson advised of several more exhibits. One exhibit was included within the application materials submitted to the City; however, the Applicant requests adding the exhibit to the record because of the number of comments from the community surrounding flooding and stormwater. The Applicant prepared a Preliminary Drainage Report for the project. The report includes the geotechnical report prepared to inform the preliminary design of the storm drainage system. Examiner Reeves entered the Preliminary Drainage Report as Exhibit 18.

Mr. Carlson reported the geotechnician who prepared the geotechnical report within the Preliminary Drainage Report also prepared a Winter Groundwater Monitoring Report. The City's Drainage Manual requires winter stormwater studies. He asked for admittance of the Winter Groundwater Monitoring Report into the record. Examiner Reeves assigned the report as Exhibit 19.

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The geotechnician also completed a Supplemental Soil Evaluation Report. The original report included within the Preliminary Drainage Report included only three tests pits; however, the geotechnician dug an additional 12 testing pits with five located in the area of the tract for the storm drainage facility. Examiner Reeves admitted the report as Exhibit 20.

Mr. Carlson cited several comment letters that spoke to the condition of Kirsop Road and the lack of sidewalks. The Applicant is requesting submittal of information related to the Kirsop Crossing Plat, which was approved prior to the area being annexed to the City. To meet the requirements of safe walking to schools, the Thurston County Hearing Examiner included a finding and condition for the Kirsop Crossing Plat project to include the addition of a school bus waiting area off Kirsop Road adjacent to the subject project at the request of the Tumwater School District. Mr. Carlson requested admission of the Thurston County Hearing Examiner's decision to include the condition to reflect that the condition for safe walking to schools has been satisfied. The proposed project is directly connected via sidewalk, Patio Street, and Kirsop Road, which satisfies the safe walking to schools condition with the connection of sidewalks to the bus waiting area located to the south. Examiner Reeves admitted the Hearing Examiner decision as Exhibit 21.

Mr. Carlson reported the final exhibit for admittance is the recorded plat for Kirsop Crossing (project located to the south) reflecting the location of the bus waiting area. Examiner Reeves admitted the information as Exhibit 22.

In response to the request to include the credit of two residences for impact fees, Manager Merriman affirmed the City's fee ordinance includes provisions for credit for existing structures. The Applicant will receive credit for the existing two residential units.

Examiner Reeves recommended producing another exhibit (23) to ensure the recording of changes and clarifications requested by Manager Merriman. Mr. Pantier asked Manager Merriman to revise the condition for review by Mr. Carlson for review prior to forwarding the information to Examiner Reeves.

**PUBLIC
TESTIMONY:**

Examiner Reeves administered the oath to Jessie Solomon.

Jesse Solomon reported he is working with Examiner Reeves to serve as a future hearing examiner.

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Mr. Solomon noted that Tract D on the plat map reflects the fence line located within the Applicant's property. He asked whether that interpretation of the location of the fence was accurate. Mr. Pantier affirmed the fence is located within the Applicant's property. Mr. Solomon asked about the owner of the fence and the responsible party for constructing the fence. Mr. Pantier said the intent and what was attested during testimony was that the Applicant plans to concede the fence to the adjacent property owner.

Examiner Reeves summarized the plan for clarifying the conditions and the additional exhibits (16-22) to include in the record to be provided by the Applicant to City staff and changes to the conditions as Exhibit 23. Based on testimony and the staff report by the City staff, he does not envision any issue for rendering a decision approving the proposal with recommended conditions.

ADJOURNMENT: With there being no further business, Examiner Reeves adjourned the public hearing at 7:54 p.m.

Prepared by Valerie L. Gow, President
Puget Sound Meeting Services, psmsoly@earthlink.net