

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

In the Matter of the Application of	)	Nos. TUM-22-1731; TUM-22-1732
	)	
	)	
<b>Tyrell Bradley, LDC, Inc., on behalf</b>	)	<b>Kingswood Commercial Proposal</b>
<b>of Kingswood Capital, Inc.</b>	)	
	)	
	)	
	)	
For Approval of a Preliminary Binding	)	FINDINGS, CONCLUSIONS,
<u>Site Plan and Variance</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a preliminary binding site plan to subdivide two parcels—totaling approximately nine acres—into seven lots for commercial development with associated improvements, and a variance from zoning setback requirements of the municipal code, on property at 1401 and 1551 Kingswood Drive, 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 June 28, 2023. The record was left open until June 30, 2023, to allow for the submission of an additional exhibit discussed at the hearing (as detailed below). The Hearing Examiner was provided the exhibit on June 30, 2023, and accordingly, the record closed at that time.

Testimony:

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

Alex Baruch, City Associate Planner  
Tyrell Bradley, Applicant Representative

Attorney Jeff Myers appeared on behalf of the City.

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 16, 2023
2. Preliminary Development Plans, dated November 2022
3. Vicinity Map

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4. Notice of Application, dated December 15, 2022
5. Mitigated Determination of Non-significance, dated March 16, 2023, with SEPA Environmental Checklist, dated September 30, 2022
6. Notice of Public Hearing, dated June 16, 2023
7. Preliminary Binding Site Plan Application, dated May 24, 2022
8. Variance Application, dated May 24, 2022
9. Variance Project Narrative, dated November 29, 2022
10. Variance Request Plans, dated November 2022
11. Zoning Map, dated June 13, 2023
12. Certification of Public Notice, dated June 16, 2023
13. Public Comments:
  - a. Comment from Nisqually Indian Tribe, dated December 13, 2022
  - b. Comment from Squaxin Island Tribe, dated December 14, 2022
14. SEPA Comments:
  - a. Comment from Washington State Department of Ecology, dated March 30, 2023
15. Transportation Concurrency Memorandum, dated February 21, 2023
16. Drainage Report, LDC, Inc., dated September 2022
17. Geotechnical and Stormwater Evaluation, Insight Geologic, Inc., dated April 19, 2011
18. Traffic Impact Analysis, Heath and Associates, Inc., dated May 23, 2022
19. Water and Sewer Availability Letter, dated June 1, 2022
20. Mazama Pocket Gopher and Thurston County Regulated Prairie Absence Report, dated October 15, 2021
21. Tree Protection Plan, Sound Urban Forestry, dated April 28, 2022
22. Preliminary Landscape Plan, dated July 13, 2022
23. Formal Site Plan Review Letter, dated November 22, 2022
24. Home Depot Approval Letter, dated September 27, 2022
25. Title Report
26. Land Use Map, dated December 14, 2022
27. Indemnity Agreement, dated June 27, 2023
28. Staff Email re: Indemnity Agreement, dated June 27, 2023
29. Staff Email re: Revised Conditions 53 and 54, dated June 30, 2023

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

## **FINDINGS**

### Application and Notice

1. Tyrell Bradley, on behalf of Kingswood Capital, Inc. (Applicant), requests approval of a preliminary binding site plan to subdivide two parcels totaling approximately nine acres into seven lots for commercial development. Associated improvements would include drive aisles, sidewalks, parking areas, landscaping, stormwater facilities, open space, and other infrastructure. The Applicant also requests a variance from the zoning setback requirements of Tumwater Municipal Code (TMC) 18.22.050.D, which requires a

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minimum structural setback of twenty feet where any structures in the General Commercial (GC) zoning district are proposed adjacent to a residential zoning district.<sup>1</sup> The subject properties are located at 1401 and 1551 Kingswood Drive.<sup>2</sup> *Exhibit 1, Staff Report, pages 1 through 3, 17, and 18; Exhibit 2; Exhibits 7 through 10; Exhibit 23.*

2. The City of Tumwater (City) determined that the applications were complete on December 8, 2022. On December 14, 2022, the City provided notice of the applications by mailing or emailing notice to property owners within 300 feet of the site and to reviewing government agencies and tribes, with a comment deadline of December 30, 2022. The next day, the City provided notice of the applications by posting notice on-site, and publishing notice in *The Olympian*. On June 15, 2023, the City provided notice of the open record hearing associated with the applications by mailing or emailing notice to property owners within 300 feet of the site and to reviewing government agencies and tribes. The next day, the City provided notice of the hearing by posting notice on-site, and publishing notice in *The Olympian*. *Exhibit 1, Staff Report, pages 1, 2, and 20; Exhibit 4; Exhibit 6; Exhibit 12.*
3. The City did not receive any comments on the proposal from members of the public in response to its notice materials. The City received comments from two reviewing tribes in response to its notice materials. Specifically:
  - The Nisqually Indian Tribe expressed concerns about the size of the proposed development and protection of cultural resources connected to the Medicine Creek Treaty Tribes. The Nisqually Indian Tribe also expressed concerns about the project's proximity to the Union/Pioneer Calvary Cemetery, noting that there is uncertainty about the original boundaries of the cemetery.
  - The Squaxin Island Tribe raised concerns about the property having a high potential for cultural resources and recommended that a cultural resources survey and report be completed for the project site.

*Exhibit 13.*

#### State Environmental Policy Act

4. The City Community Development Department (CDD) acted as lead agency and analyzed the environmental impacts of the development 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

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<sup>1</sup> TMC 18.22.050.D further provides that, where structures are constructed over one story, the setback of the structure from the adjacent property line shall be increased by ten feet for every story above the ground level story of the proposed new building and shall be screened from view in accordance with TMC Chapter 18.47.

<sup>2</sup> The properties are identified by parcel nos. 12703240404 and 12703240403. *Exhibit 1, Staff Report, page 1.*

on file, and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, CDD issued a Mitigated Determination of Nonsignificance (MDNS) on March 16, 2023, with an appeal deadline of April 6, 2023. The Washington State Department of Ecology (DOE) provided general comments noting that all grading and filling of land must utilize only clean fill and that all removed debris must be disposed at an approved site. DOE also noted that, if toxic contamination is suspected, discovered, or occurs during development, the Applicant must test the potential contaminated medium and notify DOE. The MDNS was not appealed. *Exhibit 1, Staff Report, page 7; Exhibit 5.*

5. The MDNS requires the Applicant to implement the following mitigation measures:
- Prior to issuance of the Building Permit:
    - Construct a roundabout at the northbound Interstate 5 On/Off Ramp and Tumwater Boulevard intersection; or
    - Voluntarily pay a mitigation fee of \$4,219 per peak trip generated by this project under RCW 82.02.020 to be used as described herein:  
*Tumwater Boulevard/I-5 Interchange: The City's planned transportation improvements at the Tumwater Boulevard/I-5 interchange include converting the interchange to a roundabout diamond interchange by replacing the southbound on/off ramp signal and northbound stop controlled intersections with roundabouts. If the subject development has trips to the interchange before the roundabout is constructed, a temporary signal will be required.*
  - To mitigate intersection movement failure caused by this development adding trips through the Kingswood Road and Tye Drive intersection, the project shall install a compact roundabout. The roundabout design shall be approved by the City of Tumwater Transportation and Engineering Department as a part of the site development grading design review for frontage improvements required by this development.

*Exhibit 5.*

#### Comprehensive Plan and Zoning

6. The property is within the Littlerock Neighborhood and is designated "General Commercial" and "Utilities" under the City Comprehensive Plan. The General Commercial designation is intended to support and implement the goals of the Tumwater Economic Development Element, which was adopted in 1990. Among these goals are the establishment of a new commercial center for Tumwater, the preservation of areas for commercial facilities, which make use of the close proximity to Interstate 5, and minimizing the undesirable impacts of such uses on the residential neighborhoods, which they serve.

*City Comprehensive Plan, Land Use Element, pages 42 and 43.*

### The Utilities designation

includes those areas of land devoted to the transport and provision of utilities such as electricity, natural gas, telephone, and other utilities. Most of the areas receiving this designation in Tumwater are electrical utility easements. Utilities such as natural gas, telephone, and other utilities can be provided within areas designated for other land uses in ways that are compatible with other land uses.

*City Comprehensive Plan, Land Use Element, page 46.*

City staff determined that the proposal would be consistent with the Comprehensive Plan. *Exhibit 1, Staff Report, pages 3 through 6; Exhibit 26.*

7. The property is located in the “General Commercial” (GC) zoning district. *TMC 18.14.050.* The intent of the GC zoning district is to provide for those commercial uses and activities which are dependent on convenient vehicular access; discourage extension of “strip” development by filling in available space in areas where substantial auto-oriented commercial development already exists; provide development standards which enhance efficient operation of these districts, and lead to more pedestrian and transit oriented development; provide for a type, configuration, and density of development that will entice pedestrian shoppers to frequent the area, encourage pedestrian traffic between businesses, facilitate efficient mass transit, and require less reliance on automobiles within a business area; balance the needs of motorists and businesses serving a regional or community-wide market with the needs of pedestrians and neighborhood residents; integrate new development with existing uses to achieve a better environment for pedestrians and to maintain or enhance the livability of adjacent residential neighborhoods; and encourage the provision of urban plazas and convenient access to transit stops. *TMC 18.22.010.* City staff determined that the intended use for the lots within the proposed development include a fast food restaurant, oil change service station, a seated Restaurant, a retail/office, a hotel, a car charging station, and an open space tract. General retail sales, general offices, support facilities, open space areas, restaurants, hotels, automobile service stations, electric vehicle infrastructure, and parking lots are permitted uses within the GC zoning district. *TMC 18.22.020. Exhibit 1, Staff Report, pages 8, 9, and 15; Exhibit 11.*
8. Development standards for the GC zoning district require a maximum impervious surface of 85 percent; a maximum building height of 65 feet; and 0-foot setbacks along all boundaries and all public street frontages except where any structures or portions of structures are adjacent to any residential zoning district, the minimum structural setback shall be 20 feet. *TMC 18.22.050.* As discussed in detail below, the Applicant has requested a variance from the 20-foot setback requirement along the portion of the property boundary that abuts the Single-Family Low-Density Residential (SFL) zoning district. The proposal would comply with all other development standards applicable to

the GC zoning district. *Exhibit 1, Staff Report, pages 15 and 16; Exhibit 2; Exhibits 7 through 10.*

9. The property is located in the Aquifer Protection (AQP) overlay zoning district. 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 uses are not restricted uses within the AQP overlay district. *Exhibit 1, Staff Report, page 16.*

#### Existing Site and Surrounding Development

10. The approximately 9-acre project site is generally flat with some small changes in topography. The properties are vacant with the exception of Bonneville Power Administration (BPA) stanchions located on the western portion of the property. The Applicant provided an indemnity agreement between BPA and the Applicant on behalf of the City, dated June 27, 2023. The property does not contain any critical areas. The site is bordered to the east and north by commercial developments. Properties to the west and south are occupied by single- and multi-family housing. *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 17; Exhibit 27.*
11. Insight Geologic, Inc., provided a geotechnical report on behalf of the Applicant, entitled “Geotechnical and Stormwater Evaluation,” (“Geotechnical Evaluation” or “GE”) dated April 19, 2011. The Geotechnical Evaluation determined that soils on-site would be suitable for the proposed commercial development. The GE also identified a large area of uncontrolled, undocumented fill that would be unsuitable for bearing structures or parking areas. The GE recommended that unsuitable fill materials, including trash and wood debris, should be excavated and removed from the site. *Exhibit 17.*

#### Binding Site Plan

12. The purpose of binding site plans is to “provide an alternative method of land division for the sale or lease of commercial or industrial zoned properties, condominiums, and manufactured home parks that is more flexible than traditional land division procedures.” *TMC 17.08.010.A.* Binding site plans allow for “shared access, parking, streets and other required aspects of development such as park and open space areas.” *TMC 17.08.010.A.* All divisions of land must comply with the requirements of Chapter 17.12 TMC. *TMC 17.12.010. Exhibit 1, Staff Report, page 17.*

#### Trees and Open Space

13. Chapter 16.08 TMC regulates the removal and preservation of existing trees on a development site. In addition, TMC 17.12.070 requires development projects to preserve to the greatest extent feasible natural vegetation and features on-site, including trees. TMC 16.08.070.R provides that, when land clearing is performed in conjunction with a specific development proposal not less than twenty percent of the trees, or not less than

twelve trees per acre (whichever is greater), shall be retained. Where a parcel of land to be developed does not meet the retention standards in an undeveloped state, the Applicant must reforest the site to meet the applicable standard outlined above at a 1:1 ratio as a condition of project approval. *TMC 16.08.070.R.4*. Under these requirements, the approximately 9-acre property would require the retention of 108 trees. Sound Urban Forestry prepared a report addressing tree protection on the property, entitled “Tree Protection Plan,” (“TPP”) dated April 28, 2022. The Tree Protection Plan identified 75 trees on the property, of which 58 were determined to be in good health and counted as “trees within the site.” The Applicant would retain 31 of the 58 trees and replant at least 77 trees on the properties. Chapter 18.47 also provides landscaping requirements for parking area interior buffers, parking lots and public rights-of-way, and perimeter buffer along the GC zone. City staff reviewed the TPP and the landscape plan provided by the Applicant and determined that the proposed development would satisfy the requirements of Chapter 16.08 TMC, TMC 17.12.070, and Chapter 18.47 TMC. TMC 17.12.210 provides general design standards for open spaces in a land subdivision. However, TMC 17.12.210 only provides open space requirements for new commercial binding site plans of ten or more acres. The approximately 9-acre property would be exempt from these open space requirements. The proposed development includes a 27,500 square foot open space/storm tract. *Exhibit 1, Staff Report, pages 7 through 10, 13, and 17; Exhibit 2; Exhibits 8 through 10; Exhibits 21 through 23.*

#### *Stormwater*

14. LDC, Inc., provided a report addressing stormwater management on the property, entitled “Preliminary Drainage Report” (“Drainage Report” or “DR”), dated September 2022. Stormwater would be conveyed to a system of interconnected bioretention ponds. Water quality treatment would be provided through the use of a bioretention soil mix layer in each of the bioretention ponds. The Drainage Report indicates that all stormwater runoff conveyed to the ponds would be completely infiltrated. Oil control facilities would be required for Lots 1, 2, 3, and 5, which would be developed with drive-through businesses. The DR indicated that the proposed development would comply with the 2022 City of Tumwater Drainage Design and Erosion Control Manual. *Exhibit 1, Staff Report, pages 2, 9, and 10; Exhibit 2; Exhibit 16; Exhibit 17; Exhibit 23.*

#### *Utilities*

15. The City issued an updated Water and Sewer Availability Certificate for the proposed development on June 1, 2022. All utilities associated with the development project have been or would be installed underground, in accord with the requirements of TMC 17.12.200 and Section 3.14 of the Tumwater Development Guide. *Exhibit 1, Staff Report, pages 1, 13, and 22; Exhibit 2; Exhibit 19.*

#### *Access, Parking, and Traffic*

16. Access to the property would be provided by an access point from Kingswood Drive and two limited access points from Littlerock Road. Internal vehicle connections would

allow patrons to travel from one business to another without utilizing the main roads. The Applicant would install pedestrian access elements, including ADA ramps, pedestrian crossings, and sidewalk, throughout the site. Sidewalk internal to the project site would connect to public sidewalk on Kingswood Drive and Littlerock Road. The proposed development would include approximately 280 parking stalls (PDF pg. 32 adds up to 280; PDF pg 54 says 274 parking stalls w/ 14 EV charging stalls). The proposed development would also include bicycle parking throughout the site. *Exhibit 1, Staff Report, pages 1 through 3, 8, and 13; Exhibit 2; Exhibit; Exhibit 5.*

17. Heath and Associates, Inc., prepared a report addressing traffic impacts related to the proposed development, entitled “Traffic Impact Analysis” (“TIA”), dated May 23, 2022. The TIA determined that the proposed development would generate 2,610 average weekday daily trips with 255 AM peak-hour trips and 188 PM peak-hour trips. The TIA also identified additional pass-by and internal linked trips, but the trips are not considered new trips to the City’s system. All studied intersections would continue to operate at acceptable level of service (LOS) following full buildout of the proposed development, with the exception of the intersection of Kingswood Drive SW and Tyee Drive SW.

As noted above, the MDNS requires the Applicant to construct a compact roundabout at the intersection of Kingswood Drive SW and Tyee Drive SW. The MDNS also requires the Applicant to construct a roundabout at the northbound Interstate 5 On/Off Ramp and Tumwater Boulevard intersection or pay a mitigation fee. *Exhibit 1, Staff Report, pages 1, 2, 5, and 6; Exhibit 5; Exhibit 15; Exhibit 18*

18. 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. City staff indicated that, with the extension of sidewalks into the project site and by providing bike parking throughout the development, the project is contributing to the goal in the Plan of reducing vehicle miles traveled. City staff also determined that the project would not conflict with the Sustainable Development Plan for the Thurston Region. *Exhibit 1, Staff Report, page 6.*
19. 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 6.*

#### Variance

20. The Applicant requests a variance from TMC 18.22.050.D to eliminate the required 20-foot building setback from adjacent SFL-zoned property for proposed Lots 3 through 5. *Exhibit 1, Staff Report, pages 1, 2, 17 through 20; Exhibit 2; Exhibits 8 through 10; Exhibit 23.*



21. The Applicant submitted a project narrative addressing the specific criteria for approval of a variance with respect to the requested setback variance, which notes:
- The project site is surrounded by GC-zoned properties in the north, east, and south directions. To the west of the site, there are Single-Family Low Density Residential (SFL) properties. The special conditions which exist for the proposed development is that Littlerock Road SW, a 50-foot public right-of-way, bounds the project site in the west. This minor arterial has a boulevard style and provides a natural buffer for the proposed commercial development and the SFL zone. In addition, the parcels across Littlerock Road SW to the west are owned and operated by Tumwater Middle School. These parcels are occupied and have minimal to no potential for the standard development of single-family homes in the future.
  - There are no special conditions or circumstances that are a result of the actions of the Applicant.
  - The granting of the variance would not confer a special privilege to the property. The variance seeks to loosen regulations which are set in place for the typical areas where GC and SFL zones meet. However, considering the substantial natural buffer created by Littlerock Road SW and the actual use on the adjacent site, this variance would be granted for and only for the owners of 1401 and 1551 Kingswood Drive SW. This is a specific situation that would likely never be recreated elsewhere in the City.
  - By granting the variance, it would not be materially detrimental to the public welfare or injurious to the property of improvements in the vicinity and zone in which the subject property is located. The proposed development is an allowed use in the GC zoning district and does not produce any noise, odor, or emission that could be considered a nuisance.
  - Allowing the buildings to be setback 5-feet from the property line adjacent to Littlerock Road SW would be the minimum variance possible to reasonably accommodate for the special conditions which exist on site and in the immediately surrounding zoned lands.

*Exhibit 9.*

22. City staff reviewed the Applicant's variance proposal, agreed with the analysis provided in the Applicant's project narrative, and determined that the proposals would satisfy the specific criteria for approval of variances under TMC 18.58.040.A. *Exhibit 1, Staff Report, pages 18 through 20.*

#### Testimony

23. City Associate Planner Alex Baruch testified generally about how City staff reviewed the application for consistency with the Comprehensive Plan, zoning requirements, and the

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specific criteria for approval of a preliminary binding site plan and variance. He noted that the property is currently vacant except for a BPA easement on the western portion of the project site. He stated that the Applicant established an Indemnity Agreement with BPA to indemnify the City and hold the property owners accountable moving forward. He explained the project site is located adjacent to an SFL-zoned property that is developed as a middle school as part of the Tumwater School District. He noted that the MDNS issued for the proposal has not been appealed. *Testimony of Mr. Baruch.*

24. Attorney Jeff Myers appeared on behalf of the City. He explained that the BPA has easement rights for electronic transmission lines that allow BPA to maintain those lines without interference from the underlying property owner. He stated that the Applicant and BPA established an indemnity agreement to prevent any liability associated with the easement from falling upon the City. *Statements of Attorney Myers.*
25. Applicant Representative Tyrell Bradley explained that adjacent properties with BPA easements have updated their easements and require approval from the Environmental Protection Agency (EPA), but that the subject proposal is unique in not needing EPA approval, which would indemnify the City. He explained that the Applicant initially proposed restriping to address deficiencies of the intersection of Kingswood Drive SW and Tyee Drive SW but that the City requested the Applicant install a roundabout at that intersection. He stated that the City agreed to offset some of the costs associated with construction of the roundabout with funds from the City's transportation impact fees. *Testimony of Mr. Bradley.*
26. The Hearing Examiner left the record open until June 30, 2023, to allow the City to submit revised language for the recommended conditions of approval as discussed between the Applicant and City staff. *Oral Ruling of the Hearing Examiner.*

#### Staff Recommendation

27. City staff recommends approval of the preliminary binding site plan and variance request, with conditions. *Exhibit 1, Staff Report, pages 30 through 39.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner has authority to hear and decide applications for preliminary binding site plans and variances. 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; Table 14.08.030.*

## Criteria for Review

### *Preliminary Binding Site Plan*

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*.

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

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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 to the review criteria of TMC 17.14.040, binding site plans shall meet the following:

- A. A binding site plan shall depict building envelopes and all existing and proposed land uses if known.
- B. A parking lot plan is required for the binding site plan. The plan shall allocate parking to each lot or condominium unit or specify joint use parking. Proposed lots containing legally existing structures and uses need not meet current parking regulations. Proposed lots without legally existing structures or uses must meet current parking regulations.
- C. Access to each lot or condominium unit within the binding site plan shall be depicted. Existing access to legally existing structures and uses need not meet emergency vehicle access standards. Access to proposed lots and new development without legally established structures or uses shall meet current standards.
- D. Binding site plans shall be reviewed for storm drainage, roads, water supply, existing sanitary sewage disposal, access or easement for vehicles, survey requirements, utilities, and fire protection for any lot, tract, parcel or site, and for zoning requirements, previous decisions, accuracy of legal description, ownership, lot dimensions, and improvements on the lots.
- E. A binding site plan cannot amend or conflict with previously granted use permit approvals or conditions of approval.
- F. A binding site plan shall depict any open space tract, required recreational areas, critical area buffers, and utility easements.
- G. Proposed uses must be as allowed in the underlying zone district. Should the proposed use require a conditional use permit, said permit shall be requested and reviewed concurrently or prior to approval of the binding site plan. Binding site plan approval does not constitute approval for other required use permits.
- H. If there is adjacent property that is under the same ownership as the property being divided, then the location and sizing of shared and public amenities such as streets, access, utilities, and open space and recreation areas shall be taken into account so the development does not preclude future adjacent development.
- I. Binding site plans shall account for the development of all of the land of a parcel or lot or parcels or lots under the same ownership.

*TMC 17.14.045.*

#### *Variance*

Where difficulties exist that render compliance with the zoning ordinance impractical and such compliance would create unnecessary hardship to the owners or users of land or buildings, the Hearing Examiner may grant a variance after due notice and a public hearing. *TMC 18.58.010.*

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A variance may be granted, after investigation, provided all of the following findings of fact exist:

1. That special conditions exist which are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district, and that literal interpretation of the provisions of this title would deprive the property owners of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;
2. That the special conditions and circumstances are not the result of actions of the applicant;
3. That the granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;
4. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements of the vicinity and zone in which the subject property is situated; and
5. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.

*TMC 18.58.040.A.*

In no event may a variance be granted if it would permit a use that would not be permitted as a primary, accessory, or conditional use in the district involved. *TMC 18.58.040.B.*

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

##### *Preliminary Binding Site Plan*

1. **With conditions, the preliminary binding site plan 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 properties re designated General Commercial and Utilities under the City Comprehensive Plan and located in the General Commercial (GC) zoning district. City staff reviewed the proposal and determined that the proposal would be consistent with the Comprehensive Plan.

The approximately 9-acre property requires retention of 108 trees. To meet this requirement, the Applicant would retain 31 of the 58 “trees within the site” and replant at

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least 77 trees on the properties. The proposed development would also include a 27,500 square foot open space/storm tract, parking area interior landscaped buffers, parking lot and public right-of-way landscaped buffers, and parcel perimeter landscaped buffers. City staff reviewed the tree protection plan and landscape plan provided by the Applicant and determined that the proposed development would satisfy landscaping requirements under Chapter 16.08 TMC, TMC 17.12.070, and Chapter 18.47 TMC.

Stormwater would be conveyed to a system of interconnected bioretention ponds. Water quality treatment would be provided through the use of a bioretention soil mix layer in each of the bioretention ponds. All stormwater runoff conveyed to the ponds would be completely infiltrated. Water and sewer services would be provided by the City. The City issued a certificate of availability for the proposed development. All utilities associated with the development project have been or would be installed underground.

Access to the property would be provided by an access point from Kingswood Drive and two limited access points from Littlerock Road. Drive aisles internal to the development would allow patrons to travel from one business to another without utilizing the main roads. The Applicant would install pedestrian access features, including sidewalk that would connect to public sidewalk on Kingswood and Littlerock Road. The proposed development would also include bicycle parking and approximately 280 vehicle parking spaces, including electric vehicle parking stalls. The Applicant provided a TIA, which determined that the proposed development would generate 2,610 average weekday daily trips with 255 AM peak-hour trips and 188 PM peak-hour trips. The TIA also determined that all studied intersections would continue to operate at acceptable level of service (LOS) following full buildout of the proposed development, with the exception of the intersection of Kingswood Drive SW and Tyee Drive SW. The Applicant would construct a compact roundabout at the Kingswood Drive SW and Tyee Drive SW intersection, as required by the MDNS. Conditions, as noted in Conclusion 1 and detailed below, are necessary to ensure that the proposal meets all criteria required for preliminary binding site plan approval. *Findings 1 – 27.*

2. **With conditions, the proposed land division 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 proposal. The City did not receive any comments on the proposal from members of the public. The City received comments from the Squaxin Island Tribe and the Nisqually Indian Tribe expressing concerns about the inadvertent discovery of cultural resources during construction. The City also received general comments from DOE concerning the use of clean fill, the proper disposal of debris, and the proper procedures for addressing any potential contaminated media during development. The Applicant would be required to submit a cultural resource study for review and approval by the Department Archeological and Historic Preservation, Squaxin

Island Tribe and Nisqually Indian Tribe prior to any ground disturbance work or site development grading permit issuance.

The Applicant requests to subdivide the two parcels into seven lots for commercial development. The proposed commercial uses—which include a fast food restaurant, oil change service station, a seated Restaurant, a retail/office, a hotel, and a car charging station—are permitted outright in the GC zoning district. The proposed development would comply with all development standards specific to the GC zoning standard with the exception of the 20-foot setback required for GC-zoned parcels adjacent to residential-zoned properties. The Applicant requests a variance to eliminate the setback, which is discussed below in Conclusion 3. The City issued an MDNS for the proposal, which was not appealed. The subject properties do not contain any critical areas. City staff determined that, with conditions, the proposal would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards. The public interest would be served by the proposed subdivision of land. Conditions, as noted in Conclusion 1 and detailed below, are necessary to ensure that the proposal meets all criteria required for preliminary binding site plan approval. *Findings 1, 4 – 27.*

#### *Variance*

- 3. With conditions, the proposal would comply with the requirements of a variance.**

The Applicant requests a variance from TMC 18.22.050.D to eliminate the required 20-foot building setback from adjacent SFL-zoned property to the west for proposed Lots 3 through 5. TMC 18.22.050.D requires a 20-foot building setback plus an additional 10-foot setback for every story of a commercial building above the ground-level story. The intent of this additional required setback area is to ensure that the development of taller, commercial structures would be compatible with single-family development on adjacent property. Here, the adjacent property within the SFL zoning district is not developed with single-family residences and, instead, is owned and operated by Tumwater Middle School. Accordingly, strict adherence to the additional setback requirement is not necessary to ensure compatibility with adjacent single-family residential uses. In addition, Littlerock Road SW is located between the project site and the SFL-zoned property, providing a 50-foot right-of-way between the neighboring uses. There are no special conditions or circumstances that area result of the actions of the Applicant. The granting of the variance requested would not confer a special privilege to the property that is denied to other lands in the same district. The intent of the zoning setback requirement would be met because adjacent SFL-zoned property is owned by Tumwater Middle School and is not developed with single-family residences. The property is unique in having a substantial 50-foot buffer right-of-way located between the subject project site and SFL-zoned property and the lack of residential development on the adjacent SFL-zoned property.

The granting of the variance would not be materially detrimental to the public welfare or injurious to the property or improvements of the vicinity and zone in which the subject property is situated. As addressed in the above conclusions, the City provided reasonable notice and opportunity to comment on the proposal and did not receive any comments from members of the public. Comments from reviewing agencies have been addressed by the conditions below. The requested variance from applicable zoning setback requirements is the minimum necessary to allow the property to be developed. Conditions, as detailed below, are necessary to ensure that the project proceeds in conformance with the previously approved site plan, adheres to the conditions of the previously issued site development/grading permit, and satisfies all criteria for variance approval. *Findings 1 – 10, 20 – 27.*

### DECISION

Based on the preceding findings and conclusions, the request for a preliminary binding site plan to subdivide two parcels totaling approximately nine acres into seven lots for commercial development with associated improvements, and a variance from zoning setback requirements, at 1401 and 1551 Kingswood Drive, is **APPROVED**, with the following conditions:

1. Conditions listed in the DRC Formal Site Plan Review Letter, dated November 22, 2022, shall apply to the proposal.
2. Prior to any ground disturbance work or site development grading permit issuance, a cultural resource study shall be reviewed and approved by the Department of Archeological and Historic Preservation, Squaxin Island Tribe and Nisqually Indian Tribe. Moreover:
  - A. The project proponent shall follow the procedures in the City of Tumwater Standard Inadvertent Archaeological and Historic Resources Discovery Plan.
  - B. If any archaeological or cultural resources are uncovered during construction, the project proponent shall stop work in the area of discovery; follow the procedures in TMC 18.40.065 Inadvertent Discovery of Archaeological and Cultural Resources; and contact the City of Tumwater, the Washington State Department of Archaeology and Historic Preservation, and the Squaxin Island Tribe's Archaeologist, Shaun Dinubilo via email at [sdinubilo@squaxin.us](mailto:sdinubilo@squaxin.us).
  - C. Should archeological artifacts be encountered during construction, all of the following shall apply:
    - i. Construction activity shall be immediately suspended;
    - ii. The contractor shall immediately notify the City of Tumwater Community Development Department;
    - iii. The contractor shall immediately notify the Washington State Department of Archeology and Historic Preservation; and The contractor shall



immediately notify potentially affected tribal nations including, but not limited, to the Squaxin Island Tribe, Chehalis Tribe, and Nisqually Tribe.

3. Conditions listed in the Mitigated Determination of Non-Significance, dated March 16, 2023, shall apply to the proposal.
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. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact the Thurston County Health Department for proper management of these materials.
6. If contamination is suspected, discovered, or occurs during construction of the proposed project, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) for the Washington State Department of Ecology at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at (360) 407-7263.
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 project proponent shall follow the requirements of the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit issued for the project by the Washington State Department of Ecology.
9. The City's water and sewer utilities shall be extended to serve the needs of the development. The utility extensions shall be in accordance with the Tumwater Development Guide requirements in place at the time the preliminary binding site plan application was vested. All necessary right-of-way and/or easement will need to be dedicated to the City of Tumwater.

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10. 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.
11. The engineering plans shall show all existing and proposed utilities and easements including streetlights, street trees, water, sewer, storm, gas, cable, power, telephone, signage, and striping. Provide street sections showing dimensions of existing and proposed improvements. Include the line sizes on the water and sewer mains and services.
12. All engineering designs and construction shall be in accordance with the City of Tumwater's Development Guide and WSDOT standards.
13. 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.
14. The project proponent shall be responsible for all plan check, inspection, and connection fees.
15. Any public or private utility relocation necessary to construct the project shall be the sole responsibility of the project proponent.
16. The project proponent 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 for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Transportation and Engineering Director. Please refer to Chapter 3 of the Development Guide for further clarification.
17. 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. All engineered drawings and legal exhibits shall be made available in PDF format with 300 DPI or greater. The documents shall conform to requirements for proper recording as established by Thurston County and the City of Tumwater.
18. The owner or owner's representative is also responsible for furnishing the City with electronic files, compatible with release 2017 or newer Auto-CAD format. Provide individual drawings independent of x-refs. Include all non-standard font files and plot files. Also, please furnish PDF files printed from the AutoCAD files 300 DPI or greater. A storm water maintenance agreement, utility maintenance agreement, easements and bills-of-sale will also be required.

19. The City vertical and horizontal control datum is NGVD 29 and NAD 83(HARN) / Washington South U.S. Survey Feet respectively.
20. A note shall be added on the site plan that the Professional Land Surveyor responsible for the surveying of the project must obtain a permit from the Washington State Department of Natural Resources before any existing survey monuments are disturbed.
21. The project proponent shall provide a cover page with all dedication and easement language.
22. Any water main extension will require a minimum of an eight-inch system. The main size will depend on the fire flow requirements for this project. The system shall be designed for a maximum velocity of eight feet per second.
23. All sanitary sewer mains must be TV'd. The project proponent shall provide a tape of the sanitary sewer line prior to recording the final binding site plan.
24. A drainage design and erosion control plan will be required according to City of Tumwater's 2021 Drainage Design and Erosion Manual.
25. Maintenance of the on-site stormwater system will be the responsibility of the project proponent, their successors, or assigns. A stormwater maintenance agreement must be recorded against the property prior to recording the Final Binding Site Plan.
26. Fire hydrants shall be provided as shown on the preliminary binding site plan.
27. All water wells on site shall be abandoned in accordance with the Washington State Department of Ecology requirements. A permit from the Washington State Department of Ecology shall be obtained for each well to be abandoned.
28. If applicable, on and off-site well locations within 200 feet of the proposed development shall be shown on the Final Binding Site Plan with the associated 100-foot protective radii.
29. All septic systems on the property shall be abandoned in accordance with the Thurston County Environmental Health requirements. A permit shall be obtained from Thurston County Environmental Health for each separate system to be abandoned.
30. Impact fees for traffic will be assessed to each lot in the preliminary binding site plan 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.

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31. Dumpsters are required to be gated and screened with masonry walls and/or sight-obscuring fence with landscaping.
32. Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings or placed within five feet of combustible walls, openings or combustible roof eaves lines unless the area is protected by an approved automatic sprinkler system per IFC Section 304.3.3.
33. The project proponent must maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
34. If required by the Thurston County, property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Binding Site Plan can be recorded.
35. A Commercial Association is required to be formed for the project. Prior to recording the Final Binding Site Plan, 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 a lien upon the land.
36. If required by USPS, consolidated postal drop off facilities shall be provided for the site. The location of the facilities must be coordinated and approved by the U.S. Postal Service.
37. The building designs shall conform to the City of Tumwater's Citywide Design Guidelines. Architectural elevation drawings of each building-type and narrative description stating how the design guideline requirements are being met shall be submitted for review and approval prior to issuance of Building Permits.
38. Exterior walls are required to be of one-hour fire-rated construction when less than ten feet to the property line. Protected openings are required when less than five feet to the property line. No openings are permitted less than three feet to the property line.
39. Water cross connection control shall be provided in accordance with the provision of the Plumbing Code. Cross connection control devices or assemblies must be models approved under WAC 246-290-490.

40. If water pressure at the meter exceeds 80 psi, a pressure-reducing valve will be required to be installed on the private side of the water line.
41. Backwater valves shall be installed for each structure when the sewer is lower than the street manhole.
42. Automatic sprinkler systems shall be provided throughout all buildings in this project.
43. Fire alarm systems shall be required to be installed in all buildings in this project.
44. The project proponent must coordinate with the City of Tumwater Building Safety Official on the location of the City of Tumwater Fire Department connection, post indicator valve, remote annunciator panel, and Knox box's. The locations of the fire suppression equipment must be approved by the City of Tumwater Building Safety Official.
45. Any dead-end fire access roads that are in excess of 150 feet in length shall be provided with an approved turnaround.
46. Fire lane signs and yellow striping shall be provided on-site to identify the City of Tumwater Fire Department access roads and prohibit the obstruction thereof.
47. When any portion of a building constructed on the site is in excess of 150 feet from a water supply on a public street, as measured by an approved route around the exterior of the building, there shall be provided on the site fire hydrants capable of supplying the required fire flow. Placement of the hydrants shall be coordinated with the City of Tumwater Building Safety Official.
48. The water main shall be looped around the entire site, extend to adjacent properties for future connection, and connect to existing stubs on adjacent properties extended by previous projects.
49. Building plans and specifications shall be prepared and stamped by an architect or an engineer licensed to practice in the State of Washington.
50. Building Permit applications shall include architectural, structural, plumbing, mechanical, and energy plans, and specifications. Fire sprinkler and fire alarm permit applications and plans may be submitted separately from the main permit application.
51. All new building projects are required to provide for the storage of recycled materials and solid waste. The storage area shall be designed to meet the needs of the occupancy, efficiency of pick-up, and shall be available to occupants and haulers.

52. The Development Plan shall be reviewed by Bonneville Power Administration (BPA). A Letter of Approval from BPA, or a Land Use Agreement which assures the right to construct and maintain the improvements shown on the Development Plans shall be submitted to the City of Tumwater prior to site development grading permit issuance. Alternatively, an indemnity agreement shall be agreed upon and approved by the City to be recorded by the Applicant against the subject property prior to site development grading permit issuance.
53. The City of Tumwater has the ability to reduce Traffic Impact Fees (TIF) or reimburse a portion of the cost to the property owner for the compact roundabout construction and design. The amount shall be coordinated with the Director of Transportation and Engineering prior to the issuance of the first Certificate of Occupancy on the property.
54. The compact roundabout shall be approved, constructed and accepted by the City of Tumwater prior to the initial certificate of occupancy for the project.

DECIDED this 29<sup>th</sup> day of August 2023.



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ANDREW M. REEVES  
Hearing Examiner  
City of Tumwater