

1 BEFORE THE CITY OF TUMWATER HEARINGS EXAMINER

2 IN RE:) HEARING NO. TUM-21-0551
3)
4 SUNRISE HILLS PRELIMINARY PLAT) FINDINGS OF FACT, ANALYSIS,
5) CONCLUSIONS OF LAW AND
6) DECISION

7 **APPLICANT:** Chul M. Kim
8 454 SW 297th Street
9 Federal Way, Washington 98023

10 **SUMMARY OF REQUEST:**

11 The Applicant seeks Preliminary Plat approval to subdivide 10.72 acres into 36 single-family lots within a Clustered Subdivision. Other improvements include utility extensions, 2 roads terminating at cul-de-sacs and 7 tracts for access and open space.

12 **LOCATION OF PROPOSAL:**

13 The project is located north of Sapp Road SW between Antsen Street and Crosby Blvd., Tax Parcel No. 12827330000.

14 **SUMMARY OF DECISION:**

15 The requested Preliminary Plat is **approved** subject to modified conditions.

16
17 **BACKGROUND**

18 The Applicant seeks to subdivide 10.72 acres into 36 single-family lots. A similar
19 application was presented in 2005 and approved but the Applicant failed to timely develop and
20 the application became stale. The Applicant reapplied in 2019 only to have the City oppose the
21 application as being inconsistent with density requirements, and the application was denied by
22 the Hearing Examiner.

23 The Applicant now submits a very similar application but relies upon the provisions for
24 clustered subdivisions in order to meet density requirements. City Staff finds that the application

1 satisfies all clustering requirements; that the new application is consistent with the City's
2 Subdivision regulations; and recommends approval subject to various conditions. The
3 application continues to experience significant opposition from surrounding property owners
4 who worry about its density, aesthetics, stormwater management, and traffic.

5 **PUBLIC HEARING**

6 The public hearing commenced at 7:00 p.m. on May 24, 2023¹. The hearing was
7 conducted in a hybrid format with interested parties appearing both in person and remotely. The
8 City appeared through Tami Merriman, Permit Manager, along with Mike Matlock, Community
9 Development Director and SEPA Official. The Applicant, Chul M. Kim, appeared without
10 representation. Approximately one dozen members of the public appeared in person and several
11 more attended remotely, with 11 asking to testify. All who testified were sworn under oath and a
12 verbatim recording was made of the proceedings. The hearing lasted approximately three and a
13 half hours.

14 The hearing began with the recognition of exhibits received prior to or at the
15 commencing of the hearing. A total of 24 exhibits were recognized:

16 Exhibit 1 Staff Report 05-12-2023
17 Exhibit 2 Vicinity Map
18 Exhibit 3 Zoning Map
19 Exhibit 4 Preliminary Plat Application 03-22-2021
20 Exhibit 5 Preliminary Plat Map 11-23-2022
21 Exhibit 6 Public Notice Certifications May 12, 2023
22 Exhibit 7 TUM-19-0317 Staff Report 08-23-2019
23 Exhibit 8 Hearing Examiner Decision 09-20-2019
24 Exhibit 9 Hearing Examiner Reconsideration and LUPA Appeal
25 Exhibit 10 DNS and Checklist 06-27-2019
Exhibit 11 Public Works Director Concurrency Ruling 05-08-2019
Exhibit 12 Tree Plan 09-20-2018
Exhibit 13 Plat Name Certificate 04-22-2023

24 ¹ The public hearing was conducted by the City's then Hearing Examiner, Andrew Reeves, who also conducted the
25 supplemental public hearing. Mr. Reeves was thereafter unable to complete his decision. The City requested the
Hearing Examiner Pro Tem to review the hearings and all submitted materials and render a decision.

- 1 Exhibit 14 Geotech Report 09-04-2018
- 2 Exhibit 15 Notice of Application Comments 06-18-2021
- 3 Exhibit 16 Notice of Application Comments May 2023
- 4 Exhibit 17 Preliminary Stormwater Site Plan 02-21-2023
- 5 Exhibit 18 Water Sewer Availability 05-10-2023
- 6 Exhibit 19 Tumwater School District Comment 8-23-2019
- 7 Exhibit 20 Kim Letter to Hearing Examiner dated May 22
- 8 Exhibit 21 Kim Response to Comments dated May 22
- 9 Exhibit 22 Public Comments in Response to Hearing Notice
- 10 Exhibit 23 Additional Public Comments to Hearing Notice
- 11 Exhibit 24 Response of Kim to Public Comments

12 The hearing commenced with the testimony of Tami Merriman, Permit Manager. Ms.
13 Merriman relied extensively upon her Staff Report (Exhibit 1). Ms. Merriman noted that the
14 Applicant had originally applied for Preliminary Plat approval in about 2019 but his application
15 was denied as it failed to meet the City's then density requirements due to the method by which
16 the City calculated density in regard to critical areas. The Applicant reapplied in March 2021.
17 City Staff found his new application to be unacceptable in the form presented and recommended
18 to the Applicant that he consider its redesign using the available Clustered Subdivision option.
19 The City's Planning Staff worked with both the Transportation Department and the Engineering
20 Staff to assist the Applicant in presenting an acceptable design. This process ultimately led to a
21 proposal for Clustered Subdivision providing for 36 lots with the City's recommended approval.

22 Ms. Merriman then explained how the site's maximum residential density is calculated.
23 The site is located within the Residential Sensitive Resource (RSR) 2-4 land use designation.
24 This designation allows for a minimum of 2 residential units per acre and a maximum of 4, but
25 also allows for a "density bonus" of 125% of the maximum density if development is "clustered"
and if the project site is not subject to wetland protection. A Clustered Subdivision must also
satisfy four additional criteria:

- 1 1. The portion set aside for open space must be at least 30% of the entire site;
- 2 2. At least half of the area set aside for open space must be used for passive
- 3 recreational purposes;
- 4 3. The area set aside for open space must be located as to include environmentally
- 5 sensitive areas to the maximum extent possible; and
- 6 4. The Clustered Subdivision must meet all other development regulations.

7 Ms. Merriman explained that the project meets these requirements and is therefore
8 subject to the density bonus. The density bonus is calculated based upon the net developable
9 area which consists of the gross area (10.72 acres), less designated critical areas (steep slopes) of
10 1.61 acres, and less roads and access easement areas equaling an additional 1.17 acres, leaving
11 7.94 acres for density calculations. With the density bonus, the maximum allowed density
12 becomes 37 lots ($7.94 \times 4 \times 125\% = 37$). The Applicant seeks approval for 36 lots.

13 Again, to satisfy Clustered Subdivision requirements the application must provide open
14 space equal to at least 30% of the total site. $10.72 \text{ acres} \times 30\% =$ a minimum of 3.22 acres of
15 open space. At least one-half of this open space, or 1.61 acres, must provide for passive
16 recreation. Ms. Merriman confirmed that the application will satisfy all of these requirements.

17 The project site is located within the Tumwater Hill Neighborhood in the City's
18 Comprehensive Plan. It has a land use designation of Residential Sensitive Resource (RSR) 2-4.
19 This designation is intended to protect unusually sensitive areas from over development and
20 expressly encourages clustered development so as to maximize the amount preserved from
21 development. Developers are incentivized to provide clustered development in the form of the
22 density bonus of 125% and smaller residential lots.

23 Ms. Merriman analyzed the project in reference to the Tumwater Parks & Recreation
24 Plan and noted that the project has been conditioned upon constructing a bicycle lane along the
25

1 project's frontage on Sapp Road. Community park impact fees will be collected. As earlier
2 noted, the project must set aside at least 30% as private open space, with 50% of that area
3 available to be used for passive recreational purposes. Again, the project satisfies these
4 requirements. Staff finds that the project, as conditioned, is consistent with the City's
5 Comprehensive Plan and Subplans.

6 Ms. Merriman next analyzed the project with respect to transportation impacts. She
7 noted that the application was reviewed for traffic impacts in 2019. It also underwent thorough
8 SEPA review at that time. City Staff finds that the current application has the same traffic and
9 environmental impacts as the 2019 application and, therefore, the City's earlier review of both
10 traffic and SEPA remain satisfactory. A Transportation Concurrency Ruling was issued May 8,
11 2019, indicating that the project's traffic will not cause Levels of Service at any impacted
12 corridors or intersections to fall below the City's Level of Service standard (Exhibit 11). Staff
13 concludes that the revised plat will not have any negative impact on the earlier Concurrency
14 Ruling, and that by constructing street improvements along Sapp Road, building two internal
15 streets to City standards, and paying transportation impact fees. the project will be consistent
16 with the City's Transportation Plan. The project will also be consistent with the City's other
17 plans including the Thurston Regional Trails Plan and the Sustainable Development Plan for
18 Thurston Region.

19 Ms. Merriman next turned to public notice and confirmed that all required public notices
20 had been given (Exhibit 6), including notice of amended applications. As noted earlier, the City
21 did not undertake a new SEPA analysis but instead relied upon the SEPA DNS issued June 27,
22 2019, for the earlier application. Ms. Merriman, followed by Mike Matlock, Community
23 Development Director, confirmed that this approach was correctly done. Staff determined that
24 the new application did not materially change from the 2019 application and that, if anything, the
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1 current application had less environmental impacts than the earlier one. As a result, Staff
2 concluded that it was unnecessary to reissue a SEPA Determination.

3 Ms. Merriman then turned to the project's compliance with Title 18 of the Tumwater
4 Municipal Code and the permitted uses and development standards for the Residential Sensitive
5 Resource zoning district as set forth in Chapter 18.08 TMC. Ms. Merriman quickly reviewed the
6 development standard for minimum lot size, maximum building height, setback areas, etc. She
7 noted that the zoning designation allows for side yard setbacks of 7 1/2 feet and rear setbacks of
8 10 feet. She also noted that single-family homes are a permitted use within this zoning district.

9 The project site is located within the Aquifer Protection Overlay district but the proposed
10 use is not a restricted land use in this overlay, and single-family residences are allowed.

11 The project has been conditioned on an Inadvertent Discovery requirement should any
12 cultural resources be discovered during development.

13 The project is also subject to the City's Tree Protection regulations, Chapter 16.08 TMC.
14 The Applicant has submitted a Professional Forester's Report (Exhibit 12) which finds that there
15 are 353 regulated trees on the property. The City Tree Protection Ordinance requires 20% of
16 existing trees, or 12 trees per acre, to be retained. This means that 112 trees are required to be
17 retained. The Applicant proposes to retain 167 trees, or well above what is required.

18 The project site is well recognized as a geologically hazardous area and is therefor
19 subject to the regulations found in Chapter 16.20 TMC. The Applicant submitted a Geotechnical
20 Report in 2019 (Exhibit 14) which designates all geologically hazardous areas onsite. Ms.
21 Merriman confirmed that the project has been conditioned to protect these areas from
22 development.

23 Ms. Merriman then turned to compliance with the requirements for preliminary land
24 subdivision found in Title 17 of the City's Municipal Code as well as in Chapter 58.17 RCW.

25 The application must be shown to serve the public use and interest and to demonstrate

1 concurrency with needed public infrastructure. Ms. Merriman reviewed the various
2 requirements of TMC 17.14.040 and concluded that all requirements are met: Provisions have
3 been made for needed public streets; the project proposes 30% open space areas; stormwater will
4 be managed in accordance with the City's most recent Stormwater Manual; water and sewer
5 service will be provided by the City; school impact fees will be paid and a school bus stop will
6 be provided as requested by the district; fire impact fees will be paid and, in addition,
7 development on some lots will require sprinkler systems to assure fire safety; and a water main
8 assessment fee of \$12,216 will be assessed. All together, 49 conditions have been imposed on
9 the project to ensure that the public use and interest requirement is met.

10 Ms. Merriman completed her direct testimony by recognizing that members of the public
11 have a number of concerns but the most important of these concerns may be relating to required
12 blasting due to the site's unusual topographical conditions. Project approval has been expressly
13 conditioned upon the Applicant complying with all City requirements for blasting. Among other
14 things, these regulations require advance notice to neighbors; a security bond/insurance; and pre-
15 blasting inspection of neighboring properties. While City Staff fully understands the concerns
16 expressed by neighbors, it believes that the City's blasting protections will address these
17 concerns.

18 At the conclusion of Ms. Merriman's direct testimony the Hearing Examiner posed a
19 number of questions to her. He asked for further explanation as to why the City did not issue a
20 new SEPA Determination or, at a minimum, provide a new comment period for it. Ms.
21 Merriman and Mr. Matlock responded and again explained that the project has no material
22 difference from the 2019 application and that WAC 197-11-230(3) expressly waives the
23 requirement of a new SEPA Determination or notice period.
24
25

1 The Hearing Examiner then reviewed the project's concurrency requirements and Ms.
2 Merriman again confirmed that the project satisfies all concurrency obligations including those
3 for traffic, water, sewer, schools and fire safety.

4 The Hearing Examiner asked Ms. Merriman to more fully discuss public comments. She
5 confirmed that at least 12 letters from the public seek a seismic study and greater notice of
6 blasting. The City acknowledges these concerns but believes that they are adequately addressed
7 through the City's blasting requirements. Ms. Merriman also noted that local tribes have
8 commented but have expressed no concerns. Other public comments include worries over the
9 loss of privacy/lack of buffering. Again, the City understands these concerns but notes that the
10 proposal is consistent with all urban density requirements. Other public comments have
11 expressed concern over water runoff, especially to the west, but this has been taken into
12 consideration and the stormwater management system has been designed to collect that runoff
13 and manage it consistent with the City's most current Stormwater Manual. The City believes that
14 this stormwater system will actually reduce existing offsite stormwater drainage. Ms. Merriman
15 also noted that a few public comments have expressed concerns over boundary lines but that
16 these concerns appear to have been resolved. She also noted that many members of the public
17 had questioned how the project could have earlier been denied in 2019 and yet now found to be
18 acceptable, and she explained how this was possible due to the Clustered Subdivision rules and
19 the opportunity for a density bonus.

20 At the conclusion of Ms. Merriman's presentation the Applicant, Mr. Kim, was provided
21 the opportunity to make a presentation. His testimony was quite short. He explained that the
22 new application will leave all steep slopes intact and will have less environmental impact than
23 the 2019 proposal. In particular, the current application no longer requires a connection between
24 Sapp Road and Woodland Drive to the north. This eliminates the need for a significant amount
25 of blasting that would otherwise have been required to make this connection. The lack of a

1 required street connection has the added benefit of preventing use of the property's streets as a
2 thoroughway to other neighborhoods - something sought by the neighbors who were concerned
3 that the project might invite faster traffic through their neighborhoods.

4 Following Mr. Kim's testimony the hearing was opened for public comment. Eleven
5 individuals asked to testify:

6 **Darin Rice.** Mr. Rice resides on property immediately west of the project and has
7 provided earlier written comment as well as additional comment during the 2019 application.
8 Mr. Rice is primarily concerned with stormwater impacts. He notes that the project site is a
9 conveyer of water to the west including a seasonal stream which drains toward his property. Mr.
10 Rice wishes to know whether a hydrological study has been undertaken to determine the source
11 and location of all water onsite. He also wishes to know whether the stormwater system is
12 designed with stormwater ponds, and is designed to prevent runoff onto adjoining properties.

13 Separately, Mr. Rice notes that the new road (Road A) appears to be designed to adjoin
14 the property's western boundary, with no buffer between it and properties to the west. This
15 question resulted in an examination of the site plan which confirms that Road A is largely
16 located in the center of the public right-of-way, with a buffer area between it and properties to
17 the north, but that in the vicinity of Mr. Rice's property the roadway extends to his boundary line
18 (to accommodate a bus stop on the north side of the road at this location).

19 **Ricky Fryer.** Mr. Fryer sought assurance that seismic studies would be paid for by the
20 Applicant, not adjoining property owners. He also asked for confirmation that the project
21 intended to rely on Woodland Drive and then Brookside for access to Crosby Blvd. It was
22 confirmed that the project proposes this form of ingress/egress for the lots in the northern section
23 of the development. Mr. Fryer expressed concerns that these streets are not well lit and that
24 additional street lighting should be considered.

1 **Rod Finkle.** Mr. Finkle resides near the northeast corner of the project site and has
2 provided both written and oral testimony previously. He remains confused as to why the City
3 has changed its mind and allowed this current application when it denied the earlier one, even
4 though there has been no material change to the application.

5 If the application is approved, Mr. Finkle asks that the City recognize the long-term
6 nature of its construction and hopes that the City will require a comprehensive construction plan
7 so that the neighbors are fully aware of what will take place. His residence, and his neighbors
8 houses, all sit on solid rock and are highly susceptible to damage from blasting. He asks that a
9 survey be undertaken prior to any blasting and a second survey be conducted following it. He
10 also proposes that the neighborhood be kept advised as to the project's development and that an
11 advisory group of neighbors be included in review of plans and specifications.

12 **Christine Finkle.** Mrs. Finkle has also previously provided oral and written testimony.
13 She is concerned that the proposed private driveway serving lots in the northeast portion of the
14 development will eliminate existing trees and result in increased water runoff toward her house.
15 She seeks assurance that the project will not exacerbate existing water runoff conditions. Mrs.
16 Finkle is also concerned about existing traffic congestion on Crosby Blvd. and fears that the
17 project will only worsen that congestion.

18 **Norma Green.** Ms. Green resides next to the Finkle's near the northeast corner of the
19 project site. She has provided earlier written comment. She explained how her property, the
20 Finkle's property, and several other nearby properties are all serviced by a private road. This
21 road already has stormwater from the project site running down it. She worries that the project
22 will increase that runoff onto their private road. She also questions how it will be possible to
23 construct the proposed private drive intended to service Lots 28, 32 and 33 as there is a large
24 outcropping along the boundary between her property and the proposed driveway causing a
25 significant grade change at this location.

1 Ms. Green separately questions how the project will satisfy fire truck access requirements
2 when its lots will only have 7 1/2-foot side setback areas.

3 **John Ryan.** Mr. Ryan is an attorney who previously represented the neighborhood
4 homeowners association during the 2019 application. He is no longer serving in a representative
5 capacity and is instead testifying as an individual. Mr. Ryan had three concerns:

6 1. His first concern is with traffic impacts. He notes that 22 of the proposed 36 lots
7 will exit onto Woodland Drive to the north. Even so, the project does not propose any street
8 improvements to Woodland Drive and only proposes improvements to Sapp Road to the south.
9 Mr. Ryan is pleased to see that the project no longer proposes a direct connection between Sapp
10 Road and Woodland Drive as he had worried about the resulting increased traffic. He added that
11 the portion of Woodland Drive between Brookside and Delrose further north is in very poor
12 condition and that this project will only worsen its condition. He also expressed concern that the
13 City's reliance upon a 2019 traffic review is inadequate given the amount of development taking
14 place in the neighborhood since then, especially the large new apartment development nearby.

15 2. Mr. Ryan is concerned that the City's reliance upon its 2019 SEPA Determination
16 is inappropriate as the current project proposes a completely new stormwater plan and that alone
17 should trigger renewed SEPA review.

18 3. Mr. Ryan's final concern is with the proposed new clustering design. He feels
19 that it is incongruous that, in the name of environmental protection, greater density and smaller
20 lots are being proposed. He invites the City to rethink this concept.

21 **Janine Beaudry.** Ms. Beaudry has earlier provided written comment. She lives on
22 Brookside just north of the development and notes that the proposed driveway for Lots 35 and 36
23 will be directly against her property boundary. She shares Mr. Ryan's concerns that the 2019
24 traffic study is outdated and inadequate and asks that an updated traffic evaluation be
25 undertaken.

1 **Kathy Phillips.** Ms. Phillips has provided earlier written testimony. She shares the
2 concerns of many others that there should be a seismic study undertaken both before and after
3 any blasting is performed. She also worries that traffic along Crosby Blvd. is already too fast and
4 that the project will simply worsen this problem. She also worries that the project will lead to
5 the elimination of important privacy currently enjoyed by the site's neighbors. For all of these
6 reasons she opposes the application.

7 **Carrie Wayno.** Ms. Wayno lives about a block from the project and agrees with the
8 concerns expressed by all others. She explains that her children refer to this property as the
9 "Forbidden Forest" due to its dense canopy of large trees and many birds. She notes that the site
10 is unusually steep and that the proposed development will not only eliminate much of its forest
11 and wildlife but will also expose these steep slopes to greater runoff. She asks that it be allowed
12 to remain in its natural state to protect its sensitive environment.

13 **Bridgette Underdahl.** Ms. Underdahl echoes all previous witnesses comments. Like
14 Ms. Wayno, she asks that the project's impact upon the local environment be given greater
15 consideration and that the humanity of the neighborhood be protected by denying the application.

16 **Angela Garner.** Ms. Garner had two concerns: (1) she joins with Mr. Ryan in the belief
17 that the 2019 SEPA Determination is outdated and should be revisited; and (2) she shares the
18 concerns expressed by Ms. Wayno and Ms. Underdahl that the local ecosystem is not being
19 protected and that the things that make this area a community are being sacrificed to this
20 development.

21 At the conclusion of all public testimony the Applicant, Mr. Kim, was allowed the
22 opportunity to respond. Mr. Kim responded to Mr. Rice's comment regarding stormwater and
23 explained how the road leading to Sapp Road (Road A) has been designed to direct water away
24 from properties to the west and to instead direct it toward the east side of the street, thus
25 improving current stormwater discharge in this area. Mr. Kim also expressed frustration over

1 public comments asking that this property be prevented from development when the
2 commenters' own properties were allowed to be developed in a very similar way. Mr. Kim
3 believes that all of these properties should be thought of in a similar way.

4 Following Mr. Kim's responses the City was asked to respond to several issues. Mr.
5 Merriman first addressed Mr. Rice's concerns about stormwater discharge toward his property.
6 She confirmed Mr. Kim's comments that the proposed stormwater system is intended to direct
7 stormwater away from properties to the west and that the proposed Road A will assist in this
8 process. She also confirmed that the stormwater review had included a geological study and that
9 the stormwater design had taken the study into consideration, including the design of Road A.
10 Ms. Merriman also confirmed that the stormwater system will direct stormwaters into ponds for
11 infiltration.

12 Ms. Merriman then addressed the concerns expressed by the Finkles and Ms. Green
13 regarding the topography in the northeast corner of the site near their properties. She confirmed
14 that any final driveway design for the northeast lots will be done during civil plan review. She
15 also confirmed that the driveways leading to these lots are not roads but merely shared driveways
16 and that, should any of these shared driveways be incapable of satisfying design criteria, the
17 proposed lot may not be developable.

18 Ms. Merriman discouraged any thought of an advisory group being part of civil plan
19 review as this is the sole responsibility of City Staff. Nonetheless, she would not oppose a
20 condition that required the giving of notice that the civil plans had been received by the City.

21 Regarding Mr. Finkle's comments regarding the regulation of construction activity, Ms.
22 Merriman confirmed that the City does have limits on construction hours and days.

23 Ms. Merriman then pulled up the City's regulations on blasting permit requirements and
24 went through each one. These requirements include an application; a surety bond; a limit of
25 10:00 a.m. to 4:00 p.m., Monday through Friday; two weeks notice to all within 300 feet and pre-

1 blast inspection of adjoining properties at the developer's expense. These requirements do not
2 impose a post-blast reinspection.

3 Ms. Merriman acknowledged Ms. Green's comments regarding fire truck access but
4 explained that properties having 7 1/2-foot side setbacks will result in a minimum of 15 feet
5 between houses. Fire code requires ten feet separation and so the properties will be adequately
6 distanced for fire access. Some properties will be required to have sprinklers due to limited
7 driveway access. Individual lot owners will be responsible for assuring that their garbage can be
8 picked up and may be required to deliver it to the main roads.

9 Ms. Merriman addressed comments regarding the stormwater design and confirmed that
10 the new stormwater system is very similar if not the same as the previous one but will satisfy all
11 requirements of the 2022 Stormwater Manual. There is nothing about the updated stormwater
12 system that will require new SEPA review.

13 Ms. Merriman responded to some of Mr. Ryan's concerns about improvements to Sapp
14 and no improvements to the existing streets to the north by explaining that a development such as
15 this requires access to one fronting street which happens to be Sapp. In addition, improvements
16 to Woodland have already been made and no further improvements are needed.

17 Ms. Merriman's responses concluded the public hearing. The Hearing Examiner allowed
18 the record to remain open to the following Tuesday to allow for any additional written
19 comments. No additional comments were received.

20 **REOPENED PUBLIC HEARING AND LEGAL BRIEFING**

21 After several months of consideration, in December 2023, the Hearing Examiner
22 announced his desire to reopen the public hearing in order to receive additional legal argument.
23 The public hearing was reconvened on December 13, 2023, for the purpose of discussing several
24 unresolved legal questions surrounding the Preliminary Plat. No public testimony was received.
25 The City appeared through its attorney, Jeff Meyers, and the Applicant appeared through his

*Findings of Fact, Analysis,
Conclusions of Law
and Decision - 14*

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1 attorney, Keaton Hille. The Hearing Examiner announced that he had continuing questions as to
2 several legal issues including the following:

3 1. The City's Comprehensive Plan announces a prohibition on the Transfer of
4 Development Rights (TDRs) in the Residential Sensitive Resource (RSR) zone. How can this
5 prohibition be reconciled with the density bonus allowed for Clustered Subdivisions? Is the
6 density bonus not a Transfer of Development Rights?

7 2. How does the density calculation in Chapter 18.08 TMC work in light of the
8 potential restrictions on density transfers? How is density calculated in the RSR zoning district?

9 3. The project proposes a number of shared use driveways. Are these shared
10 driveways to be considered "roads" when either calculating allowed density or when measuring
11 impervious surface?

12 4. Can stormwater tracts be included in calculations of open space? Can they also
13 be included in calculating density?

14 5. Should deference be given to the City Staff's interpretation of development
15 regulations when calculating density?

16 The City and the Applicant were allowed a week to respond to these questions. Both
17 responded in writing on December 20, 2023, with nearly identical responses:

18 1. **The City's Comprehensive Plan announces a prohibition on the Transfer of**
19 **Development Rights (TDRs) in a Residential Sensitive Resource zone. How can this**
20 **prohibition be reconciled with the density bonus allowed for Clustered Subdivisions? Is**
21 **the density bonus not a Transfer of Development Rights?**

22 Answer: The City and Applicant agree that the City's Comprehensive Plan expressly
23 disallows the Transfer of Development Rights in the RSR zoning district. Chapter 18.57 TMC.
24 But both agree that this restriction does *not* prohibit a density bonus for Clustered Subdivisions.
25 In other words, the density bonus allowed for Clustered Subdivisions in the RSR zoning district

*Findings of Fact, Analysis,
Conclusions of Law
and Decision - 15*

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1 is not a transfer of density rights but is, instead, an incentive to develop property in the RSR
2 zoning district in an environmentally sensitive way by steering clear of development in
3 environmentally sensitive portions of the site and intensifying development elsewhere. This is
4 not the *importation* of development rights from other property but instead the incentivized
5 increased development of those portions of the project site not impacted by critical areas. In
6 short, there is nothing in the regulations for the RSR zoning district that prohibits the density
7 bonus for Clustered Subdivisions.

8 **2. How does the density calculation set forth in Chapter 18.08 TMC work in**
9 **light of the potential restrictions on density transfers? How is density calculated in the**
10 **RSR zoning district?**

11 Answer: Again, both the City and the Applicant are in agreement as to the response to
12 these questions. Chapter 18.08 TMC expressly allows for a density bonus of 125% to encourage
13 residences to be located away from environmentally sensitive areas. The first step in this process
14 is to determine the net area subject to the density calculation. TMC 18.08.080.B.1 excludes from
15 this density calculation lands required to be used for public uses, open space, rights of way,
16 critical areas, and land used for roads. Importantly, it does not exclude open space areas for
17 stormwater facilities and those designed for active or passive recreational purposes. In other
18 words, the area subject to the density calculation is the net developable area not dedicated for
19 streets, or preserved in critical area tracts, and includes those portions of open space areas for
20 stormwater facilities or designed for active or passive recreational purposes.

21 As explained in the Staff Report, the site contains 10.72 gross acres. 1.61 acres are
22 contained in landslide hazard areas and another 1.17 acres are contained in roads and access
23 easements, for a total of 2.78 acres that must be excluded when calculating density. This leaves
24 7.94 net developable acres to be included in density calculations.

1 The Applicant is entitled to a 125% density bonus *if* the residential development is
2 clustered and the following additional conditions are met:

- 3 1. The portion set aside for open space shall be at least 30% of the entire site;
- 4 2. At least one-half of the area set aside for open space shall be used for passive
5 recreational purposes;
- 6 3. The area set aside for open space shall be located so as to include environmentally
7 sensitive areas to the maximum extent possible (in this case landslide hazard areas); and
- 8 4. The Clustered Subdivision must meet all other development regulations.

9 The proposed development meets these requirements and is therefore entitled to the
10 density bonus. The project therefore has an allowed maximum density of 7.94 acres x 4 x 125%,
11 or 37 lots.

12 3. **The project proposes a number of shares use driveways. Are these shared**
13 **driveways to be considered "roads" when either calculating allowed density or when**
14 **measuring impervious surface?**

15 Answer: The Applicant and City acknowledge that public and private *roads* are to be
16 deducted from gross acreage when calculating allowed density. The above calculations do this:
17 To reach the 7.94 net developable acres for calculating density, 1.17 acres of roads were
18 deducted from gross acreage. The question posed by the Hearing Examiner is whether *shared*
19 *driveways* are "roads" and therefore also to be deducted before reaching net developable acreage.
20 The City and Applicant agree that shared driveways are *not* deducted as they are not "roads". A
21 driveway serving only two or fewer lots is exempted from the definition of a "road" in the City.
22 TMC 18.08.05.B.1. All shared driveways in this development have been designed to service two
23 or fewer lots so as to avoid being designated as roads. This avoid their being deducted from
24 gross acreage when calculating allowed density.

1 The City and Applicant slightly disagree as to whether the shared driveways are to be
2 calculated when determining allowed maximum impervious surface. Both recognize that
3 driveways are expressly called out as an example of "impervious surface" in TMC 18.04.090.
4 The City and Applicant disagree slightly, however, as to whether this means that all driveways
5 are to be considered impervious surface. The City believes that driveways should generally be
6 included when calculating impervious surface. The Applicant suggests that there is a
7 *presumption* that driveways are impervious areas, but that this presumption can be overcome by
8 demonstrating that the driveway has been constructed using pervious materials. The Applicant
9 therefore recommends that an additional condition be imposed that requires the Applicant to use
10 pervious concrete or asphalt material for driveways if needed to fall within the 40% maximum
11 impervious surface requirement.

12 **4. Can stormwater tracts be included in calculations of open space? Can they**
13 **also be included in calculating density?**

14 Answer: To qualify for Clustered Development, 30% of the project must be set aside for
15 open space, and at least half of that must qualify for passive recreational use. The Hearing
16 Examiner questioned whether stormwater facilities and critical areas are to be counted as open
17 space, and whether they can also be counted as passive recreation areas. The City and Applicant
18 are in agreement with their response: City ordinances clearly recognize that stormwater areas
19 can be included in calculations of open space, TMC 18.04.150.O, and additionally, they can also
20 serve as passive recreational areas. "Passive recreation" is defined by TMC 18.04.170 as "low
21 intensity recreational uses or activities" and expressly includes view points, unpaved trails,
22 picnic facilities, hiking, nature study areas, etc. In short, the City allows stormwater facilities to
23 both serve as open space areas as well as passive recreational use areas.

24 Similarly, critical areas can also contribute to open space and passive recreation
25 requirements. TMC 18.08.050.E strongly encourages the placement of critical areas into open

1 space tracts "to the maximum extent possible". So long as no structures are built within these
2 critical areas, they qualify as open space and can be used for low intensity recreation use and can
3 thus be counted as part of the passive recreation requirement. The inclusion of stormwater areas
4 and critical areas as passive recreation open space is how this project qualifies for the density
5 bonus.

6 **5. Should deference be given to the City Staff's interpretation of development**
7 **regulations when calculating density?**

8 Answer: The City and Applicant agree that yes, deference must be given to the City's
9 interpretation of its own regulations, recognizing that City Staff not only drafted these
10 regulations but have considerable experience in interpreting them over the course of many
11 projects. Deference is to be given to the interpretation of ordinances by those members of staff
12 charged with their enforcement. *Citizens for a Safe Neighborhood v. City of Seattle*, 67 Wn.
13 App. 436, 440, 836 P.2d 235 (1992). "In any doubtful case, the court should give great weight to
14 the contemporaneous construction of an ordinance by the officials charged with its enforcement."
15 *Morin v. Johnson*, 49 Wn.2d 275, 279, 300 P.2d 569 (1956).

16 In summary:

17 1. The net developable acreage for calculating maximum allowed density is
18 determined by deducting only (1) critical areas and (2) roads from gross acreage. All other areas,
19 including all stormwater areas and all remaining open space and driveways are included. This
20 results in a greater amount of net developable acreage than what might be expected.

21 2. To qualify for the density bonus, the Applicant must demonstrate that 30% or
22 more of the site is within open space, and that at least 50% of open space is available for passive
23 recreational use. At first glance it would seem that stormwater areas would not qualify as
24 passive recreation areas, and that critical areas may not qualify either, but the City recognizes

1 both as qualifying. Indeed, it is the inclusion of these areas that allows this project to qualify for
2 the density bonus.

3 These results are not necessarily intuitive but they are supported by the City's
4 development regulations and Staff's interpretation of those regulations. Staff's interpretation is
5 entitled to deference.

6 ANALYSIS

7 It is not at all surprising that members of the public find it difficult to understand how the
8 nearly identical Preliminary Plat applications could be denied in 2019 and now recommended for
9 approval by City Staff in 2023. The answer is how residential density is now being measured
10 due to the project's status as a "Clustered Subdivision". Unlike the 2019 application, the present
11 one seeks approval as a Clustered Subdivision entitled to a density bonus of 125% as applied to
12 the net developable area. The net developable area has been calculated as the gross area (10.72
13 acres) less critical areas (landslide hazard areas) of 1.61 acres and less roads and access
14 easements of another 1.17 acres, leaving 7.94 acres subject to the density calculation. This
15 remaining net acreage is then allowed a density bonus of 125% if at least 30% of the project is
16 set aside for open space; one-half of that area set aside is useful for passive recreational
17 purposes; environmentally sensitive areas are set aside in the open space to the maximum extent
18 possible; and the subdivision meets all other development requirements. City Staff has
19 determined that the application satisfies these other requirements and is therefore entitled to the
20 density bonus. Thus, the project has a density calculation of 7.94 acres x 4 x 125% or 37 lots -
21 one more than the Applicant seeks.

22 These calculations are not without some manipulation to achieve maximum bonus. For
23 example, all private roads are deducted from gross acreage when calculating density, but two-lot
24 shared driveways are not "roads" and therefore not deducted. This has clearly been taken into
25 consideration in the design of this project as all of its driveways are designed for two lots or less

1 so as to avoid being defined as roads and excluded from density calculations. Similarly, the
2 project's stormwater system is not only included in the calculation of open space but is also
3 included in the portion of open space where passive recreational use is allowed - all to meet the
4 requirements for status as a Clustered Subdivision entitled to the density bonus. In short, an
5 unusual degree of careful calculation has been utilized in the design of this project to achieve
6 maximum density. It is not surprising that adjoining property owners find all of this to be a bit
7 too clever and thus remain opposed. Nonetheless, I concur with City Staff that the application
8 relies upon correct analyses and the proper use of development standards, and that its density
9 calculations are correctly done.

10 I therefor conclude that the project, as conditioned by Staff, generally complies with all
11 applicable development regulations but that additional conditions should be imposed to more
12 fully achieve compliance with the City's Preliminary Plat standards:

13 1. Mr. Finkle and others have asked for greater neighborhood involvement in the
14 construction process, including participation in design review. Unfortunately, this last
15 suggestion is fraught with liability issues and must therefore be denied. Nonetheless, Mr.
16 Finkle's suggestion that neighbors receive notice that civil designs have been presented to the
17 City is a good one and will be added to the conditions suggested by City Staff:

18 "50. Upon receipt of civil plans from the Applicant, City Staff shall notify all
19 adjoining landowners of their receipt and shall provide copies upon request."

20 2. Mr. Rice has asked about the location of the new road leading north from Sapp
21 Road (Road A) and its proximity to his property line and his neighbors. I share Mr. Rice's
22 concerns that this road right-of-way is inadequately buffered from properties to the west and that
23 a vegetative screen should be imposed within that portion of the right-of-way located west of the
24 as-built roadway. The following additional condition is therefore imposed:

1 "51. The Applicant shall be required to provide a vegetative buffer to the extent
2 practicable and as approved by City Staff in the portion of the Road A right-of-
way west of the as-built road."

3 3. The Applicant offers to resolve any question as to whether the proposed shared
4 driveways are to be included in calculations of maximum impervious lot coverage by requiring
5 the use of pervious material if necessary. I concur with this suggestion and therefore impose the
6 following additional conditions:

7 "52. Pervious concrete or asphalt shall be used for driveways if necessary to
8 maintain maximum impervious lot coverage at 40%."

9 A few other important issues have been raised: Nearly every public commenter has
10 expressed the desire to have a follow-up inspection of adjoining homes once any blasting has
11 occurred. I have given this suggestion careful consideration and have ultimately decided not to
12 impose it. It is of critical importance to establish pre-blasting conditions, but once this baseline
13 has been established, I do not feel it necessary to undertake a second investigation as any impacts
14 should be sufficiently manifested to not require a formal investigation. Nonetheless, the
15 Applicant will be responsible for the consequences of its blasting.

16 Many are also concerned about stormwater impacts. I fully understand these concerns as
17 none of this project's neighbors should find themselves burdened by the project's stormwater.
18 Having said this, I recognize that the City's most recent Stormwater Manual takes all of this into
19 account and mandates stormwater management in a manner that will avoid its undue discharge
20 onto adjoining properties. Indeed, the project's stormwater system has been designed in a
21 manner which should alleviate some of the existing stormwater problem in the neighborhood.
22 No further conditions are required as the project has already been conditioned on complying with
23 the most Stormwater Manual, and the Manual requires this outcome.
24
25

1 I therefore make the following:

2 **FINDINGS OF FACT**

3 1. Any Findings of Fact contained in the foregoing Background, Public Hearing or
4 Analysis Sections are incorporated herein by reference and adopted by the Hearing Examiner as
5 his Findings of Fact.

6 General Findings.

7 2. The Applicant seeks Preliminary Plat approval to subdivide 10.72 acres into 36
8 single-family lots along with seven tracts, two roads and utility extensions.

9 3. The project site is located in the Residential Sensitive Resource (RSR) 2-4 zoning
10 designation. Nearby properties to the west and south have the same RSR zoning designation,
11 while properties to the east and north are zoned SFL. Properties in all directions are used
12 primarily for single-family residences.

13 4. The City's Comprehensive Plan recognizes that properties designated as
14 Residential Sensitive Resource should have low density residential development and that this
15 development should be clustered whenever possible to preserve open spaces in environmentally
16 sensitive areas.

17 5. The Applicant proposes Clustered Subdivision consistent with the RSR zoning
18 designation.

19 6. In addition to developing 36 single-family lots, the proposed Clustered
20 Subdivision proposed seven tracts for open space and access, two streets, tree preservation, and
21 159 lineal feet of street frontage improvements along Sapp Road.

22 7. The proposed road system will not establish connectivity between Sapp Road to
23 the south and Woodland Drive to the north. Instead, the road leading in from Sapp Road (Road
24 A) will terminate in a cul-de-sac in the south central portion of the project site, while the road
25

1 leading in from Woodland Drive (Road B) will shortly terminate in a cul-de-sac near the north
2 central portion of the site.

3 8. Access to the individual lots will largely be by way of shared driveways
4 commencing along Road A and Road B. Shared driveways have been designed so as to be
5 limited to two lots per driveway. The site plan map demonstrating the two roads and all shared
6 driveways is found at Exhibit 5.

7 9. As each shared driveway is limited to two lots, these driveways do not constitute
8 "roads" and are therefore included when calculating the project's maximum density (roads are
9 excluded from the net area subject to density calculations). This is pursuant to the City Staff's
10 longstanding interpretation.

11 10. The shared driveways are, however, subject to maximum imperious surface
12 calculations unless the driveways are constructed of pervious material.

13 11. The site contains seven open space tracts designated as Tracts A-G. Tract A,
14 located at the south boundary of the site, is intended for stormwater management/open space.
15 Tract F, located along the western boundary of the project site, is intended as an access tract for
16 utilities. All other tracts, that is, Tracts B, C, D, E and G, are open space tracts and include all
17 critical areas. All tracts are identified on the Preliminary Plat Map, Exhibit 5.

18 12. The project site does not contain any wetlands or associated buffers but does
19 contain a number of areas designated as landslide hazard areas. All such areas are identified in
20 the "Landslide Hazard Area Exhibit" included in Exhibit 5. As indicated on this map, landslide
21 hazard areas are located in the south central portion of the site, the western portion and the
22 north/east portion. All designated landslide hazard areas have been incorporated into open space
23 tracts, specifically Tracts B, C and E.

24 13. Other project improvements include street improvements along Sapp Road in the
25 form of sidewalk, bicycle lane and other frontage improvements; sidewalk and other frontage

1 improvements along the north side of Road A, around the cul-de-sac, and a portion of the south
2 side; and frontage improvements along the north side of Road B and around the cul-de-sac, all as
3 indicated on the Site Plan Map (Exhibit 5).

4 Findings Relating to Prior Plat Applications.

5 14. In or about 2005, a Preliminary Plat application was approved for the site but the
6 project was not timely developed and the approved Preliminary Plat became stale.

7 15. In about 2019, the current Applicant applied for Preliminary Plat application (the
8 "2019 Plat"). The 2019 Plat similarly sought approval for the development of 36 single-family
9 residential lots. The 2019 Plat did not propose Clustered Subdivision. The plat application was
10 opposed by City Staff on the basis that it failed to satisfy density requirements (Exhibit 7) and
11 the application was denied by the Hearing Examiner (Exhibit 8).

12 16. As part of the 2019 Plat application, the City, as Lead Agency, issued a SEPA
13 Determination of Non-Significance (DNS) on June 27, 2019. The SEPA Determination was not
14 appealed and was deemed final.

15 17. As part of the 2019 Plat application, the City also received a professional Tree
16 Report (the "Tree Report") dated September 20, 2018 (Exhibit 12) and Geotech Report dated
17 September 4, 2018 (the "Geotech Report") (Exhibit 14).

18 18. Due to the significant similarities between the 2019 Plat and the current plat
19 application, the City retained the earlier SEPA DNS and also continues to rely on the 2018 Tree
20 Plan and the 2018 Geotech Report.

21 19. The City did not issue renewed notice of the SEPA Determination, relying on
22 WAC 197-11-230(3).

23 20. The Applicant also provided a Trip Generation Report as part of its 2019
24 application. After reviewing this report, the Public Works Director issued a Transportation
25 Concurrence Ruling on May 8, 2019, indicating that traffic generated from the project will not

1 cause the Level of Service at any impacted corridors or intersections to fall below the City's
2 Level of Service standard (Exhibit 11). Staff finds that the current project will have the same
3 traffic impacts and trip generation and is therefore continuing to rely upon the 2019 Trip
4 Generation Report and the 2019 Concurrency Ruling by the Public Works Director.

5 Findings Relating to the Project's Consistency with the City's Comprehensive Plan and
6 Other Plans.

7 21. As noted earlier, the project site has a land use designation of Residential
8 Sensitive Resource Land in the City's Comprehensive Plan. This designation is intended to
9 recognize areas of unique open space character and sensitivity to environmental disturbance.
10 The Comprehensive Plan encourages clustered development in these areas to maximize unbuilt
11 open space especially in environmentally sensitive areas. Densities within the RSR designation
12 are two to four dwellings per acre but with a 125% density bonus for qualified Clustered
13 Subdivision.

14 22. Staff finds that the project, as conditioned, is consistent with the City's
15 Comprehensive Plan and the Tumwater Hill Neighborhood Subarea Plan, as well as the site's
16 land use designation as Residential Sensitive Resource. The Hearing Examiner concurs.

17 23. The Staff Report, at page 4, analyzes the project's consistency with the Tumwater
18 Parks & Recreation Plan. City Staff notes that the only reference in the parks plan affecting the
19 property is a planned bicycle lane along Sapp Road. Plat approval has been conditioned upon
20 the Applicant constructing a bike lane along the length of project frontage on Sapp Road.

21 24. Staff also notes that the project has been conditioned upon collection of a
22 community park impact fee for the development of future public parks. The project will also be
23 required to contain at least 30% of its area in private open space, and that this open space must
24 allow for both passive and active recreation. In total, the project proposes 3.22 acres in open
25

1 space. Staff therefore finds that the project, as conditioned, is consistent with the City's Parks &
2 Recreation Plan. The Hearing Examiner concurs.

3 25. The Staff Report, at page 5, analyzes the project's consistency with the City's
4 Transportation Plan. As earlier noted, City Staff continues to rely on the Trip Generation Report
5 prepared as part of the 2019 Plat and the associated Concurrency Ruling by the Public Works
6 Director. The Public Works Director has concluded that traffic generated from the project will
7 not cause the Level of Service at any impacted corridor or intersection to fall below the City's
8 Level of Service standard. Staff therefore finds that by constructing street improvements along
9 Sapp Road; building two new internal streets to City standards (Roads A and B), and paying
10 transportation impact fees, the project is consistent with the Tumwater Transportation Plan. The
11 Hearing Examiner concurs.

12 26. The Staff Report, at page 5, also analyzes the project's consistency with the
13 Thurston Regional Trails Plan and finds that the project does not affect any regional trail
14 networks or plans. The Hearing Examiner concurs.

15 27. The Staff Report, at page 6, analyzes the project's consistency with the
16 Sustainable Development Plan for the Thurston Region. Staff finds that there is nothing in the
17 proposed plat application in conflict with the Sustainable Development Plan for the Thurston
18 Region. The Hearing Examiner concurs.

19 28. The proposed Preliminary Plat, as conditioned, is consistent with the Tumwater
20 Comprehensive Plan, all Subarea Plans, and all other City and Regional Plans.

21 Findings Relating to Public Notice.

22 29. Notice of the Preliminary Plat application was mailed to property owners within
23 300 feet of the subject property and various agencies and posted onsite on March 7, 2023. The
24 notice was also published in The Olympian on March 10, 2023 (Exhibit 6).

1 30. The Notice of Application generated considerable public comments, generally in
2 opposition (Exhibits 15 and 16). These comments, and the parties who provided them, are set
3 forth at page 12 of the Staff Report. Generally, public comments expressed concern over the loss
4 of privacy, impacts to wildlife, stormwater issues, the loss of trees and impacts to surrounding
5 properties.

6 31. As noted earlier, the City did not reissue SEPA notice, relying instead on the 2019
7 SEPA DNS and the earlier notice of that SEPA Determination. WAC 197-11-230(3).

8 32. Notification of the public hearing was mailed to property owners within 300 feet
9 of the subject property, persons who provided comments on the Notice of Application, to various
10 agencies, and posted onsite on May 12, 2023. The public hearing notice was also published in
11 The Olympian in conformance with TMC 14.06.070 (Exhibit 6).

12 33. Notice of the public hearing generated additional public comment (Exhibits 22
13 and 23). These comments were of a similar nature to the public comments earlier received, and
14 also similar to the public testimony described earlier in the Public Hearing portion.

15 34. The only agency comment received in response to the public notices was from the
16 Squaxin Island and Nisqually Indian Tribes, both expressing no specific cultural concerns but
17 requesting an Inadvertent Discovery condition; from the City of Olympia inquiring about street
18 connectivity; and from Representative Doglio seeking additional information.

19 35. The earlier 2019 Plat had generated comments from the Tumwater School District
20 requesting the installation of a bus waiting area for students along proposed Road A. That earlier
21 request has been incorporated into conditions of approval for this Preliminary Plat. The
22 requested bus waiting area is identified on the Preliminary Plat Map (Exhibit 5) along the
23 southern portion of Road A near its intersection with Sapp Road.

1 Findings Relating to Allowed Maximum Density, and Density Calculations.

2 36. As noted earlier, the 2019 Plat was opposed by City Staff and denied by the
3 Hearing Examiner on the basis that it exceeded maximum allowed density. The current plat
4 application proposes the same number of single-family residential lots (36) as the 2019 Plat but
5 does so as a "Clustered Subdivision".

6 37. Pursuant to TMC 18.08.050.2, the maximum density for the RSR zoning
7 designation is four dwelling units per acre. However, if the proposed subdivision qualifies for
8 the clustering provisions found in TMC 18.08.050.2.E, and is not subject to wetland protection
9 standards, the maximum density increases by 125%. In order to achieve the 125% "density
10 bonus" provided in TMC 18.08.050.E, the following four criteria must be satisfied:

- 11 1. The portion set aside for open space shall be at least 30% of the
12 entire site;
- 13 2. At least one-half of the area set aside for open space shall be used
14 for passive recreational purposes;
- 15 3. The area set aside for open space shall be located so as to include
16 environmentally sensitive areas to the maximum extent possible; and
- 17 4. The Clustered Subdivision must meet all other provisions of
18 Chapter 18.08 TMC.

19 38. The proposed Preliminary Plat contains 3.22 acres of open space, or at least 30%
20 of the entire site. TMC 18.08.050.E.1 is satisfied.

21 39. At least one-half of the area set aside for open space is useful for passive
22 recreational purposes as more fully discussed in the Analysis Section. As noted in that section,
23 environmentally sensitive areas as well as stormwater areas can qualify for passive recreational
24 use.

1 40. The proposed Preliminary Plat identifies all environmentally sensitive areas and
2 has incorporated them into open space tracts, specifically Tracts B, C and E. See Landslide
3 Hazard Area Exhibit (Exhibit 5). TMC 18.08.050.E.3 is therefore satisfied.

4 41. As more fully set forth in other Findings, the proposed Clustered Subdivision
5 meets all other provisions of Chapter 18.08 TMC for Clustered Subdivision. TMC
6 18.080.050.E.4 is therefore satisfied.

7 42. As all requirements of TMC 18.08.050.E(1-4) have been met, the proposed
8 development qualifies as a Clustered Subdivision subject to a 125% bonus density. TMC
9 18.08.050.2.

10 43. The density calculation, including calculation of the bonus density, is applied to
11 the net developable area. The net developable area is the gross acreage (10.72 acres) less: (1)
12 environmentally sensitive areas (per Title 16 TMC) and (2) land used for roads and dedicated
13 public open spaces. TMC 18.08.080.B.1.

14 44. The site contains designated landslide hazard areas totaling 1.61 acres. Pursuant
15 to Title 16 TMC and TMC 18.08.080.B.1, this area is to be excluded from net developable area.

16 45. The project site contains roads and access easements totaling 1.17 acres. Pursuant
17 to TMC 18.08.080.B.1, this area is also to be excluded from the net developable area.

18 46. When landslide hazard areas (1.61 acres) and roads and access easements (1.17
19 acres) are deducted from the gross acreage of 10.72 acres, the net developable acreage becomes
20 7.94 acres.

21 47. As noted in earlier Findings, the site contains a number of two-lot shared
22 driveways. These shared driveways are not "roads" as the term is defined by City Staff. These
23 shared driveways are therefore not deducted from gross acreage when calculating net
24 developable area.

1 48. The net developable area (7.94 acres) multiplied by the maximum density in the
2 RSR zoning designation (4 units per acre) multiplied by the 125% density bonus results in the
3 project site having a maximum density of 37 units. The project's proposed density of 36 units
4 complies with the maximum allowed density.

5 Finding Relating to Compliance with Other Development Standards for the RSR Zoning
6 District.

7 49. The Staff Report, at page 7, analyzes the project in relation to the development
8 standards imposed on development in the Residential Sensitive Resource zone. As noted in the
9 previous Findings, the RSR zone has a minimum density of two dwelling units per acre and a
10 maximum of four dwelling units per acre but with a 125% density bonus if the development
11 satisfies all clustering provisions. The project satisfies all clustering provisions and is subject to
12 the density bonus as applied to the net developable acreage of 7.94 acres.

13 50. Development in the RSR zone is also subject to maximum height standards as
14 well as minimum front, rear and yard setback requirements. The project, as conditioned, satisfies
15 these requirements.

16 51. Single-family homes are a permitted use in the RSR zone.

17 Findings Relating to Compliance with the Aquifer Protection Overlay (AQP) Zoning
18 District, Chapter 18.39 TMC.

19 52. The project site is located within the Aquifer Protection Overlay (AQP) zone
20 district.

21 53. The AQP is intended to protect vulnerable land or critical aquifer recharge areas
22 within the City.

23 54. The proposed use is not a restricted land use in the AQP Overlay.

24 55. As a condition of project approval, an Integrated Pest Management Plan (IPMP)
25 approved by Thurston County Environmental Health will be required in order to minimize the

1 use of pesticides. City Staff finds that the project, as conditioned, will comply with the Aquifer
2 Protection Overlay. The Hearing Examiner concurs.

3 Findings Relating to Compliance with Cultural Resource Requirements, TMC 18.40.065.

4 56. As noted in earlier Findings, the Nisqually and Squaxin Island Tribes responded
5 to the Notice of Application (Exhibit 16). Neither Tribe indicated any specific concerns or
6 comments but both requested an Inadvertent Discovery condition. Pursuant to TMC 18.40.065,
7 the Tribes' requests will be incorporated as a condition of project approval.

8 Findings Relating to Compliance with Tree Protection and Replacement, Chapter 16.08
9 TMC.

10 57. As noted earlier, as part of the 2019 Plat, the Applicant submitted a professional
11 Forester's Report (Exhibit 12). The City finds that this earlier report remains relevant. The
12 report finds that there are a total of 353 trees on the property.

13 58. Chapter 16.08 TMC requires the proposed subdivision to retain 20% of the
14 existing trees or 12 trees per acre, whichever is greater.

15 59. The greater number between these two standards is 12 trees per acre. This will
16 require 112 trees to be retained.

17 60. The Forester's Report declares that 167 trees will be retained. The project
18 therefore satisfies the tree retention requirements of Chapter 16.08 TMC.

19 Findings Relating to Geologically Hazardous Areas, Chapter 16.20 TMC.

20 61. As noted earlier, the Applicant submitted a Geotechnical Report as part of the
21 2019 Plat (Exhibit 14). That report identified several areas onsite which qualified as
22 "geologically hazardous" areas pursuant to TMC 16.20.045.B.8. These are areas with slopes of
23 40% or steeper and with a vertical relief of 10 or more feet.

24 62. All geologically hazardous areas have been identified on the Site Plan Map and
25 have been incorporated into open space tracts, specially Tracts B, C and E (Exhibit 5).

1 63. As also noted earlier, all geologically hazardous areas, or 1.61 acres, have been
2 excluded from the net developable acreage when calculating maximum density.

3 Findings Relating to Compliance with Subdivision Requirements, Chapter 17.14 TMC
4 and Chapter 58.17 RCW.

5 64. Chapter 17.14 TMC, in conjunction with Chapter 58.17 RCW, require the
6 Hearing Examiner to inquire into the public use and interest proposed to be served by the
7 subdivision and any public dedications associated with it. The Hearing Examiner must consider
8 if appropriate provisions are made for public health, safety and general welfare, for open spaces,
9 drainage ways, streets or roads, alleys, or other public ways, other grounds, transit stops, potable
10 water supplies, sanitary waste, parks and recreation playgrounds, schools and schoolgrounds, fire
11 protection and other public facilities, and shall consider all other relevant facts including the
12 physical characteristics of the site, and determine whether the public interests will be served by
13 the land division and dedication. In addition, consideration shall be given for sidewalks and
14 other planning features to assure safe walking conditions for students walking to and from
15 school.

16 65. The Staff Report, commencing at page 10, contains extensive Findings relating to
17 the project's compliance with TMC 17.14.040 and RCW 58.17.110. City Staff finds:

18 ● Open space of more than three acres is included in the project. This acreage not
19 only satisfies the requirements of Chapter 18.08 TMC for Clustered Subdivision but also allows
20 for passive and active recreation purposes.

21 ● Public streets have been provided for through proposed Road A and B; frontage
22 improvements along Sapp Road including a bike lane, sidewalks and other frontage
23 improvements along both Roads A and B; and street illumination along Sapp Road as well as
24 Roads A and B.

1 ● A storm drainage system has been designed (Exhibit 17) in compliance with the
2 City's most current Drainage Design and Erosion Control Manual, taking into consideration the
3 site's topography and drainage as found in the Geotech Report (Exhibit 14).

4 ● Sanitary sewer and water will be extended to the site. The City's Public Works
5 Department has issued a Water Availability Ruling (Exhibit 18).

6 ● The site is not currently being considered by the Tumwater School District for
7 future needs. Intercity Transit does not currently service the site,

8 ● The Tumwater Fire Department has adequate facilities to service the proposed
9 site. As noted in the Public Hearing Section, some of the proposed lots will likely require
10 sprinkler systems to assist in their fire protection.

11 ● Children residing in the subdivision will attend Tumwater Hill Elementary,
12 Tumwater Middle School and Black Hills High School. Tumwater Hill Elementary is one mile
13 from the site; Tumwater Middle School is two miles; and Black Hills High School is three and
14 one-half miles. The school district has a policy for children walking to school. The district will
15 offer bus service to children in the subdivision. Elementary students in the northern part of the
16 subdivision can walk to an existing bus stop on Woodland Drive via new and existing sidewalks,
17 while middle and high school students in the north portion can walk to an existing bus stop on
18 Crosby Blvd. Students in the southern portion of the subdivision will rely upon a new bus
19 waiting area along Road A as discussed in earlier Findings.

20 66. In summary, City Staff finds that the project, as conditioned, will serve the public
21 interest and that all considerations set forth in TMC 17.14.040 and RCW 58.17.110 have been
22 met. The Hearing Examiner has carefully reviewed Staff's Findings and concurs.

23 67. City Staff recommends approval of the proposed subdivisions subject to the 49
24 conditions set forth in the Staff Report commencing at page 13. The Hearing Examiner has
25

1 noted 3 additional conditions in the Analysis Section, being necessary to satisfy the requirements
2 of TMC 17.14.040 and RCW 58.17.110.

3 Having entered his Findings of Fact, the Hearing Examiner makes the following:

4 **CONCLUSIONS OF LAW**

- 5 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.
- 6 2. Any Conclusions of Law contained in the foregoing Background, Public Hearing
7 and Analysis Sections or Findings of Fact are hereby incorporated by reference and adopted by
8 the Hearing Examiner as his Conclusions of Law.
- 9 3. The requirements of SEPA have been met.
- 10 4. All notice requirements have been met.
- 11 5. The Preliminary Plat, as conditioned, conforms to the subdivision regulations,
12 Comprehensive Plan, zoning ordinance, wetland ordinance, fish and wildlife habitat protection
13 ordinance, tree protection ordinance, and to planning standards, development standards,
14 specifications and policies of the City of Tumwater.
- 15 6. Adequate provisions have been made for public health, safety and general
16 welfare, and for such open spaces, drainage ways, streets, sanitary waste, parks and recreations,
17 schools, sidewalks, and the public use and interest will be served by the subdivision of the
18 property.
- 19 7. The requirements of TMC 18.08.050.E(1-4) for Clustered Subdivisions have been
20 met and the project is entitled to a 125% density bonus.
- 21 8. Stormwater areas and critical areas included within open spaces can be considered
22 for passive and active recreational use as required by TMC 18.08.050.E.2.
- 23
24
25

1 9. When calculating net developable area for maximum density calculations,
2 environmentally sensitive areas (1.61 acres) and roads and access easements (1.17 acres) are
3 excluded, but all other open space areas and all shared driveways are included, resulting in 7.94
4 net developable acres and maximum density of 37 single family lots.

5 10. The City Staff's interpretation of its own regulations, including its interpretation
6 that shared driveways are not "roads" is entitled to deference, especially when this interpretation
7 has been consistently applied to all prior applications.

8 11. The project, as conditioned, is consistent with the Tumwater Comprehensive Plan
9 and the Tumwater Hill Neighborhood Subarea Plan; with the Tumwater Parks & Recreation
10 Plan; with the Tumwater Transportation Plan; with the Thurston Regional Trails Plan; with the
11 Sustainable Development Plan for the Thurston Region; with the Residential Sensitive Resource
12 zoning district; and with the Aquifer Protection Overlay zoning district.

13 12. The project, as conditioned, is in compliance with cultural resource requirements,
14 TMC 18.40.065.

15 13. The project, as conditioned, complies with all tree protection replacement
16 requirements set forth in Chapter 16.08 TMC.

17 14. The project, as conditioned, complies with all requirements for geologically
18 hazardous areas set forth in Chapter 16.20 TMC.

19 15. The project, as conditioned, complies with all other requirements set forth in
20 Chapter 17.14 TMC.

21 16. The project should be approved subject to the conditions set forth in the Staff
22 Report together with those additional conditions imposed by the Hearing Examiner.

1 **DECISION**

2 Now, therefore, the Applicant's request for Preliminary Plat approval to subdivide 10.72
3 acres into 36 single-family lots within a Clustered Subdivision, with associated improvements,
4 shall be **approved** subject to the following conditions:

5 **CONDITIONS**

6 1. Stormwater from impervious surfaces associated with the project shall be
7 managed in accordance with the City of Tumwater 2022 Drainage Design and Erosion Control
8 Manual.

9 2. Blasting permits will be required if the underlying rock cannot be removed by
10 conventional methods. If the blast area is within 100 feet of other structures, the permit applicant
11 is required to notify the affected property owners a minimum of two weeks in advance of any
12 blast. If the affected property owners request a pre- blast inspection of their structure, one shall
13 be performed at the developer's cost. The permit application shall include the surrounding
14 property owner's information and copies of the letters notifying them of their option. Blasting
15 permits are not issued "over the counter" so sufficient time needs to be incorporated in the
16 schedule to receive the permit.

17 3. Some of the lots in this plat have steep slopes that exceed 15% and may be
18 located on rock or areas containing ground or surface water. In addition, areas of fill and
19 construction of rockeries or retaining walls may be required to establish lots suitable for
20 building. Therefore, the footings and foundations for structures are required to be designed by a
21 licensed structural engineer and geo-tech slope report submitted for each lot. The Building
22 Official will decide upon completion of the grading and site development if this requirement will
23 apply to all lots.

24 4. The Fire Department has determined that because access may be difficult for
25 some of the lots in the plat additional fire protection measures are needed. Authority for the
following requirement is derived from the International Fire Code (IFC) 503.1.1 and 503.2.

5. Residential fire sprinklers, meeting the requirements of NFPA 13D will be
required to be installed in the homes on the following lots: 7, 6, 9, 10, 16, 17, 19, 21, 22, 23, 24,
25, 28, 29, 30, 32, 33, 36 and 35. Pursuant to comment #4 above, additional lots may be added to
this list.

6. The lots that are requiring sprinklers will need 1" water meters installed, unless
design fire flows can be achieved with 3/4" water meters.

1 7. The maximum grade on public streets within the subdivision shall be 15 percent.

2
3 8. Erosion and sediment control measures that comply with the City of Tumwater
4 2022 Drainage Design and Erosion Control Manual shall be implemented during construction of
the project to prevent sediment laden runoff from entering surface waters.

5 9. A Site Development/Grading Permit shall be obtained from the City for grading,
6 street, sidewalk and utility construction, tree removal and construction of storm drainage
7 facilities.

8 10. In accordance with TMC 18.08.070, clearing, grading or other activities that
9 remove or substantially alter vegetative ground cover shall not be permitted during the wet
10 season (between October 1 and April 30) to protect environmentally sensitive areas from
potential sedimentation and runoff associated with these activities.

11 11. Should contaminated soils be encountered during construction, all of the
12 following shall apply:
13 a. Construction activity shall be immediately suspended;
14 b. The contractor shall immediately notify the Washington State Department of
Ecology;
15 c. Contaminated materials shall be properly handled, characterized, and disposed of
16 consistent with applicable regulations.

17 12. Pursuant to TMC18.40.065, Building, grading, land clearing, shoreline, and
18 development permits shall include the following Inadvertent Discovery note:

19 When an unanticipated discovery of protected cultural material (e.g., bones, shells, stone
20 tools, beads, ceramics, old bottles, hearths, etc.) or human remains are discovered, the property
21 owner or contractor will immediately stop all work, completely secure the location, and contact
the Washington State Department of Archaeology and Historic Preservation and other contacts
as identified in the City of Tumwater Standard Inadvertent Archaeological and Historic
Resources Discovery Plan. The individual or representative whom the permit was issued to must
send written notification of the inadvertent discovery to the City of Tumwater Community
Development Department.

22 13. Fill for the project shall be clean material, void of solid waste or organic debris.

23 14. Disposal of construction debris and overburden associated with construction and
24 grading activity that is not suitable for fill is required to be disposed of at an approved location.

1 15. The applicant shall secure a National Pollutant Discharge Elimination System
2 (NPDES) Construction Storm Water General Permit from the Washington State Department of
3 Ecology.

4 16. The proposed public streets within the subdivision shall comply with the
5 Tumwater Development Guide design requirements in place at the time the preliminary plat
6 application was vested, subject to the following: Road A as depicted in the preliminary plat map
7 shall provide 40-foot right-of-way, and Road B shall provide 48 foot right-of-way. Public streets
8 shall be dedicated to the City of Tumwater.

9 17. No parking signs shall be installed in the cul-de-sac turnaround areas.

10 18. Street frontage improvements including curb and gutter, sidewalk, landscape strip,
11 bike lane, street illumination and storm drainage facilities complying with the design
12 requirements of the Tumwater Development Guide shall be constructed along the property
13 frontage on Sapp Road. Additional right-of-way, as necessary, shall be dedicated to contain the
14 improvements.

15 19. The City's water and sewer utilities shall be extended to serve the needs of the
16 subdivision. The utility extensions shall be in accordance with the Tumwater Development
17 Guide requirements in place at the time the preliminary plat application was vested. All
18 necessary right-of-way and/or easement will need to be dedicated.

19 20. The minimum fire flow requirement for the project shall be 1,000 gallons per
20 minute at 20 pounds per square-inch. The system shall be designed for a maximum velocity of 8
21 feet per second.

22 21. If the required fire flow cannot be achieved, NFPA 13D residential fire sprinklers
23 shall be required in each home in the subdivision.

24 22. Separate permits and engineered designs are required for all retaining walls on-
25 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.

 23. 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. The report shall also include

1 recommendations for measures to protect existing and future homes and properties in the event
2 of slope failure related to the steep slopes identified on the property.

3 24. All grading and filling work shall be conducted in accordance with the approved
4 soils report. Compaction testing of the soils under the building foundations and utility trenches
5 shall be verified by the geotechnical engineer of record and the WABO registered special
6 inspector.

7 25. Fire hydrants shall be provided at all intersections and at approximately 600-foot
8 spacing along the internal streets.

9 26. Fire hydrants and paved access roads shall be installed, tested for fire flow by the
10 Fire Department and made serviceable by the Public Works Department prior to any building
11 permits being issued.

12 27. The project proponent shall be responsible for providing the City with all costs
13 associated with the installation of water, sewer, street and storm drainage systems that are
14 dedicated to the City of Tumwater.

15 28. All engineering designs and construction will need to be in accordance with the
16 City of Tumwater's Development Guide and WSDOT standards.

17 29. All street construction, utility installation and storm drainage work requires
18 engineered plans certified by a professional engineer licensed to practice in the State of
19 Washington. The plans shall be submitted for review and approval by the City.

20 30. Any public or private utility relocation necessary to construct the project is the
21 sole responsibility of the project proponent.

22 31. The applicant is required to submit a performance surety and surety agreement
23 prior to release of the Site Development/Grading Permit to ensure successful completion of the
24 required public improvements. The amount of the surety shall be 150% of the proponent
25 engineer's estimate of completing the required public improvements.

26 32. The applicant shall be responsible for the maintenance and timely repair of all
27 public improvements for a period of 30 months following final certification by the City and shall
28 submit a surety and surety agreement for maintenance equal in value to fifteen (15) percent of
29 the total value of the required public improvements certified by the Public Works Director.

1 33. Maintenance of the on-site storm water system will be the responsibility of the
2 project proponent, their successors or assigns. A stormwater maintenance agreement will be
3 recorded against the property prior to or concurrent with final plat approval.

4 34. A water main special assessment fee has been recorded against this property. The
5 fee in the amount of \$12,216.01 shall be paid to the City of Tumwater prior to recording the final
6 plat map with the Thurston County Auditor.

7 35. Back flow prevention is required on all irrigation services in accordance with the
8 AWWA Cross Connection Control Manual.

9 36. A landscape and irrigation plan must be submitted for the proposed street planter
10 strips, proposed open space tracts and the storm water facilities showing proposed plantings, tree
11 types and heights, and other vegetation. Street trees are required to be installed along Sapp Road
12 and the proposed interior public streets in accordance with the Tumwater Development Guide
13 and Comprehensive Street Tree Plan. This plan must be submitted as part of site development
14 grading application, and approved prior to final plat approval.

15 37. Each residential lot shall have a building site no less than 1,600 square feet in area
16 within which a suitable building can be built and served by utilities and vehicular access unless
17 dedicated or restricted by covenant for open space, park, recreation or other public use.

18 38. The minimum lot size shall be 7,600 square feet.

19 39. The maximum impervious surface for all lots within the subdivision shall be forty
20 percent of the total area of the lot.

21 40. Two off-street parking spaces are required for each lot. Driveways and off-street
22 parking spaces must be hard-surfaced (asphalt, concrete or turfstone).

23 41. Impact fees for traffic, community parks, and schools will be assessed to each
24 dwelling unit in the subdivision as building permits are issued. The impact fees will be in
25 accordance with the most current fee resolution adopted by the City at the time of vesting of the
26 building permit applications.

27 42. An integrated pest management plan approved by Thurston County
28 Environmental Health must be submitted to the City of Tumwater prior to final plat approval.

1 43. All legal descriptions on documents submitted to the City must be accompanied
2 with an appropriate drawing that the City can use to verify the legal description.

3 44. The Professional Land Surveyor responsible for the surveying of the project must
4 obtain a permit from Department of Natural Resources before any existing monuments are
5 disturbed.

6 45. The applicant must maintain a current Plat Name Reservation Certificate
7 approved by the Thurston County Auditor.

8 46. Property taxes may need to be paid for the current year, including any advance
9 and delinquent taxes, before a Final Plat can be recorded. Please contact Thurston County
10 Auditor's Office to confirm taxes due.

11 47. A Homeowners Association is required to be formed for the project. Prior to final
12 plat approval, the project proponent shall supply the City with copies of the grantee
13 organization's articles of incorporation and bylaws, and with evidence of a binding commitment
14 to convey. The articles of incorporation shall provide that membership in the organization shall
15 be appurtenant to ownership of land in the land division; that the corporation is empowered to
16 assess such land for costs of construction and maintenance of the improvements and property
17 owned by the corporation, and that such assessments shall be in lien upon the land.

18 48. At the request of the Tumwater School District, the developer shall be required to
19 install a new concrete school bus waiting area at the northeast intersection of Sapp Road and
20 proposed Road A, south of proposed Tract A.

21 49. In addition, the developer is required to install a "School Bus Stop Ahead" sign at
22 the corner of Sapp Road and Crosby Boulevard. The final location of the sign shall be approved
23 by the City's Public Works Department.

24 50. Upon receipt of civil plans from the Applicant, City Staff shall notify all
25 adjoining landowners of their receipt and shall provide copies upon request.

51. The Applicant shall be required to provide a vegetative buffer to the extent
practicable and as approved by City Staff in the portion of the Road A right-of-way west
of the as-built road.

1 52. Pervious concrete or asphalt shall be used for driveways if necessary to
2 maintain maximum impervious lot coverage at 40%.

3 DATED this 2 day of February, 2024.

4
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6 _____
7 Mark C. Scheibmeir
8 City of Tumwater Hearing Examiner

9 **HEARING EXAMINER**
10 **POST-DECISION PROCEDURES**

11 The following sections of the Tumwater Municipal Code outline procedures for requesting
12 reconsideration of a decision by the Tumwater Hearing Examiner and appealing a decision made by the
13 Tumwater Hearing Examiner.

14 **TMC 2.58.135 Reconsideration.**

15 Upon the written request of a party of record filed with the city clerk within five working days of the
16 hearing examiner's written decision, such decision may be reconsidered at the discretion of the hearing
17 examiner. The request for reconsideration must state the grounds upon which the request is made. In the
18 event reconsideration is granted, the hearing examiner shall have an additional 10 working days to render
19 a written final decision.

20 **TMC 2.58.150 Appeal from examiner's decision.**

21 A. In cases where the examiner's jurisdictional authority is to render a decision, the decision of the
22 examiner shall be final and conclusive unless appealed to superior court within the applicable appeal
23 period as set forth in TMC 2.58.180.

24 B. In cases where the hearing examiner decision is appealable to the city council, the decision of the
25 examiner shall be final and conclusive unless appealed within the applicable appeal period as set forth in
26 this section.

27 C. Appeals to the city council must be filed with the city clerk by the applicant or other party of record, a
28 department of the city, county or other agency within 14 calendar days following rendering of such
29 decision. Persons not in attendance at the hearing but who submit written information prior to the hearing
30 which becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in
31 writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be
32 accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall
33 not be charged to a department of the city or to other than the first appellant.

34 D. In the event an apparent prevailing party files an appeal to preserve appeal rights and no opposing
35 appeals are filed, said party may, by giving written notice thereof to the city clerk, abandon their appeal
36 and in such event shall be refunded their filing fee.

37 E. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as
38 the appeal is adjudicated by the city council or is withdrawn.

39 F. Within five days after the final day upon which an appeal may be filed, notice thereof and of the date,
40 time and place for city council consideration shall be mailed to the applicant, all other parties of record

41 *Findings of Fact, Analysis,*
42 *Conclusions of Law*
43 *and Decision - 43*

CITY OF TUMWATER HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

1 and anyone who submitted written information prior to the hearing. Such notice shall additionally indicate
2 the deadline for submittal of written arguments as prescribed in TMC 2.58.160.

3 **TMC 2.58.180 Judicial appeals.**

4 Final decisions (after exhausting administrative remedies) may be appealed by a party of record with
5 standing to file a land use petition in the Thurston County superior court, except shoreline permit actions
6 which may be appealed to the shoreline hearings board. Such petition must be filed within 21 days of
7 issuance of the decision as provided in Chapter 36.70C RCW.

8 Updated: June 10, 2013
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