

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

In the Matter of the Application of	)	No. TUM-18-1124
	)	
<b>Donald Gendlek</b>	)	Gendlek Short Plat and PUD
	)	
For Approval of a Short Plat and	)	FINDINGS, CONCLUSIONS,
<u>Planned Unit Development</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a preliminary short plat and planned unit development to subdivide approximately 1.13 acres into seven single-family residential lots, at 2518 70th Avenue SW, 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 November 14, 2018. The record was left open until November 19, 2018, for the City to provide additional information related to traffic and safe walking routes for school children.

Testimony:

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

Suresh Bhagavan, City Associate Planner  
Chris Carlson, City Permit Manager  
Donald Gendlek, Applicant  
Judy Kimeldorf  
Rebecca Teter  
Kenneth Stone  
Carrie Fenner  
Scott Kelly

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated November 6, 2018
2. Preliminary Planned Unit Development Application, received August 30, 2018
3. Preliminary Short Plat (Sheet No. 1 of 2), dated July 5, 2018; Preliminary Utility Plan (Sheet No. 1 of 2), dated July 5, 2018
4. Vicinity Map, dated October 25, 2018
5. Land Use Designation Map, dated October 25, 2018

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6. Zoning Map, dated October 25, 2018
7. Chapter 18.12 TMC, Single-Family Medium Density Residential Zone District, printed November 5, 2018
8. Chapter 18.39 TMC, Aquifer Protection Overlay, printed November 5, 2018
9. Tumwater Development Guide, Section 4.8
10. Transportation Concurrency Assessment, dated September 5, 2018
11. Preliminary Storm Drainage and Erosion Control Report, Clear Creek Solutions, Inc., dated July 25, 2018
12. Mazama Pocket Gopher Study, West Fork Environmental, dated August 15, 2018
13. Determination of Nonsignificance, issued September 27, 2018; SEPA Environmental Checklist, dated August 24, 2018
14. Notice of Application, dated September 10, 2018
15. Water and Sewer Availability Certificate, dated July 25, 2018
16. Email from Judith Webb to Suresh Bhagavan, dated September 17, 2018
17. Letter from Kyle Jones and Rebecca Teter, dated September 22, 2018, with 10 photos
18. Letter from Carrie Fenner, dated September 24, 2018
19. Letter from Department of Ecology, Southwest Regional Office, to Suresh Bhagavan, dated September 24, 2018
20. Letter from Judy Kimeldorf, Gold Creek Property Owners Association, to Tumwater Planning Commission, received September 24, 2018
21. Certification of Public Notice, dated November 2, 2018
22. Petition to Stop Development, undated
23. Comments of Kenneth Stone, received November 14, 2018
24. Letter from Tumwater School District to Suresh Bhagavan, dated November 15, 2018
25. Letter from Suresh Bhagavan to the Hearing Examiner, dated November 16, 2018

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

## **FINDINGS**

### Application and Notice

1. Donald Gendlek (Applicant) requests approval of a preliminary short plat and planned unit development to subdivide approximately 1.13 acres into seven single-family residential lots. The vacant property is located at 2518 70th Avenue SW, and a private roadway would provide access to the homes within the development.<sup>1</sup> *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 3.*
2. The City of Tumwater (City) determined that the application was complete on September 7, 2018. On September 10, 2018, the City posted notice of the application on the property and mailed notice to property owners within 300 feet of the subject property and

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<sup>1</sup> The property is identified by Tax Assessor Parcel Nos. 12704420400. *Exhibit 2.* A legal description of the property is included with the preliminary short plat map. *Exhibit 3.*

to reviewing government departments and agencies. The next day, the City published notice of the application in the *Olympian*. On November 2, 2018, the City mailed notice of the open record hearing associated with the application to property owners within 300 feet of the subject property, published notice of the open record hearing in *The Olympian*, and posted notice on-site. *Exhibit 1, Staff Report, page 6; Exhibit 14; Exhibit 21.*

3. As discussed in detail below, the City received several written comments from members of the public opposing the proposal. In addition, the City received two comments from reviewing government departments and agencies in response to its notice materials:
  - The Department of Ecology (DOE) commented that, if toxic contamination is suspected, discovered, or occurs during development, the Applicant must test the potential contaminated medium and notify DOE. DOE also provided general comments about the need for erosion control measures during construction and the need for appropriate stormwater and solid waste management on-site.
  - The Tumwater School District noted that Michael T. Simmons Elementary, Tumwater Middle School, and Black Hills High School are all less than one mile from the proposed development. Because walking routes in the area are incomplete, however, students would be offered bus service from the development, to these schools.

*Exhibit 19; Exhibit 24.*

#### State Environmental Policy Act

4. The City Community Development Department (CDD) acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington RCW (RCW). CDD reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. CDD provided notice on September 10, 2018, with the notice of application, using the optional DNS process allowed by Washington Administrative Code (WAC) 197-11-355, that it expected to issue a Determination of Nonsignificance (DNS) for the proposal. The notice materials provided for a comment deadline of September 27, 2018. The City received no comments specific to the threshold SEPA determination. Accordingly, on September 27, 2018, CDD issued the DNS. The DNS was not appealed. *Exhibit 1, Staff Report, page 6; Exhibit 13; Exhibit 14.*

#### Comprehensive Plan and Zoning

5. The property is within the Littlerock Neighborhood under the City's Comprehensive Plan and is designated Single-Family Medium Density Residential. The Single-Family Medium Density Land Use Designation in the Comprehensive Plan states that the density of new development "should be averaged over the entire site in order to reach the maximum densities required to accommodate future population" and that it "is not the intent of the City to require that lots be a specific size but that densities are met as an

average of the overall site.” *City Comprehensive Plan, Land Use Element, page 34*. The Comprehensive Plan calls for density of 6 to 9 dwelling units per acre within the Single-Family Medium Density Residential designation and notes that a mix of housing types should be provided “in order to provide affordable housing and ensure neighborhood stability.” *City Comprehensive Plan, Land Use Element, page 35*. The project is proposed at 9 dwelling units per acre. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 4; Exhibit 5*.

6. The property is located in the Single-Family Medium Density (SFM) zoning district, which allows a density of six to nine units per acre. The intent of the SFM zoning district is to provide for a high standard of development for residential areas of moderate density in which single-family housing is the primary form of development; encourage and plan for the availability of public services and community facilities, such as utilities, police and fire protection, streets, public transit, schools, and parks and recreation; encourage development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere and contain a variety of housing types; and ensure that development without municipal utilities is at a density and in a configuration that enables cost-effective urban density in-fill development when municipal utilities become available. *Tumwater Municipal Code (TMC) 18.12.010*. City staff determined that the proposed project, at just under 8 dwelling units per acre, is at a density that meets the requirements of the Comprehensive Plan and zoning regulations. Staff also determined that the proposal would meet minimum lot size, width, coverage, and setback requirements of TMC 18.12.050. *Exhibit 1, Staff Report, page 3; Exhibit 4; Exhibit 6; Exhibit 7*.
7. Properties to the east and west are also zoned SFM and are developed with single-family residences. The Gold Creek Subdivision abuts the property to the north and is zoned Single-Family Low-Density Residential (SFL). Property to the south, across 70th Avenue SW, is zoned Multi-Family Medium-Density Residential (MFM) and is developed with a mobile-home park and a Puget Sound Energy electrical substation. *Exhibit 1, Staff Report, page 2; Exhibit 4; Exhibit 6; Exhibit 7*.

#### Critical Areas

8. There are no known critical areas on-site. Mazama pocket gophers, however, are known to inhabit the geographic area where the subject property is located. The Mazama pocket gopher is listed as a protected species under both Washington State and Federal threatened and endangered species lists. The Applicant submitted a Mazama Pocket Gopher Study, dated August 15, 2018, prepared by West Fork Environmental for the property. The study determined that no gopher mounds were observed on the subject property. With no gopher occupation observed on the property subject to this preliminary plat application, City staff determined that the project is consistent with the applicable

environmental protection ordinances for the City of Tumwater. *Exhibit 1, Staff Report, page 6; Exhibit 12.*

9. The property is also located in the Aquifer Protection overlay zoning district (AQP). The AQP overlay district is an overlay zone covering the entire city: it is intended to “protect vulnerable and/or critical aquifer recharge areas within the city and urban growth area” by “preventing future pollution from new or different land uses or activities.” *TMC 18.39.010.* The proposed residential subdivision is not a restricted use within the AQP overlay district. City staff determined that compliance with the City’s Drainage Design and Erosion Control Manual and connection of all lots to the City’s sewer system would satisfy requirements for protection in the AQP overlay district. *TMC 18.39.010; Exhibit 1, Staff Report, pages 6 and 7; Exhibit 8.*

#### Trees

10. TMC 16.08.070.R requires that, when land clearing is performed in conjunction with a specific development proposal, not less than 20 percent of the trees, or not less than 12 trees per acre (whichever is greater), must be retained. TMC 16.08.050.B requires that a tree protection plan be prepared by a qualified professional forester and submitted in conjunction with the Applicant’s land clearing permit. Of note, in determining which trees should be given the highest priority for retention, consideration should be given to the following criteria:
- heritage or historic trees;
  - trees that are unusual due to their size, age, or rarity;
  - trees in environmentally sensitive areas;
  - trees that act as a buffer to separate incompatible land uses;
  - trees that shelter other trees from strong winds that otherwise could cause them to blow down;
  - trees within greenbelts, open space, tree protection open space, or buffers;
  - trees with significant habitat value, as identified by a qualified wildlife biologist or by the city tree protection professional; and
  - trees that are part of a continuous canopy or that are mutually dependent, as identified by a qualified professional forester or the city tree protection professional.

*TMC 16.08.070.R.5.*

#### Stormwater

11. The Applicant submitted a Storm Drainage and Erosion Control Report (Stormwater Report), dated July 25, 2018, prepared by Clear Creek Solution, Inc. The Stormwater Report predominantly included the analysis of a previous report, dated October 22, 2010, prepared by Materials Testing & Consulting, Inc. This analysis determined that it would be appropriate to treat stormwater on-site through infiltration of roof water runoff on each individual lot and by grading each lot to have runoff drain to the private road (which

would utilize porous asphalt) for infiltration. The analysis notes that stormwater on-site would be self-contained. Although the report indicates that it would be feasible to develop the site as proposed, significant changes have occurred since 2010 in how stormwater should be treated, and additional analysis is necessary. Accordingly, the Applicant must submit an updated stormwater report with grading permits addressing how low-impact development techniques and infiltration best management practices (BMPs) would be used to decrease overall site runoff and maintain the site's natural hydrologic conditions, consistent with the City's most recently adopted stormwater manual. *Exhibit 1, Staff Report, page 6; Exhibit 11.*

#### Utilities

12. The Applicant would extend private utilities (i.e., power, gas, cable, and telephone) to the project site. Water and sewer would be provided by the City of Tumwater, electricity and natural gas would be provided by Puget Sound Energy, telephone and cable service would be provided by Comcast and CenturyLink, and garbage collection would be provided by Pacific Disposal. A gravity sanitary sewer latecomer agreement is in place, and the Applicant would be required to pay \$14,989.79 prior to recording the short plat. A water main latecomer agreement is also in place, and the Applicant would be required to pay \$17,301.05 prior to recording the short plat. All utilities on-site would be underground, in accordance with TMC 17.12.200. *Exhibit 1, Staff Report, page 2; Exhibit 15.*

#### Access, Parking, and Traffic

13. As noted above, a new private roadway would provide access to the development off of 70th Avenue SW. The City of Tumwater Development Guide, Section 4.8, restricts the number of dwelling units on separate parcels served by a private street system to four unless a planned unit development is proposed. In that instance, as would occur here, the private road must meet or exceed the City's minimum design standards for private streets, remain accessible at all times for emergency and public service vehicles, not result in land-locking present or future parcels or obstruct public street circulation, and be appropriately maintained by a homeowners association or other legal entity. Here, City staff determined that the private road would meet each of these requirements. The Applicant would provide frontage improvements along the portion of 70th Avenue SW abutting the property, including sidewalks, as required by the municipal code. *Exhibit 1, Staff Report, page 5; Exhibit 9.*
14. Two off-street parking spaces would be provided for each lot. The Applicant submitted a Transportation Concurrency application as required by Chapter 15.48 TMC. The City's Public Works Director issued a transportation concurrency ruling for the project. The concurrency ruling indicates that traffic generated from the project would not cause the level of service, at any impacted corridor or intersection, to fall below the City's level of service standard. According to the City of Tumwater Transportation Plan, the LOS for

70th Avenue SW is “LOS-D,” and the existing LOS for the closest intersection, 70th Avenue SW and Littlerock Road, is “LOS-A.” Traffic impact fees would be assessed for each dwelling unit in the subdivision, as building permits are issued, to help mitigate traffic impacts from the proposal. *Exhibit 1, Staff Report, pages 5 and 6; Exhibit 3; Exhibit 25.*

#### Schools and Parks

15. Children residing within the proposed subdivision would attend Michael T. Simmons Elementary, Tumwater Middle School, and Black Hills High School. As noted above, the Tumwater School District determined that the schools are “non-walking schools,” because of the lack of area sidewalks and that students would be offered bus service from the development to these schools. Accordingly, the Applicant would ensure that safe walking routes to bus stops within the neighborhood are provided. *Exhibit 1, Staff Report, page 9; Exhibit 24; Exhibit 25.*
16. The Parks and Recreation element of the Tumwater Comprehensive Plan does not identify the property as a potential site for a future neighborhood or community park. The zoning code does not require that open space be provided within the SFM zoning district. Impact fees for community parks and schools, however, would be assessed for each dwelling unit in the subdivision, as building permits are issued, to mitigate impacts to neighborhood parks. City staff determined that, with payment of community park impact fees for each single-family residence proposed in the subdivision, the proposed short plat and planned unit development would be consistent with the Comprehensive Parks Plan and with municipal code requirements. *Exhibit 1, Staff Report, page 8.*

#### Written Comments

17. As noted above, the City received several public comments in response to its notice materials in opposition to the proposal. Specifically,
  - Kyle Jones and Rebecca Teter wrote the City with concerns over the proposed density. They noted that they would not oppose up to 4 homes being built on the property but “shoehorning” 7 homes creates privacy concerns and is not consistent with the neighborhood. They stress that allowing a proposal like this would change the neighborhood and negatively impact property values. They would like the 100-foot trees on the northern portion of the lot to be retained in a protected greenbelt and a privacy fence to be provided along the perimeter of the property. Finally, they noted that increased traffic would be a concern.
  - Carrie Fenner wrote the City with similar concerns to those of Mr. Jones and Ms. Teter and stressed that the proposal would impact privacy for adjoining lots, change the neighborhood, and create undesirable increases in noise and traffic.
  - The Gold Creek Property Owners Association provided a comment letter in which it recommended that a wooded buffer be preserved on the northern portion of the property to provide a privacy screen between the proposed development and the

existing Gold Creek Subdivision. It also requested that development be limited to no more than 4 homes. The Association expressed concern over emergency vehicle access to the development, increased area traffic, and increased residential density in the area.

- 26 area residents submitted a petition expressing opposition to the proposal, noting that the City “must protect current homeowners from the decreased property value and privacy that will result from this project.”

*Exhibit 17; Exhibit 18; Exhibit 20; Exhibit 22.*

#### Testimony

18. City Associate Planner Suresh Bhagavan testified generally about the application review process, explaining that the City reviewed the application for consistency with the Comprehensive Plan, zoning requirements, and critical areas ordinances. Mr. Bhagavan explained that the Comprehensive Plan encourages in-fill development and increased density under the Single-Family Medium Density Residential designation, up to 9 dwelling units per acre (du/acre), and the project would result in a density of just under 8 du/acre. He stressed that the minimum density allowed for a subdivision in the SFM zone would be 6 du/acre and that the property has been zoned SFM since 1997. Mr. Bhagavan noted that tree protection would be required and that project plans indicate the Applicant would most likely protect trees along the northern boundary of the property. He also explained that the municipal code does not require vegetative buffers between residential properties. *Testimony of Mr. Bhagavan.*
19. City Permit Manager Chris Carlson testified that the City is aware that some adjacent properties contain wells. He noted that a well protection area is required, that sanitary sewer lines would not be allowed within a 50-foot radius of any wells, and that project plans do not call for placing sewer lines in any such areas. Mr. Carlson also explained that neither the storm drainage facilities treating polluted water nor the private road serving the plat would be located within the well protection area. *Testimony of Mr. Carlson.*
20. Applicant Donald Gendlek testified that he purchased the property in 2008 and previously removed all structures on the property. He noted that he understands that people are concerned about development but noted that, to meet minimum density requirements, it is necessary to either site more single-family residences or place a different type of housing on-site, such as multi-family apartments. *Testimony of Mr. Gendlek.*
21. Area resident Judy Kimeldorf testified that she has lived in Tumwater for 39 years and has seen the city grow. She noted that her primary concerns are traffic and poor road access. She noted that additional developments are being built along 70th Avenue SW, and it does not appear that the City is accounting for cumulative impacts from growth.

Ms. Kimeldorf also expressed concern over stormwater and the removal of too many trees on-site. She stressed that, although trees can be planted to replace those removed, it is difficult to replace a 100-year old tree. *Testimony of Ms. Kimeldorf.*

22. Rebecca Teter testified that her property is adjacent to the subject property, and she would not have purchased her home if she had known that it would be possible for someone to develop at this density in the area. She stressed that her privacy would be lost with this development and she is concerned that property values for existing homes would drop with this type of development. Finally, she noted that the proposal does not account for safe walking routes for students and that it would have a detrimental impact on the quality of life of existing residences, especially with the loss of privacy. *Testimony of Ms. Teter.*
23. Kenneth Stone testified that he is a 30-year resident of Tumwater. He noted that most homes in the vicinity are on one-acre lots and that density of even 3 to 4 homes per acre would be appropriate. Here, though, with 7 homes, there would be inadequate space on the lots to provide a vegetative buffer between the new homes and existing development. Mr. Stone stressed that it would be preferable to have a dedicated tract of land, maintained by an HOA, to provide such a buffer. Finally, Mr. Stone stressed that hundreds of homes have been added along 70th Avenue SW in the last several years, and yet, there do not appear to be any plans to improve the street, a serious problem.<sup>2</sup> *Testimony of Mr. Stone.*
24. Carrie Fenner testified that she lives adjacent to the north side of the property, and as a result, the proposed homes would be looking into her windows. She is not opposed to development, but putting 7 homes on this particular lot seems excessive. Ms. Fenner testified that she would like there to be a permanent vegetative buffer between her property and the development. She noted that it is discouraging that a home could be placed 5 feet from her property line. *Testimony of Ms. Fenner.*
25. Scott Kelly testified that he lives in the adjacent Gold Creek Subdivision. He stated that, like other neighbors, he does not oppose development but believes fewer homes on the site would be appropriate. Mr. Kelly noted that traffic is a concern and that the lack of contiguous sidewalks on 70th Avenue SW is a problem. He also noted that removing most of the existing trees on the property would impact quality of life and that 3 to 4 homes would be more appropriate. *Testimony of Mr. Kelly.*
26. In response to public comments, Mr. Bhagavan noted that a traffic study is only required if a project would generate 50 PM peak hour trips. He also noted that the Applicant would be required to install frontage improvements along 70th Avenue SW adjacent to the property and that, with each future development, additional improvements on 70th

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<sup>2</sup> Mr. Stone provided a copy of his prepared remarks at the hearing. It has been admitted as Exhibit 23.

Avenue SW would occur. Mr. Bhagavan explained that, under the municipal tree protection ordinance, 20 percent of trees on-site would need to be protected and that it is likely that trees along the northern property boundary would be preserved here. There are no buffer requirements, however, between two properties zoned for residential development. He testified that project plans indicate that municipal requirements for emergency vehicles would be met within the development. Finally, he noted that Thurston County rezoned the property in 1997 and, when Tumwater annexed the property in 2008, it adopted the existing zoning. *Testimony of Mr. Bhagavan.*

27. Mr. Carlson clarified that there are no current plans to improve 70th Avenue SW in the City's six-year transportation improvement plan. He noted that the "level of service" (LOS) for the 70th Avenue SW corridor is currently "D" and the proposal would not impact the LOS. Mr. Carlson also explained that, when the City annexed the area in 2008, bicycle and pedestrian safety was identified as a concern, and the City has addressed this, in part, through adding an asphalt path on the south side of 70th Avenue SW. *Testimony of Mr. Carlson.*

#### Staff Recommendation

28. Mr. Bhagavan testified that City staff determined that, with conditions, the proposed plat would be consistent with the City's Comprehensive Plan, municipal code, and development standards and that City staff recommends approval of the application, with conditions. Mr. Gendlek testified that the Applicant understands and agrees with the City's proposed conditions. *Exhibit 1, Staff Report, pages 6 through 13; Testimony of Mr. Bhagavan; Testimony of Mr. Gendlek.*

### **CONCLUSIONS**

#### Jurisdiction

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

#### Criteria for Review

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

Under TMC 17.14.040.A, the Hearing Examiner shall determine whether:

appropriate provisions are made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other

public ways, other grounds, transit stops, potable water supplies, sanitary wastes, parks and recreation playgrounds, schools and school grounds, fire protection and other public facilities, and shall consider all other relevant facts, including the physical characteristics of the site, and determine whether the public interest will be served by the land division. Further, consideration shall be given for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school.

If the Hearing Examiner finds that the proposal for the division of land makes appropriate provisions, and the Hearing Examiner makes written findings to that effect, then the Hearing Examiner shall approve the proposed division of land. If the Hearing Examiner finds that the proposal for 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 proposal. *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 shall 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 subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.

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

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

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

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

#### Conclusions Based on Findings

1. **With conditions, the preliminary subdivision would make appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, and schools and school grounds, as required by TMC 17.14.040.A and RCW 58.17.110.** The property is designated Single-Family Medium Density Residential and is located in the Single-Family Medium Density (SFM) zoning district, which requires a minimum net density of 6 dwelling units per acre (du/acre) and a maximum net density of 9 du/acre. The proposal is for a subdivision with a net density of just under 8 du/acre. Several area residents expressed opposition to the proposal, especially in light of the proposed density. Both the Comprehensive Plan and zoning ordinances, however, require increased density on new development in land designated and zoned SFM to account for future population growth and encourage in-fill development. Moreover, the property has been zoned SFM since 1997, and property directly to the south is designated and zoned for even higher density multi-family residential housing. The City Council determined the appropriate Comprehensive Plan and zoning designations for the site and the Hearing Examiner must defer to the Council on such policy matters. In addition, community displeasure, alone, cannot form the basis for permit denial. *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 801 P.2d 985 (1990).

There are no known critical areas on-site, and the Applicant provided a Mazama pocket gopher study indicating that the site does not appear to provide pocket gopher habitat.

The property is also located in the Aquifer Protection overlay zoning district (AQP) and would meet all requirements of the overlay district. The preliminary short plat is not a restricted use within the AQP overlay zone district. Retention of 20 percent of trees on-site would be required, and the Applicant must submit a tree protection plan prepared by a qualified professional forester that prioritizes preserving heritage or historic trees, trees which are unusually large – such as the trees that abut the Gold Creek Subdivision to the north – and trees that serve as a buffer. Here, although the municipal code does not require vegetative buffering or privacy screening between adjacent properties zoned for residential development, the Applicant is encouraged to satisfy the tree retention requirement under the municipal code by retaining the existing tree buffer that exists between the development and the Gold Creek Subdivision to the north. The Applicant must submit an updated stormwater report with grading permits addressing how low-impact development techniques and infiltration best management practices (BMPs) would be used to decrease overall site runoff and maintain the site's natural hydrologic conditions, consistent with the City's most recently adopted stormwater manual.

Utilities are available to serve the site and all such utilities would be underground, as required by the municipal code. Tumwater School District impact fees would be collected at the time of issuance of building permits, and sidewalks would be provided within the development for students walking to school bus stops. An internal, ADA-compliant sidewalk would connect the proposed development to 70th Avenue SW, and the Applicant would construct frontage improvements along the portion of the public right-of-way that abuts the property. The City's Public Works Director issued a transportation concurrency ruling for the project. The concurrency ruling indicates that traffic generated from the project would not cause the level of service, at any impacted corridor or intersection, to fall below the City's level of service standard. According to the City of Tumwater Transportation Plan, the LOS for 70th Avenue SW is "LOS-D" and the existing LOS for the closest intersection, 70th Avenue SW and Littlerock Road, is "LOS-A." Traffic impact fees would be assessed for each dwelling unit in the subdivision, as building permits are issued, to help mitigate traffic impacts from the proposal.

Conditions are necessary to ensure that the project proceeds in conformance with the plans on file and with all requirements of the municipal code, including requirements related to fire and building safety and environmental health and protection. In addition, conditions are necessary to ensure that: the private road meets minimum design standards and remains accessible at all times for emergency and public service vehicle use; covenants are recorded ensuring maintenance of the private street and any communal stormwater facilities; the Applicant submits a detailed tree retention and landscaping plan; the proposal satisfies the requirements of DOE; improvements are installed along the frontage of 70th Avenue SW, including sidewalks, curbs and gutters; the Applicant submits an updated stormwater report; and required payment related to the gravity

sanitary sewer latecomer agreement and the water main latecomer agreement occurs.  
*Findings 1, 5 – 28.*

2. **With conditions, the proposed subdivision would be consistent with the requirements for a planned unit development under TMC 18.36.050.** The City provided reasonable notice and opportunity to comment on the proposed short plat and planned unit development. Environmental impacts of the proposed plat were considered, as required by SEPA, and the City issued a DNS that was not appealed. The preliminary plat would provide single-family residential development consistent with applicable development regulations and at a density required by the Comprehensive Plan and zoning ordinances. A planned unit development is required because a private road would serve all 7 units within the development. City staff determined that the road would meet all requirements related to emergency services and that the development is of adequate size to accommodate the development. Although some members of the community expressed opposition to the proposal, all surrounding areas are developed with residential lot. The proposal would also be developed with residential lots, albeit it a higher density than currently exists. The property has been zoned for development at this density since 1997. Further, properties to the south, across 70th Avenue SW, are zoned for even greater density, and one such property is developed with a mobile-home park. Accordingly, the development would be in harmony with the surrounding area. City staff determined that, with conditions, the proposal would be consistent with all applicable City, county, and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards. The public interest would be served by the platting of the subdivision and planned unit development. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for plat approval and approval of a planned unit development. *Findings 1 – 28.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a preliminary short plat and planned unit development to subdivide approximately 1.13 acres into seven single-family residential lots, at 2518 70th Avenue SW, is **APPROVED**, with the following conditions:<sup>3</sup>

1. The proposed private road shall meet the minimum design standards for private streets in Chapter 4, Table-One of the Tumwater Development Guide.
2. The proposed private road shall be accessible at all times for emergency and public service vehicle use.

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<sup>3</sup> Conditions include legal requirements applicable to all developments as well as conditions designed to mitigate the specific impacts of this development.

3. Covenants shall be approved, recorded, and verified with the City, providing for maintenance of the private street, storm drainage facilities and associated parking areas by the owners, homeowners association, or other legal entity. Per TMC 17.22.040, the Final Short Plat shall contain the following statement on the face of the Short Plat: All saleable lots are subject to all service fees and charges which may be levied by the owners' association for the maintenance, operation, and improvement of community facilities and for liens for any unpaid service fees or charges.
4. Lot size requirements: Each residential lot shall have a building site no less than 1,600 square feet in area within which a suitable building can be built and served by utilities and vehicular access unless dedicated or restricted by covenant for open space, park, recreation or other public use. The minimum lot-size shall be 4,000 square feet. The minimum lot-width shall be 50 feet. The maximum lot-coverage for impervious surface shall be 70 percent of the total area of the lot. The required setbacks for the SFM zone district are as follows:
  - Front yard: 10 feet minimum from frontage property line. Driveways in front yards of single-family dwellings and duplexes must be a minimum of 18 feet in length as measured along the shortest edge of the driveway starting from the front property line.
  - Side yard: 5 feet from property line.
  - Rear yard: 20 feet from property line, minimum. Exceptions: Storage, garden, or tool sheds 200 square feet or less in area may be located a minimum of 5 feet from property line.A required setback area shall be kept free of any building or structure taller than 42 inches.
5. Two off-street parking spaces are required for each dwelling unit. Driveways and off-street parking spaces shall be hard-surfaced (asphalt, concrete, or turfstone). No parking will be allowed in a cul-de-sac turnaround and shall be posted accordingly.
6. Impact fees for traffic, community parks, and schools will be assessed to each dwelling unit in the short subdivision as Building Permits are issued. The impact fees will be in accordance with the most current fee resolution adopted by the City at the time of submittal of complete Building Permit application(s).
7. If contamination is suspected, discovered, or occurs during the construction, testing of the potentially contaminated media shall be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, the Department of Ecology shall be notified. If there are known soil/ground water contaminants present on-site, additional information (including, but not limited to: temporary erosion and sediment control plans; stormwater pollution prevention plan; list of known contaminants with

concentrations and depths found; a site map depicting the sample locations; and additional studies/reports regarding contaminants) will be required to be submitted.

8. The Applicant shall submit an updated stormwater report with grading permits addressing how low-impact development techniques and infiltration best management practices (BMPs) would be used to decrease overall site runoff and maintain the site's natural hydrologic conditions, consistent with the City's most recently adopted stormwater manual. Erosion control measures shall be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or storm drains that lead to waters of the state.
9. The Applicant shall submit a tree protection plan prepared by a qualified professional forester that prioritizes preserving heritage or historic trees, trees which are unusually large, and trees that serve as a buffer.
10. The Applicant 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. All designs/construction shall comply with the City of Tumwater's Development Guide and WSDOT standards.
12. A Site Development/Grading Permit is required to be issued for the project.
13. All street construction, main installation and storm drainage work requires engineered plans certified by a professional engineer.
14. The Applicant shall be responsible for all plan check, inspection, and connection fees.
15. Any private or public utility relocation shall be the responsibility of the Applicant.
16. The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Public Works Director. Please refer to Chapter 3 of the Development Guide for further clarification.
17. The Applicant shall provide all easements and bills-of-sale documents for public improvements associated with the project.

18. All necessary legal descriptions shall be accompanied with an appropriate drawing that the City Surveyor can use to verify the legal description.
19. All engineering drawings shall be on 24" x 36" paper sheets.
20. The owner or owner's representative shall also be responsible for furnishing the City with electronic files on CD-ROM, compatible with Release 2014 or newer Auto-CAD format. Drawings shall be in TCHPN (Thurston County High Precision Network) horizontal datum. Vertical datum is NGVD29. No exceptions. The Applicant shall provide individual drawings independent of x-refs and include all non-standard font files and plot files. Also, the Applicant shall furnish a CD with PDF files printed from the Auto-CAD files. A stormwater maintenance agreement, utility maintenance agreement, bonds, easements, and bills-of-sale shall also be required.
21. The PLS responsible for the surveying of the project shall obtain a permit from DNR before any monuments are disturbed.
22. All required public and private infrastructure improvements shall be completed before the plat is recorded.
23. Street frontage improvements shall be required along the full frontage of the property on 70th Avenue, per TMC 12.12.010. These improvements shall include 6-foot separated sidewalks, curb and gutter, street patch, street lighting, street trees/landscaping and any storm drainage necessary to take care of the impervious area in the right-of-way. Dedication of additional right-of-way to contain the improvements shall be required.
24. All access to the property shall be consistent with City standards and policies.
25. If the depth from the bottom of the proposed storm drainage facility to the high groundwater elevation or other restrictive layer is less than 5 feet, stormwater modeling per the current Ecology standards shall be required. The Applicant shall be responsible for the cost of a third-party review of the on-site and off-site stormwater impacts and mitigations.
26. A drainage design and erosion control plan shall be required according to the City's 2018 Drainage Design and Erosion Control Manual.
27. Maintenance of the on-site stormwater system shall be the responsibility of the homeowners, and a maintenance agreement must be recorded against the property.
28. There is a gravity sanitary sewer latecomer in the amount of \$14,989.79 required to be paid before the short plat can be recorded.

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29. Extension of a gravity sanitary sewer on-site is required to serve the lots.
30. The project shall meet minimum fire flow requirements of 1,000 gallons per minute at 20 psi.
31. Any water main extension shall require a minimum of an 8-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 8 feet per second.
32. Water meters, hydrants and all other appurtenances to the water main shall be constructed within an easement dedicated to the City.
33. There is a water main latecomer in the amount of \$17,301.05 required to be paid before the short plat can be recorded.
34. A complete application for approval of a Final Planned Unit Development will be required.
35. Property taxes shall be paid in full for the current year, including any advance and delinquent taxes, before a Final Short Plat can be recorded.

**DECIDED** this 5<sup>th</sup> day of December 2018.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center

## **HEARING EXAMINER POST-DECISION PROCEDURES**

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

### **TMC 2.58.135 Reconsideration.**

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

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

- A. In cases where the examiner's jurisdictional authority is to render a decision, the decision of the examiner shall be final and conclusive unless appealed to superior court within the applicable appeal period as set forth in TMC 2.58.180.
- B. In cases where the hearing examiner decision is appealable to the city council, the decision of the examiner shall be final and conclusive unless appealed within the applicable appeal period as set forth in this section.
- C. Appeals to the city council must be filed with the city clerk by the applicant or other party of record, a department of the city, county or other agency within 14 calendar days following rendering of such decision. Persons not in attendance at the hearing but who submit written information prior to the hearing which becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.
- D. In the event an apparent prevailing party files an appeal to preserve appeal rights and no opposing appeals are filed, said party may, by giving written notice thereof to the city clerk, abandon their appeal and in such event shall be refunded their filing fee.
- E. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the city council or is withdrawn.
- F. Within five days after the final day upon which an appeal may be filed, notice thereof and of the date, time and place for city council consideration shall be mailed to the applicant, all other parties of record and anyone who submitted written information prior to the hearing. Such notice shall additionally indicate the deadline for submittal of written arguments as prescribed in TMC 2.58.160.

### **TMC 2.58.180 Judicial appeals.**

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