

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

In the Matter of the Application of	)	No. TUM-18-1294
	)	No. TUM-18-1297
	)	
<b>Jeff Pantier, Hatton Godat Pantier,</b>	)	Skyview Estates PP and PUD
<b>on behalf of Evergreen Heights, LLC</b>	)	
	)	
For Approval of a Preliminary Plat and	)	FINDINGS, CONCLUSIONS,
<u>Planned Unit Development</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a preliminary plat to subdivide 26.52 acres into 117 single-family lots, with associated improvements, as a planned unit development, at 7517 Littlerock Road 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 June 5, 2019. The record was left open until June 7, 2019, to allow the City to submit additional information.

Testimony:

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

Chris Carlson, City Permit Manager  
Jeff Pantier, Applicant Representative  
Steve Hatton, P.E.

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated May 28, 2019
2. Skyview Estates Parcel Map, dated May 24, 2019
3. Preliminary Plat Application, received October 10, 2018
4. Planned Unit Development Application, received October 10, 2018
5. Preliminary Plat Map, undated
6. Project Plans, dated July 2018:
  - a. Preliminary Cover Sheet (Sheet 1 of 9)
  - b. Preliminary Temporary Sediment & Erosion Control Plan (Sheet 2 of 9)
  - c. Preliminary Overall Grading & Drainage Plan (Sheet 3 of 9)

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- d. Preliminary Grading Details (Sheet 4 of 9)
- e. Preliminary Drainage Details (Sheet 5 of 9)
- f. Preliminary Utility Plan (Sheet 6 of 9)
- g. Preliminary Water Details – 1 (Sheet 7 of 9)
- h. Preliminary Water Details – 2 (Sheet 8 of 9)
- i. Preliminary Sewer Details (Sheet 9 of 9)
- 7. Certification of Public Notice, dated May 23, 2019
- 8. SEPA Environmental Checklist, dated October 10, 2018, with Staff Notes
- 9. Determination of Nonsignificance (DNS), dated February 6, 2019
- 10. Notice of Application, dated November 29, 2018
- 11. Critical Habitats and Critical Species Assessment, Habitat Technologies, dated October 2, 2017
- 12. Critical Habitats and Critical Species Assessment, Habitat Technologies, dated November 21, 2016
- 13. Tree Plan, Professional Forestry Services, Inc., dated August 21, 2018
- 14. Geotechnical Engineering Report, The Riley Group, dated July 18, 2018
- 15. Preliminary Drainage and Erosion Control Report, Lance Talmadge, EIT, dated November 13, 2018
- 16. Transportation Concurrency Application, received October 10, 2018; Transportation Impact Analysis, Transportation Engineering Northwest, dated August 22, 2018
- 17. Memorandum from Jay Eaton to Chris Carlson, Transportation Concurrency, dated May 22, 2019
- 18. Letter from Dan Smith to Rob Rice, Certificate of Water & Sewer Availability, dated October 16, 2018; Letter from Dan Smith to Rob Rice, Updated Certificate of Water & Sewer Availability, dated June 6, 2019
- 19. Letter from Southwest Regional Office, Department of Ecology, to Chris Carlson, dated December 13, 2018
- 20. Letter from Southwest Regional Office, Department of Ecology, to Chris Carlson, dated February 20, 2019; Letter from Southwest Regional Office, Department of Ecology, to Chris Carlson, dated December 13, 2018
- 21. Email from Lauren Whybrew to Chris Carlson, dated December 10, 2018
- 22. Email from Lauren Whybrew to Chris Carlson, dated February 6, 2019
- 23. Letter from State of Washington Department of Archaeology & Historic Preservation, dated December 13, 2018
- 24. Email from Stephanie Jolivette to Chris Carlson, dated January 10, 2019, with email string
- 25. Email from Stephanie Jolivette to Chris Carlson, dated February 20, 2019, with email string
- 26. Email from Kelly Wallace to Chris Carlson, dated February 26, 2019, with email string
- 27. Letter from Jackie Wall, Nisqually Indian Tribe, to Stephanie Jolivette, dated December 18, 2018

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28. Letter from Jackie Wall, Nisqually Indian Tribe, to Kelly Wallace, dated February 6, 2019
29. Letter from Mel Murray, Tumwater School District, to Chris Carlson, dated May 28, 2019, with marked Preliminary Plat Map
30. Email from Alex Ball to Chris Carlson, dated December 13, 2018, with attachments
31. Letter from Candice Buehler, dated February 19, 2019
32. Email from Jason Stapert to Chris Carlson, dated March 26, 2019
33. Email from Lisa Stapert to Chris Carlson, dated March 26, 2019, with email string
34. Email from Jessica Ball to Chris Carlson, dated December 13, 2018
35. Letter from Jim and Terri Garren to Chris Carlson, dated December 7, 2018
36. Letter from Jolene Stokesberry and Jayson Lossing to Chris Carlson, received December 19, 2018
37. Email from Karen Hall to Chris Carlson, dated December 5, 2018
38. Email from Kecia Rongen to Chris Carlson, dated December 12, 2018
39. Letter from Ron Holcomb and Kathy McCann, dated December 11, 2018
40. Email from Stephanie Carey to Chris Carlson, dated December 13, 2018, with Community Petition
41. Email from Doug Shank to Chris Carlson, dated December 11, 2018
42. Preliminary Landscape Plan, dated July 2018
43. Updated Tree Plan, Professional Forestry Services, Inc., dated June 4, 2019
44. Annotated Preliminary Plat Map, received June 5, 2019

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

## **FINDINGS**

### Application and Notice

1. Jeff Pantier, on behalf of Evergreen Heights, LLC (Applicant), requests approval of a preliminary plat to subdivide 26.52 acres into 117 single-family residential lots, as a planned unit development. Ten of the lots would be developed as attached townhomes. The proposal would include the creation of 12 community tracts for open space, private roads/alleys, park/play areas, and tree mitigation. Improvements would include mass grading, construction of 305 linear feet of frontage improvements on Littlerock Road SW abutting the east side of the project site, extension of water and sewer to the site, installation of a stormwater system and street lighting, and extension of private utilities, including power, gas, cable, and telephone. An existing single-family residence and various outbuildings on-site would be demolished during construction. The property is located at 7517 Littlerock Road SW.<sup>1</sup> *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 3; Exhibit 4.*

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<sup>1</sup> The property is identified by Tax Assessor Parcel Nos. 09090004000 and 09090005000. *Exhibit 3.* A legal description of the property is included with the preliminary plat map. *Exhibit 5.*

2. The City of Tumwater (City) determined that the application was complete on November 1, 2018. On November 29, 2018, the City posted notice of the application on the property and at two other locations in the vicinity of the property, and it mailed or emailed notice to property owners within 300 feet of the subject property and to reviewing government departments and agencies. The next day, the City published notice of the application in the *Olympian*. On May 23, 2019, the City posted notice of the open record hearing associated with the application on the property and at two other locations in the vicinity of the property, and it mailed or emailed notice to property owners within 300 feet of the subject property and to reviewing government departments. The next day, the City published notice of the open record hearing in *The Olympian*. As discussed in detail below, the City received several written comments from members of the public in response to its notice materials. In addition, several written comments from reviewing government departments and agencies were also received. *Exhibit 1, Staff Report, pages 1, 7, and 8; Exhibit 7; Exhibit 10.*

#### State Environmental Policy Act

3. 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 issued a Determination of Nonsignificance (DNS) on February 6, 2019, with a comment deadline of February 20, 2019, and an appeal deadline of February 26, 2019. The City received timely comments from reviewing departments and agencies concerning its SEPA determination. Specifically, the Washington State Department of Ecology (DOE) provided a comment discussing the potential existence of emergent wetlands on-site and the need for further critical areas investigation, the need to determine the location of all existing wells on-site, the requirement that all grading and filling of land involve only clean fill and that all other debris be appropriately removed, and the need for testing of materials suspected of toxic contamination, as well as general comments about the need for erosion control measures during construction and the need for appropriate stormwater and solid waste management on-site. In addition, the Olympic Region Clean Air Agency (ORCAA) noted that an asbestos survey would be required for all demolition projects associated with the proposal. No other comments specific to SEPA were provided and the DNS was not appealed.<sup>2</sup> *Exhibit 1, Staff Report, pages 1 and 7; Exhibit 7 through 9; Exhibit 19; Exhibit 20; Exhibit 21; Exhibit 22.*

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<sup>2</sup> Comments from the Washington State Department of Archaeology & Historic Preservation, the Squaxin Island Tribe, and the Nisqually Indian Tribe were provided concerning the potential of the site to contain cultural and archaeological resources, a topic covered under SEPA. The comments, however, were more general and are discussed in detail later in this decision. *Exhibits 23 through 28.*

#### Comprehensive Plan and Zoning

4. The property is within the Littlerock Neighborhood under the City Comprehensive Plan. The property consists of two adjoining lots. The majority of the property (23.18 acres) is designated Single-Family Medium Density Residential. The Comprehensive Plan states that, for property designated for Single-Family Medium Density Residential development, 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 (du/acre) for property designated Single-Family Medium Density Residential. Here, proposed density for the portion of the project designated Single-Family Medium Density Residential would be 6.01 du/acre, with 95 lots proposed for development. The remainder of the property (3.34 acres) is designated Multi-Family Medium Density Residential. The Comprehensive Plan states that, for property designated for Multi-Family Medium Density Residential development, density “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 35*. The Comprehensive Plan dictates density of 9 to 15 du/acre on land designated Multi-Family Medium Density Residential. Here, there are 22 lots proposed on the portion of the property designated Multi-Family Medium Density, and the density in this area would be 9.24 du/acre. The proposed density for the entire project is 6.44 du/acre. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 5*.
5. The larger portion of the property (23.18 acres) is zoned Single-Family Medium Density Residential (SFM). 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; achieve density levels as envisioned by the Comprehensive Plan; 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 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*. Single-family residences are an allowed use in the SFM zoning district. *TMC 18.12.020. Exhibit 1, Staff Report, page 8*.
6. The remainder of the property (3.34 acres) is zoned Multi-Family Medium Density Residential (MFM). The intent of the MFM zoning district is to provide for a high standard of development for residential areas of medium density, including both single-family and multifamily housing; achieve density levels as envisioned by the

Comprehensive Plan; 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 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) 18.14.010*. Single-family residences, including townhomes, are an allowed use in the MFM zoning district. *TMC 18.14.020. Exhibit 1, Staff Report, page 8.*

7. As noted above, the Applicant has proposed to develop the property as a planned unit development (PUD). Under TMC 18.36.010, the intent of using a PUD overlay is to encourage flexibility in design and development that would result in a more efficient and desirable use of land; permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, off-street parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; provide for maximum efficiency in layout of streets, utility networks, and other public improvements; produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and provide a guide for developers and City officials who review and approve developments. The uses allowed in a PUD overlay are those “which are allowed in the underlying zone district,” and PUDs are allowed in both the SFM and MFM zoning districts. TMC 18.36.020. With a PUD, there are no minimum project sizes; densities are established by the underlying zone; project setbacks are as required by the underlying zoning district but are applicable only in relation to perimeter boundary lines of the entire site; maximum land coverage established by the underlying zoning district may be exceeded by 25 percent; and the open space/park dedication requirements of the underlying zoning district shall prevail. PUDs are exempt from all other minimum zoning ordinance requirements. *TMC 18.36.080.*
8. Here, the project would satisfy the required densities of the SFM and MFM zoning districts, as detailed above. In addition, the project would meet the required setbacks for the SFM and MFM zoning districts for the perimeter boundary lines of the entire plat and the required open space requirements. The Applicant has sought a PUD for two reasons:
  - Normally, under Section 4.8 of the City of Tumwater Development Guide, the number of dwelling units on separate parcels that can be served by a private street system is limited to four unless a PUD is approved. The private street must meet the minimum design standards for private streets, be accessible at all times for emergency and public service vehicle uses, not result in land-locking of present or future parcels or obstruction of public street circulation, and requires approval of covenants providing for maintenance of the street. Here, lots 72 through 77, the westernmost lots in the subdivision, would be served by Tract I, a private street. The private street would meet the requirements detailed above.

- In addition, the SFM zoning district normally requires lot widths of 50 feet, except where there is an alley located adjacent to a side property line. Here, several lots within the portion of the property zoned SFM would have lot widths of 40 feet without an alley adjacent to a side property line.

*Exhibit 1, Staff Report, page 9; Exhibit 2; Exhibit 3.*

#### Surrounding Property

9. Black Hills High School is located immediately adjacent to the west of the subject property and two pedestrian access routes to the school would be provided within the plat. Property to the north is developed with residential neighborhoods, between the subject property and 70th Avenue SW. Country Village Drive SW and Mirasett Street SW were stubbed to the northern boundary of the subject property in anticipation of future development (i.e., the development that is now occurring). Road “1-B” within the plat would connect Mirasett Street SW and Country Village Drive SW and bound the northern portion of the property. In addition, Mirasett Street SW would traverse the plat from north to south and provide a connection between 70th Avenue SW and Littlerock Road SW. An older neighborhood with larger lots, the Summerhill Court neighborhood, bounds the property to the east. Littlerock Road SW bounds the property to the south along with undeveloped parcels planned for future residential development. *Exhibit 1, Staff Report, page 2; Exhibit 2; Exhibit 3; Exhibit 42; Exhibit 44.*

#### Critical Areas

10. The 26.52-acre property is relatively flat, with a mixture of open grassed areas and tree stands. 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 and DOE noted, during SEPA review, of the potential existence of emergent wetlands on-site. The Mazama pocket gopher is listed as a protected species under both Washington State and Federal threatened and endangered species lists. The Applicant submitted two reports, prepared by Habitat Technologies, assessing the site. Both reports determined that no gopher mounds were observed on the subject property and no hydric soils exist on-site, obviating the possibility of emergent wetlands. With no gopher occupation observed on the property subject to this preliminary plat application, and no wetlands, City staff determined that the project is consistent with the applicable environmental protection ordinances for the City of Tumwater. *Exhibit 1, Staff Report, pages 10 and 11; Exhibit 11; Exhibit 12.*
11. 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 Drainage Design

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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, page 8.*

#### Trees

12. 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. Professional Forestry Services, Inc., prepared a Tree Plan, dated August 21, 2018, for the proposal. The Tree Plan notes that, under the requirements of TMC 16.08.070.R, 243 trees would need to be retained or replaced at a three-to-one ratio for the project. Because of the amount of fill necessary for the project, the Tree Plan determined it would not be possible to retain any of the existing trees on-site. Accordingly, the Applicant would plant at least 729 trees throughout the project site. The preliminary landscape plan shows that 747 trees would be planted throughout the site in addition to street trees that would be planted. Professional Forestry Services, Inc., prepared a supplemental report on June 4, 2019, assessing potential impacts to trees located off-site, to the east of the property, in light of concerns raised by neighboring property owners. The supplemental report determined that these trees should be addressed on an individual basis prior to land clearing and grading activity on-site, to ensure their protection. *Exhibit 1, Staff Report, page 10; Exhibit 13; Exhibit 42; Exhibit 43.*

#### Stormwater

13. Lance Talmadge, EIT, prepared a Preliminary Drainage and Erosion Control Report and Preliminary Site and Erosion Control Plan (Stormwater Report) for the proposal, dated November 13, 2018. The Stormwater Report notes that stormwater from the site would be caught and conveyed to two separate storm ponds. The "South Infiltration Pond" (Tract A) would receive runoff from approximately 3.9 acres of the site near Littlerock Road SW. The "North Infiltration Pond" (Tracts B and C) would receive runoff from approximately 25.01 acres. Both ponds would provide enhanced stormwater treatment through use of infiltration through native soils. The ponds are sized to accommodate 100 percent of stormwater infiltration on-site – the North Infiltration Pond alone, for instance, is 6.61 acres in size (approximately 25 percent of the entire project site). Accordingly, the proposal would be employing low-impact development techniques and infiltration best management practices (BMPs) to decrease overall site runoff and maintain the site's natural hydrologic conditions, consistent with the City's most recently adopted stormwater manual. The Applicant also submitted a Geotechnical Report, prepared by The Riley Group, which determined that the site is suitable for development. *Exhibit 1, Staff Report, pages 11 and 12; Exhibit 14; Exhibit 15.*

#### Utilities

14. 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 garbage collection would be provided by LeMay. The City provided a water and sewer availability letter, dated June 6, 2019, stating that the City would be able to provide sewer and water to the project site so long as all connection/latecomer fees, if any, are paid prior to occupancy and any existing exempt wells or septic systems on-site are appropriately decommissioned. *Exhibit 1, Staff Report, page 2; Exhibit 18.*

#### Access, Parking, and Traffic

15. Littlerock Road SW would provide access to the development from the south. From the north, Mirasett Street SW and Country Village Drive SW would connect to existing residential development to the north and provide additional access to the plat. Road “1-B,” would be stubbed in the northwest corner of the property to provide future road connectivity to the east. Road “2-F,” in the southwest portion of the property would also be stubbed and would allow for future road connectivity to the south. The Applicant submitted a Transportation Impact Analysis (TIA), prepared by Transportation Engineering Northwest on May 22, 2019, assessing potential traffic impacts from the proposal. The TIA determined that the proposal would generate 113 new PM peak hour trips and would not cause levels of service (LOS) to fall below the City’s adopted level (LOS D) at intersections within the vicinity of the project site. The City Public Works Director issued a transportation concurrency ruling for the project, concurring with the TIA’s determination that traffic generated from the project would not cause the LOS at any impacted corridor or intersection to fall below the City’s level of service standard. City staff further determined that, by connecting Mirasett Street and Country Village Drive to the north and providing future connectivity to the east and south, the proposal would be consistent with the City Transportation Plan and the Black Hills Sub-Area Transportation Plan, both of which call for ensuring future road connectivity. *Exhibit 1, Staff Report, page 6; Exhibit 16; Exhibit 17*
16. 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. In addition, the Applicant would provide 305 linear feet of frontage improvements on Littlerock Road SW abutting the east side of the project site, including sidewalks, as required by the municipal code. *Exhibit 1, Staff Report, page 6; Exhibit 16; Exhibit 17.*

#### Schools and Parks

17. Children residing within the proposed subdivision would attend Black Lake Elementary, Tumwater Middle School, and Black Hills High School. The Tumwater School District provided comments on the proposal and noted that bus service would be provided to

Black Lake Elementary and Tumwater Middle School. The Applicant would ensure that safe walking routes to bus stops within the neighborhood are provided. Black Hills High School is located in close proximity to the west of the site and, accordingly, no transportation would be provided. A walking route the high school already exists along the northern property line. The Applicant, however, would provide an additional walking route along the southern portion of the North Infiltration Pond (adjacent to Lot 72) accessible to all residents of the development. In addition, the Applicant would pay school impact fees to mitigate impacts on area schools. *Exhibit 1, Staff Report, page 9; Exhibit 24; Exhibit 29.*

18. 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, although the City has plans to acquire and develop a future community park approximately three miles southeast of the development. There are two other park property acquisitions proposed in the general vicinity of the site, including an area around Railroad Pond (approximately one mile to the southwest) and Rhondo Pond (approximately one mile to the south). The Applicant would pay park impact fees to mitigate for impacts on area parks. In addition, TMC 17.12.210 requires that a minimum of 10 percent of the gross site area be set aside as private open space, and TMC 18.14.050.H requires that all residential developments where more than one-half of the dwelling units are single-family residences set aside 10 percent open space in the MFM zone. Here, 7.7 acres—or approximately 29 percent of the site—would be set aside as open space, far exceeding this requirement. *Exhibit 1, Staff Report, pages 3 through 5; Exhibit 2; Exhibit 3; Exhibit 4.*

#### Written Comments

19. As noted above, the City received several written comments from reviewing agencies in response to its application materials. Specifically, the Washington State Department of Archaeology & Historic Preservation (DAHP), the Squaxin Island Tribe Cultural Resources Department, and the Nisqually Indian Tribe commented on the potential for cultural or archaeological resources to be discovered on-site. DAHP and the Nisqually Tribe both requested that the City require the Applicant to conduct a professional archaeological survey of the project prior to commencement of ground-disturbing activities. Both City staff and the Applicant requested further information from DAHP about their concerns, inquiring as to whether any specific known cultural or archaeological resources are known to exist on or near the site. DAHP stated that it could not provide any such information but that, due to the amount of grading that would occur on-site, it thought such a survey would be beneficial. Ultimately, the City determined that, lacking any specific evidence to the contrary, use of an inadvertent discovery plan would be sufficient to protect potential archaeological or cultural resources discovered during site development. The Squaxin Island Tribe concurred with this approach. DAHP and the Nisqually Tribe expressed disappointment that the City would not be requiring a

full archaeological survey in advance of site development but did not appeal the City's SEPA determination, provide any additional information, or attend the public hearing to express further concern. *Exhibits 24 through 28.*

20. The City also received several written comments from members of the public in response to its notice materials.
- Alex Ball, Jessica Ball, Jason Stapert, Lisa Stapert, Kecia Rongen, Stephanie Carey, and Doug Shank all wrote with concerns about connecting the proposed plat to residential development to the north through the "opening" (extension) of Mirasett Street SW, arguing that such a connection would damage the character of the existing neighborhood to the north by increasing cut-through traffic and noise and reducing safety. Ms. Carey also started a petition, signed by several area residents, opposing the connection of Mirasett Street SW.
  - Candice Buehler wrote with concerns about environmental impacts from the proposal, including loss of habitat, aesthetic impacts, impacts from traffic, and general impacts from the increased urbanization of this area of the city.
  - Jim and Terri Garren expressed concerns over the loss of privacy that would occur through development, as five of the proposed lots would abut their property.
  - Jolene Stokesberry and Jayson Lossing expressed concern over potential traffic impacts to Littlerock Road SW, the protection of existing wells on neighboring properties, and the light pollution that would occur with increased development.
  - Ron Holcomb and Kathy McCann wrote with concerns over stormwater impacts, traffic, privacy, and loss of open space resulting from the proposal.

*Exhibits 30 through 41.*

#### Testimony

21. City Permit Manager Chris Carlson testified generally about the application review process, explaining that the City reviewed the application for consistency with the Comprehensive Plan, zoning requirements, and critical areas ordinances, as well as with the City's Parks and Recreation Plan, Transportation Plan, Black Hills Sub-Area Transportation Plan, the Thurston Regional Trail Plan, and the Sustainable Development Plan for the Thurston Region. Mr. Carlson explained that the Comprehensive Plan encourages in-fill development and increased density, under both the Single-Family Medium Density Residential designation and the Multifamily Medium Density Residential designation, and this proposal would accomplish that, with a density of approximately 6.44 du/acre. He explained why a PUD would be necessary for the proposal (as detailed above). Mr. Carlson also discussed the various written comments received in response to the notice materials and noted: no hydric soils were discovered on-site with the Habitat Assessment and, accordingly, it was determined no wetlands exist on-site; without some indication as to why a full archeological survey would be appropriate, especially in light of the City's past experience with development in this area not leading to significant discoveries of cultural or archaeological resources, the City

determined an inadvertent discovery plan would adequately protect potential cultural or archaeological resources; and, while the City understands the concerns raised by the existing development to the north, the City planned for the extension of Mirasett Street when the existing neighborhood was built and the City's Comprehensive Plan and Transportation Plan both call for connectivity of streets in the area. Mr. Carlson further explained that, in light of public interest in the proposal, was provided to all properties fronting Mirasett Street SW from the northern property boundary of the project to 70th Avenue SW and the City held a public information meeting earlier in the review process to listen to and address community concerns over the road extension. *Testimony of Mr. Carlson.*

22. Applicant Representative Jeff Pantier also testified generally about the proposal and explained the various features of the plat. Mr. Pantier noted that, because of required site grading, no existing trees on-site would be able to be protected, but 29 percent of the site would be dedicated as open space and significant quantities of trees would be planted throughout the area. In addition, in drier months, the North Infiltration Pond would serve as a grassy field that could be used by area residents. Mr. Pantier explained that a homeowners association (HOA) would be established for the entire plat and that all communal facilities would be appropriately maintained in the future. He noted that, although several concerns were raised about connecting the existing development to the north to the proposed plat through the extension of Mirasett Street SW, the TIA analyzed potential traffic impacts on Mirasett Street SW and determined that the impacts would not be significant. In relation to concerns raised by DAHP and the Nisqually Tribe, Mr. Pantier testified that he attempted to schedule a meeting over the course of several months but that the parties were unable to meet. He noted that he requested specific information from DAHP repeatedly that would warrant a full archaeological survey being performed, but DAHP was not forthcoming with any such information. Finally, Mr. Pantier stated that he has been working with property owners to the east to ensure that their concerns over privacy and tree protection are adequately addressed. *Testimony of Mr. Pantier.*
23. Steve Hatton, P.E., testified about stormwater treatment throughout the proposed plat and explained that two sub-basins underlie the project site. Because of this, two separate infiltration ponds are proposed. He stressed that the North Infiltration Pond is quite large (nearly a quarter of the entire site) to ensure that all stormwater can be infiltrated on-site. Mr. Hatton noted, however, that standing water would be rare in the infiltration pond and that, through much of the year, it would appear as a grassy field that can be used by residents for recreation. He also noted that the project would not impact area aquifers and that existing wells on adjacent properties would be protected. *Testimony of Mr. Hatton.*

#### Staff Recommendation

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

### **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:

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.

#### Conclusions Based on Findings

1. **With conditions, the preliminary subdivision would make appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, and schools and school grounds.** The majority of the property (23.18 acres) is designated Single-Family Medium Density Residential under the Comprehensive Plan and is zoned Single-Family Medium Density Residential (SFM). The remainder of the property (3.34 acres) is designated and zoned Multi-Family Medium Density Residential (MFM). The proposal is for a subdivision of 117 lots on 26.52 acres at a net density of 6.44 dwelling units per acre. Ten of the lots in the portion of the property zoned MFM would be developed as attached townhomes. The proposal would include the creation of 12 community tracts for open space, private roads/alleys, park/play areas, and tree mitigation. Improvements would include mass grading, construction of 305 linear feet of frontage improvements on Littlerock Road SW abutting the east side of the project site, extension of water and sewer to the site, installation of a stormwater system and street lighting, and extension of private utilities, including power, gas, cable, and telephone. An existing single-family residence and various outbuildings on-site would be demolished during construction.

There are no critical areas on-site. The property is located in the Aquifer Protection overlay zoning district (AQP). The preliminary plat is not a restricted use within the overlay zone and would meet all requirements of the overlay district. No trees would be retained through development of the site, but the Applicant would replant trees at a minimum three-to-one ratio, as required by TMC 16.08.070. Plans call for planting at least 747 trees throughout the project site, not including street trees. A site development/grading permit would be required at the time of development.

Utilities are available to serve the site, and all such utilities would be underground, as required by the municipal code. Development would not cause the motorized level of service (LOS) standard for Littlerock Road SW or for other area roads and intersections to fall below the LOS-D standard. 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. Two walking paths to nearby Black Hills High School would also be provided because these students would not require bus service. The City Public Works Director issued a transportation concurrency ruling for the project. The Applicant would pay both traffic and school impact fees to mitigate project impacts.

City staff reviewed the proposal and determined that the proposed plat would comply with municipal requirements and that the public use and interest would be served by the platting of the subdivision. The Hearing Examiner concurs with this assessment. Conditions unique to the proposal and those required of all preliminary plats, however, are necessary to ensure development meets all requirements of the municipal code and the City's other development standards, and to ensure that all concerns raised by reviewing departments and agencies have been adequately addressed. *Findings 1, 4 – 24.*

2. **With conditions, the proposed subdivision would be consistent with development regulations, considering land use type, development level, infrastructure, and development characteristics, such as development standards, as required by Chapter 58.17 RCW and Title 17 TMC.** The City provided reasonable notice and opportunity to comment on the proposed preliminary plat. Several area residents expressed concern over the proposal, especially the plan to connect the project site to the residential development to the north through the extension of Mirasett Street SW. The City's Comprehensive Plan and Transportation Plan, however, both call for connectivity of streets in the area and in-fill development is encouraged. Environmental impacts of the proposed plat were considered, as required by SEPA, and the City issued a DNS that was not appealed. The preliminary plat would provide single-family residential development consistent with applicable development regulations. City staff determined that, with conditions, the proposal would be consistent with all applicable City, county, and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards. The public interest would be served by the platting of the subdivision. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1 – 24.*
3. **The proposal would meet the requirements for a planned unit development under TMC 18.36.050.** Under TMC 18.36.010, the intent of using a PUD overlay is to encourage flexibility in design and development that would result in a more efficient and desirable use of land; permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, off-street parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; provide for maximum efficiency in layout of streets, utility networks, and other public improvements; produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and provide a guide for developers and City officials who review and approve developments. Here, the project would satisfy the required densities of the SFM and MFM zoning districts, as detailed above. In addition, the project would meet the required setbacks for the SFM and MFM zoning districts for the perimeter boundary lines of the entire plat and the required open space requirements. The Applicant has sought a PUD for two reasons: to allow a private street, Tract I, to serve more than four lots, and to allow lot widths narrower than 50 feet within the portion of the property zoned SFM. City staff reviewed

the proposal and determined that it would be consistent with the City Comprehensive Plan and would be in harmony with the surrounding area and potential future uses and that the PUD overlay would be adequate in size to accommodate the contemplated development. The Hearing Examiner concurs with this assessment. *Findings 1 – 24.*

### DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat to subdivide 26.52 acres into 117 single-family residential lots, with associated improvements, as a planned unit development, at 7517 Littlerock Road SW is **APPROVED**, with the following conditions:<sup>3</sup>

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

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

- D. The contractor shall immediately notify potentially affected tribal nations including, but not limited, to the Squaxin Island Tribe, Chehalis Tribe and Nisqually Tribe.
6. Fill for the project shall be clean material, void of solid waste or organic debris.
  7. Disposal of construction debris and overburden associated with construction and grading activity that is not suitable for fill is required to be disposed of at an approved location.
  8. The Applicant shall secure a National Pollutant Discharge Elimination System (NPDES) Construction Storm Water General Permit from the Washington State Department of Ecology.
  9. The proposed public streets within the subdivision shall comply with the Tumwater Development Guide design requirements in place at the time the preliminary plat application was vested. The public streets shall be dedicated to the City of Tumwater.
  10. The most northerly and most southerly east/west public streets shall be stubbed to the adjacent properties, as shown on the preliminary plat map for future extension. Street barricades complying with the Tumwater Development Guide shall be installed and contain a sign that reads "Future Public Street Extension".
  11. Road 2-F, as depicted on the preliminary plat map shall be stubbed to the property to the south for future extension. A street barricade complying with the Tumwater Development Guide shall be installed and contain a sign that reads "Future Public Street Extension".
  12. Street frontage improvements including curb and gutter, sidewalk, landscape strip, bike lane, street illumination and storm drainage facilities complying with the design requirements of the Tumwater Development Guide shall be constructed along the property frontage on Littlerock Road. Additional right-of-way shall be dedicated to contain the improvements.
  13. The City's water and sewer utilities shall be extended to serve the needs of the subdivision. The utility extensions shall be in accordance with the Tumwater Development Guide requirements in place at the time the preliminary plat application was vested. All necessary right-of-way and/or easement will need to be dedicated.
  14. In order to meet future needs of the Tumwater School District for children walking to school, sidewalk improvements shall be constructed in the northwest portion of the project site and a new pedestrian gate provided to access the Black Hills High School property as depicted on the preliminary plat drawing.

15. The minimum fire flow requirement for the project shall be 1,000 gallons per minute at 20 pounds per square-inch. The system shall also be designed for a maximum velocity of 8 feet per second. If the required fire flow cannot be achieved, residential fire sprinklers shall be required in the dwelling units.
16. A separate permit and engineered design is required for all retaining walls on-site if the height of the wall is over 4 feet measured from the bottom of the footing or if the wall is supporting a surcharge.
17. A final geotechnical engineering report shall be submitted for the grading and site work. The report shall include conclusions and recommendations for grading procedures, soil design criteria for structures or embankments required to accomplish the proposed grading and recommendations and conclusions regarding the site geology. All grading and filling work shall be conducted in accordance with the approved soils report. Compaction testing of the soils under the building foundations and utility trenches shall be verified by the geotechnical engineer of record and the WABO Registered special inspector.
18. Fire hydrants shall be provided at all intersections and at approximately 600-foot spacing along the internal streets.
19. Demolition permits are required to be issued by the City prior to removal of any structures on the properties. A separate permit is required for each structure.
20. A demolition permit is required to be issued by the Olympic Region Clean Air Agency for each structure proposed to be removed from the properties. Olympic Region Clean Air Agency (ORCAA) regulations require an asbestos survey for all demolition projects. Prior to any demolition project, the following must be completed:
  - A. A good faith asbestos survey must be conducted on the structure by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector;
  - B. If asbestos is found during the survey, an Asbestos Removal Notification must be completed and all asbestos-containing material must be properly removed prior to the demolition; and,
  - C. If the structure is larger than 120 sq. ft., a Demolition Notification must be submitted regardless of the results of the asbestos survey.
21. All water wells on the site shall be abandoned in accordance with Washington State Department of Ecology requirements. A permit from the Department of Ecology shall be obtained for each well to be abandoned.

22. All septic systems on the property shall be abandoned in accordance with Thurston County Environmental Health requirements. A permit shall be obtained for each separate system that will be abandoned.
23. The project proponent shall be responsible for providing the City with all costs associated with the installation of water, sewer, street, and storm drainage systems that are dedicated to the City of Tumwater.
24. All engineering designs and construction will need to be in accordance with the City of Tumwater's Development Guide and WSDOT standards.
25. All street construction, utility installation and storm drainage work requires engineered plans certified by a professional engineer licensed to practice in the State of Washington. The plans shall be submitted for review and approval by the City.
26. Any public or private utility relocation necessary to construct the project is the sole responsibility of the project proponent.
27. The Applicant is required to submit a performance surety and surety agreement prior to release of the Site Development/Grading Permit to ensure successful completion of the required public improvements. The amount of the surety shall be 150% of the proponent engineer's estimate of completing the required public improvements.
28. The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety and surety agreement for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Public Works Director.
29. Maintenance of the on-site storm water system will be the responsibility of the project proponent, their successors or assigns. A storm water maintenance agreement will be recorded against the property prior to or concurrent with final plat approval.
30. Sanitary sewer is required to be extended across the frontage on Littlerock Road. The City will accept a FILO (fee in lieu of) for this requirement.
31. A water main is required to be extended across the frontage on Littlerock Road. A minimum 20-inch main will be required. The Applicant may pursue an oversizing agreement with the City to share in the cost of the water main.
32. Back flow prevention is required on all irrigation services in accordance with the AWWA Cross Connection Control Manual.

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33. A landscape and irrigation plan must be submitted for the proposed street planter strips, the proposed open space tracts, and the storm water facilities showing proposed plantings, tree types and heights, and other vegetation. Street trees are required to be installed along Littlerock Road and the proposed interior public street in accordance with the Tumwater Development Guide and Comprehensive Street Tree Plan. This plan must be submitted and approved prior to final plat approval.
34. Lot size requirements, lot coverage, and setbacks: Each residential lot shall have a building site no less than 1,600 square feet in area within which a suitable building can be built and served by utilities and vehicular access unless dedicated or restricted by covenant for open space, park, recreation or other public use. The maximum lot-coverage for impervious surface shall be 70 percent of the total area of the lot.
35. Two off-street parking spaces are required for each lot. Driveways and off-street parking spaces must be hard-surfaced (asphalt, concrete, or turfstone).
36. Impact fees for traffic, community parks, and schools will be assessed to each dwelling unit in the subdivision as building permits are issued. The impact fees will be in accordance with the most current fee resolution adopted by the City at the time of vesting of the building permit applications.
37. An integrated pest management plan approved by the Thurston County Environmental Health must be submitted to the City of Tumwater prior to final plat approval.
38. All legal descriptions on documents submitted to the City must be accompanied with an appropriate drawing that the City can use to verify the legal description.
39. The Professional Land Surveyor responsible for the surveying of the project must obtain a permit from Department of Natural Resources before any existing monuments are disturbed.
40. The Applicant must maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
41. Property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Plat can be recorded.
42. In order to comply with the City's Tree Protection and Replacement Standards, a minimum of 729 replacement trees must be planted on the site. The replacement trees must be planted in the proposed tree protection open spaces on the project site, tracts C and D, shown on the Preliminary Plat Map. The size of the tree protection open space

area(s) associated with the project is required to be a minimum of 5 percent of the buildable area of the site.

43. A Homeowners Association is required to be formed for the project. Prior to final plat approval, the project proponent shall supply the City with copies of the grantee organization's articles of incorporation and bylaws, and with evidence of a binding commitment to convey. The articles of incorporation shall provide that membership in the organization shall be appurtenant to ownership of land in the land division; that the corporation is empowered to assess such land for costs of construction and maintenance of the improvements and property owned by the corporation, and that such assessments shall be in lien upon the land.
44. The Applicant will be responsible for providing two access points for children from the subdivision walking to Black Hills High School. One access point will be in the vicinity of that depicted on the preliminary plat map in the northwest corner of the project. The other access point will be either on the north side of lot 72 or the south side of lot 77 as depicted on the preliminary plat map.

**DECIDED** this 21<sup>st</sup> day of June 2019.



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Andrew M. Reeves  
Hearing Examiner  
Sound Law Center