

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

In the Matter of the Application of	)	Nos. TUM-21-0046; TUM-21-0117;
	)	and TUM 21-1231
	)	
	)	
<b>KPFF Consulting Engineers, on behalf</b>	)	<b>Forest Park Townhomes Preliminary</b>
<b>of Morningside Development Group</b>	)	<b>Plat, Planned Unit Development, and</b>
	)	<b>Variance</b>
	)	
	)	
For Approval of a Preliminary Plat,	)	FINDINGS, CONCLUSIONS,
<u>Planned Unit Development, and Variance</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a preliminary plat and planned unit development, to subdivide a 7.73-acre parcel into 22 multifamily lots for 67 dwelling units, four open space tracts, and a private roadway tract, and for a variance from zoning setback and recreational open space area requirements, at 1653 Starlight Lane 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 September 29, 2021, using access technology.

Testimony:

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

Brad Medrud, City Planning Manager  
Tom Reynolds  
Mark Steepy, Applicant Representative  
John Lape

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated September 17, 2021
2. Site Aerial Photograph Map, published August 23, 2021
3. Preliminary Plat Application, dated December 16, 2020
4. Preliminary Planned Unit Development Application, dated January 12, 2021

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5. Variance Application, dated July 23, 2021
6. Variance Site Plan, dated July 23, 2021
7. Variance Request Narrative, dated July 23, 2021
8. Variance Site Section – Building 5, dated July 7, 2021
9. Variance Site Section – Building 7, dated July 7, 2021
10. Preliminary Plat and Planned Unit Development Map, dated August 2, 2021
11. Wall and Storm Drainage Plan, dated November 25, 2020
12. Notice of Public Hearing, dated September 15, 2021
13. Comprehensive Plan Tumwater Hill Neighborhood Map, dated January 16, 2019
14. Zoning Map, dated August 23, 2021
15. Determination of Nonsignificance (DNS), dated January 7, 2016
16. DNS Appeal Order of Dismissal, dated April 22, 2016
17. Notice of Application, with plat map, dated May 19, 2021
18. Affidavit of Posting, dated May 20, 2021
19. Amended Notice of Application, with DNS and Plat Map, dated August 12, 2021
20. Affidavit of Posting, dated August 12, 2021
21. Amended Notice of Application Ad confirmation, for publication in *The Olympian* on August 12, 2021
22. Updated Water and Sewer Availability Letter, dated August 25, 2021
23. Formal Site Plan (TUM-15-0726) Notice of Application, dated October 6, 2015
24. Formal Site Plan (TUM-15-0726) Critical Area Map, dated January 25, 2016; SEPA Environmental Checklist, submitted August 3, 2015
25. Tree Protection Plan, Sound Urban Forestry, dated June 23, 2015
26. Formal Site Plan (TUM-15-0726) Approval, dated March 4, 2016
27. Tree Protection Plan Peer Review Letter, Professional Forestry Services, Inc., dated June 26, 2020
28. Site Development/Grading Permit (TUM-20-0350) Approved Civil Plans, dated August 26, 2020
29. Site Development/Grading Permit (TUM-20-0350), issued September 15, 2020
30. Site Development/Grading Permit (TUM-20-0350) Approved Landscape Plans, dated March 19, 2021
31. Roadway Photometrics, dated August 19, 2021
32. Plat Name Reservation Certificate, dated May 11, 2021
33. Title Report, dated December 3, 2020
34. Comment from Squaxin Island Tribe, dated May 26, 2021
35. Comment from Squaxin Island Tribe, dated August 16, 2021
36. Comment from Washington State Department of Ecology, dated August 26, 2021

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

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## **FINDINGS**

### **Background**

1. On March 30, 2021, the City of Tumwater (City) approved an application for Site Plan Review (TUM-15-0298) to allow construction of 67 dwelling units in 22 multifamily apartment buildings on a 7.73-acre parcel, with associated open space, landscaping, private roadways, frontage improvements, stormwater management features, and utility extensions. Notably, in approving the application for site plan review, the City determined that, with conditions, the proposed development would be consistent with the City Comprehensive Plan and would meet all applicable municipal code requirements, including requirements related to density, building coverage, building height, setbacks (including setbacks from abutting single-family residential zoning districts), pedestrian access, design review, off-street parking, lighting, landscaping, signage, critical areas, transportation concurrency, open space (including recreational open space), clearing, tree protection, utilities, street design standards, and stormwater management. The property is located at 1653 Starlight Lane SW, approximately a half-mile south of the intersection of Ridgeview Loop SW and Barnes Boulevard SW.<sup>1</sup> *Exhibit 1, Staff Report, pages 1 and 3; Exhibits 23 through 26.*
2. The City issued a Site Development/Grading Permit (TUM-20-0350) on March 30, 2021, and site construction commenced shortly thereafter. Site improvements that have been completed, or are nearing completion, under the approved site development/grading permit include mass grading for private roads and lot pads (including completion of necessary blasting), construction of frontage improvements on Ridgeview Loop SW abutting the east side of the project site, extension of City water and sewer utilities and private utilities to serve the development, stormwater management features to address runoff generated from new pollution-generating impervious surfaces, and street lighting. *Exhibit 1, Staff Report, pages 1, 3, and 4; Exhibit 7; Exhibits 23 through 30.*

### **Application and Notice**

3. The property has changed ownership since the earlier approval. Accordingly, KPFF Consulting Engineers, on behalf of Morningside Development Group (Applicant), now requests approval of a preliminary plat and planned unit development (PUD) to subdivide the 7.73-acre parcel comprising the previously approved development project into 22 multifamily residential lots for 67 dwelling units, four open space tracts, a private roadway tract, and utility easements. The Applicant does not propose any changes to the previously approved site plan and, as noted above, development of the property has commenced consistent with the approved site plan and site development/grading permit issued for the project. Variances from the minimum building setback from an abutting single-family residential zone requirement of Tumwater Municipal Code (TMC) 18.14.050.F, and from the minimum active recreation open space area requirement of

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<sup>1</sup> The property is identified by Thurston County Tax Parcel No. 5520-12-00000. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included with the Preliminary Plat Map. *Exhibit 10.*

TMC 17.12.210.G, are required for the proposed subdivision because the previously approved development project would not meet these standards and could not feasibly meet these standards through reasonable changes to the proposal due to unique site constraints and other circumstances, as detailed later in this decision. As noted above, the subject property is located at 1653 Starlight Lane SW. *Exhibit 1, Staff Report, page 1; Exhibits 3 through 11; Exhibits 23 through 26; Exhibit 33.*

4. The City determined that the preliminary plat and PUD applications were complete on May 13, 2021, and that the variance application was complete on July 30, 2021. The City originally provided notice of the preliminary plat and PUD applications on May 19, 2021. After receiving the variance application, the City provided revised notice of the applications on August 12, 2021, by mailing or emailing notice to property owners within 300 feet of the site and to reviewing government agencies and tribes, posting notice on-site, and publishing notice in *The Olympian*, with a comment deadline of August 26, 2021. On September 17, 2021, the City provided notice of the open record hearing associated with the applications by mailing or emailing notice to property owners within 300 feet of the site and to reviewing government agencies and tribes, posting notice on-site, and publishing notice in *The Olympian*. *Exhibit 1, Staff Report, pages 3, 8, and 9; Exhibits 3 through 5; Exhibits 17 through 21.*
5. The City did not receive any comments on the proposal from members of the public in response to its notice materials. The City received comments from two reviewing agencies in response to its notice materials. Specifically:
  - The Squaxin Island Tribe commented that it does not have specific concerns over cultural resources related to the project site but stated that it would concur with recommendation by the Washington State Department of Archaeology and Historic Preservation (DAHP) to conduct a cultural resources survey. The Squaxin Island Tribe also commented that, if any archeological or cultural resources are discovered on site, work should halt and DAHP and the tribe should be contacted. DAHP did not comment on the proposal.
  - The Washington State Department of Ecology (DOE) provided general comments noting that all grading and filling of land must utilize only clean fill and that all removed debris must be disposed at an approved site. DOE also noted that, if toxic contamination is suspected, discovered, or occurs during development, the Applicant must test the potential contaminated medium and notify DOE.*Exhibit 1, Staff Report, pages 8, 9, 29, and 30; Exhibits 34 through 36.*

#### State Environmental Policy Act

6. The City Community Development Department (CDD) acted as lead agency and analyzed the environmental impacts of the original development proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington RCW (RCW). CDD reviewed the Applicant's environmental checklist, and other information

on file, and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, CDD issued a Determination of Nonsignificance (DNS) on January 7, 2016, with an appeal deadline of January 13, 2016. An appeal of the DNS was filed (by the original property owner), but the Hearing Examiner later granted the property owner's request to withdraw the appeal prior to the scheduled hearing. The City has determined that the scope and impacts of the proposed preliminary plat, PUD, and variances are addressed by the January 7, 2016, DNS and, accordingly, no further SEPA review is necessary. *Exhibit 1, Staff Report, pages 2 and 9; Exhibits 15 and 16; Exhibit 24.*

#### Comprehensive Plan and Zoning

7. The property is within the Tumwater Hill Neighborhood and is designated "Multi-Family Medium Density Residential" under the City Comprehensive Plan, which provides for a density of 9 to 15 dwelling units per acre. The previously approved development would provide a density of 13.7 dwelling units per acre, consistent with the Comprehensive Plan designation for the property. The Comprehensive Plan provides that the Multi-Family Medium Density Residential land use designation is intended to provide primarily for multifamily condominium and apartment building types and 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." *Comprehensive Plan, Land Use Element, page 35.* In addition, "Multi-Family Medium Density designated areas should be accompanied by open space, environmental protection for sensitive areas and mass transit linkage in order to make these higher densities viable and compatible with the community." *Comprehensive Plan, Land Use Element, page 36.* City staff determined that the proposal would be consistent with the Comprehensive Plan. *Exhibit 1, Staff Report, pages 4 through 6; Exhibit 13.*
8. The property is located in the "Multifamily Medium Density Residential" (MFM) zoning district, which allows a minimum net density of 9 units per acre and a maximum net density of 15 units per acre. *TMC 18.14.050.* 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; promote the efficient use of land; 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. *TMC 18.14.010.* Multifamily dwellings, including triplexes and fourplexes, are a permitted use in the MFM zone. *TMC 18.14.020. Exhibit 1, Staff Report, pages 10, 22, and 24.*

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9. TMC 18.14.050 provides development standards applicable to the MFM zoning district, which include a required building setback from abutting single-family residential zones of 20 feet, plus an additional 10 feet for every story of a multifamily structure above the ground-level story. As part of its initial formal site plan review approval, the City determined that the proposed development would comply with this zoning setback requirement by locating the proposed multilevel, multifamily buildings along the property's eastern border a minimum of 20 feet from adjacent property zoned "Single-Family Low Density Residential" (SFL). The City's approval of this 20-foot setback from the abutting single-family residential zone was due to its overlooking the fact that an additional setback area from the abutting zone would be required for multi-story buildings. Development standards for the MFM zoning district also require new development projects to designate a minimum of 15 percent of the gross site area as open space with both passive and active recreation facilities for the enjoyment of residents. *TMC 18.14.050.H; TMC 17.12.210.B.* In another part of its initial formal site plan review approval, the City originally determined that the proposed development would exceed open space requirements by designating over 38 percent of the gross site area for open spaces and providing for both passive and active recreational opportunities. Since the time of the approval, however, the code has been updated to require 50 percent of the open space to be used for active recreation. *TMC 17.12.210.G.* As discussed in detail below, the Applicant has requested variances from the building setback requirement and the active open space area requirement described above to allow the proposed subdivision to be developed consistent with the previously approved site plan. The proposal would comply with all other development standards applicable to the MFM zoning district. *Exhibit 1, Staff Report, pages 1, 2, and 16 through 29; Exhibits 5 through 9; Exhibit 14; Exhibits 23 through 30.*
10. The property is located in the Aquifer Protection (AQP) overlay zoning district. The AQP overlay district is an overlay zone covering the entire city: it is intended to "protect vulnerable and/or critical aquifer recharge areas within the city and urban growth area" by "preventing future pollution from new or different land uses or activities." *TMC 18.39.010.* The proposed residential subdivision is not a restricted use within the AQP overlay district. *Exhibit 1, Staff Report, page 24.*

#### Existing Site and Surrounding Development

11. As noted above, development of the 7.73-acre subject property has commenced consistent with the previously approved site plan and site development/grading permit, including mass grading for private roads and lot pads, construction of frontage improvements on Ridgeview Loop SW, utility extensions, stormwater management features, and street lighting. Prior to the start of construction, the subject property consisted of undeveloped forested areas. The project site is hilly and contains steep slope geologically hazardous areas. In issuing the site development/grading permit for the development project, the City approved a geotechnical engineering report that provided

recommendations for building setbacks from the top and toe of geologically hazardous steep slopes on the property. No other regulated critical areas or associated buffers were identified on the property. Properties immediately to the north and west of the subject property are zoned MFM and consist of undeveloped forested areas. Property immediately to the south and east of the subject property is zoned SFL and is developed with the Tumwater Hill Elementary School, with the portion of the school property adjacent to the subject property consisting of an athletic field. *Exhibit 1, Staff Report, pages 4, 12, and 13; Exhibit 2; Exhibit 11; Exhibit 14; Exhibit 24; Exhibit 26; Exhibit 28.*

#### Trees and Open Space

12. Chapter 16.08 TMC regulates the removal and preservation of existing trees on a development site. In addition, TMC 17.12.070 requires development projects to preserve to the greatest extent feasible natural vegetation and features on-site, including trees. The City reviewed a professional forester's report, tree inventory, and tree protection plan submitted prior to issuance of the site development/grading permit and determined that the proposed development would satisfy the requirements of Chapter 16.08 and TMC 17.12.070. TMC 17.12.210 provides general design standards for open spaces in a preliminary plat. As noted above, the City originally determined, as part of its initial formal site plan review approval, that the proposed development would meet applicable open space design standards. Since the time of that approval, however, TMC 17.12.210 has been updated to require 50 percent of the open space to be used for active recreation, necessitating the Applicant's request for a variance to develop open space areas within the subdivision in conformance with the approved site plan. *Exhibit 1, Staff Report, pages 9, 11, and 16 through 20; Exhibits 5 through 7; Exhibit 10; Exhibits 23 through 30.*

#### Stormwater

13. The City reviewed a preliminary storm drainage report with the site development/grading permit application and determined that the proposed preliminary stormwater design would comply with the 2018 City of Tumwater Drainage Design and Erosion Control Manual. *Exhibit 1, Staff Report, page 21; Exhibit 10; Exhibit 11; Exhibits 23 through 30.*

#### Utilities

14. The City issued an updated Water and Sewer Availability Certificate for the proposed development on August 25, 2021. As noted above, site improvements currently underway with the approved site development/grading permit include extensions of City water and sanitary sewer and private utilities. All utilities associated with the development project have been or would be installed underground, in accord with the requirements of TMC 17.12.200 and Section 3.14 of the Tumwater Development Guide. *Exhibit 1, Staff Report, pages 4, 15, 16, and 21; Exhibit 22; Exhibit 28; Exhibit 29.*

### Access, Parking, and Traffic

15. Access to the property would be provided from Ridgeview Loop SW, with access to the individual lots provided by two new private internal roadways terminating in cul-de-sacs. Additional connections providing access through the proposed subdivision would not be required because adjacent property to the south consists of school property and because on-site steep slopes make additional roadway connections impractical. As depicted on the approved site development/grading permit plans, the proposed internal private roads would include four-foot-wide sidewalks on one side, which would connect to the public sidewalk along Ridgeview Loop SW. The City has determined, in association with its issuance of the site development/grading permit, that the new private roadways serving the development would comply with all applicable street design standards, including standards related to street size, street alignment, driving surfaces, cul-de-sac specifications, maximum street grades, street signage, emergency vehicle access, and lot access. As addressed in detail below, the Applicant requests approval of a planned unit development to allow the new internal roadways serving the subdivision to be constructed as private roads. A Transportation Concurrency Application and Trip Distribution Diagram was submitted for review and approved by the City Public Works Director as part of the formal site plan review approval. The transportation concurrency ruling determined that traffic generated from the proposed development would not cause any impacted corridors or intersections to fall below acceptable levels of service. City staff determined that, by connecting to Ridgeview Loop SW to the east, the proposal would be consistent with the Tumwater Transportation Plan. As noted in the formal site plan approval, the project would be required to provide a minimum of 1.5 off-street parking stalls for each dwelling unit containing one or two bedrooms and two off-street parking stalls for each dwelling unit containing three or more bedrooms, plus an additional guest stall for each 10 dwelling units, as well as short- and long-term bicycle parking facilities. *Exhibit 1, Staff Report, pages 6 through 15; Exhibit 4; Exhibit 10; Exhibit 15; Exhibits 23 through 31.*
16. The City has adopted a Sustainable Development Plan for the Thurston Region to reduce vehicle miles traveled and to preserve sensitive areas, farmland, forestland, prairies, and rural lands. The project site is located approximately 0.06 miles south of properties located at the intersection of Ridgeview Loop SW and Barnes Boulevard SW that are zoned Neighborhood Commercial (NC). The NC zoning designation allows a mix of retail and service business uses, such as restaurants, recreation facilities, and day care centers, which could serve residents of the proposed subdivision who walk or use bicycles. City staff determined that the project would not conflict with the Sustainable Development Plan for the Thurston Region. *Exhibit 1, Staff Report, pages 5 and 6.*

### Schools and Parks

17. Children residing within the proposed subdivision would attend Tumwater Hill Elementary School (approximately 0.15 miles to the south of the site), Tumwater Middle School (approximately 2.8 miles to the south of the site), and Black Hills High School

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(approximately 4.8 miles to the south of the site). As noted above, the proposed new private streets serving the subdivision would include four-foot-wide sidewalks that would connect to the public sidewalk along Ridgeview Loop SW, which would ensure safe walking conditions for students walking to Tumwater Hill Elementary School or to a school bus stop located on Ridgeview Loop SW. School and park impact fees would be assessed to each dwelling unit in the subdivision at the building permit stage. *Exhibit 1, Staff Report, pages 10, 22, and 35; Exhibit 10.*

18. The City participates in the Thurston Regional Planning Council, which adopted a Thurston Regional Trail Plan in December 2007. City staff determined that the proposed project would not affect implementation of this plan. *Exhibit 1, Staff Report, pages 7 and 8.*

#### Planned Unit Development

19. The Applicant requests approval to develop the property as a planned unit development (PUD) to allow for private internal roadways. The intent of PUDs is to encourage new development not limited by strict application of the City's zoning code. *TMC 18.36.010.A.* More specifically, the purpose of PUDs is to encourage flexibility in design and development that will 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 the 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 meeting the standards and purposes of this chapter. *TMC 18.36.010.B.* PUDs achieve these purposes by providing relief from the minimum requirements of the underlying zone, with the following exceptions:
  - A. Minimum Project Size. There is no minimum project size for a planned unit development.
  - B. Project Densities. Densities established by the underlying zone district shall prevail.
  - C. Setbacks. Project setbacks as required by the underlying zoning district shall prevail on all perimeter boundary lines.
  - D. Land Coverage. Maximum land coverage, as established by the underlying zone district, may be exceeded by no more than 25 percent.
  - E. Uses Allowed. The use of the development shall be limited to those allowed either as permitted, accessory, or conditional uses in the underlying zones.
  - F. Open Space/Park. The open space/park dedication requirements of the underlying zoning district shall prevail.*TMC 18.36.080.* The Applicant requests PUD approval to develop the property with

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private internal roads. *Exhibit 1, Staff Report, pages 24 through 26; Exhibit 4.*

20. Under TMC 18.36.050, all PUDs must (1) substantially conform to the Comprehensive Plan, (2) harmonize with the surrounding area or its potential future use, and (3) ensure the size of the proposed overlay can accommodate the proposed development. City staff analyzed the proposal for consistency with the requirements for a PUD and determined:
- The proposal would be consistent with the Tumwater Comprehensive Plan.
  - The proposal would be consistent with the surrounding residential area that is developed at urban densities.
  - The proposal would comply with the densities allowed in the MFM zoning district.

*Exhibit 1, Staff Report, pages 1, 9, 10, 13 through 15, and 24 through 26.*

#### Variances

21. The Applicant requests a variance from TMC 18.14.050.F to reduce the required building setback from adjacent SFL-zoned property to 20 feet for proposed Lots 1 through 8. The Applicant also requests a variance from the updated requirement under TMC 17.12.210.G mandating that residential subdivisions provide active recreation features within at least 50 percent of required open space areas. Approval of both variances would allow the subdivision to be developed consistent with the previously approved site plan and in compliance with all other current requirements of the municipal code. *Exhibit 1, Staff Report, pages 26 through 29; Exhibits 5 through 10; Exhibits 23 through 30.*
22. The Applicant submitted a project narrative addressing the specific criteria for approval of a variance with respect to the requested setback variance, which notes:
- The intent of the setback provisions under TMC 17.12.210.G is to provide additional separation between single-family residences and taller, multifamily buildings. Although proposed Lots 1 through 8 abut SFL-zoned property, the adjacent property does not contain single-family residences and, instead, consists of school district property developed with an athletic field. In addition, due to the grade change on-site, the school district property is at a higher elevation than the proposed buildings on Lots 1 through 8. Site section illustrations provided with the variance application demonstrate that the height of the proposed buildings above the grade of the adjacent property would be roughly equivalent to a single story. Therefore, the intent of the municipal code would be met by reducing the required setback to 20 feet.
  - The 20-foot rear yard setback shown in the site plan review that was approved in 2016 has been maintained from the original approval through construction documents for site improvements. The need for additional rear yard setback was not brought up during the site plan review process. At the time of site plan

approval, all parties were under the impression that the 20-foot rear yard setback met code requirements.

- The intent of the setback requirement would be met through the previously approved 20-foot rear yard setback for proposed Lots 1 through 8 and, therefore, granting the variance would not confer a special privilege to the property.
- Granting the variance would not be materially detrimental to the public welfare or injurious to surrounding properties. The adjacent SFL-zoned property consists of school property that is not developed with single-family residences, and the proposed multi-story buildings would be partially embedded in the side of a slope, which would ensure that the buildings would not tower above the adjacent property.

*Exhibit 7.*

23. The Applicant's project narrative also addresses the variance criteria with respect to the recreational open space variance request, noting:

- There is a significant grade change across the site, with over 100 vertical feet in topographic relief from east to west. With the previously approved site plan, a large portion of the open spaces on-site are also tree protection areas that are required to be undisturbed. To provide additional active recreation areas required under TMC 17.12.210.G, these tree protection areas would have to be reduced to create more flat area suitable for recreation facilities, which would also require significant earthwork, walls, and potential blasting in bedrock.
- The overall open space quantity requirement would be met by the project, but the ability to create the required amount of active recreation space is limited due to site constraints, including steep topography, tree protection open space areas, and the presence of bedrock. These constraints are all related to conditions of the property and are not a result of the Applicant's actions.
- Because the variance is necessary due to site constraints, granting the variance would not confer a special privilege to the property.
- The reduction of open space for active recreation would not be materially detrimental to the public welfare or injurious to surrounding properties. By allowing this reduction, the amount of tree protection area can remain, and the overall amount of open space exceeds minimum requirements.

*Exhibit 7.*

24. City staff reviewed the Applicant's variance proposals, agreed with the analysis provided in the Applicant's project narrative, and determined that the proposals would satisfy the specific criteria for approval of variances under TMC 18.58.040.A. *Exhibit 1, Staff Report, pages 26 through 29.*

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### Testimony

25. City Planning Manager Brad Medrud testified generally about how City staff reviewed the applications for consistency with the Comprehensive Plan, zoning requirements, and the specific criteria for approval of a preliminary plat, planned unit development, and variance. He stated that the City has approved the development project through formal site plan review and the issuance of a site development/grading permit but that the Applicant now requests preliminary plat approval to subdivide the 7.73-acre property into 22 multifamily residential lots, four open space tracts, a private roadway tract, and utility easements. Mr. Medrud explained that preliminary planned unit development approval is required to allow the internal roadways to be constructed as private streets, consistent with the previously approved site plan, and that variances from applicable building setback and recreational open space requirements are also required to develop the property consistent with the approved site plan. He noted that the subject property is currently being developed consistent with the previously approved site plan and site development/grading permit. Mr. Medrud stressed that the findings and approvals issued for the development project, which determined that the project would comply with all applicable municipal code requirements, have been incorporated into this current proposal and that, with conditions and approval of the variances and planned unit development, the current proposal would satisfy all current municipal code requirements, as well as all local and state requirements for the subdivision of land. Regarding the request for a variance to allow the buildings on proposed Lots 1 through 8 to be set back 20 feet from adjacent property zoned “Single-Family Low Density Residential” (SFL), Mr. Medrud explained that the 20-foot setback was approved with the formal site plan review and the site development/grading permit due to an oversight of the fact that additional setback area would be required due to the height of the proposed multifamily structures. He noted that the previously approved 20-foot setback from the adjacent property would meet the intent of the code because the adjacent property is developed with a public school and associated athletic field rather than single-family housing and because of the substantially higher elevation of the adjacent property. Regarding the request for a variance from recreational open space requirements, Mr. Medrud explained that the development would provide open space areas in excess of that required under the municipal code but that it would not meet current recreational open space requirements. He explained that the provision of additional recreational facilities on the property would not be practical because it would require significant earthwork and, potentially, the blasting of bedrock due to existing site conditions. *Testimony of Mr. Medrud.*
26. Tom Reynolds, of Morningside Development Group (MDG), testified that MDG purchased the property after formal site plan review was approved by the City, explaining that MDG is seeking to subdivide the property to facilitate financing of the project. He noted that, after consulting with the City, MDG decided to develop the property under the prior permit approval while at the same time seeking preliminary plat approval to subdivide the lots. Mr. Reynolds explained that site development is nearly complete and

ready for building construction. He stressed that the property is currently being developed, and would continue to be developed, consistent with the previously approved site plan and that the Applicant is seeking preliminary plat approval only to create separate lots. *Testimony of Mr. Reynolds.*

27. Applicant Representative Mark Steepy, of KPFF Consulting Engineers, testified that he agrees with City staff's analysis of the proposal as provided in the staff report and the testimony of Mr. Medrud. He noted that development of the site consistent with the previously approved site plan is nearly complete and that the requested variances are necessary to allow the current site layout. Mr. Steepy explained how the 20-foot setback from adjacent, SFL-zoned property would meet the intent of the setback requirements, as described in the Applicant's project narrative. *Testimony of Mr. Steepy.*
28. The Applicant's project architect, John Lape, explained that the multifamily buildings on Lots 1 through 8 would meet the general setback requirement from the adjacent SFL-zoned property but that a variance is required because additional setback area is normally required for multifamily buildings exceeding one story. *Testimony of Mr. Lape.*

#### Staff Recommendation

29. City staff recommends approval of the preliminary plat, preliminary planned unit development, and variance requests, with conditions. *Exhibit 1, Staff Report, pages 30 through 39.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner has authority to hear and decide applications for preliminary plats, planned unit developments, and variances. The Hearing Examiner may grant, deny, or grant with such conditions, limitations, modifications, and restrictions as the Hearing Examiner finds necessary to make the application compatible with applicable laws and regulations, including but not limited to compatibility with the environment, the Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. *TMC 2.58.090.A; TMC 2.58.130.A.2; Table 14.08.030.*

#### Criteria for Review

##### *Preliminary Plat*

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

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other public facilities, and shall consider all other relevant facts, including the physical characteristics of the site, and determine whether the public interest will be served by the land division. Further, consideration shall be given for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school.

If the Hearing Examiner finds that the proposed division of land makes appropriate provisions, and makes written findings to that effect, then it shall be approved. If the Hearing Examiner finds that the proposed land division does not make such appropriate provisions or that the public use and interest will not be served, then the Hearing Examiner shall disapprove the proposed division of land. *TMC 17.14.040.A.*

Dedication of land, provision of public improvements to serve the land division, and/or payment of impact fees allowed by state law, to any public body, may be required as a condition of land division approval. The Hearing Examiner shall not, as a condition of approval, require an Applicant to obtain a release from damages from other property owners. The Hearing Examiner will consider the physical characteristics of a proposed land division site and may disapprove a proposed division because of flood, inundation, or wetland conditions. Construction of protective improvements may be required as a condition of approval. *TMC 17.14.040.B, .040.C, and .040.D.*

The subdivision provisions of the Tumwater Municipal Code are substantially similar to RCW 58.17.110(2), which provides:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed 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.

#### *Planned Unit Development*

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

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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.

#### *Variance*

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

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

*TMC 18.58.040.A.*

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

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

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## Conclusions Based on Findings

### *Preliminary Plat*

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 property is designated Multi-Family Medium Density Residential under the City Comprehensive Plan and is located in the Multifamily Medium Density Residential (MFM) zoning district, which allows a density of 9 to 15 dwelling units per acre. The proposal is for a subdivision with a net density of 13.7 dwelling units per acre. The City previously approved the proposed development through formal site plan review, at which time the City determined that, with conditions, the proposal would meet all applicable municipal code requirements, including requirements related to density, building coverage, building height, pedestrian access, design review, off-street parking, lighting, landscaping, signage, critical areas, transportation concurrency, clearing, tree protection, utilities, stormwater management, street design standards, open space (including recreational open space areas), and setbacks (including required setbacks from abutting single-family residential zoning districts). The Applicant does not propose any changes to the previously approved site plan and has commenced development of the property consistent with the approved site plan and with the site development/grading permit issued for the project. As proposed, approved through the formal site plan review process, and conditioned herein, the project would meet all current municipal code requirements for multifamily development in the MFM zoning district, apart from setback requirements for multi-story, multifamily buildings adjacent to single-family residential zones and the requirement to provide active recreation facilities on a minimum of 50 percent of required open space areas. As detailed in Conclusions 4 through 8 below, variances from these requirements are warranted due to unique conditions and circumstances of the subject property that are not the result of any action by the Applicant.

In light of the City's prior review and approval of the project through formal site plan review, development of the property consistent with the previously approved site plan would ensure that adequate provisions would be made for the public health, safety, and general welfare and would meet all other requirements for preliminary subdivision approval. Specifically, the proposed subdivision would provide open space areas on over 38 percent of the gross area of the site, which would provide both passive and active recreational opportunities for residents; preserve existing trees within dedicated open space areas consistent with the previously approved tree protection plan; include installation of stormwater management features in compliance with the City's current Drainage Design and Erosion Control Manual; provide off-street parking meeting or exceeding municipal code requirements; and include construction of internal private roadways and cul-de-sacs in compliance with all applicable street design standards,

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which would include sidewalks providing safe walking conditions from the subdivision to nearby schools or school bus stops. In addition, the City Public Works Director issued a transportation concurrency ruling determining that traffic generated from the proposed development would not cause any impacted corridors or intersections to fall below acceptable levels of service, and the City issued an updated Water and Sewer Availability Certificate noting that there is adequate water and sanitary sewer capacity to serve the proposed development.

Conditions, as detailed below, are necessary to ensure that the project proceeds in conformance with the previously approved site plan, adheres to the conditions of the previously issued site development/grading permit, and satisfies all other local and state requirements for preliminary plat approval. *Findings 1 – 3, 7 – 29.*

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 proposal. The City did not receive any comments on the proposal from members of the public. The City received comments from the Squaxin Island Tribe concerning the inadvertent discovery of cultural resources during construction. The City also received general comments from DOE concerning the use of clean fill, the proper disposal of debris, and the proper procedures for addressing any potential contaminated media during development. These agency comments are addressed through the conditions of plat approval detailed below. Environmental impacts of the proposed development were considered, as required by SEPA, during the formal site plan review process, and the City issued a DNS on January 7, 2016. An appeal of the DNS was filed but later withdrawn by the Appellant. The scope and impacts of the current plat proposal, which does not include any changes to the previously approved site plan, are addressed by the January 7, 2016, DNS. With approval of the requested planned unit development and variances addressed in the conclusions below, the preliminary plat would provide multifamily residential development consistent with all applicable development regulations. City staff determined that, with conditions, the proposal would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards. The public interest would be served by the platting of the subdivision. Conditions, as noted in Conclusion 1 and detailed below, are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1 – 29.*

#### *Planned Unit Development*

3. **With conditions, the proposal would be consistent with 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

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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 Applicant has sought approval of a PUD to allow private internal streets to serve the subdivision. Connections providing public access through the subdivision is not necessary because adjacent property to the south consists of public school property and because steep slope hazard areas on-site make additional roadway connections impractical. The City has determined, in association with its issuance of the site development/grading permit, that the new private roadways serving the development would comply with all applicable street design standards, including standards related to street size, street alignment, driving surfaces, cul-de-sac specifications, maximum street grades, street signage, emergency vehicle access, and lot access. As discussed above in Conclusions 1 and 2, the proposal, with conditions, would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards, and would be harmonious with surrounding development. City staff reviewed the proposal and determined that the PUD overlay would be adequate in size to accommodate the contemplated development. The Hearing Examiner concurs with City staff's assessment. The public interest would be served by the platting of the subdivision and planned unit development. As discussed in the above conclusions and detailed below, conditions are necessary to ensure that the proposal meets all criteria required for plat approval and approval of a planned unit development. *Findings 1 – 29.*

#### *Variances*

4. **Special conditions exist that are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district, and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district.** Consistent with the previously approved site plan and site development/grading permit, the proposed multi-story, multifamily buildings on Lots 1 through 8 would be set back at least 20 feet from adjacent property to the east and south, which is zoned "Single-Family Low Density Residential" (SFL). TMC 18.14.050, however, requires a 20-foot building setback *plus* an additional 10-foot setback for every story of a multifamily structure above the ground-level story. The intent of this additional required setback area is to ensure that the development of taller, multifamily structures would be compatible with single-family development on adjacent property. Here, the adjacent property within the SFL zoning district is not developed with single-family residences and, instead, consists of an athletic field associated with a public school on the property. Accordingly, strict adherence to the additional setback requirement is not necessary to ensure

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compatibility with adjacent single-family residential uses. In addition, the adjacent school district property is at a significantly higher elevation than the ground level of the proposed buildings on Lots 1 through 8. Due to this significant grade change, the height of the proposed buildings would extend only approximately one story from the ground level of the adjacent school district property and, therefore, a 20-foot setback would meet the intent of the code.

Also consistent with the previously approved site plan and site development/grading permit, the Applicant would dedicate open space areas in excess of the minimum requirement but would not provide the minimum amount of active recreation areas currently required under TMC 17.12.210.G. Compliance with this minimum active recreation area requirement is not feasible due to unique conditions of the property that include steep site topography, tree preservation areas, and the presence of bedrock that would require blasting to accommodate the installation of recreation facilities. *Findings 1 – 3, 7 – 29.*

5. **The special conditions and circumstances are not the result of actions of the Applicant.** Development of the property has commenced consistent with the previously approved site plan and site development/grading permit. At the time of formal site plan approval, the City determined that the 20-foot setback from adjoining SFL-zoned property met applicable code requirements, and the Applicant has commenced site development in reliance on that determination. Site constraints related to topography, the presence of bedrock, and tree preservation within dedicated open space areas, are conditions of the property that are not the result of any actions by the Applicant. *Findings 1 – 3, 7 – 29.*
6. **The granting of the variance requested would not confer a special privilege to the property that is denied to other lands in the same district.** The intent of the zoning setback requirement would be met because adjacent SFL-zoned property consists of an athletic field associated with a public school on the property, rather than single-family residential development, and is at a significantly higher grade than the ground-level of the proposed multi-story, multifamily buildings on Lots 1 through 8. In addition, unique site constraints render it infeasible for the Applicant to install recreation facilities necessary to meet the minimum active recreational open space requirement. Accordingly, granting the requested variances to allow the property to be developed consistent with the previously approved site plan and site development/grading permit would not confer a special privilege denied to other properties in the MFM district. *Findings 1 – 3, 7 – 29.*
7. **With conditions, the granting of the variance would not be materially detrimental to the public welfare or injurious to the property or improvements of the vicinity and zone in which the subject property is situated.** As addressed in the above conclusions, the City provided reasonable notice and opportunity to comment on the proposal and did not receive any comments from members of the public. Comments from reviewing

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agencies have been addressed by the conditions below. The scope and impacts of the proposed variances, which would allow the property to be developed consistent with the previously approved site plan, are addressed by the DNS issued in association with the approved site plan. Conditions, as detailed below, are necessary to ensure that the project proceeds in conformance with the previously approved site plan, adheres to the conditions of the previously issued site development/grading permit, and satisfies all criteria for variance approval. *Findings 1 – 29.*

8. **The reasons set forth in the application justify the granting of the variance, and the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.** The requested variances from applicable zoning setback requirements and from active recreation open space area requirements are the minimum necessary to allow the property to be developed consistent with the previously approved site plan and site development/grading permit. *Findings 1 – 3, 7 – 29.*

### DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat and planned unit development to subdivide a 7.73-acre parcel into 22 multifamily lots for 67 dwelling units, four open space tracts, and a private roadway tract, and for a variance from zoning setback and open space area requirements, at 1653 Starlight Lane SW, is **APPROVED**, with the following conditions:<sup>2</sup>

1. Stormwater from impervious surfaces associated with the project shall be managed in accordance with the City of Tumwater 2018 Drainage Design and Erosion Manual.
2. Erosion and sediment control measures that comply with the City of Tumwater 2018 Drainage Design and Erosion Manual shall be implemented during construction of the project to prevent sediment-laden runoff from entering surface waters.
3. Construction shall follow the conditions of the Site Development/Grading Permit (TUM-20-0350) issued by the City for grading, street, sidewalk, and utility construction, tree removal, and construction of storm drainage facilities.

This project will be considered "engineered grading." Special hazards may include steep slopes, terracing with rockeries or multiple retaining walls. Inspection of the grading shall be performed by the civil engineer and geotechnical engineer approved by the City of Tumwater Building Official. In addition, special inspectors approved by the City of Tumwater Building Official shall perform inspections of fill placement, compaction testing, and blasting. All special inspections must be performed by Washington

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<sup>2</sup> Conditions include legal requirements applicable to all developments as well as requirements designed to mitigate specific impacts of the proposal.

Association of Building Officials (WABO) registered labs and inspectors who have expertise in grading and earthwork.

When the grading work is complete and ready for final inspection, the civil engineer of record is responsible for providing a final inspection report which will include the geotechnical and special reports. In addition, as-built drawings for the site must be submitted in a PDF format. (IBC Appendix J).

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;
  - 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. All grading and filing of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filing. All removed debris resulting from this project must be disposed of at an approved site. Contact the Thurston County Health Department for proper management of these materials.
7. If contamination is suspected, discovered, or occurs during construction of the proposed project, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) for the Washington State Department of Ecology at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at (360) 407-7263.

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8. 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.
9. The project proponent shall follow the procedures in the City of Tumwater Standard Inadvertent Archaeological and Historical Resources Discovery Plan.
10. If any archaeological or cultural resources are uncovered during construction, the project proponent shall stop work in the area of discovery; follow the procedures in TMC 18.40.065 Inadvertent Discovery of Archaeological and Cultural Resources; and contact the City of Tumwater, the Washington State Department of Archaeology and Historic Preservation, and the Squaxin Island Tribe's Archaeologist, Shaun Dinubilo via email at [sdinubilo@squaxin.us](mailto:sdinubilo@squaxin.us).
11. The project proponent shall follow the requirements of the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit issued for the project by the Washington State Department of Ecology.
12. The proposed private streets within the subdivision shall comply with the Tumwater Development Guide design requirements in place at the time the preliminary plat application was vested.
13. 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 Ridgeview Loop SW per TMC 12.12.010.
14. 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 to the City of Tumwater.
15. 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.
16. The engineering plans shall show all existing and proposed utilities and easements including streetlights, street trees, water, sewer, storm, gas, cable, power, telephone, signage, and striping. Provide street sections showing dimensions of existing and proposed improvements. Include the line sizes on the water and sewer mains and services. All rockeries proposed shall also be shown on the site plan.

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17. All engineering designs and construction shall be in accordance with the City of Tumwater's Development Guide and WSDOT standards.
18. 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.
19. The project proponent shall be responsible for all plan check, inspection, and connection fees.
20. Any public or private utility relocation necessary to construct the project shall be the sole responsibility of the project proponent.
21. The project proponent shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Transportation and Engineering Director. Please refer to Chapter 3 of the Development Guide for further clarification.
22. All legal descriptions on documents submitted to the City must be accompanied with an appropriate drawing that the City can use to verify the legal description. All engineering drawings must be on 24" x 36" paper sheets.
23. The owner or owner's representative is also 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 and NGVD-29 vertical datum. Provide individual drawings independent of x-refs. Include all non-standard font files and plot files. Also, please furnish a CD with PDF files printed from the Auto-CAD files. A utility maintenance agreement, easements, and bills-of-sale will also be required.
24. A note shall be added on the site plan that the Professional Land Surveyor responsible for the surveying of the project must obtain a permit from the Washington State Department of Natural Resources before any existing survey monuments are disturbed.
25. The project proponent shall provide a cover page with all dedication and easement language.
26. Any water main extension will require a minimum of an eight-inch system. The main size will depend on the fire flow requirements for this project. The system shall be designed for a maximum velocity of eight feet per second.

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27. The eight-inch sanitary sewer main this project is tying into is a private main for the Tumwater Hill Elementary School. The existing line will be required to pass the appropriate tests to be taken over by the City of Tumwater. The Tumwater School District will need to provide a bill-of-sale.
28. All sanitary sewer mains must be TV'd. The project proponent shall provide a tape of the sanitary sewer line prior to recording the Final Plat.
29. A drainage design and erosion control plan will be required according to City of Tumwater's 2018 Drainage Design and Erosion Manual.
30. Maintenance of the on-site stormwater system will be the responsibility of the project proponent, their successors, or assigns. A stormwater maintenance agreement must be recorded against the property prior to recording the Final Plat.
31. This project will provide treatment of the stormwater on-site and release to Crosby Boulevard SW. The water is then routed to the Linwood Regional Stormwater Facility.
32. A separate permit and engineered design is required for any retaining walls on site if the height of the wall is over four feet measured from the bottom of the footing or if the wall is supporting a surcharge.
33. Fire hydrants shall be provided at all intersections and at approximately 600-foot spacing along the internal streets.
34. All water wells on site shall be abandoned in accordance with the Washington State Department of Ecology requirements. A permit from the Washington State Department of Ecology shall be obtained for each well to be abandoned.
35. If applicable, on and off-site well locations within 200 feet of the proposed subdivision shall be shown on the Final Plat with the associated 100-foot protective radii.
36. All septic systems on the property shall be abandoned in accordance with the Thurston County Environmental Health requirements. A permit shall be obtained from Thurston County Environmental Health for each separate system to be abandoned.
37. The maximum lot coverage for impervious surface shall be 70 percent of the total area of the lot.
38. Off-street parking stalls shall be provided per Chapter 18.50 TMC.

No parking will be allowed in the proposed cul-de-sac turnarounds and this shall be posted accordingly per TMC 17.12.130.

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39. ~~A minimum of one van accessible barrier free parking stall shall be provided for the office per IBC Section 1106. [Condition withdrawn].~~
40. The clubhouse building and site are required to be accessible. An accessible route of travel shall be provided to all portions of the building, to accessible building entrances, and connecting the building and the public way. The accessible route of travel shall be shown on the site plan.
41. Street trees are required along Ridgeview Loop SW and must be installed in accordance with the Tumwater Development Guide, the Comprehensive Street Tree Plan, and the Urban Forestry Management Plan.
42. 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.
43. Dumpsters are required to be gated and screened with masonry walls and/or sight-obscuring fence with landscaping.
44. Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings or placed within five feet of combustible walls, openings, or combustible roof eaves lines unless the area is protected by an approved automatic sprinkler system per IFC Section 304.3.3.
45. The project proponent must maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
46. Property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Plat can be recorded.
47. A Forest Park Townhomes Homeowners Association is required to be formed for the project. Prior to recording the Final Plat, the project proponent shall supply the City with copies of the grantee organization's articles of incorporation and bylaws, and with evidence of a binding commitment to convey. The articles of incorporation shall provide that membership in the organization shall be appurtenant to ownership of land in the land division; that the corporation is empowered to assess such land for costs of construction and maintenance of the improvements and property owned by the corporation, and that such assessments shall be a lien upon the land.
48. Consolidated postal drop-off facilities shall be provided for the site. The location of the facilities must be coordinated and approved by the U.S. Postal Service.

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49. A school bus pad may be required along one of the exterior streets and will be dictated by the Tumwater School District. The project proponent must contact the District to coordinate the bus pad location.
50. The building designs shall conform to the City of Tumwater's Citywide Design Guidelines. Architectural elevation drawings of each building-type shall be submitted for review and approval prior to issuance of Building Permits.
51. Exterior walls are required to be of one-hour fire-rated construction when less than ten feet to the property line. Protected openings are required when less than five feet to the property line. No openings are permitted less than three feet to the property line.
52. Water cross connection control shall be provided in accordance with the provision of the Plumbing Code. Cross connection control devices or assemblies must be models approved under WAC 246-290-490.
53. If water pressure at the meter exceeds 80 psi, a pressure-reducing valve will be required to be installed on the private side of the water line.
54. Backwater valves shall be installed for each structure when the sewer is lower than the street manhole.
55. Automatic sprinkler systems shall be provided throughout all buildings in this project.
56. Fire alarm systems shall be required to be installed in all buildings in this project.
57. The project proponent must coordinate with the City of Tumwater Building Safety Official on the location of the City of Tumwater Fire Department connection, post indicator valve, remote annunciator panel, and Knox boxes. The locations of the fire suppression equipment must be approved by the City of Tumwater Building Safety Official.
58. Any dead-end fire access roads that are in excess of 150 feet in length shall be provided with an approved turnaround.
59. Fire lane signs and yellow striping shall be provided on-site to identify the City of Tumwater Fire Department access roads and prohibit the obstruction thereof.
60. When any portion of a building constructed on the site is in excess of 150 feet from a water supply on a public street, as measured by an approved route around the exterior of the building, there shall be provided on the site fire hydrants capable of supplying the

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Forest Park Townhomes PP, PUD, and Variance  
Nos. TUM-21-0046; TUM-21-0117; and TUM-21-1231*

required fire flow. Placement of the hydrants shall be coordinated with the City of Tumwater Building Safety Official.

61. The water main shall be looped around the entire site.
62. Building plans and specifications shall be prepared and stamped by an architect or an engineer licensed to practice in the State of Washington.
63. Building Permit applications (including shell permits) shall include architectural, structural, plumbing, mechanical, and energy plans, and specifications. Fire sprinkler and fire alarm permit applications and plans may be submitted separately from the main permit application.
64. All new building projects are required to provide for the storage of recycled materials and solid waste. The storage area shall be designed to meet the needs of the occupancy, efficiency of pick-up, and shall be available to occupants and haulers.

DECIDED this 13<sup>th</sup> day of October 2021.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center