

COPPER RIDGE, LLC

PO Box 73790
Puyallup, WA 98373
Phone: 253.848.0820

October 3, 2022

Melody Valiant, MMC
City Clerk
City of Tumwater
555 Israel Road SW
Tumwater, WA 98501

RE: Three Lakes Crossing Permit #TUM-22-1101; Appeal of Administrative Decision

Dear Melody:

This letter is a formal Appeal of an Administrative Decision issued September 21, 2022, as it relates to the undergrounding of offsite existing overhead utilities along the frontage of Henderson Boulevard. Per Tumwater Municipal Code (TMC) 17.02.140 we are able to appeal an administrative decision before a hearing examiner by first providing written notice of appeal to the City Clerk within 14 days of the decision being appealed.

In the review comments provided on August 31, 2022, item #12 under the “Street” section (Page 4) states:

This project shall be required to underground the existing overhead utilities along Henderson Blvd. Please address this on the plan set.

On September 13, 2022, we made a formal Request for Clarification detailing how City of Tumwater Code does not support the requirement to underground existing overhead utilities. See attached Request for Clarification Letter. In response to that request, an Administrative Decision was provided by Jared Crews, Engineer II, in which the City further claims that the undergrounding of existing overhead utilities is required. See attached Administrative Decision Letter.

Frankly, we disagree and believe that City code does not support the undergrounding of existing overhead utilities and would like the opportunity to appeal this decision before a hearing examiner. We believe the City erred in their analysis of code and that a plain review of code would not result in the costly undergrounding of overhead utilities along the frontage of the proposed Three Lakes Crossing project.

In the Administrative Decision letter, the City states the following as justification for requiring that the existing overhead utilities be converted to underground:

Chapter 3, section 3.14 Utility Locations, sub-section B states new and existing facilities shall comply with provisions as set for in Tumwater Municipal Code 17.12.200, Land Division.

The provision from Tumwater Municipal Code 17.12.200, Land Division states that electrical power, telephone, cable television, fiber optics and other transmission line shall be installed underground.

For clarification, the “Chapter 3” being referenced in the above justification is in reference to the Tumwater Development Guide and not found in the Tumwater Municipal Code. Section 3.14 is titled “Utility Locations”. That section reads:

All new utilities including services from overhead power facilities to new residential or commercial structures shall be installed underground by the utility owning said facility, and new and existing facilities shall comply with provisions as set forth in TMC 17.12.200, Land Division, and provisions as set forth in franchise agreements between the City and the utility.

Utilities converted from overhead to underground on existing roadways may be located within the right-of-way.

This section is very clear that it is contemplating new services and new connections being installed underground, which we will do. While there is a brief mention at the end of this section to converting from overhead to underground, this mention is specific to the allowance for those utilities to remain in the right of way. This section in no way indicates that existing overhead facilities must be converted to underground.

Ultimately, Section 3.14 of the Tumwater Development Guide refers to the Tumwater Municipal Code as the controlling language for how and where utilities are installed. In particular TMC 17.12.200 which reads:

Electrical power, telephone, cable television, fiber optics and other transmission lines shall be installed underground.

Title 17 is the controlling title as it relates to Land Division and new plats. Furthermore, TMC17.12 lays out the General Design Standards for new development and construction. In that context, TMC 17.12.200 is clearly referencing new onsite utility installation related to plats. As the overhead power on Henderson is existing, it cannot be installed, and read plainly, this code would not require us to relocate it underground. That being said, all onsite utilities will be installed underground per this code section.

On it’s face, this code section does not require undergrounding of existing utilities and is very clear by stating that utilities “shall be installed” not “shall be relocated” underground. Cities that have relocating requirements have very clear separate code sections relating to undergrounding of existing utilities. Furthermore, this condition of approval does not exist in the Hearing Examiner Decision which is very common when this is intended to be a requirement by jurisdictions. This request has major cost and time implications that do not appear to be supported by code.

Even if the poles for the overhead utilities along Henderson Boulevard need to be relocated horizontally to allow for the placement of new road, curb, gutter, and sidewalk, that relocation would not qualify as an installation.

Based on the plain reading of these code sections, we request that this condition be removed from the most recent comment letter and that any existing offsite overhead utilities remain overhead as is allowed by the Tumwater Municipal Code.

Please review this request and let us know if you have any additional questions or would like to discuss this issue further. I am available by phone at 253-820-7835 or email at evan@soundbuilthomes.com. We look forward to hearing from you on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Evan Mann', with a long horizontal flourish extending to the right.

Evan Mann
Entitlement Manager
Copper Ridge, LLC
evan@soundbuilthomes.com

Attachments:

Request for Clarification

Administrative Decision

CC:

Jared Crews

Kurt Wilson

ATTACHMENT 1

September 13, 2022

Jared Crews
Engineer II
City of Tumwater Transportation & Engineering
555 Israel Road SW
Tumwater, WA 98501

RE: Three Lakes Crossing Permit #TUM-22-1101 Request for Clarification

Dear Jared:

This letter is a formal request for an Administrative Decision as it relates to the undergrounding of offsite existing overhead utilities along the frontage of Henderson Boulevard. In the review comments provided on August 31, 2022, item #12 under the “Street” section (Page 4) states:

This project shall be required to underground the existing overhead utilities along Henderson Blvd. Please address this on the plan set.

Upon further inquiry as to where in the Tumwater Municipal Code this requirement exists, we were told that “TMC 17.12.200 Underground Utilities” is the controlling code section. This section reads:

Electrical power, telephone, cable television, fiber optics and other transmission lines shall be installed underground.

Title 17 is the controlling title as it relates to Land Division and new plats. Furthermore, TMC17.12 lays out the General Design Standards for new development and construction. In that context, TMC 17.12.200 is clearly referencing new onsite utility installation related to plats. As the overhead power on Henderson is existing, it cannot be installed, and read plainly, this code would not require us to relocate it underground. That being said, all onsite utilities will be installed underground per this code section.

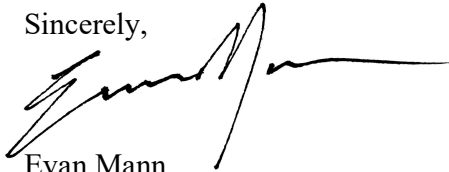
On it’s face, this code section does not require undergrounding of existing utilities and is very clear by stating that utilities “shall be installed” not “shall be relocated” underground. Cities that have relocating requirements have very clear separate code sections relating to undergrounding of existing utilities. Furthermore, this condition of approval does not exist in the Hearing Examiner Decision which is very common when this is intended to be a requirement by jurisdictions. This request has major cost and time implications that do not appear to be supported by code.

Even if the poles for the overhead utilities along Henderson Boulevard need to be relocated horizontally to allow for the placement of new road, curb, gutter, and sidewalk, that relocation would not qualify as an installation.

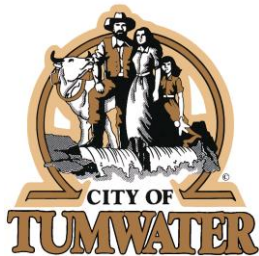
Based on the plain reading of this code section, we request that this condition be removed from the most recent comment letter and that any existing offsite overhead utilities remain overhead as is allowed by the Tumwater Municipal Code. If the City feels that they are warranted in the requirement to underground the existing overhead utilities along Henderson Boulevard, then we request a formal Administrative Decision justifying this requirement so we can take further action per TMC 17.02.140 allowing us to appeal this decision before a hearing examiner.

Please review this request and let us know if you have any additional questions or would like to discuss this issue further. I am available by phone at 253-820-7835 or email at evan@soundbuilthomes.com. We look forward to hearing from you on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Evan Mann', with a long horizontal flourish extending to the right.

Evan Mann
Entitlement Manager
Copper Ridge, LLC
evan@soundbuilthomes.com



ATTACHMENT 2

City Hall
555 Israel Road SW
Tumwater, WA 98501-6515
Phone: 360-754-5855
Fax: 360-754-4138

September 21, 2022

Evan Mann
Entitlement Manager
Copper Ridge, LLC
PO Box 73790
Puyallup, WA 98373

RE: Three Lakes Crossing Permit #TUM-22-1101 Response to Request for Clarification

Dear Evan:

Please consider this letter as the formal response to your request for administrative decision as it relates to the undergrounding of existing overhead utilities along the frontage of Henderson Blvd.

In which the City is requiring the installation of existing overhead utilities underground with the proposed project improvements.

Where you testified that the applicable code and guidelines relate to “new” utilities rather than “existing” utilities.

The Administrative Decision is as follows:

After reviewing the applicable codes and guidelines as they relate to the project, the City of Tumwater has decided the requirement to install the existing overhead utilities underground stands.

Justification:

Chapter 3, section 3.14 Utility Locations, sub-section B states new and existing facilities shall comply with provisions as set for in Tumwater Municipal Code 17.12.200, Land Division.

The provision from Tumwater Municipal Code 17.12.200, Land Division states that electrical power, telephone, cable television, fiber optics and other transmission line shall be installed underground.

The City of Tumwater finds that the Three Lakes Crossing project is subject to the above codes and guidelines and is required to install the existing overhead utilities underground.

If you have any questions, please don't hesitate to call me at 360-754-4140 or email me at jcrews@ci.tumwater.wa.us.

Sincerely,

Jared Crews
Engineer II
City of Tumwater
Transportation & Engineering Department