

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

In the Matter of the Application of)	No. TUM-19-0317
)	
Chul Kim, Sunrise Hills LLC)	Sunrise Hills Preliminary Plat
)	
)	
<u>For Approval of a Preliminary Plat</u>)	DECISION ON REQUEST FOR RECONSIDERATION

TO: Parties of Record

BACKGROUND

The Tumwater Hearing Examiner held an open record hearing on the Sunrise Hills Preliminary Plat (No. TUM-19-0317), a request to subdivide approximately 10.72 acres into 36 single-family residential lots, on September 4, 2019. The record was left open until September 6, 2019, to allow additional information on the proposal to be submitted. On September 20, 2019, the Hearing Examiner denied the application, specifically concluding that the “Applicant’s plans fail to account for required open space and, because of this, would result in density at a higher rate than is allowed by the Comprehensive Plan.” *Decision of the Hearing Examiner, dated September 20, 2019.* On September 24, 2019, the Applicant timely requested reconsideration of the decision under Tumwater Municipal Code (TMC) 2.58.135. Because no obvious legal error has occurred and no material factual issue was overlooked that would change the previous decision, the request for reconsideration is hereby **DENIED**.

RECONSIDERATION

Request

The Applicant argues that reconsideration is warranted on several grounds. Specifically, the Applicant argues that the Hearing Examiner misinterpreted TMC 18.08.050.B.1, in relation to open space requirements and how open space calculations impact allowable density calculations; that a similar proposal was approved in 2005 and, accordingly, should be approved now; that, contrary to the Hearing Examiner’s decision, the municipal code encourages building in critical areas through engineered solutions; that market concerns justify the density; and that the density transfer provisions of Chapter 18.08 TMC would allow the proposed density. *Reconsideration Request, pages 1 through 3.*

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Criteria

TMC 2.58.135 provides:

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

DECISION

The Applicant's first contention is that, under TMC 18.08.050.B.1, areas designated for open space should not be excluded from the allowable density calculation for the property. This, however, misconstrues the municipal code. That provision states that the following types of land should be excluded from density calculations:

Land that is required to be dedicated for public use as open space, right-of-way, or land on which development is prohibited by TMC Title 16, Environment, and land that is to be used for private roads; provided, that portion of open space/park areas that consists of stormwater facilities and that is designed for active and/or passive recreational purposes in accordance with the drainage design and erosion control manual for Tumwater shall not be excluded from density calculations.

TMC 18.08.050.B.1.

The Applicant appears to argue that all the open space tracts proposed on-site should be included in the allowable density calculation because active and passive recreational amenities would be included in these open space areas. TMC 18.08.050.B.1, however, provides that open space/park areas that consist of stormwater facilities *and* are designed for active and/or passive recreation not be excluded from density calculations. Here, the Applicant has proposed a stormwater tract, "Tract D," that is 18,992 square feet. Project plans do not indicate how this tract would be designed for active and/or passive recreation. Nevertheless, even were Tract D designed to meet the requirements of TMC 18.08.050.B.1 such that this tract were included in the allowable density calculation, the proposal would still involve higher-than-allowed density, as other open space areas must be excluded from the density calculation.

As noted in the decision, the gross site area of the property is 466,977 square feet. After removing square footage associated with the two internal roads and three access tracts, as is required by TMC 18.08.050, then just over 9 acres (or 392,439 square feet) of potentially "buildable" area remains. Under TMC 17.12.210, at least 46,698 square feet of open space is required. Even assuming Tract D is treated as "open space" under TMC 18.08.050.B.1, an additional 27,706 square feet of required open space would *not* be excluded from the net buildable area calculation. This would result in 8.3 usable acres of land (before excluding

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critical areas) and no more than 33 homes would be allowed. Accordingly, the Applicant's first contention fails.

The Applicant next contends that, in 2005, the Hearing Examiner approved a similar proposal and, in doing so, did not exclude landslide hazard areas from allowable density calculations. The 2005 decision has no bearing on the current application and this argument holds no merit. As was stated in the Hearing Examiner's recent decision:

Mr. Kim has repeatedly stressed that the site was approved for development of 34 lots in 2005. That approval is in no way controlling in the present circumstances. The Hearing Examiner notes that a different hearing officer presided over that 2005 hearing and that there has been significant turnover in the City's planning department since then. Regardless, while mistakes concerning density calculations were made in 2005, they need not be repeated now.

Decision of the Hearing Examiner, dated September 20, 2019.

The Applicant's next argument appears to be that, contrary to the Hearing Examiner's decision, the municipal code encourages development in critical areas through engineered solutions. The Applicant cites TMC 16.20.020 for this proposition. TMC 16.20.020 provides:

It is the declared policy of the city of Tumwater to encourage land uses that are compatible with underlying geological conditions through the use of appropriate engineering, design and construction practices. It is also recognized that at times even the best of efforts to properly design and apply technology will not adequately reduce the risks of geological hazards. In these instances, areas of extreme geological instability are to be avoided as sites for development and placement of structures.

This code provision does not support the Applicant's argument: it speaks to encouraging "compatibility" with underlying geological conditions, not encouraging development in all circumstances.

The Applicant next contends that market concerns warrant the higher density that has been proposed. Market concerns are not one of the factors that must be considered in assessing a proposed preliminary plat under the Tumwater Municipal Code or the State Subdivision Act (Chapter 58.17 RCW). The Applicant did not apply for a reasonable use exception under TMC 16.20.048, where economic considerations may be considered. Accordingly, this contention has no merit.

Finally, the Applicant appears to argue that "density transfer provisions" of Chapter 18.08 TMC are applicable to this proposal. The density transfer provisions referenced by the Applicant relate to "Clustered Subdivisions" under TMC 18.08.050.E. The Applicant has not proposed this

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(and, further, clustered subdivisions have a 30 percent open space requirement). The density transfer provisions are inapplicable.

Because the record does not support a conclusion that an obvious legal error has occurred or that a material factual issue was overlooked that would change the previous decision, the request for reconsideration is hereby **DENIED**.

DECIDED this 7th day of October 2019.

A handwritten signature in black ink, appearing to read "Andrew M. Reeves", is positioned above a horizontal line.

ANDREW M. REEVES
Hearing Examiner
Sound Law Center

October 9, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

SUNRISE HILLS, LLC,

Appellant,

v.

CITY OF TUMWATER,

Respondent.

No. 54687-6-II

RULING GRANTING
DISMISSAL

On October 1, 2020, Appellant Sunrise Hills filed with this court a Notice of Withdrawal of Appeal. Attached to Sunrise Hills' motion is a certificate of service showing that the opposing parties were served with a copy of the motion to withdraw appeal on October 1, 2020. Accordingly, it is hereby

ORDERED that Appellant Sunrise Hills' appeal is dismissed.



Eric B. Schmidt
Court Commissioner

cc: Carolyn A. Lake
Jeffrey S. Myers
Karen E. Kirkpatrick
Hon. John Skinder