

CITY OF TUMWATER
HEARING EXAMINER STAFF REPORT
Hearing Date: April 13, 2022

Project Name: I-5 Commerce Preliminary Plat (Amending TUM-20-0220)

Case Number: TUM-22-0044

Owner: John Kaufman, Kaufman Real Estate, LLC
7711 Martin Way E, Olympia, WA 98506

**Project Proponent/
Representative:** Hatton Godat Pantier, Attn: Chris Carlson
3910 Martin Way E, Suite B, Olympia, WA 98506

Type of Action Requested: The applicant requests Preliminary Plat approval to amend Hearing Examiner's Condition Number 38 of the preliminary plat approval for TUM-20-0220 issued October 14, 2020. The preliminary plat map also includes an updated lot configuration to reflect an administrative approval to relocate Lot 8 and a stormwater tract to address stormwater treatment (Exhibits 2 & 4).

Project Location: The property is located within the 2700 block of 93rd Avenue SW, Tumwater, WA 98512, within a portion of the SE ¼ and a portion of the NW ¼ and the SW ¼ of the SE ¼ of Section 16, Township 17 N., Range 2 W.W.M. Parcels #12716420000, #12716340100, #12716340102 and #12716340101 (Exhibit 3).

Public Notification: Public notification for this public hearing was mailed to property owners within 300 feet of the subject property and various agencies, posted on-site and published in *The Olympian* on April 1, 2022, in conformance with Tumwater Municipal Code (TMC) 14.06 (Exhibit 5).

Staff Recommendation: Approve Preliminary Plat TUM-22-0044 to amend the conditions of approval and preliminary plat map for TUM-20-0220.

Staff Planner: Tami Merriman, Permit Manager
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I. BACKGROUND INFORMATION

A. Background

The applicant received preliminary plat approval, TUM-20-0220, on October 14, 2020. The preliminary plat was to subdivide 40.26 acres into 12 commercial/industrial lots, 2 stormwater tracts, and one tree tract (Exhibit 13).

During preparation of Site Development/Grading Plans, the applicant found that the stormwater facilities needed to be relocated due to high groundwater. This resulted in “switching” the stormwater facility and lot# 8. City staff determined that this lot reconfiguration was not a substantial change in June 2021. Plans are approved, and construction underway (Exhibit 14).

The foresters report and proposed mitigation for preliminary plat TUM-20-0220 provided that in order to meet City minimum requirement of 12 trees per acre, the applicant would retain 101 trees in the existing wetland buffer, and plant additional trees. For mitigation purposes, replacement would be at a 3:1 ratio, resulting in 1,149 trees planted (Exhibit 8).

Hearing Examiner Condition #38 reflected the above mitigation of 1,149 replacement trees to be planted in order to comply with the City’s Tree and Vegetation Ordinance (Exhibit 13).

The applicant contacted the City on November 29, 2021, stating that the forester’s report submitted for the preliminary plat cited the wrong tree replacement ratio for the project. The tree plan referred to TMC 16.08.070(R)(3) which is mitigation for not retaining the minimum 12 trees per acre. The applicant states that TMC 16.08.070(R)(4) should have been followed, as the parcel did not meet the minimum retention standards in an undeveloped state (less than 12 trees per acre).

B. Application and Review Process

Application for preliminary plat was submitted on January 12, 2022, and deemed complete on January 31, 2022 (Exhibit 6).

Under TMC 2.58.090, review authority for preliminary plat applications falls under the purview of the Hearing Examiner.

C. Existing Conditions

The properties are vacant, with site infrastructure currently under construction and near completion.

D. Project Description

The preliminary plat map depicts an updated lot configuration to reflect an administrative approval for a change in layout of lot configuration, moving Lot 8 and the stormwater tract to address stormwater treatment (Exhibit 4).

The applicant requests an amendment to Hearing Examiner's Condition Number 38 of the October 14, 2020 approval for preliminary plat TUM-20-0220 in regards to the number of mitigation trees to be planted pursuant to TMC 16.08.070 (Exhibit 2).

There are no other requested changes to preliminary plat approval TUM-20-0220.

II. REGULATORY FRAMEWORK

Public Notice TMC 14.06: Public Notice Requirements

***Staff Response and Recommended Finding:** The application was submitted on January 12, 2022, and deemed complete on January 31, 2022. The notice of application was mailed to property owners within 300 feet of the property and affected agencies, posted on-site, and published in the Olympian on February 3, 2022 (Exhibit 5).*

Comment received from the Nisqually Indian Tribe stated they had no specific concern (Exhibit 7).

SEPA Determination: Pursuant to the State Environmental Policy Act, the City of Tumwater Community Development Department issued a Mitigated Determination of Non-significance on August 6, 2020 (Exhibit 11).

No additional review or notice is required.

Preliminary Land Divisions; Changes, alterations or deletions TMC 17.14.110:

Once the preliminary land division map has been approved, it shall not be altered unless approved by both the department of community development and public works department. If the alteration is felt to be of a substantial nature by the community development and public works departments, then the land division shall be resubmitted in accordance with the procedures for preliminary division approval.

The tree replacement plan was provided by the applicant. It was reviewed by staff, and recommended to the Hearing Examiner to become a condition of approval. It was not clear from the foresters report that the property did not meet the required 12 trees per acre in its undeveloped state. As such, all parties interpreted TMC 16.08.070(R)(3) correctly.

This change results in 786 less trees planted, than the original approval of 1,149, and is a substantial change to both the Hearing Examiners condition and the resulting plat.

Hearing Examiner, TMC 2.58.090: Hearing Examiner authority to review preliminary plat.

Staff Response and Recommended Finding: *Preliminary plat requires a public hearing and decision by the Tumwater Hearing Examiner.*

The proposal is subject to the following policies and regulations:

A. Preliminary Map Alteration:

The plat map is updated to reflect the relocation of Lot 8 to the northern side of the new public street, and the reconfiguration of 3 stormwater tracts (Exhibit 4).

Staff Response and Recommended Finding: During the review and approval of site development and grading plans, including stormwater treatment, an alteration of lot layout was approved by the City. The number of lots and tracts did not change, lot 8 and a stormwater tract were flipped in location, and individual lot sizes changed minimally. City staff felt the change was not substantial, and more so, was required to achieve appropriate stormwater treatment. The preliminary map has been updated and incorporated into this amendment request (Exhibits 4 and 14).

B. Protection of Trees and Vegetation Ordinance, TMC 16.08:

TMC 16.08.070 regulates the preservation and renewal of existing trees on a site to be developed.

The proposal is to amend TUM-20-0220 Preliminary Plat Approval Condition #38 relating to the protection of trees and vegetation, resulting in a reduction of 786 trees to be planted as mitigation for removing trees.

Preliminary Plat TUM-20-0220 staff findings, and Hearing Examiner Condition 38:

“L. Tree Protection and Replacement Ordinance, TMC 16.08: TMC Chapter 16.08 regulates the removal and preservation of existing trees on a site to be developed.

Staff Response and Recommended Finding: *A professional forester’s report has been submitted for the project.”*

According to the report, the City’s tree protection ordinance requires 12

trees per acre or 484 trees to be retained on the project site. The report indicates that 101 existing trees are proposed for retention. The tree protection ordinance requires that 3 new trees be planted for each existing tree that is removed in excess of the 12 tree per acre retention standard. This results in the planting of 1,149 trees on the project site (383 trees not retained multiplied by 3 replacement trees = 1,149 new trees).

Staff finds that the project complies with the City's Tree Protection and Replacement Ordinance (TMC 16.08) if conditioned that a minimum of 1,149 replacement trees be planted (Exhibit 12).

Hearing Examiner Condition 38: In order to comply with the City's Tree Protection and Replacement Standards, a minimum of 1,149 replacement trees must be planted on the site. The replacement trees must be planted in the proposed tree protection open spaces on the project site, tract D, shown on the Preliminary Plat Map. The size of the tree protection open space area(s) associated with the project is required to be a minimum of 5 percent of the buildable area of the site (Exhibit 13).

Staff Response and Recommended Finding: TMC 16.08.070(R) provides specific development standards for the retention of trees as part of any land clearing in conjunction with a specific development proposal. It requires that not less than twenty percent of the trees, or not less than twelve trees per acre (whichever is greater), shall be retained. TMC 16.08.070(R)(2) allows a waiver or modification of this requirement under certain circumstances, which requires three new trees to be planted for every tree that is required to meet minimum standards.

TMC 16.08.070(R)(4) states: In situations where a parcel of land to be developed does not meet the retention standards above in an undeveloped state, the applicant shall be required to reforest the site to meet the applicable standard outlined above at a 1:1 ratio as a condition of project approval.

The forester's report dated March 18, 2020, states the total number of trees to be retained on site are 101 trees which are located in an existing wetland buffer. In order to meet the minimum twelve trees per acre (484 trees), 383 trees would need to be planted. Using the mitigation requirement of 3:1, resulted in 1,149 trees to be planted. This report did not include the count of all trees on site, and did not show or reflect that the parcels in their undeveloped state did not meet the minimum requirements of TMC 16.08.070(R) (Exhibit 8).

A revised foresters report shows the total number of trees onsite, including the wetland buffer, to be 351 trees, which is below the minimum 12 trees per acre. In this

case, it would have been appropriate to review the foresters report under TMC 16.080070(R)(4), as the parcel, in its undeveloped state, did not meet the minimum 12 trees per acre. The revised foresters report also includes a count of 31 existing trees that are less than 6-inches (2 – 5 inches) in diameter on the site. Instead of disturbing the tree tract area to plant additional trees, the applicant requests to retain the 31 smaller trees within the tract allowing them to be counted towards the 363 new trees to be planted. Approximately 75 will be planted around the exterior of the stormwater facilities located in Tract A and Tract B, with remaining trees to be part of required perimeter landscape on the individual parcels, and street trees (Exhibits 9 & 10).

Staff finds that the revised foresters report complies with the City's Tree Protection and Replacement Ordinance TMC 16.08.070(R)(4), if conditioned that a minimum of 363 replacement trees be planted, and an area of 5% of more of buildable land is designated as a tree tract.

Staff concludes that adequate provisions will be made for public health, safety and general welfare as follows:

The findings and conclusions provided in the 09-21-2020 staff report for Preliminary Plat TUM-20-0220, remain the same, with the exception of Section II, Letter L (Exhibit 12).

The findings, conclusions, and mitigating conditions of the MDNS issued August 6, 2020 remain the same (Exhibit 11).

The Hearing Examiners findings, conclusions, and decision for Preliminary Plat TUM-20-0220, dated October 14, 2020 remain the same, with the exception of finding #10, a portion of conclusion #1, and Condition #38 (Exhibit 13).

III. RECOMMENDATION

Pursuant to TMC 2.58.110, staff recommends approval of the Preliminary Plat with the following conditions:

1. The conditions of the Mitigated Determination of Nonsignificance dated August 6, 2020, are hereby referenced and are considered conditions of this approval.
2. The conditions of the City of Tumwater Hearing Examiner Findings, Conclusions, and Decision I-5 Commerce Place Preliminary Plat No. TUM-20-0220 are hereby referenced and are considered conditions of this approval, with the exception of finding #10, a portion of conclusion #1, and Condition #38.
3. In order to comply with the City's Protection of Trees and Vegetation standards, the trees in the wetland buffer, and shown as Tract D on the preliminary plat map

shall remain undisturbed.

4. A minimum of 363 replacement trees shall be planted, first on the perimeter of the stormwater tracts, then as part of perimeter landscaping as required for development of the individual parcels.

**Submitted on Behalf of
the City of Tumwater
Community Development
Department by/
Staff Contact:**

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Report Issue Date: March 29, 2022

List of Exhibits:

1. Staff Report, dated March 29, 2022
2. Preliminary Plat Application & Narrative 12-28-2021
3. Aerial Map
4. Amended Preliminary Plat Map 12-28-2021
5. Public Notice Certification
6. Notice of Application 02-03-2022
7. NOA Comment Nisqually 02-14-2022
8. Tree Plan 03-18-2020
9. Revised Tree Plan 12-28-2021
10. Revised Tree Tract LS Plan 12-28-2021
11. MDNS 08-06-2020
12. Final Staff Report 09-21-2020
13. Hearing Examiner Decision 10-14-2020
14. Approved Civil Plans 06-18-2021