

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

In the Matter of the Applications of	)	NO. 2022100780
	)	
	)	<b>Littlerock West PUD</b>
	)	
<b>Brandon Johnson</b>	)	
	)	
For Preliminary Plat and	)	FINDINGS, CONCLUSIONS,
Planned Unit Development	)	AND DECISIONS
_____	)	

**SUMMARY OF DECISIONS**

The request for preliminary plat and planned unit development approvals to subdivide 2.6 acres into 16 townhouse lots and one duplex lot is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Brandon Johnson (Applicant) requested a preliminary plat and planned unit development (PUD) to subdivide 2.6 acres into 17 residential lots, including 16 townhouse lots and one duplex lot. The subject property is located at 6439 Littlerock Road SW, Tumwater, Washington.

**Procedure:**

At the time the preliminary plat and PUD applications were submitted, the subject property was part of unincorporated Thurston County, and the application was initially presented to the Thurston County Hearing Examiner for decision. The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on August 30, 2022. During the hearing, the Applicant disclosed that the subject property had been annexed into the City of Tumwater after the date of complete application but prior to the scheduled hearing; Applicant representatives asserted that jurisdiction over the application was governed by an interlocal agreement. At the close of the hearing, the Thurston County Hearing Examiner left the record open for two purposes: (1) to allow any members of the public having technology-related difficulty accessing the hearing to submit written comments, with time scheduled for responses by the parties (no post-hearing public comments were received by the September 1, 2022 deadline specified by the Hearing Examiner); and (2) to receive additional documentation and written testimony from the parties on the annexation and interlocal agreement, including information relating to the Thurston County Hearing Examiner’s jurisdiction over the application and the applicability of certain Thurston County Code requirements; these documents were identified on the record as Exhibits 6, 7, 8, 9, and 10. The Hearing Examiner also admitted a list of additional conditions (or requested revisions to County Planning Staff’s conditions) submitted by the City of Tumwater and responses to those conditions submitted by the parties (Exhibit 11). Subsequent procedural communications were later admitted, with the final documents submitted, and the record closed, on September 19, 2022.

Through the post-hearing process, it was determined that the City of Tumwater – not Thurston County – has jurisdiction to make a final decision on the preliminary plat/PUD. Subsequently, the City of Tumwater, with the concurrence of Thurston County and the Applicant, appointed the Thurston County Hearing Examiner as the City of Tumwater Hearing Examiner *pro tem* for the purpose of deciding the preliminary plat/PUD based on the previously conducted Thurston County hearing. The instant Decisions are therefore issued as City of Tumwater decisions.

**Testimony:**

At the open record public hearing, the following individuals presented testimony under oath:

Richard Felsing, Associate Planner, Thurston County Community Planning & Economic Development Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Dawn Peebles, Senior Environmental Health Specialist, Thurston County Public Health and Social Services Department

Chris Carlson, Hatton Godat Pantier, Applicant Representative

Chloe McIntyre, P.E., Hatton Godat Pantier, Applicant Representative

Brandon Johnson, Applicant

**Exhibits:**

At the open record public hearing, the following exhibits were admitted into the record:

Exhibit 1 Community Planning and Economic Development Report including the following attachments:

- A. Notice of Public Hearing, mailed August 19, 2022, published August 20, 2022
- B. Master, Division of Land, and Forest Conversion Applications, undated
- C. Revised Site Plans: Preliminary Civil Engineering Plans, Landscape Plans, Townhome Plat Map
- D. Revised Narrative Summary
- E. Combined Notice of Notice of Application/Mitigated Determination of Non-Significance, issued May 6, 2022
- F. Revised SEPA Environmental Checklist
- G. Nisqually Indian Tribe review letter and Squaxin Island Tribe review email; dated March 16 and March 12, 2021, respectively
- H. Environmental Health Division review memorandum, dated August 29, 2022
- I. [none offered]
- J. Department of Ecology Review Letter, dated March 25, 2021
- K. Memorandum – Recommendation for Preliminary Approval by Thurston County Public Works, dated April 6, 2022

- L. City of Tumwater Review Letter with conditions, dated March 2, 2022
  - M. City of Tumwater; Water & Sewer Availability letter, dated September 28, 2021
  - N. InterCity Transit email, dated April 1, 2022
  - O. Tree Protection Plan, Washington Forestry Consultants, dated October 6, 2021
  - P. Mazama Pocket Gopher Survey, EnviroVector, dated October 27, 2020
  - Q. Prairie Plant & Habitat Survey, EnviroVector, dated September 30, 2020
  - R. Olympic Region Clean Air Agency (ORCAA) review email
  - S. Tumwater School District review email, Mel Murray, dated February 16, 2022
  - T. Project Addresses list, dated April 21, 2022
  - U. [stricken/none offered]
- Exhibit 2 Memorandum from Richard Felsing, dated August 30, 2022
  - Exhibit 3 Revised Plat Map with Well Location, August 23, 2022
  - Exhibit 4 Drainage Report, prepared by Hatton Godat Pantier, dated September 28, 2021
  - Exhibit 5 Letter from City of Tumwater to Applicant dated August 23, 2022 (re: annexation and stormwater assessments)
  - Exhibit 6a Interlocal Agreement prior to annexation, dated January 7, 2014
  - Exhibit 6b Interlocal Agreement after annexation, adopted June 7, 2022
  - Exhibit 7 Revised Staff Report dated August 30, 2022, submitted September 2, 2022
  - Exhibit 8 Memo from Richard Felsing dated September 2, 2022 re: Amended Staff Report
  - Exhibit 9 Thurston County Staff request for extension of post-hearing schedule, dated September 7, 2022
  - Exhibit 10 Applicant's request for additional extension, with Thurston County Staff's concurrence attached, dated September 7, 2022
  - Exhibit 11 Proposed conditions and revisions from the City of Tumwater, dated September 16, 2022
  - Exhibit 12 Email correspondence from Chris Carlson and Brett Bures dated September 14, 2022, agreeing to appointment of Examiner Rice as City Hearing Examiner Pro Tem
  - Exhibit 13 Letter from Chris Carlson, dated September 16, 2022, addressing design review and incompatible use buffer
  - Exhibit 14 Memorandum from Thurston County Staff, dated September 16, 2022, re: Hearing Examiner jurisdiction, incompatible use buffer, and design review
  - Exhibit 15 Emails from Chris Carlson, dated September 16 and September 19, 2022, with Applicant response to City's proposed amended conditions

Exhibit 16 Email from Richard Felsing, dated September 19, 2022, with County response to City's proposed amended conditions

Based on the record developed through the virtual hearing process, the Hearing Examiner enters the following findings and conclusions.

### FINDINGS

1. Brandon Johnson (Applicant) requested preliminary plat and planned unit development (PUD) approvals to authorize the subdivision of 2.6 acres into 17 residential lots, including 16 townhouse lots and one duplex lot. The subject property is located at 6439 Littlerock Road SW, Tumwater, Washington.<sup>1</sup> *Exhibits 1.B, 1.C, 1.D, and 7.*
2. At the time the plat/PUD application was submitted in February of 2021, the subject property was within the City of Tumwater Urban Growth Area (UGA) of Thurston County. The subject property was annexed into the City effective June 14, 2022, after the plat/PUD application was complete but prior to the County's decision on the application. Pursuant to interlocal agreements entered into between the City and the County, the City of Tumwater Hearing Examiner has jurisdiction to make a decision on the preliminary plat and PUD based on the Thurston County laws and plans that were in effect at the time of application, which include in relevant part the Tumwater Urban Growth Area zoning ordinance (Title 22 Thurston County Code) and the City of Tumwater and Thurston County Joint Plan. *Exhibits 1.E, 6a, 6b, and 7.*
3. The City of Tumwater and Thurston County Joint Plan (Joint Plan) land use designation of the subject property is Single-Family Medium Density (SFM), a designation intended to provide alternative single-family housing types to enable residents of various income levels to find appropriate housing. *Exhibit 1; City of Tumwater and Thurston County Joint Plan.*
4. The zoning designation of the subject property is Single-Family Medium Density Residential (SFM). The purposes of the SFM zone, as described in the Tumwater Urban Growth Area zoning ordinance, are to provide for a high standard of development for residential areas of moderate density, promote the efficient use of land by providing for net densities ranging from six to nine dwelling units per acre, guide residential development to encourage and plan for the availability of public services and community facilities, and encourage development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere, and contain a variety of housing types. *Exhibit 7; Thurston County Code (TCC) 22.12.010.*

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<sup>1</sup> The legal description of the subject property is: "Section 03 Township 17 Range 2W Quarter SW NW SC EX FOR TAX PURPOSES ONLY: BEG W 1/4 COR; E ALG S LN SUB 235F TO WLY LN SS1-M (LITTLEROCK RD); N44-30E ALG WLY LN 400F POB: N44-30E ALG WLY LN H/W;" also known as tax parcel number 12703230600. *Exhibit 1.*

5. Single-family attached dwellings, including townhouses, are allowed in the SFM zone within a residential PUD. Duplexes are allowed in the SFM zone with a minimum lot area of 6,000 square feet. The proposed plat and PUD would create 16 single-family townhouse lots (i.e., one townhouse dwelling unit per lot) and one 6,371 square foot duplex lot, for a total of 18 dwelling units on the 2.6-acre site. The development density, calculated in accordance with TCC 22.12.050(B), would be 7.75 dwelling units per acre, which falls within the allowed range for the zone, which is a minimum of six and a maximum nine dwelling units per acre. *Exhibits 7 and 3; TCC 22.12.020; TCC 22.12.050.*
6. Historically used for grazing and small-scale agriculture associated with a former single-family residence, the subject property is currently undeveloped. It is generally flat and underlain by well drained soils; it contains areas of mixed woodlands, with both native and invasive understory species, and areas of grass pasture. Its frontage on Littlerock Road has been fully improved with street improvements, including the roundabout at the intersection of Littlerock and Odegard Roads SW. Adjacent parcels to the northeast and southwest, also fronting Littlerock Road, and parcels across the road are large lots developed with single-family residential uses. Tumwater Middle School is located approximately three parcels to the northeast. The subject property backs up against open space developed with playfields associated with the middle school. Troser Lake Park is adjacent to the north of the school property. *Exhibits 1.O and 7 (vicinity maps, pages 2-3); Google Maps site view.*
7. The proposed subdivision would take access from a new private road off Littlerock Road SW, entering the site's northeast corner as far from the roundabout as possible. All lots would front on the new internal road. The proposed lots would range from 3,481 to 6,371 square feet in area, with an average lot area of 4,301 square feet. The townhouse lots would each be 33 feet wide, and the duplex lot would be 66 feet wide. Each townhouse building would contain two attached dwelling units, with each structure straddling a lot line and each dwelling unit on its own lot. *Exhibits 1.C and 1.D.*
8. The proposed 344-foot long private road, which would be designed and built in accordance with City of Tumwater standards, would end in a hammerhead turnaround at the property's northwest (rear) boundary. It would be provided with sidewalks on both sides. *Exhibits 1.C and 1.D; Chris Carlson Testimony.*
9. Pursuant to TCC 22.36.010, the intent of the PUD overlay zone is to "encourage new development not limited by the strict application of [Title 22]." *TCC 22.36.010.A.* It is also intended, in relevant part, to encourage flexibility in design to allow for more efficient and desirable use of land and to better utilize sites characterized by special features, and to provide for maximum efficiency in layout of public improvements. *TCC 22.36.010.B.* When a PUD is approved, it modifies and supersedes the regulations of the underlying zoning district, except for allowable uses. *TCC 22.36.020.*
10. Although PUD developments are exempt from some requirements of the underlying zone, they must comply with density requirements, allowed uses, and open space

requirements of the underlying zone, as well as the parking requirements of TCC 22.50, the design review guidelines of TCC 22.43, and the landscaping requirements of TCC 22.47. Setbacks from the exterior boundary of the PUD must be comparable to or compatible with existing development on adjacent properties, or, if adjacent properties are undeveloped, the type of development that may reasonably be expected, but may be no less than 20 feet. The lot coverage of the underlying zone may be exceeded by up to 25%. *TCC 22.36.080.*

11. The SFM zoning district does not contain an open space standard. However, common open space would be provided in the northeast corner of the subject property, within Tract A (12,322 square feet). A long, narrow segment of Tract A approximately 20 feet wide would run the length of the northeast site boundary, and a wider, deeper section of Tract A would occupy the northeast corner of the site adjacent to the road and neighboring parcel; this wider section would be improved with a tot lot and a picnic table northeast of the site entrance and new internal road. Southeast of the site entrance, proposed Tract B (11,038 square feet) would front Littlerock Road and would be improved with a landscaped bioretention facility, which would discharge to a dispersion trench along Tract A. Proposed open space would total 0.69 acres, or nearly one-quarter of the overall site. *Exhibits 7, 1.C, and 3.*
12. Pursuant to TCC 22.50.070 and Figure 22.50.070A, two off-street parking spaces must be provided for each single-family dwelling (including duplex and townhouse dwellings). The Applicant proposes to meet the requirement by providing two-car garages for each unit. *Exhibit 1.D.*
13. The proposal is exempt from the design review requirements of TCC 22.43, which, for residential projects, applies to “multifamily residential development with more than four units and density greater than 7.25 dwelling units per acre.” *TCC 22.43.020.* TCC 22.04.190 defines “multiple dwelling” as “a building, designed and used for occupancy by three or more families all living independent of each other ...where all dwelling units are located on the same lot.” *TCC 22.04.190.* In this case, no multifamily development is proposed, as the duplex lot would contain two dwelling units, and all other lots would contain one dwelling unit each. *Exhibit 13.*
14. In its review of the project, the City of Tumwater requested a condition of approval requiring that the proposed residences comply with Chapter 6 of the Citywide Design Guidelines. *Exhibit 1.L.* The design guidelines are referenced in Chapter 18.43 of the City’s zoning ordinance. *Tumwater Municipal Code 18.43.010.* The Applicant objected to the request as contrary to the vested rights doctrine, as the project vested to Thurston County’s zoning ordinance. *Exhibit 15.*
15. With respect to landscaping, the Applicant and Thurston County Planning Staff disagreed as to the applicability of the “incompatible use buffer” requirement of TCC 22.47.050.H. The ordinance defines an incompatible use as including a proposed residential subdivision lot that is less than 50% of the area of an existing contiguous residential lot and requires a 30-foot wide buffer to provide screening between the uses. In this case,

there are large single-family residential lots on each side of the subject property (northeast and southwest “side” boundaries), adjacent to the rear yards of the proposed lots. The proposed lots meet the definition of an incompatible use because they would be substantially less than half the size of the existing lots.<sup>2</sup> The Applicant argued that the code requirement does not require a separate tract for the buffer, and that the intent of the requirement would be met through landscaping along the rear of the lots. The Applicant argued that the incompatible use buffer should not be required in this case because the property has been annexed and it is not a City of Tumwater requirement, and the Applicant requested to be excused from the requirement. In response, the County argued that requiring the buffer would be consistent with the character of existing development that was subject to the requirement and annexed post-development into the City from the UGA. *Exhibits 3, 11, 13, and 14; Richard Felsing Testimony; Chris Carlson Testimony.*

16. Averaging all 17 lots, the average lot depth is 122.4 feet, meaning backyards can generally be of decent depth. Proposed Lots 11 through 17 back up to the narrow portion of proposed tree Tract A, which would appear to provide an additional approximately 20 feet of treed setback from the abutting larger lot residential property as viewed from off-site. This means only proposed Lots 1 through 10 directly abut off-site larger lot residential property. These 10 lots have an average depth of 129.6 feet. The proposed landscaping/tree retention plan shows existing mature trees being retained at the rears of Lots 1, 2, 8, 9, and 10. All lots are setback well more than 30 feet from the front of the plat, which would be landscaped for the entire site frontage. *Exhibit 1.C.*
17. The proposed lot coverage, at 41%, would not exceed the maximum allowed in the SFM zone (70%). *Exhibit 7; TCC 22.12.050.G.*
18. The Applicant submitted a forest land conversion application in conjunction with the preliminary plat application seeking to harvest 7,000 board feet of forest timber on 1.8 acres of the parcel, and to harvest 120 board feet of non-forest timber from 0.8 acre of the parcel. *Exhibits 7 and 1.B.* Applications for forest land conversion must comply with the Thurston County critical areas ordinance, the Thurston County shoreline master program, the Thurston County Drainage Design and Erosion Control Manual (DDECM), and the minimum design standards for urban and rural street construction in new developments. In addition, for residential subdivisions in the Tumwater UGA, the forest land conversion standards require that at least five percent of the property being subdivided be preserved or planted with new trees and dedicated as separate tract(s). The project plans must include safeguards to protect retained trees and ground cover. Where sites do not contain healthy trees that can be incorporated into the project, the tree tract must be planted with trees of a type and spacing to provide 75% canopy coverage at maturity. In addition, all subdivision common areas must be landscaped or planted with new trees, trees must be retained or planted on individual lots at a rate of one tree per 4,000 square feet of lot area, and street trees must be installed as applicable. A bond or other financial security must

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<sup>2</sup> The incompatibility would be limited to the side boundaries of the PUD. The rear (northwest) property line is adjacent to school district-owned land associated with the nearby middle school. *Chris Carlson Testimony.*

be provided to secure the successful establishment of newly planted trees. *TCC 17.25.400.*

19. The tree tract requirement for the subject property is 0.13 acres. The Applicant proposes to establish proposed Tract A (0.28 acres) as the tree tract. Trees would be planted in Tract A along the northern property line for the full depth of the property. No existing trees would be retained within Tract A, so the canopy coverage requirements would be met with planted trees, as depicted in the submitted preliminary landscape plan. A portion of the tract would be landscaped to serve as an on-site recreational amenity and would include a picnic table and tot lot. Tract B – the stormwater tract – would also be landscaped. *Exhibits 1.C (.pdf page 11) and 1.O.*
20. With respect to the trees by lot area requirement, a total of 25 trees must be retained or planted. A certified arborist evaluated the trees on site and identified 11 trees that could be retained along the southern property line. These trees would be protected with fencing during construction. An additional 14 trees would be planted. Street trees are proposed along the internal private road. *Exhibits 1.C (.pdf page 11) and 1.O.*
21. Conditions of approval recommended by Thurston County Planning Staff address the tree planting, street trees, and maintenance surety requirements of the forest land conversion ordinance. *Exhibit 7.*
22. Thurston County soil mapping indicates that the subject property has potential to provide habitat for the Mazama pocket gopher, a species listed as endangered pursuant to the federal Endangered Species Act. However, during a site evaluation, no Mazama pocket gopher mounds or prairie habitat were detected on the subject property. *Exhibits 1.P and 1.Q.* Aside from potential gopher soils, there are no regulated critical areas or critical area buffers on the subject property. *Exhibit 7.*
23. Stormwater runoff from pollution-generating surfaces would be collected into catch basins in the proposed private road and conveyed to a bioretention cell for water quality treatment and infiltration. Roof runoff would also be conveyed to the bioretention cell. The bioretention cell would be located in proposed Tract B in the eastern portion of the site, adjacent to Littlerock Road SW. At that location the infiltration facilities would be outside of the sanitary control radius of a well on the adjacent parcel to the north. *Exhibit 4; Chloe McIntyre Testimony.*
24. Prior to the subject property's annexation into the City of Tumwater, the Thurston County Public Works Department reviewed the project for compliance with the Thurston County Road Standards and the Drainage Design and Erosion Control Manual and determined that the preliminary requirements had been satisfied. Thurston County Public Works recommended approval of the project, subject to conditions addressing roads, traffic control, drainage, utilities, survey, and procedural matters. Public Works recommended conditions require the project to comply with the City of Tumwater Development Guidelines and specify that the project must comply with the more stringent of the City or County requirements. The City also submitted recommended



conditions to address roads and utilities, and, after annexation, requested revisions to the County's recommended conditions to reference City engineering requirements and procedures, and added further conditions addressing engineering matters. *Exhibits 1.K, 1.L, 7 and 11.*

25. The subject property is within the Tumwater School District. Students from the proposed subdivision would attend Michael T. Simmons Elementary School, Tumwater Middle School, and Tumwater High School. The middle and high schools are within walking distance of the subject property, and there is a safe walking route to the schools via City sidewalks. Elementary school students would be bussed to school. The School District requested that 10-foot long concrete pad be provided along the subject property's Littlerock Road frontage, within the planter strip to the north of the proposed subdivision entrance, to serve as a bus stop. The proposed project plans include the requested school bus stop. Mitigation of school capacity impacts would be addressed through school impact fees, which are collected at building permit issuance. *Exhibits 1.S and 3.*
26. Intercity Transit provides public bus service in the vicinity of the subject property. The nearest transit stop is approximately 800 feet from the subject property. To improve transit access consistent with its preferred guidelines for bus stop spacing, Intercity Transit requested that the Applicant provide a 24-foot long concrete pad along the subject property's Littlerock Road SW frontage, at a location to be determined. *Exhibit 1.N.* This request was not incorporated into the MDNS issued for the proposal, or any of the conditions recommended by Thurston County or City of Tumwater staff. The transit stop does not appear in the proposed project plans. *Exhibits 1.C, 1.L, 2, 3, 7, 8, and 11.*
27. All lots within the subdivision would be served by the City of Tumwater public water and sewer systems, which have sufficient capacity for the proposed 18 dwelling units. The Thurston County Environmental Health Division reviewed the project for compliance with the Thurston County Sanitary Code and recommended approval, subject to conditions requiring the following: that the no sanitary sewer lines be installed within 50 feet of any existing well; that no stormwater infiltration facilities be installed within 100 feet of any existing well; that the Applicant grant a non-public restrictive covenant for the existing off-site well on the adjacent parcel to the northeast; that the Applicant prepare and obtain approval of an Integrated Pest Management Plan (IPMP); that any existing on-site septic systems be abandoned consistent with Sanitary Code requirements; that all existing wells be decommissioned in accordance with Washington Department of Ecology standards; and that City of Tumwater water and sewer utilities be extended through the subdivision and to each lot prior to final approval. *Exhibits 1.H, 1.M, 3, and 11; Dawn Peebles Testimony.*
28. The Nisqually Indian Tribe and Squaxin Island Tribe commented that they have no issues of concern but requested to be notified if there are any inadvertent discoveries of archaeological resources or human burials. This request was incorporated into the SEPA mitigated determination of non-significance (addressed below) and the recommended conditions of project approval. The conditions require that an inadvertent discovery plan be implemented during construction. *Exhibits 1.G; 1.E, and 7.*

29. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). Having reviewed the preliminary plat plans, technical reports, environmental checklist, agency comments, and other documents, the County's SEPA responsible official issued a mitigated determination of non-significance (MDNS) on May 6, 2022 through the optional DNS process (WAC 197-11-355). The MDNS imposed mitigation measures addressing park, traffic, and school mitigation fees; erosion and stormwater control; archaeological resource protection; and soil sampling/toxics cleanup.<sup>3</sup> The MDNS was not appealed and became final on June 2, 2022. *Exhibits 1 and 1.E.*
30. In accordance with the requirements of the Tumwater Municipal Code and the Thurston County Code, notice of the open record hearing was mailed to property owners within 300 feet of the subject property on August 15, 2022 and published in *The Olympian* on August 19, 2022. *Exhibit 1.A; TMC 14.06.070; TCC 22.62.020.* There was no public comment on the proposal. *Exhibits 1 and 7; Richard Felsing Testimony.*
31. Having heard all testimony, reviewed all submitted materials, and reviewed City of Tumwater and Applicant post hearing comments, County Planning Staff recommended approval subject to the conditions in the revised staff report at Exhibit 7 as modified by City of Tumwater's requests (Exhibit 11), except that the County maintained its recommendation for requiring the incompatible use buffer to be imposed around the perimeter of the plat. *Exhibits 7, 8, 14, and 16; Rich Felsing Testimony.*
32. Having reviewed all post-hearing comments from County and City Staff, the Applicant waived objection to the recommended conditions in Exhibit 7 and the proposed modifications requested by City of Tumwater in Exhibit 11, except for the following. Contrary to the City's request to condition the project for compliance with City design guidelines, the Applicant continued to maintain that design review is not required for single-family residential attached development, because none is required per County Code to which the project is vested. The Applicant also maintained the objection to the requirement of an incompatible use buffer, asserting that the Tumwater Urban Growth Area zoning ordinance does not require any for the proposed development. The Applicant also objected to City requested conditions 68, 69, and 70 relating to fire sprinklering and alarms, asserting that such features are not required for one and two-family dwelling units as specified in section 903 of the International Fire Code (IFC), nor any amendment thereto under Tumwater Municipal Code Title 15.26 and Thurston County Code Title 14.32. *Exhibits 13 and 15; Chris Carlson Testimony.*

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<sup>3</sup> At the hearing, Thurston County Planning Staff and the Applicant agreed that Condition No. 7 (requiring soil sampling and possible remediation due to Tacoma smelter plume) should not be required because the project is outside of the affected area. Consequently, the condition is not included in the conditions of this decision. *Exhibits 1.E and 2; Chris Carlson Testimony.*

## CONCLUSIONS

### **Jurisdiction:**

The City of Tumwater Hearing Examiner has jurisdiction to hear and decide this application pursuant to Section 3.b.iv of the *Interlocal Agreement Between the City of Tumwater and Thurston County, Relating to the Development within Annexation Areas* dated January 28, 2008 (with term as extended by the First Amendment to this document dated January 7, 2014). The Interlocal Agreement grants the City Hearing Examiner jurisdiction to make final decisions on land use applications within the annexation area that require quasi-judicial approval, after receiving a report and recommendation from the County. *Exhibit 6a*. The City expressly deputized the County's Hearing Examiner as a City Hearing Examiner *pro tem* and asked that she issue a final decision rather than a recommendation in this matter.

### **Criteria for Review:**

#### ***Preliminary Plat Criteria***

Pursuant to TCC 18.12.090.B, preliminary plat approval may be granted if the following criteria are shown to be satisfied:

1. Appropriate provisions are made for the public health, safety, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds 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
2. The public use and interest will be served by the platting of such subdivision and dedication. If the hearing examiner finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the hearing examiner shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. The county shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

#### ***Planned Unit Development***

Pursuant to TCC 22.36.050, the Hearing Examiner's decision to approval or deny a PUD shall be based on at least the following criteria:

- A. Substantial conformance to the Tumwater Joint Plan;
- B. The proposal's compatibility with the surrounding area or its potential future use; and
- C. The proposal shall be designed to minimize impacts on adjacent properties and, conversely, to minimize impacts of adjacent land use and development on the proposal.

### **Conclusions Based on Findings:**

1. As conditioned, the proposal satisfies the criteria for a preliminary plat.
  - A. Appropriate provisions are made for the public health, safety, public ways, transit stops, potable water, sanitary wastes, parks and recreation, playgrounds, schools,

and all other relevant facts. The PUD provides for on-site recreation facilities and would be subject to payment of park mitigation fees. There is a safe walking route to the middle and high schools serving the plat, and a concrete bus waiting area would be installed along the site for elementary school students. School impact mitigation fees would be collected by the City. Transportation, water, and sewer infrastructure would be provided consistent with City of Tumwater requirements. Public health is addressed through the conditions of the County Environmental Health Division. The Hearing Examiner concurs with the Applicant that, given the duplex design of the proposed structures, the City's requested conditions 68, 69, and 70 relating to fire sprinkler and alarm systems are not needed. Compliance with City of Tumwater road standards would ensure adequate emergency vehicle access to all lots. There is an existing Intercity Transit stop available within 800 feet of the site entrance. *Findings 6, 7, 8, 11, 12, 15, 16, 17, 21, 23, 24, 25, 26, 27, 31, and 32.*

- B. The public use and interest would be served by the subdivision. With a density of 7.75 dwelling units per acre, the PUD represents an efficient use of land consistent with the purpose of the SFM zone and the Joint Plan land use designation. It would provide community amenities and a pedestrian-friendly atmosphere and contribute to variety in available housing type. Offsite impacts would be minimized through tree retention along the rears of Lots 1, 2, 8, 9, and 10, tree replacement in Tract A, and the generous landscaped setbacks provided from the site's frontage. Incremental impacts to parks, schools, and the road network would be mitigated through payment of impact mitigation fees. The impacts of timber harvest would be mitigated through replacement plantings in conformance with the forest lands conversion ordinance. The conditions of approval address the requirements identified by the agencies with jurisdiction over the project, and conditions would ensure implementation of an inadvertent discovery plan to safeguard potential cultural/historic artifacts discovered during earth disturbing work. The proposal was reviewed for compliance with the SEPA, and the issued determination of non-significance was not challenged. *Findings 2, 3, 4, 5, 6, 7, 8, 11, 12, 15, 16, 17, 19, 20, 21, 28, 29, 30, 31, and 32.*

2. As conditioned, the proposal satisfies the criteria for a PUD.
- A. The proposal substantially conforms to the Tumwater Joint Plan, in that it provides for an alternative single-family housing type and satisfies SFM zoning standards as modified through the PUD process. *Findings 2, 3, 4, 5, 6, 9, 10, 31, and 32.*
- B. As conditioned, the proposal is compatible with surrounding land uses. Addressing the items in contention among the parties – design review and the incompatible use buffer – the following conclusions are entered.
1. Pursuant to TCC 22.43.020, design review does not apply to the development of attached single-family residences or duplex development. The project does not constitute multifamily development. The instant decisions are not conditioned on

the project's compliance with the *City's* design standards, as those standards are part of the *City's* zoning ordinance and the project vested to Thurston County's zoning ordinance. *Findings 2, 5, 7, 13, 14, 31, and 32.*

2. Regarding the incompatible use buffer, the project is vested to the substantive requirements of the Thurston County Code and the proposed lots, at well under 50% of the size of the abutting residential parcels, meet the definition of incompatible uses requiring a buffer pursuant to TCC 22.47.050.H(1)(b). No provisions in the code require the buffer to be provided in a segregated tract. Given the depths of the lots, with respect to Lots 11 through 17, proposed tree Tract A plus back yard landscaping would easily satisfy the requirement for vegetated 30-foot sight-obscuring buffer, if conditioned to provide the depth of landscaping at the rear of the yards that – when combined with the width of Tract A – would equal 30 feet. With respect to Lots 1 through 10, retention of mature trees at the rears of Lots 1, 2, 8, 9, and 10 would promote the required sight-obscuring condition. Without placing the rear 30 feet of each lot into a segregated tract, the plat could be conditioned to require some combination of fencing and vegetation along the rear 30 feet of these lots that would accomplish the required sight-obscuring buffer. Such conditions have been added. *Findings 2, 3, 4, 7, 11, 15, 16, 31, and 32.*
- C. As conditioned, the project is designed to minimize impacts to adjacent properties. This is evidenced by the placement of the tree and stormwater tracts and the location of retained trees. Stormwater would be infiltrated more than 100 feet from the nearest off-site well. New trees would be planted along the northern property line and throughout the plat, and existing trees would be retained along the southern property line. Conditions of approval require preparation of an integrated pest management plan and provision of the incompatible use buffer along both side parcel boundaries abutting large lot residential development. No potential impacts to the project from surrounding properties were identified during the review process. The SEPA MDNS was not challenged. *Findings 6, 7, 8, 11, 15, 16, 17, 19, 20, 21, 22, 23, 25, 27, 29, 31, and 32.*
3. As conditioned, the standards for forest land conversion are satisfied. The project has been reviewed against the applicable County codes referenced in the forest land conversion ordinance. The subject property does not contain critical areas. More than five percent of the site area would be preserved within a tree tract. All common areas would be landscaped. Trees would be retained or planted at a rate of one per 4,000 square feet of lot area. Retained trees would be protected during construction. Street trees would be installed as applicable. Financial guarantees would be provided. *Findings 2, 3, 18, 19, 20, 21, 22, 31, and 32.*

## DECISIONS

Based on the preceding findings and conclusions, the requested preliminary plat and planned unit development approvals are **GRANTED** subject to the following conditions:

1. Inadvertent Discovery Plan. The project proponent shall follow the procedures in the City of Tumwater Standard Inadvertent Archaeological and Historic Resources Discovery Plan. 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).

Should archaeological 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 Archaeology and Historic Preservation; and
  - D. The contractor shall immediately notify potentially affected tribal nations including, but not limited to, the Squaxin Island Tribe, Chehalis Tribe, and Nisqually Tribe.
2. [Former design review condition rescinded]

*Olympia Regional Clean Air Agency (ORCAA)– Demolition and Asbestos Testing*

3. Prior to any demolition project, the following must be completed:

Asbestos Testing. A good faith asbestos survey must be conducted on the structure by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector;

If asbestos is found during the survey, an ORCAA Asbestos Removal Notification must be completed and all asbestos containing material must be properly removed prior to the demolition; and,

If the structure is 120 square feet or greater, an ORCAA Demolition Notification must be submitted regardless of the results of the asbestos survey. There is a mandatory 14-day waiting period after ORCAA receives notification, so we recommend the Applicant complete the Demolition Notification promptly after receiving the survey.

\*These requirements are specific to ORCAA and are not synonymous with any city or county permitting jurisdiction requirements. Helpful Links:

A list of certified asbestos contractors is available at [https://www.orcaa.org/wp-content/uploads/2020/01/Asbestos\\_Contractors\\_Jan2020.pdf](https://www.orcaa.org/wp-content/uploads/2020/01/Asbestos_Contractors_Jan2020.pdf)

The Demolition Notification form is available at <https://www.orcaa.org/asbestos-demolition-programs/demolition-notification/>

If applicable, the Contractor Asbestos Removal Application is available at <https://www.orcaa.org/asbestos-demolition-programs/contractor-asbestos/>

If you have any questions or about the process, please contact Seamus Shevlin at 360-539-7610

*Department of Ecology*

4. Demolition Hazardous Waste & Toxics Reduction. The Applicant proposes demolition of an existing structure. In addition to any required asbestos abatement procedures, the Applicant should ensure that any other potentially dangerous or hazardous materials present, such as PCB-containing lamp ballasts, fluorescent lamps, and wall thermostats containing mercury, are removed prior to demolition. Also, be aware that PCBs are increasingly being found in caulking and paint. It is important that these materials and wastes are removed and appropriately managed prior to demolition. It is equally important that demolition debris is also safely managed, especially if it contains painted wood or concrete, treated wood, or other possibly dangerous materials. Please review the “Dangerous Waste Rules for Demolition, Construction, and Renovation Wastes,” on Ecology’s website at: <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Dangerous-waste-guidance/Common-dangerous-waste/Construction-and-demolition>. For assistance contact Tara Davis at (360) 407-6275. For more information about handling demolition debris contact Robert Rieck at (360) 407-6751 (Hazardous Waste and Toxics Reduction (HWTR)).
5. Solid Waste Management. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact County Environmental Health Department for proper materials management. For assistance contact Derek Rockett at (360) 407-6287.
6. Toxics Cleanup. If contamination is suspected, discovered, or occurs during the proposed SEPA action, 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) at (360) 407-6300. For assistance contact Mohsen Kourehdar, SWRO Toxics Cleanup Program at (360) 407-6256.
7. Water Quality / Watershed Resources Unit. A Construction Stormwater General Permit (CSWGP) shall be obtained if the project discharges *or has the potential* to discharge stormwater to surface waters of the State. If soil or ground water contaminants are present on-site, additional testing and reporting are required. Sites discharging stormwater to impaired waterbodies listed by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, high pH, or phosphorous, or to waterbodies covered by a TMDL may need to meet additional sampling and record keeping requirements. See

condition S8 of the Construction Stormwater General Permit for a description of these requirements.

To see if your site discharges to a TMDL or 303(d)-listed waterbody, use Ecology's Water Quality Atlas at: <https://fortress.wa.gov/ecy/waterqualityatlas/StartPage.aspx>

The Applicant may apply online or obtain an application from Ecology's website at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/-application>. Construction site operators must apply for a permit at least 60 days prior to discharging stormwater from construction activities and must submit it on or before the date of the first public notice. For assistance contact Morgan Maupin (360) 407-7320.

### *Environmental Health*

8. All Thurston County Environmental Health conditions of approval as stated in Exhibit 1.H must be met or otherwise fulfilled, to the satisfaction of the Environmental Health Division, as follows:
  1. There shall be no sanitary sewer lines located within 50 feet of any existing well, and no stormwater infiltration within 100 feet of any existing well.
  2. The Applicant must grant a non-public restrictive covenant for the existing off-site well located on Tax Parcel 12703230800. The covenant must be submitted to Environmental Health for review prior to being recorded with the Thurston County Auditor's Office. A reference to the covenant must also be placed on the final map.
  3. The Applicant must prepare an Integrated Pest Management Plan (IPMP). The plan must be submitted to Environmental Health for review with the method of distribution to future homeowners within the subdivision specified. This is typically done by incorporating a copy of the accepted IPMP into the subdivision CC&Rs. Other methods may be allowed provided they assure future property owners will receive a copy of the IPMP at the time of sale.
  4. Any existing on-site septic system located on the project site must be properly abandoned per Article IV of the Thurston County Sanitary Code prior to final plat approval. An abandonment permit is required and copies of all abandonment documentation from a certified septic system pumper must be provided.
  5. All existing wells located on the project site must be decommissioned by a licensed well driller per Washington State Department of Ecology standards prior to final plat approval. Copies of the decommissioning reports (well logs) must be provided to Environmental Health.
  6. City of Tumwater water and sewer utilities must be extended through the subdivision prior to final approval. Confirmation of final water and sewer construction approval from the City of Tumwater must be submitted to Environmental Health.

### *Public Works*

#### Roads

9. The proposed roadway in concept and design shall conform to the City of Tumwater standards and development guidelines.



10. A construction permit shall be acquired from the City of Tumwater Transportation and Engineering Department prior to any construction.
11. Work within the City right-of-way will require a permit from the City of Tumwater.

#### Traffic Control Devices

12. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact City of Tumwater Transportation and Engineering Department Staff to obtain the most current guidelines.
13. City forces may remove any traffic control device constructed within the City right-of-way not approved by this division and any liability incurred by the City due to non-conformance by the Applicant shall be transferred to the Applicant.

#### Drainage

14. The stormwater management system shall conform to the City of Tumwater Drainage Design & Erosion Manual.
15. All drainage facilities outside of the City right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
16. Stormwater runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.
17. Because proper landscaping is vital to the performance of the stormwater system, the Landscape Plan (if required) shall be signed/sealed by a Washington licensed civil engineer (preferably the engineer who designed the stormwater system).

#### Utilities

18. The proposed water and sewer system shall be designed in accordance with the standards and specification of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.
19. Proposed utility work within the City of Tumwater right-of-way shall conform to City road standards.

#### Right-Of-Way & Survey

20. Permanent survey control monuments shall be installed in accordance with the standards provided by the City of Tumwater Transportation and Engineering Department.

### General Conditions

21. No work shall take place until a construction permit has been issued by City of Tumwater Transportation and Engineering Department.
22. Development within the City of Tumwater urban growth boundary, requiring review by both Thurston County and the corresponding city jurisdiction, shall be designed to the more stringent standards of the two jurisdictions.
23. The proposed grading or site work shall conform to Appendix J of the International Building Code and the City of Tumwater Drainage Design & Erosion Manual.
24. When all construction/improvements have been completed, contact the City of Tumwater Transportation and Engineering Department for a final inspection.
25. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.

### Project Specific Conditions

26. Once the official preliminary approval has been issued, the Applicant shall submit two complete full-size sets of construction drawings, the final drainage and erosion control report and all applicable checklists along with an electronic copy to the City of Tumwater Transportation and Engineering Department for review and acceptance. The Final Drainage Report shall address all comment in the Stormwater Scoping Report Response.
27. Prior to construction, the Applicant shall:
  - a. Pay outstanding construction review and inspection fees
  - b. Receive an erosion and sediment control permit
  - c. Have the erosion and sediment control inspected and accepted
  - d. Receive a construction permit; and
  - e. Schedule a pre-construction conference with City of Tumwater Transportation and Engineering Department staff.

### *General Information*

#### Final Review

28. Prior to receiving final approval from the City Community Development Department, the following items shall be required:
  - a. Completion of all roads and drainage facilities.

- b. Final inspection and completion of all punch list items.
  - c. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by the appropriate Addressing Official.
  - d. Receive and accept Engineer's Construction Inspection Report Form (Appendix I-C, Volume I of the Drainage Design and Erosion Control Manual, or City of Tumwater equivalent).
  - e. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual, or City of Tumwater equivalent).
  - f. Execute an agreement with financial security for the maintenance and operation of the drainage facilities in accordance with applicable City of Tumwater requirements.
  - g. Approve the Final Plat Map.
  - h. Property owners articles of incorporation and covenants in accordance with Volume I, Section 2.4.11 of the Drainage Design and Erosion Control Manual, or City of Tumwater equivalent.
  - i. Completion of required signing and striping.
  - j. Payment of any required permitting fees.
29. The final plat map shall note or delineate the following:
- Required Plat Notes
- a. "ATTENTION": The City of Tumwater has no responsibility to build, improve, maintain or otherwise service private roads or driveways within or providing access to property described in this plat. The building, maintenance, repair, improvement, operation, or servicing of the storm water facilities outside the county rights-of-way are the responsibility of the property-owner(s).
  - b. Increased storm water runoff from the road(s), building, driveway, and parking areas shall be retained on site and shall not be directed to roadway ditches adjacent to Littlerock Road SW.
  - c. The City of Tumwater has no responsibility to control road runoff that flows down driveways that reconstructed below road grade. Homeowners are responsible for grading their access point and adjacent property to manage any runoff from the roadway.
  - d. If seasonal drainage crosses subject property, no filling or disruption of the natural flow shall be permitted.
  - e. Private roads are required to remain open at all times for emergency and public service vehicle use. Any future improvements (gates, fencing, etc.) that would not allow for "open" access will need to be approved by all applicable departments of the City of Tumwater.

- f. [no condition]<sup>4</sup>
- g. Impact fees shall be paid prior to issuing any building permits associated with this project.
- h. This plat is subject to the RESIDENTIAL AGREEMENT TO MAINTAIN STORMWATER FACILITIES AND TO IMPLEMENT A POLLUTION CONTROL PLAN”, as recorded under Auditor’s File No. \_\_\_\_\_.
- i. Easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on the plat for subdivision \_\_\_\_\_ including unrestricted access for City of Tumwater staff to any and all stormwater system features for the purpose of routine inspections and/or performing maintenance, repair and/or retrofit as may become necessary. No encroachment will be placed within the easements shown on the plat which may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities and drainage facilities shall be the responsibility of the Property Owners’ Association as established by covenant recorded under Auditor’s file number \_\_\_\_\_.
- j. The property described herein is required to accommodate stormwater runoff from frontage improvements to Littlerock Road SW and all natural tributary areas abutting said property.
- k. Maintenance of the landscaping, trees, sidewalk, planter strips and roadside drainage and stormwater facilities such as ditches, swales and ponds within the public right of way is the sole responsibility of the (property owners) or (homeowners association) within this subdivision. The City of Tumwater has no responsibility to maintain or service said landscaping, trees, sidewalk, planter strips or roadside stormwater facilities and the property owner(s) adjacent to the right-of-way shall be responsible for maintaining the planter strip and street trees (weeding, pruning, irrigating, mowing, etc.) in a healthy and growing manner in perpetuity.

Delineate on the Plat

- l. Provide language on the plat describing the drainage design requirements for all projected hard surfaces and lawn/landscape areas within individual building lots (drywell design/sizing, storm drain connection points, incorporated into pond design, etc.).
- m. Delineate the access restrictions by showing a "no access" strip, written and hatched, between the City approved access points along the frontage of Littlerock Road SW on the final plat map.
- n. Please clearly label all public and private roads.

*City of Tumwater*

30. The following City of Tumwater conditions of approval shall be satisfied:

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<sup>4</sup> Stricken due to annexation.

### General

- The Applicant shall be responsible for providing the City with all costs associated with the installation of water and sewer systems that are dedicated to the City of Tumwater.
- All designs/construction shall be according to the City of Tumwater's Development Guide and WSDOT standards.
- All proposed City utility improvements require engineered plans stamped by and performed by or under the supervision of a State of Washington licensed professional engineer.
- Any private or public utility relocation is the responsibility of the Applicant.
- The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety for maintenance equal in value to 15% of the total value of the required public improvement certified by the Public Works Director. Please refer to Chapter 3 of the Development Guide for further clarification.
- Provide all easements and bills-of-sale documents with the engineered plans. All legal descriptions must be accompanied with an appropriate drawing that the city surveyor can use to verify the legal description. All engineering drawings shall be on 24- x 36-inch sheets.
- Annexation. The owner of the property will be required to sign a Waiver of Protest/Special Power of Attorney for annexation.

### Street

- Street sections shall be per City of Tumwater standards, including private roads.
- Frontage improvements shall be constructed per City of Tumwater standards.
- All access to the property shall be consistent with City standards and policies.

### Sanitary Sewer

- Gravity sanitary sewer is available in Littlerock Road.
- Littlerock Road sanitary sewer special connection fees of \$21,061.13 for parcel #12703230007 and \$10,084.71 for parcel #121703230600.

### Water

- City water is available in Littlerock Road.
- A minimum of an eight-inch main shall be extended to serve the plat. The main size will depend on the fire flow requirements for the project. The system shall be designed for a maximum velocity of eight feet per second.
- Back flow prevention is required on all fire services, irrigation serviced and per the AWWA Cross Connection Control Manual.

- Existing wells and septic systems shall be abandoned per the Thurston County Health Department requirements.
31. Street trees shall be installed per the applicable street development standards.
  32. Maintenance surety. Prior to final plat approval, a maintenance assurance device and a performance device must be submitted to the City of Tumwater.
  33. Trees Planted per Lot. New trees shall be planted on individual residential lots at a rate of one tree per four thousand square feet of lot area.
  34. City of Tumwater Parks Mitigation. Parks mitigation fees are determined based upon current fee schedule at the time of building permit issuance.
  35. [no condition]
  36. City of Tumwater Traffic Mitigation. Traffic mitigation is determined based upon current fee schedule in place at time of building permit issuance, and due at that time.
  37. School Impact Fees. School impact mitigation fees for the Tumwater School District are determined by the fee schedule in place at building permit issuance, and due at that time.
  38. 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.
  39. All grading and filling 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 filling. 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.
  40. 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.
  41. 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.

42. 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.
43. 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.
44. All engineering designs and construction shall be in accordance with the City of Tumwater's Development Guide and WSDOT standards.
45. The project proponent shall be responsible for all plan check, inspection, and connection fees.
46. Any public or private utility relocation necessary to construct the project shall be the sole responsibility of the project proponent.
47. 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 15% 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.
48. 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- by 36-inch paper sheets.
49. 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.
50. 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.
51. The project proponent shall provide a cover page with all dedication and easement language.

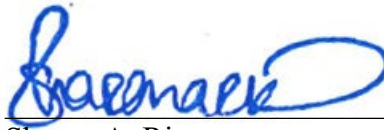
52. All sanitary sewer mains must be TV'd. The project proponent shall provide a tape of the sanitary sewer line prior to recording the Final Plat.
53. A drainage design and erosion control plan will be required according to City of Tumwater's Drainage Design and Erosion Manual.
54. Maintenance of the 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.
55. Fire hydrants shall be provided at all intersections and at approximately 600-foot spacing along the internal streets.
56. 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.
57. 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.
58. 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.
59. 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.
60. The project proponent must maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
61. Property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Plat can be recorded.
62. A 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.
63. 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.



64. 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.
65. 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.
66. 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.
67. Backwater valves shall be installed for each structure when the sewer is lower than the street manhole.
68. [no condition]
69. [no condition]
70. [no condition]
71. Any dead-end fire access roads that are in excess of 150 feet in length shall be provided with an approved turnaround.
72. 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 required fire flow. Placement of the hydrants shall be coordinated with the City of Tumwater Building Safety Official.
73. Building plans and specifications shall be prepared and stamped by an architect or an engineer licensed to practice in the State of Washington.
74. 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.
75. 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.
76. In order to ensure compliance with the County Code to which the applications are vested, specifically TCC 22.47.050.H(3), approval is conditioned upon provision of at least 30 feet of landscaped depth, to include new or retained plantings in combination with whatever fencing is desired, in order to provide the sight-obscuring buffer function

required by TCC 22.47.050.H(3) between newly subdivided Lots 1 through 10 and the abutting existing residential parcel(s) at least twice the size than the proposed lots. No separate tract is required along Lots 1 through 10. For proposed Lots 11 through 17, approval is conditioned on providing adequate landscaped backyard depth such that the backyards added to proposed tree Tract A along the outer edge of proposed Lots 11 through 17, in combination with whatever fencing is desired, provide 30 feet of landscaped depth and achieve the sight-obscuring function required by TCC 22.47.050.H(3). Aside from proposed Tract A, no separate tract is required for this purpose along Lots 11 through 17. The required depth of landscaped buffer for each lot shall be included in a note on the face of the plat.

**Decided** September 30, 2022 by



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Sharon A. Rice  
Thurston County Hearing Examiner  
City of Tumwater Hearing Examiner *pro tem*

## **HEARING EXAMINER POST-DECISION PROCEDURES**

The following sections of the Tumwater Municipal Code outline procedures for requesting reconsideration of a decision by the Tumwater Hearing Examiner and appealing a decision made by the Tumwater Hearing Examiner.

### **TMC 2.58.135 Reconsideration.**

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 10 working days to render a written final decision.

### **TMC 2.58.150 Appeal from examiner's decision.**

- A. In cases where the examiner's jurisdictional authority is to render a decision, the decision of the examiner shall be final and conclusive unless appealed to superior court within the applicable appeal period as set forth in TMC 2.58.180.
- B. In cases where the hearing examiner decision is appealable to the city council, the decision of the examiner shall be final and conclusive unless appealed within the applicable appeal period as set forth in this section.
- C. Appeals to the city council must be filed with the city clerk by the applicant or other party of record, a department of the city, county or other agency within 14 calendar days following rendering of such decision. Persons not in attendance at the hearing but who submit written information prior to the hearing which becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.
- D. In the event an apparent prevailing party files an appeal to preserve appeal rights and no opposing appeals are filed, said party may, by giving written notice thereof to the city clerk, abandon their appeal and in such event shall be refunded their filing fee.
- E. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the city council or is withdrawn.
- F. Within five days after the final day upon which an appeal may be filed, notice thereof and of the date, time and place for city council consideration shall be mailed to the applicant, all other parties of record and anyone who submitted written information prior to the hearing. Such notice shall additionally indicate the deadline for submittal of written arguments as prescribed in TMC 2.58.160.

### **TMC 2.58.180 Judicial appeals.**

Final decisions (after exhausting administrative remedies) may be appealed by a party of record with standing to file a land use petition in the Thurston County superior court, except shoreline permit actions which may be appealed to the shoreline hearings board. Such petition must be filed within 21 days of issuance of the decision as provided in Chapter 36.70C RCW.

Updated: June 10, 2013