

RECEIVED
DEC 5 2007

CITY OF TUMWATER
DEVELOPMENT SERVICES

CITY OF TUMWATER
OFFICE OF THE HEARING EXAMINER
REPORT AND DECISION

FILE NOS: TLP #10-06 and PUD #7-06

APPLICANT: Chinook Landing LLC

SUMMARY OF REQUESTS:

Requests for preliminary plat (TLP) and planned unit development (PUD) overlay approvals in order to subdivide a 39.08-acre parcel of land into 99 single-family home lots.

LOCATION:

The property proposed to be subdivided is located north of Tumwater Boulevard SE and west of Henderson Boulevard SE in a portion of the north half of the southeast quarter of Section 2, Township 17, N., Range 2 of the W.W.M, Thurston County, Washington.

DECISION OF THE EXAMINER:

The requests are approved, subject to conditions.

PUBLIC HEARING:

After reviewing the City of Tumwater Development Services report and viewing the site, the Examiner conducted a public hearing on the application on November 28, 2007.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. Chinook Landing LLC (hereinafter "applicant") is requesting preliminary plat (TLP) and planned unit development (PUD) overlay approvals in order to subdivide a 39.08-acre parcel of land into 99 single-family home lots. The property proposed to be subdivided is located north of Tumwater Boulevard SE and west of Henderson Boulevard SE in Tumwater.

2. The smallest of the lots within the proposed subdivision known as "Chinook Landing" would be 3,404 square feet and lots would vary in width, with the smallest lot width being 40 feet. The density of the proposed 99-lot subdivision would be 5.95 dwelling units per acre. Access to the lots within the proposed subdivision would be by way of an internal public street system that would provide connections to both Tumwater Boulevard SE and Henderson Boulevard SE. Six lots located in the northwest corner of the subdivision site would be served by a private roadway extending east from the current terminus of Dennis Street SE. Wetland/wetland buffer areas, as well as tree retention areas, are proposed. A stormwater treatment and detention facility is proposed in the southwest corner of the proposed subdivision. Another private road would provide access to four lots located within the southeast corner of the proposed subdivision. The proposed development constitutes Phase 1 of a larger development for which plans cannot be developed until portions of the site are rezoned and other portions are annexed to the City.

3. The subdivision site is irregular in shape with rolling topography. A large Category II Wetland complex occupies a large portion (19 plus acres) in the northwest portion of the property. A Category III Wetland and its required buffer extend into the southeast portion of the subdivision site. Two Type 4 streams have been identified in the vicinity of the site – one stream is wholly located off site, while the other discharges into the large wetland complex located in the northwest portion of the property.

4. Five single-family homes and various outbuildings currently occupy portions of the property. It is planned that these structures would be removed from the property in order to accommodate the proposed residential development.

5. Surrounding land uses consist of single-family low density land uses and a storage yard for a scrap metal business to the south; single-family uses, including a mobile home park, and undeveloped property are located to the north; a vacant commercial site and wetland are located to the east; and low density single-family uses are situated west of the subdivision site.

6. All utilities necessary to serve the proposed development are either currently available to the property or can reasonably be extended to it.

7. Since the subdivision site was previously located outside the City limits of Tumwater; the Tumwater/Thurston County Joint Plan constitutes the comprehensive plan applicable to the subdivision site. This plan calls for development of property as "single-family low density". The low-density single-family subdivision proposed here would be consistent with applicable comprehensive plan provisions.

8. The proposed subdivision is consistent with the City's Comprehensive Transportation Plan, including provisions related to street connectivity and pedestrian and bicycle travel

9. Since the City's Comprehensive Park Plan does not identify any community or neighborhood parks in the vicinity of the subdivision and the subdivision would be required to provide open space consistent with the requirements of *Tumwater Municipal Code (TMC) 17.12*, the proposed subdivision would not be inconsistent with such plan.

10. Consistent with the Comprehensive Plan designation for the property, the City has applied a Single-Family Low Density Residential (SFL) zoning classification to the site. Said zone permits single-family homes at densities ranging from 4 to 7 dwelling units per acre. The proposed subdivision conforms to the use and density requirements of the SFL zone.

11. Due to the fact that the applicant is proposing to utilize a private road to provide access to more than four lots (i.e. the 6 lots in the northwest corner of the subdivision); is also proposing narrower lot widths (40 feet) than the 50-foot minimum required by the SFL zone; is seeking flexibility in building setbacks due to the use of narrower lots; and may exceed, in some instances the sixty percent building coverage limitation of the SFL zone, the applicant is requesting the development flexibility provided under the PUD overlay zone.

12. The PUD overlay zone is, among other things, intended to provide flexibility of development where properties may be affected by unique or special conditions (*TMC 18.36.010.2*). Here, a substantial portion of the subdivision site (19 plus acres) is affected by a large wetland complex in the northwest portion of the site and to a lesser extent by another wetland in the southeast corner. Thus, one of the purposes of the PUD overlay would be met by applying such a zone to the subject property.

13. Moreover, the development proposed under the PUD overlay would be compatible with existing and planned uses in the vicinity of the site; would, as earlier found (Finding 7), be consistent with the Comprehensive Plan; and the PUD

overlay would be of sufficient size to accommodate the proposed residential development.

14. The City's Development Guide at Section 4.8 restricts the use of private roadways to serving four or fewer lots unless the lots are within a PUD and meet enumerated requirements. The evidence establishes that the preliminary plat, as submitted, satisfies such requirements. Exhibit 1 at 3.

15. An Aquifer Protection (AQP) overlay zone has also been applied to the property. Residential uses are not restricted uses within the AQP zone. Thus, the proposed subdivision conforms to the AQP zone requirements.

16. In accordance with *TMC* 16.08, the applicant has submitted to the City a forester's report and tree conservation plan, and acknowledges that the measures specified in that plan must be adhered to, and that a Forest Practices Permit issued by the Washington State Department of Natural Resources is required before removal of any trees.

17. The Category II and Category III wetlands on the site, as well as any streams on the site, are regulated under the City's *Critical Areas Ordinance (TMC)* 16.28. The wetlands, wetland buffers, and streams affecting the property have been properly identified and delineated. Further, all development proposed is outside the regulated wetlands, streams and their required buffers. Conditions have been recommended concerning wetland/stream protection. Exhibit 1 at 13.

18. The City's Director of Public Works, after review of the traffic impact analysis prepared for the project, issued a transportation concurrency determination, concluding that, with the traffic mitigation proposed, the proposed subdivision would satisfy the City's Transportation Concurrency requirements. Exhibit 1 at 7 and Attachment II. Additionally, the Mitigated Determination of Non-Significance (MDNS) issued by the City for the project requires payment of transportation mitigation fees to Thurston County and Olympia to offset the impact of the proposed subdivision on those agencies' transportation facilities.¹

19. A preliminary drainage report has been prepared by the applicant and submitted to the City, which indicates that the proposed project would be able to satisfy the requirements of the Thurston Region Drainage Design and Erosion Control Manual.

20. The preliminary plat for the proposed subdivision has been submitted in accordance with the procedural and substantive requirements of the City's Subdivision Code. *TMC* 17.12 and 17.14.

¹ The applicant noted that Thurston County has slightly miscalculated a transportation impact fee requested for *State Environmental Policy Act (SEPA)* mitigation, and that the correct amount of \$58,276 is reflected in the MDNS issued by the City.

21. The proposed preliminary plat and PUD have been reviewed by a number of governmental agencies, and comments have been submitted by the following agencies: Thurston County Roads and Transportation Services requesting SEPA based pro-rata share mitigation fees for project impacts to County transportation facilities (Exhibit 1 at Attachment EE)²; City of Olympia requesting SEPA based pro-rata share mitigation fees for project impacts to the City of Olympia transportation facilities (Exhibit 1 at Attachment FF)³; Washington State Department of Ecology regarding water quality and toxics cleanup (Exhibit 1 at Attachment DD); Washington State Department of Fish and Wildlife stating that there are no Mazama Pocket Gophers on the site (Exhibit 1 at Attachment HH); Thurston County Environmental Health Division recommending approval, subject to conditions (Exhibit 1, Attachment GG); Intercity Transit requesting bus stop pads and transit shelters in the vicinity of the entrances of the project off Henderson Boulevard and Tumwater Boulevard (Exhibit 1 at Attachment CC)⁴; City of Tumwater Public Works regarding Transportation Concurrency ruling and water and sewer availability (Exhibit 1 at Attachments II and JJ); and Washington Water Service Company relating to a public water system they own in the vicinity of the proposed project (Exhibit 1 at Attachment LL).

22. Several neighboring property owners appeared in writing expressing concerns and raising questions in regard to the proposed development. Exhibit 1 at 10 and 11 and at Attachments KK through MM. Responses were provided by Development Services to each concern and questions raised. *Id.* The responses adequately address the issues raised by neighboring property owners. No one appeared at hearing to present testimony relating to objections to the concerns with the requested preliminary plat and PUD approvals.

23. The applicant concurs in the conditions recommended and agrees to comply with the same.

24. In addition to the responses presented by Development Services, the applicant noted that it has already made substantial infrastructure improvements in the area, including the extension of a water main along the north boundary of the proposed subdivision and then extending north in Henderson Boulevard SE, the construction of a sanitary sewer lift station west of the proposed subdivision, and an extension of a sanitary sewer main in Tumwater Boulevard SE and north in Henderson Boulevard SE.

25. Roadways within PUD's may be permitted, but only subsequent to the following requirements:

² The SEPA MDNS for the project includes a condition that the requested fees be paid prior to final plat approval. Exhibit 1 at Attachment Z.

³ See Footnote 2 above.

⁴ Development Services has conditioned that Intercity Transit facilities be provided in the vicinity of the entrance of the subdivision of Henderson Boulevard and Tumwater Boulevard. Exhibit 1 at Attachment OO.

- a. The road must meet the minimum design standards for private streets in Chapter 4, Table 1 of the Tumwater Development Guide;
- b. The road must be accessible at all times for emergency and public service vehicles;
- c. The proposal will not result in land-locking of present or future parcels nor obstruct public street circulation; and
- d. Covenants will have to be approved, recorded, and verified with the City which provide for maintenance of the private streets and associated parking areas by the owners, homeowners, or other legal entity.

The roadway design, as depicted on the preliminary plat, conforms to the standards enumerated above.

26. PUD's are intended to allow flexibility in development and may be approved upon a showing that the following criteria are met:

- a. Substantial conformance to the Tumwater Comprehensive Plan.
- b. The proposal harmony with the surrounding area or its potential future use; and
- c. The adequacy of the size of the proposed overlay to accommodate the contemplated developments.

The proposed PUD is consistent with the foregoing PUD criteria since the proposed single-family residential subdivision is in conformance with the City's comprehensive plan and applicable SFL zoning, is compatible with the surrounding single-family residential neighborhood, and the property is of adequate size to accommodate the proposed subdivision.

27. In accordance with the *State Environmental Policy Act (SEPA)* of 1971, as amended, and Chapter 16.04 of the *TMC*, the Development Services Department reviewed an Environmental Checklist together with other available information. It is the determination of the department that the proposal can be considered minor to the extent that adverse environmental impacts are not anticipated. Accordingly, the responsible official prepared a Mitigated Determination of Non-significance (MDNS). The MDNS was issued on September 17, 2007 with a 15-day comment period that ended on October 1, 2007 and a 6-day appeal period that ended on October 8, 2007. No appeal of the environmental determination was made.

28. The report of the Development Services Department, designated as Exhibit 1, to the extent that it sets forth the issues, general findings of fact, applicable policies and provisions and departmental recommendations of this matter, is incorporated herein by reference as though fully set forth.

29. A Notice of Application was issued for this project on June 8, 2007 and distributed to property owners within 300 feet of the project site with a 14-day comment period. The *SEPA* threshold determination was distributed to property owners within 300 feet of the proposal on September 17, 2007. A Notice of Public Hearing was distributed to surrounding property owners within 300 feet of the project on November 16, 2007 and the notice was published in the "*The Olympian*" newspaper on November 18, 2007.

30. Any conclusion hereinafter stated which might be deemed to be a finding herein is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction in regard to the subject matter of these proceedings. *TMC* 17.14.040 and 18.36.050.

2. In reviewing applications for land use permits, local governments are constrained by the provisions of RCW 36.70B.030(2) which provides the following:

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

(a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;

(b) Density of residential development in urban growth areas;
and

(c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by chapter 36.70A RCW.

(3) During project review, the local government or any subsequent reviewing body shall not reexamine alternatives to or hear appeals on the items identified in subsection (2) of this section, except for issues of code interpretation. As part of its project review process, a local government shall provide a procedure for obtaining a code interpretation as provided in RCW 36.70B.110.

* * *

RCW 36.70B.030(2)

3. Requests for PUD's are reviewed for consistency with the criteria set forth at *TMC* 18.36.050.

4. The applicant bears the burden of proof in regard to the requested plat and PUD approvals.

5. Findings entered herein, based upon substantial and un rebutted evidence in the hearing record, establish that both the preliminary plat and PUD conform to applicable legal standards for the approval of such applications, provided the conditions set forth below are imposed and complied with by the applicant.

- A. The conditions of approval (Case DRC #06-0045), as listed in the Preliminary Plat Conditions Letter from the City of Tumwater Development Review Committee dated November 20, 2007. (Exhibit 1 at Attachment OO)
- B. The project is bound by the conditions for mitigating environmental impacts listed in the MDNS issued on September 17, 2007. (Exhibit 1 at Attachment Z)
- C. Signage identifying the wetlands will be required in accordance with *TMC* 16.28.170.H. The signage must be approved and field-verified by City staff prior to issuance of any development-related permits. Temporary construction fencing will be required to protect the wetland and its associated buffer. This fencing must also be field-verified by staff prior to permit issuance.
- D. The applicant is required to submit Homeowner Association documents including articles of incorporation, bylaws, and covenants for the new development prior to final plat approval. The covenants shall address the ownership, maintenance and

operations of all community tracts, storm water facilities and street landscaping within the development.

- E. The land divider shall be responsible for the maintenance and timely repair of all public improvements for a period of 24 months following final certification by the City Council, and shall submit a surety for maintenance equal in value to 15 percent of the total value of required public improvements certified by the Public Works Director. (*TMC 17.18.*)
- F. A National Pollutant Discharge Elimination System (NPDES) permit will be required to be issued by the Washington State Department of Ecology. A copy of the permit must be submitted to the City of Tumwater Development Services Department prior to the issuance of clearing and grading permits.
- G. Potable-water wells within 200 feet of the boundaries of the property shall be shown on the final plat with their associated 100-foot wide protective radius.
- H. Property taxes must be current prior to final plat approval as required by State law.
- I. Thurston County Environmental Health Division's requirements shall be implemented prior to final plat approval. (Exhibit 1 at Attachment GG).
- J. A Forest Practices Permit must be obtained from the Washington State Department of Natural Resources prior to the issuance of clearing and grading permits.
- K. If applicable, a permit from the Olympic Region Clean Air Agency will be required prior to the demolition and removal of the residence and sheds from the site.
- L. The applicant is responsible to make sure that the Plan Name reservation of "Chinook Landing" does not expire prior to recording of the final plat.

6. Accordingly, the requested preliminary plat and PUD should be approved, subject to the conditions set forth in Conclusion 5 herein.

7. Any finding hereinbefore stated which might be deemed a conclusion herein is hereby adopted as such.

From these Conclusions is made the following:

DECISION:

The requests are hereby approved, subject to conditions listed in Conclusion 5 herein.

DATED this 5TH day of December 2007.



**RODNEY M. KERSLAKE
HEARING EXAMINER**

POST-DECISION PROCEDURES

Reconsideration: A party may request reconsideration by filing a written request with the Department of Development Services within five working days of the Examiner's written decision. The request must state the grounds therefore. The Examiner has ten working days to render a final decision. TMC 2.58.135.

Appeals: The Examiner's decision will become final and conclusive in fourteen days unless appealed to the Tumwater City Council. The appeal must be in writing and contain all grounds on which error is claimed. TMC 2.58.150. TMC 2.58.150 provides in part:

In cases where the examiner's jurisdictional authority is to render a decision (following an open record pre-decision hearing), the decision of the examiner shall be final and conclusive unless within fourteen days following rendering of such decision an appeal there from is filed with the Director of Development Services by the applicant, a department of the city, county, or other agency or a party of record defined in Section 2.58.140. Person not in attendance at the hearing but who submit written information prior to the hearing that 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.

The Examiner's decision that is timely appealed comes before the City Council within thirty days after the final day upon which an appeal may be filed. TMC 2.58.160 and 2.58.180 describe the time limits for appeals.