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CITY OF TUMWATER
DEVELOPMENT SERVICES

**CITY OF TUMWATER
OFFICE OF THE HEARING EXAMINER
REPORT AND DECISION**

FILE NOS: TLP #3-06 and PUD #2-06

APPLICANT: J. K. Enterprises

SUMMARY OF REQUESTS:

Requests for preliminary plat (TLP) and planned unit development (PUD) overlay approvals in order to subdivide a 29.56-acre parcel of land into 91 detached single-family home sites and 108 single-family attached home sites, along with 8 community tracts.

LOCATION:

The property proposed to be subdivided is located west of Old Highway 99 SE between 88th Avenue SE and 93rd Avenue SE in Tumwater, 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. J. K. Enterprises (hereinafter "applicant") is seeking approval of a preliminary plat (TLP) for a subdivision known as "Bradbury Estates" and a planned unit development (PUD) overlay. The property proposed to be subdivided is located west of Old Highway 99 SE between 88th Avenue SE and 93rd Avenue SE in Tumwater.

2. The proposed subdivision would subdivide the 29.56-acre property into 91 detached single-family home sites and 108 single-family attached home sites along with 8 community tracts. Some single-family lots would range in width between 35 and 40 feet while some townhome lots would have widths ranging between 28 and 30 feet. The smallest lot size would be approximately 2,240 square feet. The resulting density would be 9.93 dwelling units per acre. Access serving the proposed subdivision would be by way of a street connection to Old Highway 99 SE and a street extension through the Sagewood Subdivision to the west, which is currently nearing completion. Of the 199 lots proposed, 153 would be served by an internal private street system. A small portion of the proposed access intersection with Old Highway 99 SE would be located within Thurston County. The City has initiated a change in the City's boundary to incorporate that area within the corporate city limits of Tumwater. Thurston County is expected to concur and take final action approving the city limits change

In addition to the 199 lots, 8 community tracts (Tracts A through H) are depicted on the preliminary plat drawing. These tracts would be for Mazama Pocket Gopher preservation/enhancement areas; tree retention and open space; underground stormwater facilities/active recreation/open space; and private access easement tracts. The subdivision is planned to be developed in four phases, starting in the north portion of the property and continuing to the south portion. Exhibit 1 at Attachment D.

3. The north half of the subdivision site slopes from a low point of 196 feet in the center of the site upward toward the northwest at an average grade of approximately 8 percent, while the south half slopes upward from the aforementioned low point in a southeasterly direction at an average grade of about 3 percent. The east central and northwest portions of the property are moderately wooded, with the remaining portions being open lawn areas. Five single-family homes and a number of outbuildings are currently situated on the property. It is planned that these buildings would be removed from the property to accommodate the proposed residential development.

4. The subdivision site is surrounded on the east and south by existing low-density single-family land uses. A 28-lot subdivision is proposed on property

to the north and a 599-lot single-family subdivision is located to the west and is currently under development.

5. Utilities necessary to support the proposed subdivision are either currently available to the site or can reasonably be extended to it.

6. The property proposed to be subdivided was previously located outside the City limits of Tumwater. Thus, the policies of the Tumwater/Thurston County Joint Plan are the comprehensive plan provisions applicable to the proposal. That plan recommends that the proper land use for the subject site would be single-family medium density residential and multiple-family medium density residential. The proposed subdivision would be consistent with the recommended land use for the property as set forth in the applicable comprehensive plan.

7. The City's Comprehensive Park Plan does not identify any community or neighborhood parks in the vicinity of the property and, in accordance with the City's open space requirements, the preliminary plat drawing depicts adequate open space/recreation areas within the subdivision. Thus, the proposed subdivision is not inconsistent with the park plan.

8. Consistent with applicable Comprehensive Plan provisions, the City has applied Single-Family Medium Density (SFM) and Multi-Family Medium Density (MFM) zoning classifications to the property. The SFM zone permits a residential density ranging from 6 to 9 dwelling units per acre, while the MFM zone permits densities ranging from 9 to 15 dwelling units per acre. The proposed single-family attached residential use and the proposed density of 9.93 dwelling units per acre are consistent with the use and density requirements of the applicable zoning classifications. However, the development as proposed, would not, in all instances conform to minimum lot width requirements of the SFM Zone (i.e., 50 feet), building setback requirements of the SFM and MFM zones, and the maximum lot coverage (70%) allowed in both districts.¹

9. Also, applied to the property is an Aquifer Protection (AQP) overlay zone. Residential uses are not a restricted land use within the AQP zone.

10. The applicant is requesting approval of a PUD overlay zone for the property in order to allow the use of private streets to serve 153 of the 199 lots within the proposed subdivision² and to allow flexibility in the design and layout of

¹ The applicant is seeking approval of a PUD overlay zone in order to achieve some flexibility in the layout and design of the subdivision, particularly in regard to the townhome portion of the development.

² The City's The City's Development Guide at Section 4.8 limits the number of lots that can be served by a private street to four lots unless a development is located within a PUD.

the proposed subdivision.³ The subdivision site is affected by a population of Mazama Pocket Gophers which are listed by the State as a threatened species; thus, it is required that areas of the property be set aside as protected habitat for the Mazama Pocket Gopher population. Flexibility in design and layout is necessary in order to properly accommodate the Mazama Pocket Gopher habitat on the site. The private street system within the proposed PUD would comply with design, development, and maintenance requirements of the City for such streets, and no property would be landlocked as a result of the use of a private roadway as opposed to a public street system. Accordingly, the proposed PUD is consistent with the purposes and requirements of said overlay zone.

11. In accordance with *Tacoma Municipal Code (TMC) 16.32*, Fish and Wildlife Protection Ordinance, a Habitat Protection Plan has been prepared and submitted to the City for protecting the gopher population and mitigation for the loss of habitat. That plan has been reviewed by the Washington State Department of Fish and Wildlife (WDFW).

12. Also, since a portion of the property contains a moderately dense stand of trees, a tree inventory and forester's report has been submitted to the City which satisfies tree retention standards. *TMC 16.08*.

13. Both a Level One trip generation report and a Level Two traffic impact analysis have been prepared by the applicant and submitted to the City. The City's Public Works Director has determined, with the traffic mitigation imposed, that the project would meet Transportation Concurrency requirements. Additionally, in issuing a Mitigated Determination of Non-Significance (MDNS) for the proposal, the City has required the applicant to pay mitigation fees for traffic impacts to nearby State and County transportation facilities.

14. Stormwater drainage facilities for the project are required to comply with the provisions of the Thurston Region Drainage Design and Erosion Control Manual. Additionally, since a portion of the subdivision site is situated within a high ground water hazard area, it will also be required to adhere to the City's High Ground Water Hazard Ordinance which may require groundwater monitoring and affect the design of the stormwater detention facility for the project.

15. The proposed subdivision and PUD have been reviewed by various governmental agencies. None object to the approval of the proposal; however, recommended conditions and advisory comments have been submitted, and the WDFW has indicated that it is not currently authorizing relocation of Mazama Pocket Gophers to mitigate impacts for the loss of habitat. Exhibit 1 at Attachment GG.

16. The applicant concurs in the conditions recommended and agrees to comply with the same and notes that all necessary mitigation required by WDFW

³ See Finding 8.

for protection of the Mazama Pocket Gopher habitat is being accomplished on site and no relocation is being proposed.

17. Several comment letters were submitted by neighboring property owners expressing concerns with access for the subdivision and also possible interference with access rights enjoyed by adjoining properties. Exhibit 1 at Attachment II through MM. Also, comments were presented concerning the amount of mitigation fees being imposed in the MDNS for improvements to the I-5/93rd Avenue Freeway Interchange and 93rd Avenue/Case Road Intersection. Exhibit 1 at Attachments NN and OO. No one appeared at hearing to provide testimony in opposition to or raising concerns with the proposed preliminary plat and PUD.

18. In response to the concerns expressed, the City staff and applicant indicated that, as a result of access concerns presented, the access plan for the proposed subdivision has been modified so that the subdivision would not affect the existing 40-foot wide access easement that benefits 15 properties in the area, and that the mitigation fees imposed in the MDNS for State and County transportation facilities are consistent with the requests for mitigation fees submitted by the Washington State Department of Transportation and Thurston County.⁴

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

- 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.

⁴ The traffic mitigation fees for State and County facilities were imposed by the City through the authority provided at RCW 43.21C, State Environmental Policy Act (SEPA). The City's environmental determination is not before the Hearing Examiner in these proceedings, since the MDNS issued by the City was not appealed.

20. 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 development is in conformance with the City's comprehensive plan and applicable zoning, is compatible with the surrounding single-family residential neighborhood, and the property is of adequate size to accommodate the proposed subdivision.

21. 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 October 1, 2007 with a 15-day comment period that ended on October 15, 2007 and a 6-day appeal period that ended on October 22, 2007. No appeal of the environmental determination was made.

22. 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.

23. A Notice of Application was issued for this project on September 15, 2006 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 October 1, 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.

24. 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 as listed in the Preliminary Plat Conditions Letter from the City of Tumwater Development Review Committee dated November 20, 2007 shall apply to this project. (Exhibit 1 at Attachment PP)
- B. The project is bound by the conditions for mitigating environmental impacts listed in the MDNS issued on October 1, 2007. (Exhibit 1 at Attachment Y)
- C. The recommendations, mitigation, monitoring, and contingencies as specified in the Mazama Pocket Gopher Habitat Protection Plan dated June 19, 2007 shall be implemented. At this time, WDFW is not approving the relocation option.
- D. The public street connection to Old Highway 99 through the property to the north must be in place prior to final plat approval.
- E. 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, private streets, storm water facilities and street landscaping within the development.
- F. 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.)
- G. 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.

- H. 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.
- I. Property taxes must be current prior to final plat approval as required by State law.
- J. Thurston County Environmental Health Division's requirements shall be implemented prior to final plat approval. (Exhibit 1 at Attachment HH).
- K. A Forest Practices Permit must be obtained from the Washington State Department of Natural Resources prior to the demolition and removal of the residences and outbuildings from the site.
- L. 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.
- M. The applicant is responsible to make sure that the Plan Name reservation of "Bradbury Estates" does not expire prior to recording of the final plat.
- N. Phasing of the subdivision shall be in accordance with the phasing plan identified as Exhibit D in the staff report.
- O. Prior to final plat approval, either the change in the City's boundary, as described in Finding 2 herein, shall be accomplished, or other arrangements for the design and construction of the street intersection with Old Highway 99 SE that is satisfactory to both the City and County shall be agreed to.

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.