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CITY OF TUMWATER
OFFICE OF THE HEARING EXAMINER
REPORT AND DECISION

FILE NOS: DSD-08-00027

APPLICANT: Tilley Road Industrial Park LLC

SUMMARY OF REQUESTS:

Request for preliminary plat approval in order to subdivide a 26.58 parcel of land into 8 commercial/industrial lots and a stormwater/tree protection openspace/Mazama Pocket Gropher tract.

LOCATION:

The property is located at the southeast corner of 88th Avenue SE and Tilley Road SE in Tumwater, Washington.

DECISION OF THE EXAMINER:

The request is approved, subject to conditions.

PUBLIC HEARING:

After reviewing the City of Tumwater Community Development Department report and viewing the site, the Examiner conducted a public hearing on the application on May 11, 2011.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. Tilley Road Industrial Park LLC (Tilley) is seeking preliminary plat approval in order to subdivide a 26.58-acre parcel of land into 8 commercial/industrial lots and a stormwater/tree protection open space/Mazama Pocket Gopher tract.

2. The proposed subdivision referred to in these proceedings as "Tilley Road Industrial Park" would be situated at the southeast corner of 88th Avenue SE and Tilley Road SE. The proposed subdivision, as depicted in the preliminary plat, would have three accesses --- two driveways to South 88th Avenue SE and Tilley Road SE and one new public street accessing Tilley Road SE and extending into the site, and then terminating in a cul-de-sac.

3. The subdivision site has relatively flat topography and is undeveloped. A mix of trees and open areas predominate the property. No streams or wetlands are located on the site.

4. Properties to the north and west of the subdivision site are, for the most part, owned by the Port of Olympia and their uses are associated with the Port's aviation operations of the Olympia Airport, which is situated north of 88th Avenue SE. Directly east of the proposed subdivision are light industrial operations associated with the Washington State Department of Natural Resources and Washington State Department of Corrections. Low density single-family uses are situated to the south, some of which are located in the Light Industrial (LI) zone and are considered non-conforming uses.

5. The 26.58-acre subdivision site contains a population of Mazama Pocket Gophers which are listed by the Washington State Department of Fish and Wildlife (WDFW) as a threatened species. Tumwater's Habitat Protection Code, *Tumwater Municipal Code (TMC)* 16.32 requires, in this instance, the preparation of a Habitat Management Plan for the Mazama Pocket Gopher. Tilley has had such a plan prepared. Exhibit 1 at Attachment L.¹ The plan calls for on-site mitigation, setting aside a portion of the property as a habitat for the Mazama Pocket Gopher. The preliminary plat drawings (Exhibit 1 at Attachments C and D) depict a 3.59-acre tract for stormwater retention/tree protection/gopher habitat in the southeast corner of the site. The plan has been reviewed by City staff and the WDFW who indicate that it satisfies applicable regulatory requirements and it has been recommended that the plat approval be conditioned on implementation of the recommendations set forth in the plan.

¹ The gopher management plan set forth in Exhibit 1 at Attachment L was prepared subsequent to the comments of WDFW contained in Attachments S and T to Exhibit 1 and was developed in accordance with those comments and recommendations.

6. All necessary infrastructure and public services to support the development proposed by Tilley are either currently available to the subdivision site or can be reasonably be extended to it.

7. Tumwater's Comprehensive Plan (Comprehensive Plan) locates the subdivision site within the Airport Neighborhood. The Comprehensive Plan provisions concerning the Airport Neighborhood encourages land uses that are compatible with adjacent airport operations.

8. Consistent with the Comprehensive Plan, the City has zoned the Tilley site and adjoining properties to the east, west and south as LI. Exhibit 1 at Attachment H.

9. An Aquifer Protection (AP) overlay zone is also applied to the subdivision site. The proposed industrial subdivision is not a restricted use within an AP overlay zone; however, as development is proposed for each lot within the subdivision, the proposed uses will have to be reviewed for consistency with the regulations of the AP overlay zone.

10. A professional Forester's Report was prepared for the proposed subdivision in accordance with *TMC 16.08*.² Exhibit 1 at Attachment K. The report identifies the existing trees on the property and identifies 987 trees. The only trees determined to require removal related to the initial development of the subdivision are those necessary for the installation of roads and utilities, including a stormwater retention facility. As the lots within the subdivision are developed, each specific development would be reviewed to determine the required tree retention/replacement.

11. A Level 1 Traffic Impact Analysis (TIA) and a Level 2 Addendum TIA were prepared for the project. Exhibit 1 at Attachments M, N and O. After review of the TIA and Addendum, Tumwater's Public Works Director issued a transportation concurrency ruling finding that, with the traffic mitigation measures identified and recommended in the TIA and agreed to by Tilley, the project satisfies the City's transportation concurrency requirements. Exhibit DD. Additionally, the City has required as *SEPA*³ mitigation the payment of traffic mitigation fees to the Washington State Department of Transportation and Thurston County for traffic impacts on their transportation facilities. Exhibit 1 at Attachment P.

12. The subject subdivision proposal vested to stormwater regulations preceding the City's enactment of its 2010 *Drainage Design and Erosion and*

² The Forester's Report (Exhibit 1 at Attachment K) identifies lots or tracts within the subdivision based on nomenclature used in an earlier plat drawing.

³ *RCW 43.21C*.

*Control Manual*⁴. City staff has determined that compliance with the earlier stormwater manual and also compliance with Tumwater's High Ground Water Hazard Ordinance (02005-003), that applies to the area of the City in which Tilley's proposed subdivision would be located, would provide appropriate provisions for stormwater control and protection from erosion. Such determination has not been disputed in these proceedings.

13. The preliminary plat submitted by Tilley for its proposed commercial/industrial subdivision has been submitted in accordance with Tumwater's subdivision regulations. Exhibit 1 at 2.

14. Tilley's preliminary plat proposal has been reviewed by a number of governmental agencies. None object to approval of the subdivision; however, a number of conditions concerning habitat protection, development covenants and property owners association, providing adequate surety for maintaining infrastructure, obtaining a NPDES permit⁵, providing the required 100-foot protective radius for any off-site potable water wells, payment of property taxes and compliance with *SEPA* mitigation measures. Exhibit 1 at 7.

15. Tilley agrees with the conditions recommended and further agrees to comply with the same.

16. No one appeared at hearing in opposition to Tilley's subdivision proposal.

17. In accordance with the *State Environmental Policy Act (SEPA)* of 1971, as amended, and Chapter 16.04 of the *TMC*, the Community Development 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 *MDNS*. The *MDNS* was issued on March 29, 2011 with a 15-day comment period that ended on April 13, 2011 and a 6-day appeal period, which ended on April 19, 2011. Exhibit 1 at Attachment P. No appeal of the environmental determination was made.

18. The report of the Community Development 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.

19. A Notice of Application was issued for this project on May 16, 2008 and distributed to property owners within 300 feet of the project site with a 14-day

⁴ At hearing, Tilley indicated that, although its proposed project had vested in an earlier Manual requirements, it intends to make every reasonable effort to comply with the requirements of the current Manual.

⁵ National Pollution Discharge Elimination System.

comment period. The *SEPA* threshold determination was distributed to property owners within 300 feet of the proposal on March 29, 2011 for review and comment. A Notice of Public Hearing was posted on site and distributed to surrounding property owners within 300 feet of the project on April 21, 2011. Exhibit 1 at Attachment R. The notice was published in the "*The Olympian*" newspaper on April 22, 2011.

20. 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 this proceeding. *TMC* 17.14.040.

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. The applicant bears the burden of proof in regard to the requested plat approval.

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

- A. The conditions of approval as listed in the letter from the Development Review Committee dated April 26, 2011 shall apply to this project (Exhibit 1 at Attachment CC).
- B. Recommendations and mitigation as specified in the Mazama Pocket Gopher Habitat Management Plan dated February 2, 2011 shall be implemented.
- C. The applicant is required to submit property owner's 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 the community tract, stormwater facilities and street landscaping within the development.
- D. 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.)
- E. 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 Community Development Department prior to the issuance of clearing and grading permits.

- F. Any potable 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. If any 100-foot protective radius encroaches onto the property, protective covenants shall be recorded in accordance with Thurston County Health Department requirements.
- G. Property taxes must be current prior to final plat approval as required by State law.
- H. The conditions listed in the *MDNS* dated March 29, 2011 shall be complied with.

5. Accordingly, the requested preliminary plat should be approved, subject to the conditions set forth in Conclusion 4 herein.

6. 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 request is hereby approved, subject to conditions listed in Conclusion 4 herein.

DATED this 16th day of May 2011.



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.