

**TUMWATER HEARING EXAMINER PUBLIC HEARING
MINUTES OF VIRTUAL MEETING
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CONVENE: 7:00 p.m.

PROJECT NAME: Blomberg 99-2 Conditional Use Permit

CASE NUMBER: TUM-23-1327 Conditional Use Permit. Additional permits associated with this project are TUM-23-0794 Site Plan Review and TUM-23-1328 SEPA Determination.

DESCRIPTION OF PROPOSAL: The Applicant is requesting approval of a Conditional Use Permit (CUP) to operate a marijuana producer/processor operation in an existing building complex.

APPLICANT: **Blomberg LLC**
4220 S 164th St., Suite #101
Tukwila, WA 98188

PUBLIC HEARING: Hearing Examiner Andrew Reeves with Sound Law Center convened the meeting at 7:00 p.m. to consider Blomberg 99-2 Conditional Use Permit for approval of a CUP to operate a marijuana producer/processor operation in an existing building warehouse complex on approximately 4.74 acres located at 9630 Blomberg Street SW, Tumwater, Washington.

Examiner Reeves reported the hearing will collect evidence in the form of exhibits and testimony to determine whether the proposal complies with the City's Comprehensive Plan, zoning ordinances, Critical Areas Ordinances, and the specific requirements for approval of a CUP under the Tumwater Municipal Code (TMC) and that it meets the criteria that are specific to a marijuana business under Section 18.42.080 of the TMC.

Examiner Reeves reported that prior to the public hearing he received and reviewed the following 11 exhibits:

- Exhibit 1 Staff Report, dated October 9, 2023
- Exhibit 2 Conditional Use Permit Application with Narrative, dated August 16, 2023
- Exhibit 3 Formal Site Plan Amended, dated August 30, 2023
- Exhibit 4 Vicinity Map
- Exhibit 5 Zoning Map
- Exhibit 6 Public Notice Certification, dated October 9, 2023
- Exhibit 7 Determination of Non-Significance with attachments, dated September 18, 2023
- Exhibit 8 Public Hearing Notice, dated October 13, 2023
- Exhibit 9 Tum-23-0794 Formal Site Plan Review Approval, dated October 9, 2023
- Exhibit 10 Public Comments

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Exhibit 11 Tumwater Municipal Code Excerpts

Examiner Reeves admitted the 11 exhibits into the record. Additional exhibits admitted later in the hearing included:

Exhibit 12 Letter from Thurston County Environmental Health Department in response to the inquiry by the Department of Ecology

Exhibit 13 Email between Mr. Peck and Mr. Carlson in response to Department of Ecology concerns regarding toxic waste

Exhibit 14 Certificate of Water Availability issued by City of Tumwater

Examiner Reeves reported all testimony will be under oath or affirmation because should the decision should be appealed, the audio recording of the hearing, admitted exhibits, and the decision would serve as the foundation for an appeal. The order of testimony begins with the City of Tumwater providing an overview of the proposal and any recommendations, testimony by the Applicant to present any additional information, testimony from the public, and closing arguments by the City of Tumwater and the Applicant.

CITY TESTIMONY: Examiner Reeves administered the oath to Tumwater Permit Manager Tami Merriman.

Manager Merriman reported the Applicant is seeking a CUP to operate a marijuana producer/processor facility at 9620 Blomberg Street in Tumwater. As part of the CUP review, the City issued a SEPA Determination of Non-Significance (DNS) and Formal Site Plan Approval for the proposal.

The CUP application was submitted on August 16, 2023. The application was deemed complete on August 22, 2023. The City issued and distributed a Notice of Application with an Optional DNS process on September 1, 2023. The notice was mailed to property owners within 300 feet of the subject property, emailed to interested parties and various agencies, posted on-site, posted on the City's website on August 31, 2023, and published in *The Olympian* newspaper.

The City of Tumwater Community Development Department, after review of a SEPA environmental checklist and other information, issued a Determination of Non-Significance on September 18, 2023.

A notice of public hearing was issued and mailed to property owners within 300 feet of the subject property, interested parties and various

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agencies, posted on-site and on the City's website on October 13, 2023, and published in *The Olympian* newspaper on October 13, 2023.

Manager Merriman reported the review authority for Conditional Use Permit applications falls under the purview of the Hearing Examiner.

Manager Merriman shared a copy of Exhibit 3. Zoning of the property is Light Industrial as well as surrounding properties with the exception of property located across the street, which is owned by the Washington State Department of Natural Resources (DNR) and used for agricultural/nursery uses. The property is not located within the City's urban growth area (UGA). The subject property is approximately 4.7 acres in size and is relatively flat.

Examiner Reeves inquired as to whether it is likely that the subject project would not be surrounded by residential uses because of the proximity of the DNR site located outside of Tumwater's UGA. Manager Merriman advised that the zoning of DNR's property is Rural Residential of one unit per 10 acres. Should the site ever redevelop, it would be at rural residential density and not subject to urban densities because the property is located in Thurston County. Additionally, the City would be unable to annex the property because it is located outside of the UGA.

The subject site includes three existing buildings. A building on the east side of the property is under current use as a marijuana producer/processor facility, which was approved by Thurston County prior to the property annexed to the City. The Applicant would like to move and expand the business to include the center building and the remaining building. To expand the business, the City requires a CUP.

Producers/processors are allowed as a conditional use upon the granting of a CUP by the Hearing Examiner. Conditional use criteria in the TMC include requirements for review to ensure the use meets the code. Staff reviewed and provided analysis on the requirements. The Applicant's representative provided an excellent analysis within the application. The City and the Applicant agreed with the same conclusions.

Manager Merriman outlined the criteria for granting a CUP and findings by staff:

1. The proposed use shall be in keeping with the goals and policies of the Tumwater Comprehensive Plan, including subarea plans, and applicable ordinances. *The site is designated as Light Industrial and the Land Use Element of the Comprehensive Plan provides for the location to include a*

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broad array of activities, including manufacturing and other industrial development. Staff finds that the project is an industrial use and is surrounded by existing industrial uses and is consistent with the Comprehensive Plan Land Use Element. The Neighborhood Appendix to the Comprehensive plan - SW Tumwater Neighborhood envisions the area located near the Interstate 5 and 93rd Avenue interchange as light industrial development, with supporting information in the Economic Development Element. The area includes good access to Interstate 5 at the 93rd Avenue interchange, close to the Olympia Regional Airport, with primarily flat topography, and availability of municipal utilities. The project is an industrial use, located on the west side of Interstate 5 and south of 93rd Avenue, on a site with existing structures and infrastructure. The project is consistent with the Comprehensive Land Use Neighborhood Appendix. The subject property is located within the Light Industrial zone district, which allows a marijuana processor within a fully enclosed secure indoor structure only as a conditional use. The Applicant proposes to place the use within existing structures, which is consistent with the zoning.

2. The proposed use shall not be materially detrimental to the public health or welfare, the environment, or injurious to the property or improvements near the proposed use or in the zone district in which the subject property is situated. Some examples include noise, noxious or offensive odors or emissions, light, and glare, etc. *Following review by staff, the proposed use is located within an enclosed building. HVAC equipment is located outside of the buildings with an engineered odor controlled system. The proposed use is similar to existing uses and would retain existing traffic patterns. Provide for the availability of public services that may be necessary or desirable for the support of the proposed use. The site is served by City of Tumwater water service, as well as City of Tumwater police and fire. The buildings are served by an onsite septic system approved by Thurston County to accommodate a maximum of 33 employees. The Applicant plans to provide information from Thurston County that the septic system is adequate for the proposed uses. The site has existing perimeter landscaping and the Applicant does not propose adding any additional landscaping nor is it required. The Applicant proposes to install a wood fence to provide screening for the mechanical equipment at the property lines.*
3. The proposed use shall meet or exceed the performance standards that are required in the zone district it will occupy. *The proposal, as conditioned by the Formal Site Plan Review Approval, dated October 9, 2023, meets the zoning*

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requirements of TMC Chapter 18.24.

4. Any additional minimum conditions identified for a particular type of proposed use in TMC 18.56.100 through TMC 18.56.350. *Analysis for marijuana producer/processor is included in the Staff Report. Staff finds that the proposal, as conditioned, meets the criteria for a CUP.*

Manager Merriman reviewed zoning requirements. The subject property is located within the Light Industrial zone district. Marijuana processor and/or producer, within a fully enclosed secure indoor structure is a conditional use in TMC Chapter 18.24. *The proposed use will be operated within existing enclosed structures.*

Minimum conditions for siting the proposed use within a Light Industrial zone district in TMC 18.42.080.A include:

- a. Meet Washington State licensing requirements (WAC 314-55). *The applicant has an existing active state license, No. 417201, for non-retail cannabis processor at this location. The applicant or his successor(s) will have to demonstrate that they meet the requirement for the new structures prior to issuance of a certificate of occupancy.*
- b. Comply with all building, fire safety, health code, and business licensing requirements. *The applicant currently has an active City of Tumwater Business License, No. 87378 for the existing processor building. The applicant or his successor(s) will be required to secure applicable building permits for any required improvements to the two added structures, and receive a certificate of occupancy.*
- c. Lot size, building size, setbacks, and lot coverage conform to the standards of the zone district except if the structure is a legal nonconforming structure. *The structures currently exist and comply with the lot-size, building size, setbacks, and lot coverage standards of the Light industrial zone district.*
- d. Signage, if any, will conform to TMC 18.44. *No signage is proposed for the project; however, any new signage is required to comply with City codes, as well as secure the applicable permit(s) in compliance with TMC 18.44 and Washington State Liquor and Cannabis Board requirements.*
- e. Be within a fully enclosed secure indoor structure. *The proposed use will be operated inside the three existing buildings.*
- f. All buildings must be equipped with ventilation/air filtration systems so that no odors are detectable at the property line. *The applicant will be required to secure the applicable permit(s) for any required improvement(s) to the structure(s). Additionally, the applicant will be required to maintain*

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efficient ventilation/air filtration system(s) so that no odors are detectable at the property line.

- g. All buildings associated with the production of marijuana must be set back a minimum of 300 feet from RSR, SFL, SFM, MFM, MFH, MU, CBC, TC, BD, GB, OS, and MHP zone districts. *The project site meets this requirement.*
- h. The City may suspend or revoke conditional use permits based on a finding that the provisions of this section have not been met. *The prior provisions are listed among the conditions of approval of a CUP if approved by the Hearing Examiner.*

Manager Merriman reported on the receipt of public comments from the Notice of Application and SEPA.

The Nisqually Indian Tribe and Squaxin Island Tribe provided comment that they have no specific concerns regarding archaeological and cultural resources.

The Washington State Department of Ecology provided two comments. The first comment concerned the notice of application is in regards to possible contamination on a site within a quarter mile of the project. The comment on the DNS suggested a requirement to determine management of waste if/when generated. The possibility of contamination on the adjacent site was noted. The representative for the Applicant confirmed with the Department of Ecology that the applicant does not intend to extract THC oils, so no THC waste would be generated.

In response to a comment from Carly Christiansen about concerns of adding offensive odor to an area that already emits odors, staff advised that the state requires specific ventilation systems to prevent odor from leaving a site. Additionally, other producer/processors in the area may be operating under older regulations or older HVAC equipment that may not be as technologically advanced as newer HVAC equipment to prevent odor from emitting from a site. Staff is confident that new-engineered odor control systems will meet current state regulations. If odor continues to be problematic, staff will work with the other users to ensure they are in compliance.

Examiner Reeves asked whether the City has implemented a code enforcement process to address odors created by other similar uses. Manager Merriman affirmed the City implemented a code enforcement process. The City is also subject to state requirements to ensure uses do not emit odor at the edge of the property line. The first step is identifying the use that is emitting the odor, as there are many marijuana uses in the general location as the proposal.

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Manager Merriman reported staff reviewed the project under the Site Plan Review and issued a Formal Site Plan Review decision. The review included conditions of approval and other requirements for parking, landscaping, critical areas, transportation concurrency, building code requirement, street, water, and sewer. Additionally, a condition is included in the Formal Site Plan Review decision that requires the proposal to be subject to the approval of a CUP by the Hearing Examiner.

Manager Merriman advised that one question by the Applicant pertains to one condition regarding landscaping. The requirement speaks to a requirement for detailed landscape plans to be submitted with the Site Development and Grading Permit. However, the requirement is only required if landscaping is required. The proposal requires no landscaping and no frontage improvements are necessary. If the Applicant elects to add landscaping, proposes to change landscaping, or submits a Site Development and Grading Plan for any reason in the future, the requirement would apply at that time.

Examiner Reeves offered the possibility of adding an additional condition to clarify the circumstance that might trigger the condition if there is change triggered by the Applicant. Manager Merriman clarified that one of the recommendations included in the Staff Report is that the Formal Site Plan Review Approval with Conditions references conditions approved by the Examiner. Examiner Reeves suggested adding a proposed condition that references Site Plan Review Approval. One option is adding language to clarify the intent of the condition in the Site Plan Review Approval. Manager Merriman deferred to the Applicant to respond to the issue. She anticipates that should the Examiner approve the CUP, the applicant would move forward. She does not envision requiring a detailed landscape plan. She does, however, agree the issue should be clarified.

Examiner Reeves noted that the use, in addition to meeting the City's code requirements is also subject to Washington State licensing requirements and as such, the use could be transferred as long as the new entity has the appropriate licenses. He asked whether that is the intent of the condition pertaining to meeting all Washington State licensing requirements. Manager Merriman affirmed it is the intent of that particular condition.

Examiner Reeves asked whether language of the SEPA DNS pertains to utilizing the optional process, which incorporates a public comment period. Independently, the DNS was issued on September 18, 2023 with the lead agency determining there would be no significant impacts, etc. However, the appeal period was only seven days. He believes the correct appeal timeline is 14 days based on the City's

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code. He does not believe the discrepancy affects the proposal; however, it is important that the City can attest that there were no comments in response to the SEPA DNS appeal process.

Manager Merriman cited TMC 16.04.160 A. 3 that stipulate that all appeals are in writing and any appeal must be filed within six calendar days of a final SEPA Determination. The SEPA process includes a 14-day public comment period, which was satisfied with the Notice of Application. Any appeals must be filed within six calendar days of the determination. Additionally, she extended the period one day because of a holiday. She affirmed that no one contacted the City with any concerns or a desire to appeal the decision.

**APPLICANT'S
TESTIMONY:**

Examiner Reeves administered the oath to Chris Carlson.

Mr. Carlson reported he works as a consultant for the Applicant representing Hatton Godat Pantier located at 3910 Martin Way E, Suite B, Olympia, WA 98506.

Examiner Reeves noted for the record that Mr. Carlson previously worked for the City of Tumwater as its Permit Manager.

Mr. Carlson introduced the owner and operator of the business.

Mr. Carlson agreed that the clarification pertaining to the landscaping condition should be clarified as the condition as stated in the Formal Site Plan Approval letter indicates that landscaping requirements are required if a Site Development and Grading Permit is required. He does not believe the requirement is warranted as the trigger for landscaping or a landscape plan that meets the City's code requirement occurs when improvements to the site equal or exceed 25% of the assessed valuation of the buildings on the site. That might be a good starting point for a revised or additional condition. The proposal does not meet the requirement. The Applicant has demonstrated to Public Works that the value of the tenant improvements would not trigger frontage improvements or the 25% threshold for landscaping requirements.

Ms. Merriman responded that Exhibit 9 is the Site Plan Review Approval but it is labeled as Exhibit 11. The condition states that a detailed landscape plan should be submitted with a Building Permit Application for any updated landscaping or proposed screening. If the Applicant proposes any landscaping, the City would require a detailed landscape plan; however, the Applicant is providing screening. As she recalled, the conversation with the Applicant about the terminology of "screening with a fence" can often be misinterpreted. At that time, having the plan would entail whether landscaping would be changed or

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how the screening would be provided, which speaks to the intent of Condition 10.

Examiner Reeves said the condition within the administrative approval under discussion speaks to Condition 10; however, he questioned the intent of a detailed landscape plan versus a landscape plan. Typically, a detailed landscape plan is produced by a professional engineer or a professional with landscape expertise. He understands the Applicant's concern if the proposal is for a fence to serve as screening and whether that requires a detailed landscape plan for the entire site versus a plan for a fence.

Manager Merriman replied that if the Applicant proposed landscaping for screening, the Applicant would need to provide a detailed landscape plan. Typically, those plans are produced by a landscape architect. Since the Applicant is not required to add landscaping but proposes to add screening, it would not require a detailed landscape plan by an architect but rather an explanation of the screening. The Applicant has communicated by email its intent to add a cedar fence.

Examiner Reeves commented on the need to clarify the intent to avoid any future or potential misinterpretation.

Mr. Carlson referred to Exhibit 9 (labeled as Exhibit 11). The Site Plan Development Approval Letter reflects that Condition 10 speaks to, "Landscape Plan showing proposed plantings, tree heights, and heights, and other vegetation is required." For this proposal, the condition is not required. During conversations with Manager Merriman, the Applicant proposes adding a solid wooden fence to screen the HVAC equipment along the property lines. Manager Merriman was concerned the description was not sufficient as it could be subject to interpretation in terms of the type of fence. Following additional conversations via email, he clarified the type of fence. He offered to provide the detail as part of the record that the fencing would be a cedar fence.

Examiner Reeves advised that he is wary of any decision that was not appealed; however, as the Hearing Examiner he has the authority in this instance to clarify as part of a condition of the CUP while ensuring staff is amenable as well.

Manager Merriman recommended consideration of a separate amendment between with the City and the Applicant independent of the Examiner's decision.

Examiner Reeves said he intends to amend Condition 1 to acknowledge that the City and the Applicant have agreed to resolve the

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condition after the hearing.

Mr. Carlson noted that the site is served not by one septic system but three separate septic systems on the site.

Examiner Reeves responded that he is somewhat surprised that the use is not connected to a municipal system.

Mr. Carlson said the site includes three septic systems for each building. The systems were approved when the buildings were constructed in 2005. At that time, the property was located in the urban growth boundary but under the county's jurisdiction. City sewer was not available at that time nor is it today. However, sewer was extended to the west of Interstate 5 as a collaborative effort between the developer of the Costco Warehouse Distribution Center, Chehalis Tribe, and Kaufman Construction, Inc.

Mr. Carlson said another condition of approval is for the Applicant to ensure the septic systems can handle the change of use of the buildings. The owner hired Kevin Hughes, a civil engineer for septic designs. Mr. Hughes prepared an application for submittal to Thurston County Environmental Health requesting an evaluation of the three septic systems. The application included a description of the operation. Thurston County replied with a letter. He requested admittance of the letter from Thurston County Environmental Health Department affirming that the septic systems are approved for a maximum of 32 employees.

Examiner Reeves entered the letter as Exhibit 12 in response to the inquiry by the Department of Ecology.

Mr. Carlson referred to the comment from the Department of Ecology regarding toxic waste and disposal of toxic waste. He contacted staff from the Department of Ecology within the Toxic Waste Division of the Department of Ecology. The main concern was that the extraction process requires some specific types of chemicals. The proposed operation includes no plans for extraction. The operation is a grow and processing process. He asked for admittance of the email between Mr. Peck and Mr. Carlson into the record. The Department is not concerned if the operation does not include any extraction processes.

Examiner Reeves admitted the email communication as Exhibit 13.

Mr. Carlson reported the Applicant is required to obtain a water availability certificate from the Tumwater Public Works Department. He requested admittance of the certificate into the record.

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Examiner Reeves entered the letter as Exhibit 14.

Mr. Carlson said the Applicant concurs with the recommended conditions.

Examiner Reeves affirmed that there are no major issues with the recommended conditions included in the Staff Report other than a minor alteration to the first condition that speaks to a later amendment by agreement between staff and the Applicant.

**PUBLIC
TESTIMONY:**

There was no public testimony.

ADJOURNMENT:

With there being no further business, Examiner Reeves closed the public hearing and adjourned the public hearing at 8:04 p.m.

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net