

**TUMWATER HEARING EXAMINER
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CONVENE: 7:00 p.m.

CASE NUMBER: TUM-21-0551

DESCRIPTION OF PROPOSAL: The Applicant is requesting preliminary plat approval to divide 10.72 acres into 36 single-family lots with 7 tracts, as a Clustered Subdivision.

PROJECT NAME: Sunrise Hills Preliminary Plat

APPLICANT: **Chul M. Kim**
454 SW 297th Street
Federal Way, WA 98023

PUBLIC HEARING: Hearing Examiner Andrew Reeves with Sound Law Center convened the public hearing at 7:00 p.m. to consider the Applicant's request for Preliminary Plat approval to divide 10.72 acres into 36 single-family lots, with 7 tracts, as a Clustered Subdivision.

Examiner Reeves reported the purpose of the hearing is to 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 Preliminary Plat under the requirements of Tumwater Municipal Code (TMC) and the State Subdivision Act Chapter 58.17 of the Revised Code of Washington (RCW).

Examiner Reeves reported that prior to the public hearing he received and reviewed the following 19 exhibits:

- Exhibit 1 Staff Report 05-12-2023
- Exhibit 2 Vicinity Map
- Exhibit 3 Zoning Map
- Exhibit 4 Preliminary Plat Application 03-22-2021
- Exhibit 5 Preliminary Plat Map 11-23-2022
- Exhibit 6 Public Notice Certifications May 12, 2023
- Exhibit 7 TUM-19-0317 Staff Report 08-23-2019
- Exhibit 8 Hearing Examiner Decision 09-20-2019
- Exhibit 9 Hearing Examiner Reconsideration and LUPA Appeal Exhibit
- 10 DNS and Checklist 06-27-2019
- Exhibit 11 Tree Plan 09-20-2018
- Exhibit 12 Public Works Director Concurrency Ruling 05-08-2019
- Exhibit 13 Plat Name Certificate 04-22-2023

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Exhibit 14 Notice of Application Comments 06-18-2021
Exhibit 15 Geotech Report 09-04-2018
Exhibit 16 Notice of Application Comments May 2023
Exhibit 17 Preliminary Stormwater Site Plan 02-21-2023
Exhibit 18 Water Sewer Availability 05-10-2023
Exhibit 19 Tumwater School District Comment 8-23-2019

Examiner Reeves admitted the 19 exhibits into the record and acknowledged receipt of several other public comments.

(During the hearing, Examiner Reeves admitted five additional exhibits)

Examiner Reeves reported all testimony will be under oath or affirmation because if 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 comments by the City of Tumwater and the Applicant.

Examiner Reeves described the format for public comments offered via zoom.

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

Manager Merriman noted that staff forwarded two PDF files to the Examiner from Mr. Kim.

Examiner Reeves acknowledged receipt of the files and entered Mr. Kim's exhibits as:

- Exhibit 20, Kim Letter to Hearing Examiner from May 23, 2023 with 28 pages of attachments
- Exhibit 21, a 28-page email chain from the Applicant with additional materials dated May 3, 2023
- Exhibit 22, a set of additional public comments received by the Examiner prior to the public hearing

Manager Merriman advised that staff received four public comments earlier in the day. The comments are identical form letters signed by four individuals.

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Examiner Reeves entered the materials as:

- Exhibit 23, Four Form Letters.

Additionally, Mr. Kim provided a response to the form letters. Hearing Examiner Reeves entered:

- Exhibit 24, Response by Mr. Kim

Manager Merriman reported the proposal was submitted in March 2021. At that time, the proposed layout of the project did not meet the City's density requirements. Staff worked closely with Mr. Kim to resolve the density requirement and shared information on applying for a clustered subdivision. Mr. Kim met with the City's Transportation and Engineering Department to ensure road standards achieved requirements, as well as required stormwater facilities and completion of geotech reports. Much of that work was completed over the last several years and during the pandemic. The final proposal meets all City regulations.

The initial preliminary plat application was denied in September 2019 because the proposal did not meet density requirements with the removal of critical areas from the overall acreage to determine the density requirement. The Applicant submitted a request for reconsideration, which was also denied. Subsequently, Mr. Kim resubmitted the project proposal and worked closely with staff for several years. The proposal is an application for a subdivision with exclusion of critical areas from the density calculation as per the requirements of City codes. Mr. Kim is also seeking a clustered development as allowed in Chapter 18 of the zoning code. The density requirement is a minimum of two units per acre and a maximum of four units per acre. However, if land division is subject to the clustered provisions and not subject to wetland protection standards, the Applicant can increase the maximum density to no greater than 125% of the maximum density allowed.

Any site in the zone district may be subdivided as a clustered subdivision, subject to the following:

1. The portion of the site set aside for open space use shall be at least thirty percent of the area of the entire site;
2. At least one-half of the area set aside for open space shall be useful for passive recreational purposes;
3. The area set aside for open space shall be located so as to include environmentally sensitive areas (e.g., wetlands, riparian areas) to the maximum extent possible;

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4. The clustered subdivision must meet all other provisions of the chapter.

Examiner Reeves asked whether the Applicant is allowed to utilize the critical area that was not included within the density calculation to partly satisfy the open space/passive space required by code for a clustered development. Manager Merriman advised that the assumption as stated is a correct interpretation of the clustering provisions.

Manager Merriman said the proposed development includes 36 single-family lots and seven community tracks. Calculations for critical areas and streets resulted in developable acreage totaling 3.74 acres for the density calculation. At four units per acre, 30 single-family residences are allowed. To provide for required open space, 30% of the entire 10.72-acre site equates to 3.22 acres. The 125% clustering provision bonus allows up to 37 dwelling units. The Applicant is proposing 36 units.

The project site is located in the Tumwater Hill Neighborhood with a land use designation of Residential Sensitive Resource (RSR). The City's Comprehensive Land Use Plan requires that designation to recognize areas of unique open space character and sensitivity to environmental disturbance such as stream corridors, lakes, and wetlands within the City limits and in Tumwater's Urban Growth Area. In addition to lower density, development in those areas should be clustered. Clustering is grouping or "clustering" development onto part of a property so that the remainder can be preserved as undeveloped open space. The intent of clustering development in that area is to preserve open space along environmentally sensitive areas and it provides a lot configuration that enables preservation of a specified amount of open space and enables for future applied density to be achieved over a 20-year period. Provisions for clustered development require 30% open space rather than 10% for standard subdivisions resulting in smaller lot sizes. Lot sizes are proposed at 7,600 square feet versus 9,600 square feet for a standard subdivision.

Staff finds that the proposed application is consistent with the Comprehensive Plan, zoning, and land use designation. The Parks and Recreation Plan references a desire for bicycle lanes along Sapp Road but no other requirement for parks in the area. The City owns property on the opposite side to protect critical areas. The Applicant proposes adding bicycle lanes along Sapp Road, improvements to Sapp Road, and

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payment of impact fees to meet the requirements for the Parks and Recreation Plan.

The project's environmental and transportation review were completed in 2019. Based on the current proposal, the original studies imposed changes for either the environmental determination or the transportation trip generation report. The existing SEPA review has not expired. A transportation concurrency ruling identified no changes to the lots and no changes to trip generation data. The transportation plan requires traffic impact fees for each single-family home and the improvement of Sapp Road. The proposal was reviewed against the Thurston County Regional Plan and the Sustainable Thurston Plan with no inconsistencies identified.

Public notice for the application was mailed to property owners within 300 feet of the subject property and various agencies and posted on-site on March 7, 2023. The notice was published in *The Olympian* on March 10, 2023. Public notification for the public hearing was mailed to property owners located within 300 feet of the subject property to persons who provided written comments on the notice of application, various agencies, and posted on-site on May 12, 2023. The public hearing notice was published in *The Olympian* on May 12, 2023, in conformance with Tumwater Municipal Code (TMC) 14.06.070.

The State Environmental Policy Act (SEPA) review was completed in 2019. A Determination of Non-Significance (DNS) was issued along with the Transportation Concurrency Report. State rules (WAC 197-11-230 (3)) allow for incorporating the original SEPA documentation as the impacts of the project have not changed. Some standards for development limit building heights to 35 feet. The clustering subdivision requirements provide for minimum lot size of 7,600 square feet. For lots less than the standard of 9,500 square feet in area, the setback in the front yard is 20 feet, the side yard setback is 7.6 feet, and the rear yard setback is 10 feet.

An inadvertent discovery of archaeological and cultural resources plan (TMC 18.40.065) is required if there is an unexpected discovery of protected cultural material.

The Hearing Examiner has the authority to review and approve a determination on a Preliminary Plat request. Another section of the code applicable to the proposal is the Tree and Protection Replacement Ordinance. The ordinance requires a minimum of 20% or 12 trees per

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acre retained during any portion of development. The Applicant provided a Forester's Plan reflecting 350 trees on site that meets the regulation. The Applicant proposes to retain 167 trees, which is greater than the required 12 trees per acre.

The Applicant submitted a geotechnical report for the project in 2019. The report documents the site containing areas with slope characteristics designated as "geologically hazardous" (TMC 16.20.045.B.8). The proposal provides for protection of steep slopes and buffers around each slope in non-buildable areas. The Applicant has satisfied the regulations for development in critical areas with steep slopes.

TMC 17 requires that the public use and interest proposed to be served by the development be satisfied. Staff must ensure that provisions are made for public health, safety, and general welfare to include the amount of open space provided as part of a plat. The Applicant proposes 30%. Public streets comply with the current development guide. Public streets serve both sides of the development and Sapp Road. Storm drains must meet the City's 2022 Drainage Design Manual. Sanitary sewer and water will be extended into the property. The site is served by the Tumwater School District and the Tumwater Fire Department. In 2019, the Tumwater School District requested the Applicant provide a bus stop. The proposed bus stop may not be reflected on the current plan because of the number of iterations of the plan reviewed. The requirement is included as a condition of approval carried over from 2019.

Manager Merriman reviewed the list of 49 recommended conditions. Some of the main concerns surround steep slopes and the potential for blasting that might occur as part of the development process. The City requires blasting permits. Adjoining properties require notification and the Applicant must obtain insurance.

Examiner Reeves referred to the issue of utilizing existing environmental documents. Although the WACs encourage the use of existing documents, he questioned whether an interested member of the public could appeal the original SEPA determination.

Manager Merriman cited another jurisdiction's action to incorporate by reference SEPA documentation/determinations for a project as the project had not been changed. The proposal is from the same Applicant and the project is the same, which was delayed because of reviews of impacts and adjustments. The proposal is essentially the same project

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as the original except for the clustering component. Based on a review of the existing environmental documents, staff believed the impacts are the same or less and that incorporating the environmental documents was allowed based on the WAC. Additionally, the Notice of Application stated that the original environment documents would be incorporated within the proposal and the Hearing Examiner's decision. As the Applicant is providing more open space and more protection of the environment than the original proposal, staff did not believe the impacts were any greater.

Examiner Reeves stressed the intent to ensure the process is clear in terms of what has occurred and that the City is confident that there was no need for an additional SEPA comment period. Examiner Reeves requested feedback from Director Michael Matlock.

Examiner Reeves administered the oath to Community Development Department Director Michael Matlock.

Director Matlock advised that he serves as the Director of Community Development and is the City's SEPA Responsible Official.

Examiner Reeves commented that in 2019, the SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the earlier iteration of the proposed project that was denied. He asked Director Matlock to comment on the SEPA review in terms of the current proposal.

Director Matlock said he agrees with the thorough explanation by Manager Merriman as staff analyzed the current proposal against the original project. Any identification of additional environmental impacts would have required a new SEPA Determination. Staff did not identify a need as the proposed project has less environmental impacts than the original project. Requiring a new SEPA Determination would have been duplicative and contrary to WAC 197-11.

Examiner Reeves asked staff to summarize the concurrency review.

Manager Merriman explained that concurrency is essentially an assurance that the infrastructure required for a development is available at the time the impact occurs. The Transportation Manager reviews concurrency for traffic to ensure roads are capable of handling vehicle trips and that the level of service for specific intersections would not be reduced to such a degree that it results in a failed intersection or at a

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level of service not acceptable to the City. Concurrency for water and sewer requires the Applicant to obtain a water and sewer certification of availability to ensure water and sewer are available to the development as it occurs. It is also important that the school district has the capacity to accommodate students and that the Fire Department is able to provide service to the development. The development is required to meet concurrency for infrastructure necessary for development and that it is available at the time the impact occurs or within six years.

Manager Merriman summarized the public comment received to date for the proposed project. Twelve of the comments requested a seismic study. The comments, received in a form format separately, requested a seismic inspection prior to any blasting activity, notification, and a post inspection. Local tribes submitted comments indicating no comments or concerns surrounding cultural resources. Some of the main concerns centered on blasting. The City's Blasting Permit requires public notice, insurance, and inspections if requested. Blasting concerns are covered under the existing application process. Other concerns involved the loss of privacy and buffering between the uses. The proposal meets the requirements of the GMA as it speaks to the need to promote urban density in urban areas to protect rural areas. The development is consistent with the City's Comprehensive Plan. Some comments pertained to stormwater run-off to properties caused by additional pervious surface. Any runoff from new impervious surface created by the development is required to be piped to the stormwater system for treatment. Runoff from single-family roofs is routed to individual dry wells. All new impervious surface runoff will flow to stormwater facilities.

Examiner Reeves cited a new stormwater site plan specific to the current proposal as opposed to the prior review of the original proposal. He asked about the version of the stormwater manual the City currently enforces. Manager Merriman advised that the City follows the 2022 Drainage Design Manual. As the proposal entailed some change in the curve of the roadway, the City required the Applicant's engineer to ensure that the change in pavement meets the requirements of the 2022 manual.

Manager Merriman said a property owner located south of the proposed development expressed concerns about some lines reflected on the plat map. One is a dotted line, which is an extension of a critical area and is not reflective of a property line. Another dotted line was incorrect as the dotted line depicts the adjoining property lines. One of the lines is

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incorrect. The Applicant worked with the property owner. The request was to correct the map during the final plat process to ensure the map reflects the correct boundary lines from the adjoining properties in the final plat map. The property owner was satisfied with the Applicant's response.

Manager Merriman addressed several letters received prior to the public hearing. Comments addressed some of the same concerns conveyed by others involving a request for a pre-blasting seismic study and questions about the changes in the proposal from the 2019 proposal as the appeal in 2021 clearly stated that clustering would not be allowed. She cited an explanation as to the clustering concern within the Staff Report. Other concerns pertain to setbacks and a request for additional setbacks and landscape vegetation to protect neighbors. Another request was for completion of a wetland study. However, there has been no indication of any existing wetlands on the site. Other concerns involved transportation issues on Sapp Road.

Examiner Reeves advised that he has read the Staff Report and most of the comments with the exception of the recent comments received by the City. He assured the public he would review all comments.

**APPLICANT
TESTIMONY:**

Examiner Reeves administered the oath to Applicant, Chul M. Kim.

Chul M. Kim expressed disappointment when his first application was denied. However, looking back he is glad he had the opportunity to submit a new site plan. It enabled him to retain steep slopes without including them within the entire site resulting in less environmental impact. Even with exclusion of steep slopes, he was able to develop the same number of lots as previously proposed. The site plan does not include any connecting streets that were included in the site plan approved in 2005. The 2005 plan required a connected street through the steep hillside, which would have been very expensive to construct. As the current site plan does not include any connecting roads, the costs have been reduced and blasting would be unnecessary.

Examiner Reeves said it appears the current proposal includes lots served by different roads creating less environmental impacts, less costs, as well as less blasting because it is no longer necessary to engineer a road to meet slope requirements.

Mr. Kim added that by not including a through street, it would prevent motorists from using the roadway as a shortcut.

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Examiner Reeves recalled that during the hearing for the prior proposal, an attorney representing an adjacent neighborhood testified about concerns that a connected roadway would create a shortcut for traffic through the neighborhood.

Mr. Kim commented that although he had to wait for some time, he is satisfied that the current design of the project will be a better project for everyone.

Examiner Reeves noted for the record, the communications between the Applicant and the City. Mr. Kim offered some ideas and thoughts earlier in the day that should be entered as Exhibit 24, as well as some additional email attachments. He asked Mr. Kim whether he concurs with his explanation of Exhibits 20, 21, and 24 as a letter dated May 23, 2023 with attachments, an email chain, and a response submitted by Mr. Kim earlier in the day in response to an additional letter.

Mr. Kim confirmed his acceptance of the exhibits. He cited the comments he reviewed from numerous neighbors, which is why he submitted an additional response earlier in the day.

RECESS:

Examiner Reeves recessed the public hearing from 8:20 p.m. to 8:32 p.m. for a break.

**PUBLIC
TESTIMONY:**

Examiner Reeves administered the oath to each individual prior to their testimony.

Darin Rice said he is concerned about stormwater runoff as new development will worsen an existing stormwater issue. The proposed development is literally a water conveyor. He and his neighborhood essentially are the recipients of stormwater generated from the site. The situation has worsened over time with the increase in extreme rain events. A seasonal stream runs through his property into the neighborhood. Although he is encouraged by the idea of the new stormwater plan helping to control stormwater, he questioned whether a hydrological study was completed to help inform stormwater requirements. He asked whether the City is aware of the source of stormwater runoff and if there are plans to build stormwater retention features in a logical location. He assumes the answer would be yes. He questioned whether the stormwater plan includes stormwater retention features or ponds in addition to storm sewers on roads. Finally, the road off Sapp Road on the map reflects that his property line is right next to

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the road. He asked about the setback from the property line to the street as he believes some of the paperwork mentioned 25 feet; however, the map does not accurately reflect that distance.

Examiner Reeves summarized the concerns surrounding stormwater runoff and whether a hydrological study or engineering study is under review or to be completed to ensure information is available on potential outcomes and how the development will impact stormwater runoff to ensure there are no negative or detrimental impacts to his or other adjacent properties. Secondly, another concern is whether there will be additional stormwater features such as stormwater retention vaults or similar facilities proposed on-site or would all stormwater be collected and routed to the municipal stormwater system. The third issue is the setback from the road.

Examiner Reeves asked Mr. Rice to clarify the concern. Mr. Rice responded that he believes 25 feet was referenced from a rear property if there is a street adjacent to the property. However, the map depicts very little distance between the property line and the roadway.

Examiner Reeves requested displaying a map to help clarify the issue. Mr. Rice clarified that his question is the amount of distance between his property line and the road. Examiner Reeves advised that the question would be addressed by staff later in the meeting.

Ricky L. Fryer referred to surveys of neighborhoods homes for the blasting and the responsible party for paying for those expenses. He questioned whether the survey would be paid by Mr. Kim before and after the blasting. Manager Merriman had spoken earlier about the blasting surveys of the homes prior to and after blasting.

Examiner Reeves asked whether the question is for clarification of the blasting process if the proposal was approved. Mr. Fryer said his concern is identification of the responsible party for covering the cost of surveys. Examiner Reeves replied that it would not be the responsibility of the homeowner. City staff will describe the process later in the hearing. Mr. Fryer inquired as to whether a guarantee would be in writing prior to moving forward with the proposed development. Examiner Reeves explained that his decision would be in writing with all issues clarified. He emphasized that no decision has been determined on the proposal at this time.

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Mr. Fryer asked whether the plan foresees motorists using Brookside Road as access to Crosby Boulevard. Manager Merriman explained that the proposed access on the north of the site is through Woodland Drive. It is possible that Brookside Road could be used often dependent on the travel destination. Dellrose Road could also serve as another access to Crosby Boulevard.

Examiner Reeves said that in terms of access, a number of lots with access are proposed off Crosby Boulevard through Woodland. More than half of the lots would have access in the current configuration. The remaining lots would have access from Sapp Road. There is no roadway connection between the two cul-de-sacs. It is possible a number of households would use Brookside Road to access Crosby Boulevard.

Mr. Fryer said that over the course of the last several weeks, he spoke with public works staff about installation of lights along Woodland. He spoke to Mr. Bernard who indicated the City is exploring the addition of more lights along the road. The lack of any lights along Brookside and Dellrose will increase danger to motorists.

Examiner Reeves asked whether the request is for additional street lights supplied by the Applicant or whether the comment is construction-specific with respect to the need for lights along the roads. Mr. Fryer replied that it pertains to the impact caused by the development. Examiner Reeves said if the proposal adds more homes, it appears the request is for more additional street lighting along the roads that lead to the plat or alternatively funds contributed by the property owner to improve streets with additional lighting for safety. Mr. Fryer said he does not necessarily want the developer to pay for the expense but wants the City to pay for lights.

Examiner Reeves reaffirmed the requests for more information on the blasting process and any information on street lights specific to the streets to the north of the site.

Rodney Finkle, 3216 Crosby Boulevard, Tumwater, said he lives on lot 59 of Somerset Hill 2B subdivision adjacent to the eastern border of the Applicant's property. He cited the original issue that prompted his attention after receiving notice of the development of 36 lots. He is concerned as to why the City has acquiesced from the 31 lots that were calculated in the denial of the original 2019 plat. He questioned whether minimal usable open space area is still 10% yet the current proposal

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includes steep slopes as part of that calculation, which has been added to the buildable calculation to arrive at 36 lots.

Examiner Reeves shared information about the 2019 process and his denial of the proposal. That decision is part of the record. That decision acknowledged how calculations would have been different if clustering subdivision provisions had been considered. The earlier proposal did not seek to use the clustering subdivision provision. The new proposal is utilizing the clustering subdivision provision, which speaks to the difference. The recommendation by staff is different as clustering the proposal could meet municipal code provisions. He will review the municipal code to ensure he supports the conclusions by staff.

Mr. Finkle said another issue is the comprehensive long-term construction activity of 36 homes, access roads, and utilities. Utility trenches will be necessary in addition to blasting activities. His home as well as others is located on solid rock, as well as the private road serving the homes. Residents are aware of many construction issues and would like a comprehensive plan review of homes in close proximity to include a survey of homes to identify any sheetrock issues, foundation cracks, or other problems prior to blasting activities to ensure a report is prepared for the record with a final report after blasting to determine any impacts to surrounding homes. As a long-term project, it would be preferable to know about the schedule, critical paths, and sequencing. Additionally, he and his neighbors are requesting representation through the City as an advisory committee to help review plans and specifications. In the event the proposal affects homes or neighborhoods, retaining walls, drainage, and other issues could be addressed. As a retired transportation engineer, he has dealt with many projects that once underway were subject to project complications that often became uncontrollable. There must be a process of positive specification reinforcement so that homeowners are protected and there is an avenue to address issues without delay. He cited submittal of his letter summarizing all construction concerns.

Examiner Reeves reiterated that staff would provide more information on the blasting process. It appears the requests include a delineated construction plan and establishment of a committee or some involvement in ongoing oversight or review by neighboring property owners for site development as opposed to construction.

Mr. Finkle replied that an advisory group could work with the City as the City is responsible for reviewing the contractor's plans for

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compliance with various City codes. The proposed development is in the middle of residential neighborhoods. When construction is initiated and no mechanism is available to provide input, some activities could occur that could have detrimental effects on homes. He would rather be prepared prior to the initiation of construction activities because no one desires pursuing a lawsuit or legal action.

Christine Finkle said her concern is the removal of trees and the placement of construction barriers as her home and garage would be impacted by stormwater during torrential storms. She is unsure as to how that issue would be mitigated or whether there would be a guarantee that her property would not be subject to stormwater runoff caused by construction. Her broader concern is potential impacts to the community. Her home is located off Crosby Boulevard. Current traffic and congestion has tripled with traffic speeds out of control. Once new homes are developed and residents begin accessing Crosby Boulevard, residents will either use Brookside, Dellrose, or Sapp Road, which will increase congestion. There is only one crosswalk on Crosby Boulevard. The proposed development, if approved, will impact not just neighboring properties but the community and motorists trying to access different roads. Her concerns are increased traffic and congestion, traffic speeds, and safety.

Examiner Reeves affirmed the three concerns and noted that the criteria under state law to be reviewed ensures there are safe walking routes for children to schools, school bus stops, and safe walking routes for pedestrians and bicyclists.

Norma Green said she lives on lot 60 across from a private driveway and the Finkle residence. She submitted an email earlier in the day outlining her concerns. The private driveway slopes downward with water currently running along the driveway. The comments by Ms. Finkle are important. She referred to a site map and identified her home, located on the northeast corner. Five lots are served by a private driveway. All residents of those homes are concerned that the private driveway might be accessed by construction crew members as residents do not want any intrusions. Additionally, property lot lines adjacent to Mr. Kim's property appear to have no setback on the site map. She questioned whether the future road is directly adjacent to the property line, because if so, it would be on her property. She questioned the location of the road because of the slope without intruding on her property and causing more erosion unless a rock wall was constructed.

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Examiner Reeves requested identification of the private road. Ms. Green advised that the private road is located off Crosby Boulevard. Examiner Reeves reviewed the location on an aerial map. It appears several lots proposed for development in the northeast corner could detrimentally impact her property and private driveway. Ms. Green responded that a small triangular piece of property located on the west side of the private driveway is a property line. She questioned how a road could be constructed without leveling the road with the existing driveway that would cut into the bank that is part of her property. The bank is approximately six to eight feet high depending on the location along the driveway, which is concerning. Another concern is the size of the lots with clustering with only seven feet between the houses. She questioned the ability of fire engines accessing those homes in the event of a fire or a medical emergency. She lived in a community where the requirement was at least 10 feet between houses and does not believe 7-1/2 feet between homes is adequate.

Examiner Reeves reminded everyone that no decision has been rendered at this time. There might be a need for certain lots to be served by sprinklers. However, the Tumwater Fire Department had an opportunity to comment on the proposal. He advised of following up with any additional information if available.

John Ryan addressed traffic, SEPA, and clustering. He inquired as whether 22 or 24 lots would exit onto Woodland Drive.

Manager Merriman confirmed 22 lots would exit onto Woodland Drive.

Mr. Ryan pointed out that the only improvements for roadways are Sapp Road which has much less traffic generated by the new development. The initial concern that many residents had was that streets within the development would be used as thoroughfares. That concern has been since eliminated. However, the current proposal reflects that a larger percentage of the traffic would access Woodland Drive because there is no other alternative. The problem with access to Woodland Drive is a stop sign at the intersection at the top of the hill at Crosby Boulevard with no other traffic control at the intersection. Furthermore, further down, if motorists wish to exit via Dellrose, the road is substandard caused by a depression in the road from a damaged drain pipe. A portion of the road is “alligatored” and broken into pieces no larger than 3” to 4” inches square along an entire section of the roadway.

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Examiner Reeves recapped the concerns and that it could be or ought to be appropriate to require some off-site improvements as there is a nexus for some improvements on Woodland Drive in addition to any fees. Mr. Ryan responded that if the City does not impose any additional requirements, it should be addressed by the City as to how the development impacts traffic flow on Woodland Drive. During his prior comments he offered some objections as to the traffic study. Manager Merriman has indicated that all traffic impacts have been factored; however, it is difficult to believe that new apartments including current construction near the school were factored to the extent that the City installed two new roundabouts because the volume of traffic increased so dramatically because of new development. The size of the apartment complex located north of the Somerset Hills neighborhood is a very significant multifamily apartment complex opening directly to the roundabout. He reviewed the transportation trip calculation of 9.57 trips per day per house. The City's trip calculations for intersections in the area were based on 2015 figures. That information appeared to be the most recent update posted on the City's website. The City is using 2015 trip numbers at two intersections near his neighborhood.

Examiner Reeves acknowledged the concern of using a previous traffic impact analysis for the current proposal that did not include, calculate, or envision pipeline projects in the area.

Mr. Ryan addressed SEPA concerns. The problem of using the prior SEPA DNS by reference does not consider the new stormwater plan. Stormwater runoff and the Percival Creek Watershed would be environmentally impacted. A lack of acknowledging those impacts appears to be in conflict and should be considered by the Examiner during his analysis. The Stormwater Plan is a significant part of the environmental conditions on the property.

Examiner Reeves commented that the City's Critical Areas Ordinance address many issues in terms of assessing critical areas. He questioned whether the concern is because the new Stormwater Plan should have been considered and a new SEPA Determination should have been issued.

Mr. Ryan replied a new SEPA DNS should have been completed especially since the original SEPA DNS foreclosed the ability to review or appeal by affected parties.

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Examiner Reeves explained some of the history surrounding SEPA reviews that have evolved with cities and other municipalities developing critical areas ordinances to address environmental issues. He asked for a summation of the concern surrounding the SEPA DNS.

Mr. Ryan replied that he believes the City issued the wrong conclusion in determining that the newer proposal was so similar or nearly identical that staff re-adopted the original SEPA DNS by reference. Essentially, the action equated to concurrency of previously identified environmental impacts.

Mr. Ryan addressed clustering. Although it appears that higher density is possible with greater preservation of open space and protection of critical areas and habitat, it is difficult to envision that those benefits work in concert as Manager Merriman previously pointed out. The idea of higher density and improvement to the environment is difficult to envision when the proposal is for smaller lot sizes with houses spaced close together with passive open space counted to increase density. The use of clustering development should be re-examined as it does not appear to be a way to complete new developments.

Examiner Reeve encapsulated the concern as a specific number of lots with more protected area.

Janine Beaubry said she lives on the south side of Brookside abutting the north side of the proposed site. The houses are placed to the rear of the lots. The proposal entails adding a driveway abutting her property line along with houses with very little setback between the uses and no access for fire engines or other large trucks. She questioned the inability of large vehicles accessing the new homes and driveways that would not be accessible and how it might impact adjacent properties. The developer is using a traffic study completed prior to 2019 that does not consider development changes that have occurred over the years. An updated traffic study should be completed. She spoke to the trail leading to the school, which is located near Crosby Court. Many families live in the neighborhood and no crosswalk is available. The neighborhood has inadequate lighting and the school district lacks a sufficient number of bus drivers leading to calls to parents to pick up their children. Children have no safe way to cross Crosby Boulevard.

Kathy Phillips referred to her letter she sent to the City. Her request was for a seismic study completed on the foundation of her home before and after any blasting activity. She is also concerned about traffic in the

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area. Crosby Boulevard experiences speeding traffic with many vehicles traveling at a minimum of 30 mph over the speed limit. Increasing traffic in the area is problematic as well as affecting privacy. She opposes the development as there has been sufficient development in the surrounding area with more construction underway.

Carrie Wayno echoed concerns shared by previous speakers. Her family lives a block away from the project site. The project site is adjacent to a neighborhood with many homes with small children. The area is referred to as the “forbidden forest” comprised of a canopy of large fir trees serving as a home for owls, birds, and squirrels. Walking into the forest, the forest floor dips down past more trees, downed logs, and heavy vegetation. Some trails have developed over time by people and animals. Along the trails in the fall, winter, and spring following sustained rains, a stream forms and flows downward from the steep trail. When the trails are dry, it is possible to walk further down to more vegetation at the bottom. During rain events, the area becomes a stream.

Bridget Underdahl echoed similar points previously shared and is opposed to the proposed development. She wants to humanize the living experiences and wellbeing of people’s lives, homes, and the land. She is deeply concerned about over population, additional stress and noise, increased traffic, lack of green spaces, lack of privacy, and the loss of trees and wildlife on land that was not initially designed for this type of development. She is concerned about the lack of adequate runoff reservoirs and erosion.

Examiner Reeves encouraged Ms. Underdahl to provide her written statement to City staff.

Manager Merriman described the process for the public to submit public comments.

Angela Garner recommended redoing the SEPA review as five years is a substantial length of time to default and utilize the initial DNS. Secondly, she is concerned about the ecosystem of her community not only for the people but for the animals that live in the area that would be displaced with the loss of trees and vegetation – things that make a community. It will be a huge negative impact to those that live in the area.

Examiner Reeves closed the public testimony segment of the hearing at 9:48 p.m.

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**APPLICANT
RESPONSE TO
PUBLIC
TESTIMONY:**

Examiner Reeves offered Mr. Kim the option of submitting a written response to the public comments.

Mr. Kim referred to testimony of Darin Rice and concerns that the development will exacerbate stormwater issues. He described how stormwater would be collected based on different sides of the properties. All stormwater generated by the new development will flow into proposed stormwater facilities and should facilitate improvement of the existing stormwater system.

Mr. Kim addressed speakers expressing opposition of the proposed development and the importance of all parties working together to accommodate the needs of all residents in the area.

**CITY'S RESPONSE
TO PUBLIC
TESTIMONY:**

Examiner Reeves emphasized the importance of understanding that the burden of proof or the burden of persuasion is not the responsibility of the City but it is the burden of the Applicant.

Manager Merriman provided an explanation for a number of concerns conveyed through public testimony.

The main concerns of Mr. Rice were stormwater and runoff from the hill and a seasonal stream flowing through his property. Based on the location of his home, the road is adjacent to his property. Stormwater facilities that are designed for the development will direct stormwater away from his property. If needed, it is possible to review the stormwater report to ensure the stormwater plan and planned road redirects stormwater runoff.

Examiner Reeves inquired as to whether a hydrological assessment was completed. Exhibit 17 is a Preliminary Stormwater Site Plan dated February 15, 2023. The multi-page document includes hydrological calculations. The document is available to Mr. Finkle and others who wish to review the information.

Manager Merriman advised of the availability of the Geological Study and the Stormwater Plan. The stormwater report documents existing conditions. The preliminary report determined that stormwater runoff would be directed to storm ponds on the project site.

Manager Merriman responded to concerns surrounding rear property setback and a setback adjacent to the street. Property setbacks apply to

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building foundations to a property line. A property line setback for a public street is not required. The proposed public street is 47 feet wide comprised of two drive lanes with roadway shoulders and sidewalks. Some right-of-way will be will separate the street from the private property.

Examiner Reeves commented that another speaker expressed concerns about the need for retaining walls due to the topography of the area. He asked whether the City has received any type of analysis of topographical features and the design of the roadway in some areas.

Manager Merriman clarified that the roadways are not streets but are driveways. The proposal includes shared driveway approaches. At this point during the preliminary process, the City has received some preliminary topographical information identifying contours of steep slopes. At the time of construction of the driveways, details in the civil plan submission would identify whether retaining walls would be necessary to accommodate the road or any other type of protection. That greater detail will be shared through the site development grading or the civil plans submission.

Examiner Reeves inquired about any mechanism for public review and comment when the information becomes available. Manager Merriman said the City is not required to provide public notice for site development grading. However, the Examiner could add a condition to the plat requiring public notice to the parties of record when civil plans are submitted. She cited a similar process at her previous position in another jurisdiction. At this time, it unknown whether the proposal to establish committee for review of the plans is possible because City engineers are responsible for reviewing plans to ensure the proposal complies with all City codes.

Examiner Reeves referred to comments requesting a construction plan or schedule. He does not recall if any conditions were included for a schedule or construction activity plan. Manager Merriman advised of situations such as trucks accessing residential subdivisions. Residents impacted by that activity is often confined either by hours or specific days. As an approved preliminary plat is effective for five years and site development and grading plans are effective for 12 months, it could be several years in the future before any construction activity commences. However, the request is appropriate.

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Examiner Reeves referred to questions raised by several members of the public pertaining to costs associated with blasting activities. He asked about the City's process.

Manager Merriman responded that when a developer plans blasting activities, the developer must apply for an application. A surety bond of \$100,000 is required and could be increased if the Building Official believes the amount is inadequate. Blasting can occur only between 10 a.m. to 4 p.m. Monday through Friday. All structures located within 300 feet of the blast area are provided with a two-week notice of any blasting activity. Structures subject to pre-blast can be inspected at the developer's expense. The permit process does not provide for inspections after the blasting.

Examiner Reeves asked whether the City has contemplated providing inspections following blasting activities.

Manager Merriman said she was not aware of the City providing that service.

Examiner Reeves commented that he is confident, if he were to approve the proposal, that those who addressed concerns would prefer the addition of a condition requiring an inspection of affected properties after blasting activity to ensure any detrimental impacts are compensated by the developer.

Manager Merriman addressed access for fire trucks and other service providers. She noted that since the roadways are essentially driveway accesses, conditions are proposed requiring sprinklers for some homes because of access issues for fire trucks. Setback of the units from the property line is 7-1/2 feet on each side and meets the minimum fire separation requirement of 10 feet between buildings.

Since the site plan is similar to the original proposal, stormwater facilities are similar to the original proposal; however, the layout has changed to some degree because driveway locations have changed. The City is requiring the developer to document how the stormwater plan meets the requirements of the City's 2022 manual.

Manager Merriman referred to frontage improvements. Unless transportation impacts further from the development degrade the system, the developer would be required to complete off-site improvements. The developer is automatically required to complete

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frontage improvements along the property line. Along Woodland Drive, frontage improvements have been completed. The developer's frontage improvements for Woodland Drive extend the street to the cul-de-sac. The number of trips anticipated to be generated is not at a level that would create the need for off-site improvements on either side of the development. Additionally, the City cannot impose a requirement for the developer to fund another developer's inadequacies. If there are off-site problems with roads, the City cannot require the developer to repair a pre-existing problem.

Examiner Reeves asked staff about any future plans in the City's transportation plan to add a crosswalk on Crosby Boulevard or any other plans to add street lights to neighborhoods along public right-of-way. Manager Merriman affirmed she would follow-up with Transportation and Engineering staff as to the status of any future projects in the vicinity of the project site. Examiner Reeves asked that staff provide a follow-up email with the information as it would be helpful for his review.

Manager Merriman referred to WAC 197-11-230, subsection 3 stating that a threshold determination is not required when there has been a previous threshold determination or notice of adoption, or an addendum is prepared. Essentially, the current proposal is the same as the original project. The City's critical areas codes and development regulations are strong and staff ensured the proposal was in compliance. As the project was similar staff did not believe an additional review and determination would be required.

Examiner Reeves conveyed appreciation to everyone for their patience. The information provided satisfies his needs for review. A reconsideration process is available if someone believes the decision was incorrect and lacked sufficient information or did not address a concern. Reconsideration is a simple process to request. He stressed the importance of seeking additional information in terms of planned future projects. He extended closing the record until 4 p.m. on May 30, 2023, to receive additional comments.

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Manager Merriman shared City email addresses for the public to submit comments.

Examiner Reeves thanked everyone for attending and participating in the public hearing. His decision will be thoughtful, clear, and will address all concerns.

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ADJOURNMENT: **With there being no further business, Examiner Reeves adjourned the public hearing at 10:27 p.m.**

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