

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

**CASE NUMBER:** **Sunrise Hills Preliminary Plat TUM-21-0551**

**DESCRIPTION OF PROPOSAL:** Applicant requested preliminary plat approval to subdivide 10.72 acres into 36 single-family lots, with 7 tracts, as a Clustered Subdivision. The Hearing Examiner conducted a public hearing on May 24, 2023. After the hearing was closed, and upon further consideration, the Examiner requests clarification from City staff and the Applicant and re-opened the hearing.

**PROJECT NAME:** Sunrise Hills Preliminary Plat

**APPLICANT:** **Chul M. Kim**  
454 SW 297<sup>th</sup> Street  
Federal Way, Washington 98023

**PRESENT:** City Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Community Development Department Director Michael Matlock, and Permit Manager Tami Merriman.

Others: Tumwater Councilmember Eileen Swarthout.

**PUBLIC HEARING:** Hearing Examiner Andrew Reeves with Sound Law Center convened the meeting at 7:00 p.m. to reopen the public hearing to allow the Hearing Examiner to receive some clarifications from the attorneys on the City's interpretations of its codes. He recognized the objections by the Applicant's attorney to reopen the hearing. Examiner Reeves advised that he presided over the initial request. He issued a decision of denial in 2019 for the same request.

Examiner Reeves addressed letters from attorneys with Hanson Baker representing the Applicant. He has not rendered a decision regarding the request not to reopen the public hearing. He invited self-introduction of all attorneys.

Applicant attorneys Keaton Hille and Joshua Rosenstein with Hanson Baker provided self-introduction. Jeffrey Myers, representing the City of Tumwater, provided self-introduction.

Mr. Rosenstein said he serves as the attorney for the Applicant, Chul Kim, Sunset Hills, LLC. Mr. Hille will serve as lead as he is participating to glean some information on recent interactions.

Examiner Reeves addressed the letters he received earlier in the day opposing the reopening of the hearing. He invited Mr. Rosenstein to address his letter.

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Mr. Rosenstein replied that the objection was based on potential prejudice because of the belief that there was no legal ground to reopen the hearing as the rules of the Hearing Examiner call for good cause. He does not believe there was good cause. He and Mr. Hille asked multiple times for an agenda and specifics so they could prepare to address issues and concerns. No one contacted the law office. The letter spells out those concerns.

Examiner Reeves advised that he read the letters. He noted the matter is neither an appeal hearing nor an application hearing. Reopening the public hearing is not intended to produce or provide materials to specific individuals to include parties and their representatives versus the world at large because the intent of an application hearing is to afford notification to the public of a proposed project. His intent for reopening the hearing is not to introduce appealable matters or potential problems and he understands the argument that reopening the hearing at this time could produce additional evidence that could cause problems. He acknowledged the objections that have been raised but is confident of moving forward and issuing a decision in the next 10 working days if everyone agrees that it would be the best outcome. While he affords some deference to staff and their interpretation of the municipal code, there are certain aspects of the code that despite his experience working for numerous cities and counties throughout the state, he is often unable to decipher. The hearing is the first opportunity Mr. Kim has had legal representation as well as the first time the City has been represented specific to the matter. It could be useful for the Applicant and for a future Hearing Examiner, as he has advised the City of Tumwater of his intent of not serving as the City's Hearing Examiner next year. His goal of the hearing is to receive some clarification to avoid similar situations in the future because it is clear Mr. Kim intends to develop the property.

Examiner Reeves invited feedback from Mr. Myers on the objection.

Mr. Myers said the City would like to resolve the issue as quickly as possible. He understands the concerns expressed by the Applicant, especially in terms of identifying the concerns and issues the Applicant needed to know to prepare for the hearing. It is important to identify those concerns as the Applicant's objection did identify a workable way to mitigate any potential prejudice by submittal of written responses. That option would assist in reaching a decision on the issue by the end of the year.

Examiner Reeves asked whether the direction is to inform the parties that written responses should be prepared by the parties to assist the Hearing Examiner in producing a decision.

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Mr. Myers said the option would enable both the Applicant and the City to address specific questions or concerns that prompted reopening the hearing and enable submission of information that is more thorough than a verbal response.

Mr. Rosenstein supported Mr. Myers recommended solution as his preference is to close the hearing and rest on the objections that the Examiner has already rendered. However, if the questions are in the realm of technical aspects, it makes sense to afford time to supplement information in addition to other information provided during the hearing for the Examiner's consideration.

Examiner Reeves said the plan moving forward is to have the parties take notes, ask questions for clarification from him as needed, and close the hearing. He does not intend to include public testimony other than affording the public the opportunity to watch the public hearing.

Examiner Reeves referred to the materials associated with the proposal. In the Tumwater Comprehensive Plan in Chapter 3, the plan identifies the Residential Sensitive Resource (RSR) designation for two to four dwelling units per acre that also speaks to clustering development in those areas to preserve open space along environmentally sensitive areas and provide a lot configuration that allows future density to be achieved over a 20-year period. However, the following page points out that density transfer provisions are not appropriate in the RSR designation due to the extreme sensitivity of those areas to environmental disturbance and the desire to provide relative density continuity between different development sites within the density designation that may or may not qualify for density transfer provisions. During his review of the plans and materials provided by the parties and in the Staff Report, there is a notion that density transfer appears to serve as a potential basis for a staff recommendation of approval of the proposal. However, he was unable to harmonize whether density transfer exists as a potential anywhere in the Tumwater Municipal Code (TMC). A confusing graph appears at the end of each section of the TMC that does not provide clarity and it was difficult to determine if it could be applicable in this case. He asked the parties to address whether there is a density transfer that is possible or allowed, and if so, he questioned how it would harmonize with the Comprehensive Plan.

Mr. Myers cited his understanding of the question. Provisions in TMC 18.08.050 provide for density calculations and for clustered subdivisions. The question is how those provisions harmonize with Chapter 3 of the Comprehensive Plan and whether it allows for a density transfer when a clustered subdivision is proposed. Examiner Reeves affirmed the clarification of his concern.

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Mr. Hille agreed to the summation by Mr. Myers.

Examiner Reeves noted that while the TMC may include implicit language, as a Hearing Examiner, he is required when considering a plat is to ensure the Comprehensive Plan has been followed and addressed because he perceives the Comprehensive Plan as the overriding document.

Examiner Reeves said the provision referenced by Mr. Myers is located at the end of each specific zoning designation. He asked for confirmation from Mr. Myers. Mr. Myers said the cited provision is included in the development standards section in Chapter 18.08.050 under (b) density calculation, and (e) clustered subdivision.

Examiner Reeves requested further clarification as to how the density transfer is calculated if applicable. Mr. Kim had previously provided a sketch of some numbers on a previous document. Although, the numbers appeared to be incorrect, he still had difficulty computing the numbers.

Mr. Myers advised that the density calculation formula per provisions in Chapter 18.08 were completed by City staff on page 4 of the Staff Report. He asked whether additional clarification is requested by the Examiner in addition to the information provided in the Staff Report. Examiner Reeves responded that it was unclear after reviewing Chapter 18.08 that the formula excludes all critical areas. Within the Staff Report, the response by staff on page 4 speaks to excluding steep slopes, public roads, and access tracts from the gross acreage to determine the number. He questioned whether that process was accurate. Mr. Myers affirmed that after deducting steep slopes and roadways, 7.94 acres remains to determine density, which yields 30 dwelling units as contained in the Staff Report. Additionally, because it is a cluster subdivision minus the critical areas and reducing the lot size to the minimum lot size, the density bonus of 125% yields a maximum of 37 units while the applicant proposes 36 units.

Examiner Reeves said another issue during his review pertained to what counts as a public road or access tract. Specifically, he questioned a shared driveway from road B that provides access to lots 32 and 33 adding 4,800 square feet of impervious surface that appears not counted as potential impervious surface for the entire development. The area is not counted as a tract as half of the area is owned by one of the lots and the other lot owns the remaining half. Each lot has a full easement access. He asked if those types of examples within the proposal would count towards impervious surface as the lot size of 2,400 square feet appears to be calculated as a lot size. The numbers proposed caused

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some concern and he is seeking clarification from either the City or the Applicant as to why it is appropriate to exclude an access tract because it affects minimum lot size and maximum impervious surface coverage.

Mr. Myers and Mr. Hille agreed the question warrants further follow-up by the two parties.

Examiner Reeves said that along similar lines in terms of the stormwater tract, provisions in the Critical Areas Ordinance appear to require at least half of the open space to serve as passive recreation. However, the preliminary stormwater report provides that approximately 7,500 square feet of impervious surface would be created by the stormwater pond (page 156 of the original file). His question pertains to how the formula is applied in those circumstances. Additionally, the TMC and density transfer and clustering provisions discuss certain areas useable for passive recreation. The proposal appears to include steep slope tracts in those calculations, which speaks to whether that inclusion is appropriate.

Mr. Hille and Mr. Myers agreed the questions warrant additional information. Mr. Myers said both parties understand the questions and that written responses should be provided to the Examiner. He asked about the timing for submittal of the responses.

Examiner Reeves said another question involves the objection of reopening the public hearing and the deference the Hearing Examiner should provide to recommendations by staff to the extent that there are some instances that are clear where he is required to afford deference, such as a SEPA determination. Traditionally, he has advised staff that it is helpful and useful to receive a recommendation of approval or denial of any proposal. He does not believe that he is required to afford deference to those recommendations. He asked for a response from Mr. Myers.

Mr. Myers affirmed that he could address the question and believes there are some circumstances where deference to the staff recommendation is appropriate in terms of the expertise of staff, such as an engineering determination. He will address where the line falls. However, the Hearing Examiner also has expertise and interprets City codes for the City.

Examiner Reeves said he would defer to Mr. Myers as to whether he wants to submit additional information as to the question.

Mr. Hille commented that the Hearing Examiner serves as a quasi-judicial officer and the interpretation of the code is within the purview of the Hearing Examiner to the extent that it is a legal question and to the extent that it is factual. Staff has much input and they have the

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expertise and the Applicant looks to staff for that expertise. Many staff members apply provisions on a day-to-day basis and can view the immediate implications of actions on the growth of the City.

Examiner Reeves asked Mr. Hill for feedback on timing.

Mr. Rosenstein referred to the Examiner's statement that his tenure as the City's Hearing Examiner would end after the end of the year. Examiner Reeves replied that there is no certain date established at this time, as he wants to ensure the City has service at the beginning of the year. His intent is to complete the decision on the matter. Mr. Rosenstein offered in deference to both Mr. Hille and Mr. Myers, a submittal deadline by the end of the following week.

Discussion followed on the upcoming holiday season. All attorneys agreed on the importance of settling the remaining issues as quickly as possible and supported a submittal deadline of Wednesday, December 20, 2023 by 5 p.m.

Examiner Reeves conveyed his commitment to produce a final decision that provides clarity to all parties to include the public and staff and provides sufficient documentation should the decision be appealed for the benefit of Superior Court.

**ADJOURNMENT:**      **With there being no further business, Examiner Reeves adjourned the public hearing at 7:41 p.m.**

Prepared by Valerie L. Gow, Recording Secretary/President  
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