

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

CASE NUMBER: TUM-22-0044

DESCRIPTION OF PROPOSAL: Preliminary Plat approval to amend Hearing Examiner's Condition Number 38 of the preliminary plat approval for TUM-20-0220 issued October 14, 2020. The preliminary plat map also includes an updated lot configuration to reflect an administrative approval to relocate Lot 8 and a stormwater tract to address stormwater treatment.

PROJECT NAME: I-5 Commerce Preliminary Plat (Amending TUM-20-0220)

APPLICANT: **John Kaufman**
Kaufman Real Estate, LLC
7711 Martin Way E
Olympia, WA 98506

**PROJECT PROPONENT/
REPRESENTATIVE:** **Hatton Godat Pantier**
Attn: Chris Carlson
3910 Martin Way E, Suite B
Olympia, WA 98506

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 amend the Hearing Examiner's Condition Number 38 of the preliminary plat approval for TUM-20-0220 issued October 14, 2020. The preliminary plat map also includes an updated lot configuration to reflect an administrative approval to relocate Lot 8 and a stormwater tract to address stormwater treatments. The property is located within the 2700 block of 93rd Avenue SW, Tumwater, WA 98512.

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 an alteration of a preliminary plat under Tumwater Municipal Code (TMC).

Examiner Reeves reported that prior to the public hearing he received and reviewed the following 14 exhibits:

1. Staff Report, dated March 29, 2022
2. Preliminary Plat Application & Narrative 12-28-2021

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3. Aerial Map
4. Amended Preliminary Plat Map 12-28-2021
5. Public Notice Certification
6. Notice of Application 02-03-2022
7. NOA Comment Nisqually 02-14-2022
8. Tree Plan 03-18-2020
9. Revised Tree Plan 12-28-2021
10. Revised Tree Tract LS Plan 12-28-2021
11. MDNS 08-06-2020
12. Final Staff Report 09-21-2020
13. Hearing Examiner Decision 10-14-2020
14. Approved Civil Plans 06-18-2021

Examiner Reeves admitted the 14 exhibits into the record.

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 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 preliminary plat application is to amend a condition of approval of a preliminary plat Tumwater Case No. TUM-20-0220 approved in October 2020. The application package also includes an updated map showing lot reconfiguration approved administratively during the site plan and grading review process.

The parcels are located off 93rd Avenue in Tumwater on the westside of Interstate 5 encompassing four parcels equaling approximately 44.26 acres.

Public notification of the public hearing was mailed to property located owners within 300 feet of the subject property and various agencies, posted on-site, and published in The Olympian on April 1, 2022, in conformance with Tumwater Municipal Code (TMC) 14.06.

The applicant received preliminary plat approval, TUM-20-0220, on

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October 14, 2020. The preliminary plat was to subdivide 40.26 acres into 12 commercial/industrial lots, 2 stormwater tracts, and one tree tract.

During preparation of Site Development/Grading Plans, the Applicant identified the need to relocate stormwater facilities because of high groundwater. This resulted in “switching” the stormwater facility and Lot 8. City staff determined the lot reconfiguration was not a substantial change in June 2021. Plans were approved and construction has been initiated.

The forester’s report and proposed mitigation for preliminary plat TUM-20-0220 required the Applicant to meet City minimum requirement of 12 trees per acre, retain 101 trees in an existing wetland buffer, and plant additional trees. For mitigation purposes, replacement would be at a 3:1 ratio, resulting in 1,149 trees planted. The Hearing Examiner affirmed Condition 38 as mitigation of 1,149 replacement trees to be planted in order to comply with the City’s Tree and Vegetation Ordinance.

The Applicant contacted the City on November 29, 2021, advising that the forester’s report submitted for the preliminary plat cited the wrong tree replacement ratio for the project. The tree plan referred to in TMC 16.08.070(R)(3) is mitigation for not retaining a minimum 12 trees per acre. The applicant indicated TMC 16.08.070(R)(4) should not have been applied, as the parcel did not meet the minimum retention standards, as it was an undeveloped site lacking any substantive vegetation. The forester’s report did not include information on the number of existing trees on the site at the time of preliminary plat approval, as well as the undeveloped nature of the property. Consequently, lacking such information, staff applied the wrong section of the code to an undeveloped parcel. The correct code is TMC 15.08.070(R)(4), which states that if the site is undeveloped, the mitigation ratio for replanting trees would be 1:1.

The TMC states that once a preliminary land division map is approved, it cannot be altered unless approved by the Department of Community Development Director and the Public Works Director unless the alteration is determined to be nonsubstantial. In this case, the lots were switched for the stormwater facility and did not represent a major change because it was required to meet stormwater regulations. However, upon review of the difference in mitigation of trees at a replacement ratio of 3:1 as opposed to new mitigation replacement of 1:1, staff determined it would be a substantial loss of trees the public

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would be able to view at the time of the approval equaling to approximately 700 trees that would not be replanted. Staff believes it is a substantial change to the final plat and determined it was appropriate to return to the Hearing Examiner to review findings and conclusions, receive public testimony, and convey how staff reviewed the code and the appropriate sections to determine the correct standard to apply.

Application for preliminary plat was submitted on January 12, 2022, and deemed complete on January 31, 2022. A Notice of Application was mailed to property owners located within 300 feet of the site, affected agencies, posted on-site, and published in *The Olympian* newspaper on February 3, 2022. During that time, staff received one comment from the Nisqually Indian Tribe stating no concerns with the application.

The original preliminary plat was reviewed under SEPA in 2020 and the City issued a Mitigated Determination of Nonsignificance (MDNS) on August 6, 2021. No additional environmental review is required and the MDNS is incorporated within the plat by reference.

The forester's report also addressed the tree tract. To count as a tree, the tree must be over 6 inches in diameter. The tree tract includes not only the trees that were counted in the first survey but also an additional 31 trees between 2" to 5" in diameter. Although those trees do not meet the diameter requirements it was deemed inappropriate to degrade the tree tract and replant trees when existing, smaller trees exist meeting the minimum requirement for replanting trees of 2" inches in diameter. The Applicant has requested adding 31 existing trees within the diameter width of 2"-5" as part of the replacement mitigation trees. Staff agrees it would be best not to disturb the wetland area and replace smaller, established trees. Staff believes existing trees would meet the minimum standard for tree mitigation replacement.

Pursuant to TMC 2.58.110, staff recommends approval of the Preliminary Plat with the following conditions:

1. The conditions of the Mitigated Determination of Nonsignificance dated August 6, 2020, are hereby referenced and are considered conditions for approval.
2. The conditions of the City of Tumwater Hearing Examiner Findings, Conclusions, and Decision I-5 Commerce Place Preliminary Plat No. TUM-20-0220 are hereby referenced and

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are considered conditions of this approval, with the exception of finding #10, a portion of conclusion #1, and Condition #38.

3. To comply with the City's Protection of Trees and Vegetation standards, the trees in the wetland buffer, and shown as Tract D on the preliminary plat map shall remain undisturbed.
4. A minimum of 363 replacement trees shall be planted, first on the perimeter of the stormwater tracts, and then as part of perimeter landscaping as required for development of the individual parcels.

Examiner Reeves asked for confirmation as to the number of replacement trees required under the 1:1 ratio replacement standard as the staff report reflects both 383 and 363 replacement trees. His intent is to ensure the number of replacement trees is accurately reflected. Manager Merriman responded that the difference in the number of trees between the two forester reports speak to the number of trees to be retained on the site. In the original determination, 101 trees, 6" in diameter were to be retained. The number of trees 6" in diameter in Tract D totals 90 trees with an additional 31 trees between 2" and 5" in diameter. The updated plan reflects 90 trees to be retained rather than 100 trees as noted in the original plan. The minimum number of required trees to be planted is 363.

Examiner Reeves cited the original forester's report as reflecting an assumption that there were more than 12 trees per acre on the 42+ acre site, which triggered the 3:1 replacement ratio; however, the undeveloped site did not have vegetation and the code does not require the applicant to replace trees at a 3:1 ratio, but rather it is a replacement ratio of 1:1. Manager Merriman affirmed that the 1:1 replacement tree ratio applies to sites that do not have many existing trees.

Examiner Reeves asked whether the TMC lacks a provision for any major plat alteration and whether the City's view of the process would require the applicant to reapply, without affecting the vesting of the project or issues in terms of other requirements that have been addressed, i.e., stormwater and other code requirements. He asked for confirmation as to his understanding of the parameters of the review only pertaining to trees. Manager Merriman affirmed that staff recommends the Examiner retain the original findings and conclusions for the original plat.

APPLICANT TESTIMONY:

Examiner Reeves administered the oath to Chris Carlson representing Hatton Godat Pantier.

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Mr. Carlson reported he is the Planning Manager for Hatton Godat Pantier. The company is a surveying and engineering firm located in Olympia, Washington.

Mr. Carlson thanked Ms. Merriman for the thorough staff report. He noted that some of the numbers in terms of the trees are not reflected in the most recent forester's report submitted in November 2021. However, he discussed the report with Michael Jackson, the forester who authored both reports. He asked Mr. Jackson about the difference in the number of replacement trees in terms of the reduction of 101 trees to 90 trees and the reason for the difference. Mr. Jackson has advised that the loss of trees were due to attrition as the two reports spanned over several years. Eleven trees within the area designated as tree protection open space were lost during that period. The most recent report from Mr. Jackson is the correct number of existing trees.

Mr. Carlson added that the staff report was reviewed and there are no issues with the conditions and recommendations; however, the MDNS issued by the City for the original preliminary plat approval included one condition to construct a roundabout at the intersection of Lathrop Industrial Drive and 93rd Avenue. That project was completed and the roundabout is functioning and was dedicated to the City.

Mr. Carlson said the Applicant is not only meeting the minimum tree protection open space requirement of 5%, the Applicant is exceeding the requirement by providing 5.7% of the site area as tree protection open space.

Mr. Carlson referred to Manager Merriman's explanation of the administrative approvals of the changes from the original preliminary plat approval. The issue was stormwater-related. The southern area of Tumwater has high groundwater issues. The project was reviewed under the Tumwater 2018 Drainage Design and Erosion Control Manual. The City's high groundwater hazard area ordinance requires a more robust review and standards for groundwater rise at the property line. Through a mounding analysis prepared by professional hydrogeologists through the site permit review process, the Applicant was not able to construct the pond designated on Lot 8. Through an administrative review process, the pond was moved to the east side of the project, as well as revising Lots 1-7 on the approved plans to require onsite stormwater retention to meet stormwater drainage requirements. Less than half of the lots will be served by the regional stormwater facility constructed as part of the plat.

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The approved plan pertaining to erosion control includes a note from the forester acknowledging the existence of 250 trees located on the developable portion of the site. The 12 tree per acre standard did not apply and consequently the replacement standard was flawed in the original recommendation and analysis by staff as it should have been reflected as a 1:1 ratio replacement tree standard.

Examiner Reeves pointed out that the decision in this instance is limited in scope as it adopts the original Examiner's 2020 decision and notes alterations administratively approved, and amended condition #38 of the original proposal with new conditions added. He asked for confirmation as to whether his interpretation of the scope of the new decision is accurate. Mr. Carlson agreed with his assessment.

Examiner Reeves said he has no further questions. A member of the public joined the meeting previously but has since disconnected and it appears there is no public testimony. Based on the information and proper noticing to the public, his intent is to issue a decision within the next 10 business days approving the proposal with recommended conditions contained in the Staff Report. He thanked everyone for attending.

ADJOURNMENT: **With there being no further business, Examiner Reeves adjourned the public hearing at 7:27 p.m.**

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