

Ordinance No. \_\_\_\_\_

**AN ORDINANCE of the City Council of the City of Olympia, Washington adopting Council Findings of Fact, Conclusions of Law and Decision Concerning the Trillium Master Plan File No. 04-2672.**

**WHEREAS**, on February 1, 2011, the Olympia City Council began formal review of the Trillium Master Plan (MPA) by considering procedural issues that had been raised by parties of interest; and

**WHEREAS**, on June 21, 2011, the Olympia City Council continued its review of the Trillium Master Plan by considering all remaining issues that had been raised by parties of interest: and

**WHEREAS**, for the reasons set forth in the Findings of Fact and Conclusions of Law and Decision below, the Council has determined that the Trillium MPA should be denied.

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Adoption of Council Findings of Fact, Conclusions of Law, and Decision.** The following Council Findings of Fact and Conclusions of Law and Decision in Trillium Master Plan File No. 04-2672 are hereby adopted:

**FINDINGS**

1. This matter came before the Council on a Recommendation by the Olympia Hearing Examiner ("Examiner") on the Trillium Master Plan application (MPA).
2. The Hearing Examiner held a consolidated hearing to consider the Trillium MPA, an application for a preliminary subdivision and a SEPA appeal.
3. The record for the consolidated hearing includes exhibits and testimony on matters beyond the scope of Council's review of the Trillium MPA.
4. The Examiner initially issued his "Findings, Conclusions and Recommendation RE: Trillium Master Plan Application" on October 28, 2010, recommending denial of the Trillium MPA.
5. The applicant, D.R. Horton, and the City's Department of Community Planning and Development (Department), filed motions for reconsideration on November 15, 2010 concerning certain aspects of the Examiner's October 28, 2010 recommendation. The reconsideration motions relied, in part, on what was essentially new written testimony that had not been admitted into the hearing record.
6. The Examiner provided other interested parties, generally opposed to the Trillium proposal, five working days to respond to the motions, but did not re-open the hearing.
7. After considering the motions and responses, and supporting materials, the Hearing Examiner issued "Findings, Conclusions and Recommendation RE: Motions for Reconsideration and Clarification" on December 6, 2010, again recommending denial

of the Trillium MPA. In his decision on the reconsideration motions, the Examiner concluded that he had the authority to reconsider, and that in doing so he could utilize the new written testimony submitted through the reconsideration process.

8. The Hearing Examiner determined that the newly submitted evidence is relevant and “will allow a more nuanced and thorough decision” on issues such as block size, cross-block connections and pedestrian and bicycle connections to the perimeter. December 6, 2010, “Findings, Conclusions and Recommendation RE: Motions for Reconsideration and Clarification” at page 10.
9. Per Code, the matter then came before the Council for review of the record and the Examiner’s recommendation and a decision on the Master Plan Application.
10. The Applicant agreed to extend the time for Council review of this matter to February 1, 2011.
11. On January 4, 2011, the City Council, after hearing from interested parties, determined that, in light of the objections to the Examiner’s reconsideration process, Council review should be in two phases, with the first phase focusing on resolving threshold procedural issues
12. On February 1, 2011, the Council, having reviewed the written materials and relevant portions of the Record, heard arguments by seven interested parties who had submitted written briefing.
13. At the conclusion of the February 1, 2011 meeting, Council decided to remand the Trillium MPA to the Hearing Examiner with instructions that the Hearing Examiner reopen the record and allow the submission of additional evidence and presentations on the limited issues that were raised in the motions for reconsideration.
14. On February 7, 2011, the Council adopted by resolution its “Findings and Conclusions and Decision”, remanding the Trillium MPA to the Hearing Examiner. In its decision, Council determined that, although the Hearing Examiner has authority to entertain a motion for reconsideration on a recommendation to Council concerning a Master Plan Application, the Hearing Examiner exceeded his limited authority by accepting substantial new information through the reconsideration process after the public hearing record had been closed and without reopening the hearing.
15. On March 28 and 29, 2011, the Hearing Examiner held a hearing on the issues remanded by the Council.
16. On April 26, 2011, the Hearing Examiner issued his “Findings, Conclusions and Decision” on Remand, recommending denial of the Trillium MPA.
17. For the second phase, the Council established a schedule for briefing by participants for all remaining issues. Written materials were subsequently submitted by several participants, including the Applicant, the Department, Thurston County, the Olympia Safe Streets Campaign, and seven individuals.

18. On June 21, 2011, the Council, having reviewed the written materials and relevant portions of the Record, heard oral presentations by the Department, the Applicant, the Olympia Safe Streets Campaign and nine individuals.
19. Council adopts all findings in the Hearing Examiner's Decision dated October 28, 2010, except any findings that were rescinded by the Hearing Examiner in his December 6, 2010 or April 26, 2011 decisions.
20. Council adopts all findings in the Hearing Examiner's Decision dated December 6, 2010, except any findings that were rescinded by the Hearing Examiner in his April 26, 2011 decisions.
21. Council adopts all findings in the Hearing Examiner's Decision dated April 26, 2011.
22. The present record is inadequate to make a determination that the Trillium MPA meets the requirements for bicycle and pedestrian connections set forth in the City Code, including the Engineering Design and Development Standards, and the Comprehensive Plan. However, in light of the Council's decision, a remand is unnecessary.
23. The present record is inadequate to make a determination that the Trillium MPA is consistent with Comprehensive Plan Policy PF 33.5. However, in light of the Council's decision, a remand is unnecessary.
24. Any finding of fact more properly deemed a conclusion of law shall be considered as such.

Based on its consideration of the foregoing, the Olympia City Council hereby enters the following:

#### **CONCLUSIONS OF LAW**

1. The Hearing Examiner conducted a consolidated proceeding to consider the Trillium MPA, an application for a preliminary subdivision and a SEPA appeal. The record created by the Hearing Examiner for the consolidated proceeding includes exhibits and testimony concerning issues that are beyond the scope of Council's review of the Trillium MPA. The Hearing Examiner states in his original recommendation that the issues before Council in this matter are limited to the issues of: "(a) compliance with Chapters 18.57 and 18.05 OMC, (b) school concurrency, (c) bicycle and pedestrian connections, stub streets and block sizes, and (d) consistency with the Comprehensive Plan." Conclusion of Law 9 (nine), October 28, 2010, Hearing Examiner's "Findings, Conclusions and Recommendation RE: Trillium Master Plan Application" at page 27. The Hearing Examiner further states that areas such as "traffic impact, stormwater, downstream effects, critical areas, groundwater, compliance with RCW 58.17.110 and others as appropriate, will be considered through the preliminary subdivision." *Id.* Council's review of the Trillium MPA, therefore, was limited to issues pertaining to the Master Plan Application that is before Council and did not include review of the issues pertaining to consideration of the preliminary subdivision application that is before the Hearing Examiner.
2. Council adopts all Conclusions in the Hearing Examiner's Decision dated October 28, 2010, except any Conclusions that were rescinded by the Hearing Examiner in his December 6, 2010 or April 26, 2011 decisions.

3. Council adopts all Conclusions in the Hearing Examiner's Decision dated December 6, 2010, except any Conclusions that were rescinded by the Hearing Examiner in his April 26, 2011 decision.
4. Council adopts all Conclusions in the Hearing Examiner's Decision dated April 26, 2011, except Conclusions 40, 61, 88, and 90 and except paragraph F on page 39 of the Hearing Examiner's Decision.
5. As indicated in the written materials and as acknowledged in oral argument by the applicant's representative, Subsection 18.05.050(A)(2) of the Olympia Municipal Code provides for the rezoning of land that is zoned for a neighborhood village to a residential district, "upon demonstration that the site is not viable for the designated uses due to site conditions, infrastructure or street capacity or - in the case of multiple ownerships - land assembly problems." The applicant's representative specifically argued at the hearing that if the Trillium MPA is not approved, a more traditional residential development would occur at the site which would result in the public not receiving the amenities required in a neighborhood village. Accordingly, the denial of the master plan application, as recommended by the Hearing Examiner, does not deny the applicant reasonable economic use of the property.

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, the Olympia City Council hereby enters the following:

#### **DECISION**

1. Trillium Master Plan Application File No. 04-2672 is Denied.

**Section 2. Severability.** The provisions of this ordinance are declared separate and severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance or application of the provision to other persons or circumstances, shall be unaffected.

**Section 3. Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 4. Effective Date.** This ordinance shall take effect five (5) days after publication, as provided by law.

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MAYOR

**ATTEST:**

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CITY CLERK

**APPROVED AS TO FORM:**

  
CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**