

BEFORE the HEARING EXAMINER for the CITY of POULSBO

**In the Matter of the Application for
Noll Pointe Planned Residential Development
and Preliminary Subdivision**

Planning File No. P-09-10-25-01

**ORDER REOPENING RECORD AND DIRECTING LIMITED SUPPLEMENTAL
SUBMISSIONS**

I. Authority

This is a Type III project-permit proceeding in which the Hearing Examiner is the final decision authority. PMC 19.40.040(F). The Examiner must approve or approve with modifications if the Applicant demonstrates compliance with the applicable decision criteria and may impose conditions necessary to ensure compliance. PMC 19.40.040(F)(1). If information, analysis, revisions, or other material needed to satisfy applicable law or code requirements have not been provided, the Examiner may remand the matter for submission of the required material while retaining jurisdiction. PMC 19.40.040(F)(2)(a). Any material submitted must be made available to all parties, who must be afforded an opportunity to review and rebut it. PMC 19.40.040(F)(2)(b).

Rule 1.17(d) of the City of Poulsbo Hearing Examiner Rules of Procedure authorizes the Examiner, before issuing a decision, to reopen a closed record for good cause. The Rule authorizes the Examiner to limit the scope of additional evidence or testimony and to limit the reopened proceeding to written submissions. Rules 1.4(f) and 1.17(b) further authorize the Examiner to request additional information or legal briefing and to allow participants to respond to matters raised. Rule 3.2 authorizes post-hearing written responses, and Rule 3.9 places the burden on the Applicant to establish by a preponderance of the evidence that the proposal complies with applicable state law and City codes and standards.

II. Good Cause for Limited Reopening

Good cause exists to reopen the record for the limited purpose identified below.

During the recent hearing and post-hearing proceedings concerning Cedar View at Glennwood Planned Residential Development and Preliminary Subdivision, Planning File No. P-11-04-25-02, the application of the tree-retention and replacement provisions of Chapter 18.180 PMC was examined more closely. The Cedar View record applied the alternative-retention provision by equating the number of replacement trees with twenty-five percent of the existing healthy significant trees. *See Cedar View Staff Report* at 12–13. City staff indicated that Noll Pointe and Cedar View were among the first applications in which this particular code language had been applied. The discussion indicated that the provisions requiring consideration of equivalent diameter inches, and not merely the number of trees retained or replaced, had not been squarely addressed. (*Staff testimony during Cedar View hearing*).

The official records further reflect that KPFF Consulting Engineers was involved on the applicant side in both proceedings, although different individual representatives appeared at the respective hearings. In Noll Pointe, KPFF is identified as the Applicant's agent and engineering consultant. *Noll Pointe Staff Report* at 6. In Cedar View, KPFF is identified as the applicant and served as the principal applicant-side consultant. *Cedar View Staff Report* at 5.

Given KPFF's involvement in both matters, the equivalent-diameter issue and the need for a supporting calculation should not be wholly unfamiliar to the Noll Pointe Applicant team. The Examiner anticipates that the Applicant and its consultants have reviewed, or can promptly review, the discussion and supplemental submissions concerning the same or substantially similar code provisions in the Cedar View proceeding. Identification of the Cedar View project and file number in this Order is intended to facilitate that review and allow the Noll Pointe Applicant to supplement its record efficiently with the benefit of the issues identified during the Cedar View hearing.

The Examiner does not presume that the individual representatives who appeared for Noll Pointe participated in, reviewed, or had actual knowledge of the Cedar View proceedings. Nor has the Examiner reached any conclusion concerning the proper interpretation of the cited code provisions or whether either application satisfies them. This limited reopening is intended to provide the City, the Applicant, and all parties of record notice of the precise issue and a fair opportunity to address it before a final decision is issued.

Pursuant to Hearing Examiner Rule 1.14(d), the Examiner takes official notice of the City's published code and the existence and official City record of the Cedar View proceeding. The City shall make the relevant Cedar View materials reasonably available for review by the Noll Pointe Applicant and parties of record during the supplemental-submission period.

III. Applicable Tree-Retention Provisions

PMC 18.180.030(B) provides in its entirety:

B. Tree Retention Requirement.

1. At least twenty-five percent of the existing trees which are six inches in diameter or greater measured four feet six inches above grade, and meet the priorities in subsection A of this section, shall be retained.
2. The review authority may approve retention of trees which do not meet the size requirement above as a contribution toward the sum of the diameter inches required if a group of trees and its associated undergrowth can be preserved and falls within one of the priorities identified in subsection A of this section.

PMC 18.180.040 authorizes the review authority to approve an alternative tree-retention option. Subsection A provides:

- A. Incorporates the replacement of trees equal in equivalent diameter inches as required in Section 18.180.030(B).

In addition, PMC 18.180.060(A)(1) requires the project-specific tree-retention plan and narrative to “detail how the proposal meets the requirement of this chapter.”

IV. Existing Noll Pointe Record

The Noll Pointe Tree Protection Plan identifies approximately 2,631 significant trees on the site, ranging from six to thirty-eight inches DBH, of which 1,991 are classified as healthy. *Ex. H1, Preliminary Tree Protection Plan* at 3–4 and Table 1. The Tree Protection Plan calculates the twenty-five-percent retention requirement as 498 significant trees and identifies 268 significant trees proposed for retention, producing a numerical shortfall of 230 trees. *Id.* at 4–5.

The Tree Protection Plan also identifies 87 retained trees measuring less than six inches DBH and assigns those trees a total credit of 304 diameter inches. *Id.* at 4, 6. It nevertheless concludes, without a displayed equivalent-diameter calculation, that the numerical shortfall of 230 significant trees requires 230 replacement trees. Those replacement trees are described as two-inch-caliper deciduous trees or six-foot-tall evergreen trees. *Id.* at 5–6.

The City Arborist stated that he agreed with the replacement calculations and final quantity of 230 replacement trees. *Ex. H2, Third City Arborist Review* at 1. The City Arborist further described tree retention as a combination of retained significant trees, smaller trees measured in equivalent inches, and replacement trees, and again concluded that a minimum of 230 replacement trees would be required. *Id.* at 2. The City Arborist did not include the underlying equivalent-diameter calculation.

The Staff Report similarly states that the required tree retention consists of retained significant trees, smaller trees contributing equivalent inches, and replacement trees. It identifies 230 replacement trees as the required minimum but does not display an equivalent-diameter calculation. *Staff Report* at 15–16. Proposed Condition P19 repeats that a minimum of 230 replacement trees is required and allows a combination of six-foot-tall evergreen trees and two-inch-caliper deciduous trees. *Staff Report, Conditions of Approval*, P19 at 29. The hearing presentation referenced tree retention and the proposed conditions but supplied no additional equivalent-diameter calculation. *Ex. 49, Hearing Presentation* at 11, 17.

A quick review of the existing record shows some detailed tree-count information, DBH ranges, and partial diameter-inch information. It does not appear to contain a calculation demonstrating how the retained significant trees, the 304 diameter inches attributed to the smaller retained trees, and the proposed replacement trees collectively provide the equivalent diameter inches required by PMC 18.180.030(B) and PMC 18.180.040(A). In particular, the record does not appear to clearly identify:

1. The sum of the diameter inches represented by the retention required under PMC 18.180.030(B);
2. The diameter inches provided by the 268 retained significant trees;
3. How the 304 diameter inches attributed to the 87 smaller retained trees are applied to the requirement;

4. The remaining equivalent-diameter obligation after crediting retained significant and smaller trees;
5. The equivalent diameter inches provided by the proposed replacement trees; or
6. How a six-foot-tall evergreen tree, specified by height rather than caliper, is converted into equivalent diameter inches.

Clarification of these matters will assist the Examiner in determining whether the Applicant has demonstrated compliance with the code as written.

V. Order

The record is reopened, and the matter is remanded for limited supplemental submissions addressing the application of PMC 18.180.030(B), PMC 18.180.040(A), and PMC 18.180.060(A)(1).

The City and Applicant shall each submit a written response addressing:

1. How the “sum of the diameter inches required” under PMC 18.180.030(B) should be determined;
2. How the “equivalent diameter inches” requirement of PMC 18.180.040(A) applies when fewer than twenty-five percent of the qualifying existing trees are retained;
3. How credits for smaller trees were / are credited (presumably 304 diameter inches attributed to the 87 smaller retained trees);
4. How the proposed deciduous and evergreen replacement trees are converted into equivalent diameter inches;
5. Whether the Noll Pointe proposal satisfies the cited provisions, including a complete calculation and citations to supporting evidence; and
6. Whether any revision to the Tree Protection Plan, Landscape Plan, or proposed conditions of approval is necessary.

The City and Applicant may submit any supplemental calculation, table, arborist explanation, or other limited supporting material reasonably necessary to address these questions.

Coordinated Submission Schedule

To promote consistent review of the same or substantially similar code issues and to facilitate efficient participation by City staff, the consulting teams, and interested parties, the submission dates in this proceeding are being set to coincide with the corresponding submission dates established in the Cedar View proceeding. If the Cedar View schedule is modified, the Examiner may issue a corresponding order modifying the deadlines in this proceeding.

The City and Applicant shall file their initial responses no later than Friday, September 4, 2026. All submissions shall be served on the other responding party and provided to the City for inclusion in the official record and posting on the City’s website.

After the submissions have been posted, the City shall notify all parties of record that the materials are available for review. All parties of record may submit written comments limited to the tree-retention and equivalent-diameter issues identified in this Order. Such comments shall be filed no later than Monday, September 14, 2026 at 3:00 p.m.

The City and Applicant may submit written replies addressing the other's initial submission and any timely comments received from parties of record. Replies shall be filed no later than Friday, September 18, 2026, shall be confined to matters raised in the initial submissions or comments, and shall not introduce unrelated evidence or issues.

The Examiner retains jurisdiction over the application and reserves the authority to request additional information, establish further written-response periods, or reconvene the public hearing if the supplemental submissions disclose a material factual or legal issue that cannot fairly or adequately be resolved on the written record. If the public hearing is reconvened, the City shall provide notice as directed by the Examiner and consistent with PMC 19.40.040(E)(5)(a), PMC 19.50.030, and applicable law.

The record is reopened solely for the discrete issues identified in this Order. No submissions addressing unrelated matters will be accepted. Unless otherwise ordered, the record shall close automatically upon expiration of the final reply deadline.

DATED this 26th day of August, 2026.

Transmitted without signature to expedite delivery.

Gary N. McLean
Hearing Examiner for the City of Poulsbo