

To: Ellen Fairleigh, Planner - City of Bainbridge Island
Re: Stahl - St. Louis Short Plat Application - PLN51027 SPT, 10509 Falk Road
Date: March 2, 2017

WE, the undersigned Falk Road residents - and legal owner of the easement set forth herein,
OPPOSE the Stahl-St. Louis Short Plat Application as set forth.

This application does not identify - nor address - this significant legal issue.

Can the City of Bainbridge Island “take” a validly granted easement by converting it to a
suburban residential local access road dedicated to the City for the benefit of the applicants?

Short Answer: No.

“Private property shall not be taken for public use without just compensation having been made.
The property rights of landowners *shall* be protected from arbitrary and discriminatory actions.”
City of Bainbridge 2016 Comprehensive Plan - Land Use Elements, LU-24.

“Whenever an attempt is made to take private property for a use alleged to be public, the
question whether the contemplated use be really public shall be a judicial question, and
determined as such, without regard to any legislative assertion that the use is public.”
Washington Constitution Article I Section 16 - Eminent Domain.

Analysis:

The City of Bainbridge Island (COBI) actions should be viewed as the taking of private property
for an alleged public use.

COBI Municipal Code Chapter 17.20 states:

[a]s authorized by RCW 58.17.110(2) ... in order to meet the health, safety and welfare
needs of the public and mitigate the impacts of the proposal ... the city engineer may
condition approval of the subdivision upon dedications for ... other public ways ... and
other needs of the public, as long as such dedication “does not” constitute an
unconstitutional taking of private property.

Further, “[n]o ... short subdivision ... shall be approved or granted until the owner of the affected
property dedicates to the city the portion of land ... required by the engineering design and
development standards as a street right-of-way.” COBI Municipal Code Chapter 12.30

Here, COBI Development Engineer, Peter Corelis, P.E., in his December 29, 2017
Memorandum to Ellen Fairleigh, Planner stated:

Comment 2. An access and utilities easement through the northern portion of the subject parcel serves a minimum of 11 existing lots with the potential to serve more. Per COBI Construction Standards and Specifications, "the Standards", the road shall be improved to meet the Standards for a suburban residential local access road per drawing DWG. 7-060 or 7-065 and the portion of the access easement over the subject property shall be dedicated to the City (see comment 3 below).

Comment 3. 15 feet of Right-of-Way (ROW) shall be dedicated along the northern boundary of the subject parcel. The dedicated ROW shall include the 12-foot portion of the existing 24-foot easement within the subject parcel.

See Exhibit A.

This City position - as determined by Mr. Corelis - not only violates its Comprehensive Plan - and Municipal Code - it is also a fundamental violation of the Fifth Amendment's Takings Clause as it applies to the States via the Due Process Clause of the Fourteenth Amendment.

Further, "Washington's subdivision statute, Chapter 58.17 RCW, prohibits conveyance of real property to the public for any general or public use unless there has been a dedication, signed by all parties with an ownership interest in the land, that is clearly shown on the final plat. Richardson v. Cox, 108 Wn.App. 881, Rev. Denied 146 Wash.2d 1020 (2001).

The applicants failed to disclosure - to the City - the ownership interest the undersigned parties possess. The applicants failed to even submit a preliminary title report as part of their application that would have revealed the undersigned real property interest that "runs with the land." Further, the Milligan application - as noted in our timely short plat comments - also failed to "fully disclosure" in their title report the undersigned property interest was in fact created by simultaneous easements under the recording numbers referenced below.

This failure to disclose vital - and critically important - legal documents and information should have been brought to the attention of the City; such failure is at best disingenuous. See also, Dean v. Lehman, 143 Wash.2d 12 (2001), party entitled to just compensation for taking.

The City - in its application review - should have recognized the taking issue or at a minimum inquired of the applicants whether there were any legal matters related to their application.

And, furthermore, [e]very city ... within the state of Washington is hereby authorized and empowered to condemn land and property ... for streets ... within ... the limits of such city ... after just compensation having been first made or paid into the court for the owner in the manner prescribed by this chapter. Title 8 RCW, Eminent Domain, Section 8.12.030. The City of Bainbridge Island is obligated to adhere to its code and State law. See also, Section 8.25.070 , Award of attorney's fees and witness fees to condemnee--Conditions to award.

(Additional comments related to the Corelis December 29, 2017 Memorandum are found at Pages 4 and 5, below).

Neither, the applicants nor the City of Bainbridge consulted with the undersigned who are the dominant tenants and legal holders of this easement that “runs with the land:” it is an easement appurtenant.

The easement in question was created by grant on April 30, 1957, under Kitsap County recording number 661308, for the benefit of the Grantee M.H. Flodin and Edna Flodin, his wife “and their successors and assigns.” The grant conferred upon the Grantees the right, privilege and authority to construct, improve, repair and maintain a road across THE NORTH TWELVE (12) FEET of applicants Stahl and St. Louis who are the successors in interest of the original Grantors Henry R. Falk and Margaret A. Falk his wife. See Exhibit B.

An identical April 29, 1957 grant of easement from Grantors Iner Falk and his wife, Peggy Falk, to the Grantees Flodins and their successors in interest created the same rights under Kitsap County recording number 661307 to THE SOUTH TWELVE (12) FEET of applicants Michael and Jeanne Milligan and their short plat application #PLN50803 SPT. See Exhibit C.

The sequential recording of these grants (#661307 and #661308) created one (1) easement; it is the only ingress and egress for the undersigned and has been in continuous use for decades.

Mr. Corelis’ May 19, 2017 memorandum to City of Bainbridge Island Associate Planner Kelly Tayara - at Comments 1. and 2. - used the identical language as in his December 29, 2017 memorandum to Ms. Fairleigh without acknowledging or recognizing the legal issues set forth herein. See Exhibit D.

The legal descriptions of both easement grants (#6610308 and #661307) - for the benefit of the undersigned - are contained in their recorded November 15, 1991 road maintenance agreement that “runs with the land” and imposes contractual - and cost obligations - upon its signers. (Kitsap County Recording number 9111150075). See Exhibit E.

This easement was never maintained by the Grantors or their successors in interest. The grantees are solely responsible for the cost of its maintenance as set forth in the grant of easements (#661308 and #661307). The original easement grants never contemplated their expansion - for the benefit of the applicant(s) - nor did either Grantor(s) reserve any such development rights in the original granting language.

The building site plans “do not” address these legal access issues. The plans simply propose to divide the subject properties into three (3) parcels and two (2) additional parcels to the north that further burdening our easement with five (5) additional homes with more automobiles and more

congestion. Our neighborhood is rural; our quality of life should be preserved along with the wildlife, which inhabit it.

The proposed plan does not include any specifics dealing with the financial burden current residents of the easement are likely to incur. Burdens, which likely are to include changes to titles and the ripple effect of being forced to obtain a new address could also result in increased insurance premiums. The applicants will certainly profit from any city approval, while we are likely incur expenses, many of which are simply unknown at this time.

The applicants and City have failed to address the critical access issue. See COBI Section 2, Plan Review Process 4), “a building site plan includes all site development requirements including access....”

The application(s) also likely violate RCW Title 58.17.010 wherein the statutes holds:

[t]he legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by ... cities throughout the State. The purpose of this chapter is regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets ...; to promote effective use of land...

These applications do not prevent overcrowding of the land; they promote speculation and are profit driven. Five (5) proposed housing developments within approximately 100 yards of each other - along with the new four (4) house development “directly across” Falk Road would mean nine (9) new homes, which is clearly “crowding of land.” RCW Title 58.17.

The building site plans also do not address Section 8, Road Elements and Roadside Features, 8-01 Street Ends, which states: “permanent street ends between 150 and 1000 feet (measured from the edge of traveled way of the intersecting street to the beginning of the cul-du-sac) ‘shall’ be provided with a circular turnaround or hammerhead....” If required, a cul-du-sac or hammerhead would interfere with the private property rights of one or more of the undersigned as such is likely to be constructed upon their real property. (Emphasis Added).

Again, the applicants and City have failed to address or even recognize this issue.

Additional Comments Concerning Peter Corelis’s December 2017 Memorandum:

Mr. Corelis’s comments assume changes proposed in the Milligan short plat application #PLN50803 SPT are completed or performed simultaneously to make the proposed road compliant for emergency vehicle use. However, the Milligan application has not been approved; it, clearly, has the same issues as the Stahl-St.Louis application, as set forth. These applications are complicated and are clearly linked.

The public should be afforded the opportunity to present documents and meaningful comments at a public hearing. However, the City's failure to link these applications, which would identify ALL relevant issues is a clear failure of the Comprehensive Plan goals and policies. Unfortunately, this City piecemeal approach leaves the burden to fall upon the undersigned who will be compelled to protect their legal rights.

Also of concern

The 16 homes served by this Puget Sound Energy (PSE) often experience greater power outages than homes served by other PSE lines in the immediate area. Any proposal to connect additional electrical service - to these proposed short plats homes - will only result in continued service degradation.

The homes - on this easement - are served by Kitsap P.U.D.; homes that often experience low water pressure due to competing demands for simple tasks as laundry and showering. Five (5) additional houses will simply exacerbate the problem.

And, building five (5) new houses will "tear up" our easement; and, yet another issue not addressed.

The applicants should not "impose" any burden - financial or otherwise - on the owners of this legal easement

Furthermore, as stated in our comments relating to the vegetation clearing application PLN51027 VEG, there are significant drainage issues from this property that will greatly impact the surrounding properties. The residents who own the western homes/lots are directly in the drainage path. Any home building on this property will only exacerbate the current drainage issues. The northern applicant - PLN50803 SPT - has recognized the drainage issue by proposing to increase the open space and install a rain garden. A plan was recently updated to address the drainage issue. HOWEVER, the Stahl-St.Louis short plat application DOES NOT include any such remediation measures; in fact, Stahl-St. Louis propose to build directly across the easement from open space proposed by applicant PLN50803 SPT.

Clear cutting the land, adding substantial impervious surfaces via new homes with septic systems will create more drainage issues to the surrounding homes - some of which are relatively close to Murden Cove.

The clearing application PLN51027 VEG SHOULD NOT be considered in isolation; the clearing application and short plat MUST considered together not as separate City decisions.

The City should deny the Stahl - St. Louis short plat application and the Milligan short plat application based upon the comments contained herein.

The final paragraph of Peter Corelis' May 19 and December 29, 2017 memoranda clearly states:

"subsequent review of your land use permit application may reveal issues not identified during the is (sic) initial review."

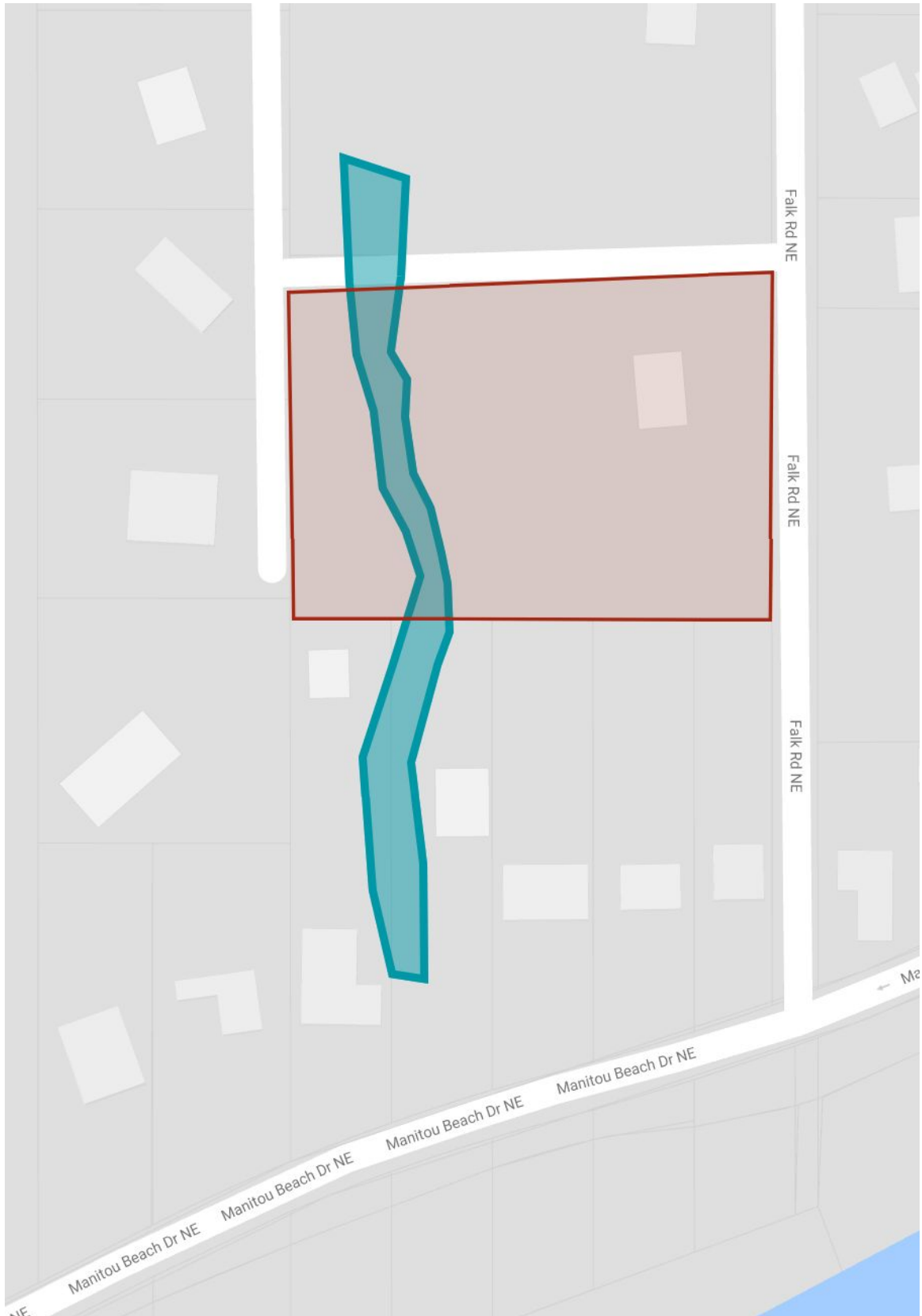
The undersigned assert neither applicant has addressed the critical issues revealed herein and therefore this application and the Milligan application should be summarily denied.

cc: Joe Levan - City Attorney



Facing east on easement
Heavy water flows south into
Falk Creek bed





Falk Creek water flow over Stahl-St. Louis easement

Name	Address	Signature
Wilma Cammarota	10525 Falk Rd NE Bainbridge Island WA 98110	Wilma Cammarota
James Kondek	10533 Falk Rd NE Bainbridge Island WA 98110	James Kondek
Tim Carahan	10541 FALK RD NE 98110	Tim Carahan
Pete Wetzel	10521 FALK RD NE 98110	Pete Wetzel
Leanne Wetzel	10521 Falk Rd NE Bainbridge Island, WA 98110	Leanne Wetzel
Crystal Koch	10541 FALK RD NE BI WA 98110	Crystal Koch
Pamela Droe	10529 FALK RD NE BAINBRIDGE IS, WA	Pamela Droe
John Komzay	10537 Falk Rd BI, WA 98110	John Komzay

Department of Public Works - Engineering

Memorandum

Date: December 29th, 2017
To: Ellen Fairleigh, Planner, Planning and Comm. Development
From: Peter Corelis, P.E., Development Engineer
Subject: PLN51027 PRE – Stahl-Louis Short Plat

Project Description:

The proposal is to subdivide one (1) original parcel into three (3) resultant parcels. The subject parcel is located at 10509 Falk Road NE in the City of Bainbridge Island (COBI).

Comments:

1. A traffic study sufficient for the City engineer to perform a concurrency test shall not be required per Chapter 15.40 of the Bainbridge Island Municipal Code (BIMC). Review of the proposal indicates trip generation will not exceed the threshold of 50 average daily trips (ADT) or 5 or more AM or PM peak-hour trips [BIMC §15.40.060].
2. An access and utilities easement through the northern portion of the subject parcel serves a minimum of 11 existing lots with the potential to serve more. Per the COBI Construction Standards and Specifications, "the Standards", the road shall be improved to meet the Standards for a suburban residential local access road per drawing DWG. 7-060 or 7-065 and the portion of the access easement over the subject parcel shall be dedicated to the City (see comment 3 below).
3. 15 feet of Right-of-Way (ROW) shall be dedicated along the northern boundary of the subject parcel. The dedicated ROW shall include the 12-foot portion of the existing 24-foot easement within the subject parcel.
4. The owner conducting road improvements that would serve and benefit additional future lots may enter into a latecomer reimbursement agreement with the City for the public road extension. The latecomer fee would apply only to lots not using the road at the time of the application that would later connect to the road extension within twenty (20) years after construction. The applicant shall include a Developer Extension Agreement application, applicable fee, and request for a latecomer agreement pursuant to Bainbridge Island Municipal Code (BIMC) 13.32 concurrently with the land use application (short plat application).

5. Plat civil improvements shall require separate clearing, grading, and plat utility permits for construction activities.
6. Plat civil improvements may be installed completely prior to applying for final plat and dividing the lots, or, a performance bond may be written to assure completion of plat improvements within one (1) year of recording the final plat.
7. Upon completion of the civil improvements maintenance bonding shall be provided to warranty the work for a period of two (2) years.
8. The City has a current land use action application for the property fronting the utilities and access easement to the north. The same road improvement and ROW dedication requirements of that project apply to your proposed future land use action, however, each project must stand on its own to meet the requirements of the division of land. Coordination and direct cost-sharing of the plat road and associated stormwater improvements should be considered in lieu of a latecomer agreement.
9. The property line along Falk Road NE shall be staked at the back of use (the boundary of the City maintained roadside area). Staking at the actual ROW boundary would result in destruction of the stakes.
10. Individual driveways serving the proposed lots shall connect to the improved plat road (the lowest volume roadway) and not along Falk Road for all new or rebuilt residences.
11. The preliminary short plat application shall demonstrate how storm water shall be handled in conformance with BIMC 15.20.
12. See the attached completed Site Assessment Review (SAR) letter for stormwater recommendations and best practices to achieve a low-impact development design of the site.

Please note that information provided in this letter reflects existing codes and standards, currently available information about the site and environs. Comments provided pursuant to preapplication review shall not be construed to relieve the applicant of conformance with all applicable fees, codes, policies, and standards in effect at the time of complete land use permit application. The comments on this proposal do not represent or guarantee approval of any project or permit. While we have attempted to cover as many of the Planning, Engineering, Building and Fire related aspects of your proposal as possible during this preliminary review, subsequent review of your land use permit application may reveal issues not identified during the initial review.

EASEMENT

For a valuable consideration, receipt of which is hereby acknowledged, the Grantor-----

HENRY R. FALK and MARGARET A. FALK, HIS WIFE,

hereby grant-----and convey-----to the Grantee M. H. FLODIN and EDNA FLODIN, his wife

to his successors and assigns, the right, privilege and authority to construct, improve, repair and maintain-----a road-----

across, over and upon the following land, located in-----Kitsap-----County, State of Washington, to-wit:

THE NORTH TWELVE (12) FEET of the following property:
Beginning at a point 40 rods west of the northeast corner of government lot 3, section 14, township twenty-five north, range two east, running thence south 952 feet to the true point of beginning; thence west 20 rods parallel with the north boundary line of lot 3, thence south 238 feet, thence east parallel with the north boundary of lot 3 a distance of 20 rods, thence north to the point of beginning

The Grantor-----shall make no use of the land occupied by said-----Road-----except for-----road purposes-----

In exercising the rights herein granted, the Grantee-----his successors and assigns, may pass and repass over said-----road-----may cut and remove brush, trees and other obstructions which in the opinion of the Grantee-----is-----interfere with-----ingress and egress-----

The covenants herein contained shall run with the land and are binding upon all subsequent owners thereof.

The easement at said-----shall be so located with the easement-----feet distance either side from a principal center line across said land

Grantee agree that they will not use culverts of any type or description in the erection of said roadway.

The Grantors will not be responsible for the upkeep of said road.

The Grantees agree to remove any trees on the Grantor's property which present a hazard, now and in the future.

The Grantors will not be liable for any damage caused by falling trees nor parts of trees, nor any other form of damage sustained while on said road, now or in the future.

In Witness Whereof, The said Grantor-----has-----executed this instrument the-----day of-----April-----1957-----19-----

Margaret A. Falk
Henry R. Falk

Vol. 651 pg. 421

STATE OF WASHINGTON,

(INDIVIDUAL ACKNOWLEDGMENT)

County of KITSAP

I, R B Rodal

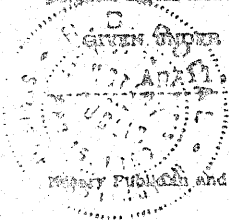
Notary Public in and for the State of Washington.

do hereby certify that on this 30th day of April, 1957, personally

appeared before me, HENRY P. FALK and FALK, his wife,

to me known to be the individual, described in and who executed the within instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes herein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 30th day of April, 1957.



R B Rodal

Notary Public in and for the State of Washington, residing at Residence Rolling Bay in said County

Filed for record May 24 1957 at 11:10 AM Request of KITSAPE COUNTY TITLE COMPANY
Margaret M. Erickson, Kitsap County Auditor.

Vol
651
Page
419

EASEMENT

For a valuable consideration, receipt of which is hereby acknowledged, the Grantor

JOHN FALK and FRED FALK his wife

do hereby grant and convey to the Grantee H. H. FLOKE and KINA FLOKE his wife

all, powers and assigns, the right, privilege and authority to construct, improve, repair and maintain a road

across, over and upon the following land, located in Kitsap County, State of Washington, to-wit:

THE SOUTH TWELVE (12) FEET of the following property:

Beginning at a point 40 rods west of the northeast corner of government lot 3, section 14, township twenty-five north, range two east; running thence south 714 feet to the true point of beginning; thence west 20 rods parallel with the north boundary line of lot 3; thence south 238 feet; thence east parallel with the north boundary of lot 3 a distance of 20 rods; thence north to the point of beginning

The Grantor shall make no use of the land occupied by said road except for road purposes

In exercising the rights herein granted, the Grantee, his successors and assigns, may pass and repass over said road

may cut and remove brush, trees and other obstructions which in the opinion of the Grantee, interfere with ingress and egress

The covenants herein contained shall run with the land and are binding upon all subsequent owners thereof.

THE GRANTEES OF HEREIN shall not be responsible for the maintenance of said road

GRANTEES agree that they will not use culverts of any type or description in the erection of said roadway. The Grantors will not be responsible for the upkeep of said road.

The Grantees agree to remove any trees on the Grantor's property which present a hazard, now and in the future.

The Grantors will not be liable for any damage caused by falling trees nor parts of trees, nor any other form of damage sustained while on said road, now or in the future.

In Witness Whereof, The said Grantor, H. H. FLOKE executed this instrument the 29th day of April, 1957, 19

H. H. FLOKE
Kina Floke

KITSAP

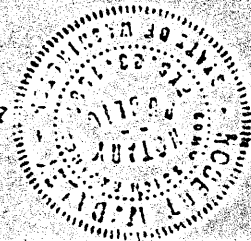
vs.

INDIVIDUAL ACKNOWLEDGMENT

County of

1. Robert H. Selby

Notary Public in and for the State of Washington.

do hereby certify that on this 29th day of April, 1957, 13 personallyappeared before me INER FALK AND PEGGY FALK, his wife.to me known to be the individual S described in and who executed the within instrument and acknowledged thatthey signed and sealed the same as A free and voluntary act and deed for the uses and purposes herein mentioned.GIVEN UNDER MY HAND AND OFFICIAL SEAL this 29th day ofApril, 1957, 19Notary Public in and for the State of Washington, residing at Seattle, Wash. in said CountyFiled for record May 24 1957 at 1:00 P.M. before me of KITSAP COUNTY TITLE COMPANY
Margaret J. Peterson, Kitsap County Auditor.

Department of Public Works - Engineering**Memorandum**

Date: May 19th, 2017
To: Kelly Tayara, Associate Planner, Planning and Comm. Development
From: Peter Corelis, P.E., Development Engineer *P.S.C.*
Subject: PLN50803 PRE – Milligan Short Plat

Project Description:

The proposal is to subdivide one (1) original parcel into three (3) resultant parcels. The subject parcel is located at 10543 Falk Road NE in the City of Bainbridge Island (COBI).

Comments:

1. An access and utilities easement through the southern portion of the subject parcel serves a minimum of 11 existing lots with the potential to serve more. Per the COBI Construction Standards and Specifications, "the Standards", the road shall be improved to meet the Standards for a suburban residential local access road per drawing DWG. 7-060 or 7-065 and the portion of the access easement over the subject parcel shall be dedicated to the City (see comment 2 below).
2. 15 feet of Right-of-Way (ROW) shall be dedicated along the southern boundary of the subject parcel. The dedicated ROW shall include the 12-foot portion of the existing 24-foot easement.
3. The owner conducting road improvements that would serve and benefit additional future lots may enter into a latecomer reimbursement agreement with the City for the public road extension. The latecomer fee would apply only to lots not using the road at the time of the application that would later connect the road extension within twenty (20) years after construction. The applicant shall include a Developer Extension Agreement application, applicable fee, and request for a latecomer agreement pursuant to Bainbridge Island Municipal Code (BIMC) 13.32 concurrently with the land use application (short plat application).
4. The property line along Falk Road NE shall be staked at the back of use (the boundary of the City maintained roadside area). Staking at the actual ROW boundary would result in destruction of the stakes.
5. Individual driveways serving proposed Lots A and C shall connect to the improved plat road along the southern boundary.

6. Lot B will retain existing access from Falk Road NE.
7. The preliminary short plat application shall demonstrate how storm water shall be handled in conformance with BIMC 15.20.
8. The Open-Space boundary should be expanded to cover the natural drainage-swale corridor through proposed Lot A to avoid creating a boundary in the in the flow line.
9. The new and replaced pollution-generating hard surface (PGHS) associated with the plat road improvements will exceed 5,000 square feet. Minimum requirement 6 relating to water quality is proposed to be handled by dispersing into adjacent vegetation. Appurtenant stormwater and drainage features, as a regulatory requirement of the access road improvements, may be included in the access and utilities easement agreement between properties. If allowed by the easement, or, agreed to by the property owner to the south, the area south of the plat road should be developed to provide an engineered water quality solution.

Please note that information provided in this letter reflects existing codes and standards, currently available information about the site and environs. Comments provided pursuant to preapplication review shall not be construed to relieve the applicant of conformance with all applicable fees, codes, policies, and standards in effect at the time of complete land use permit application. The comments on this proposal do not represent or guarantee approval of any project or permit. While we have attempted to cover as many of the Planning, Engineering, Building and Fire related aspects of your proposal as possible during this preliminary review, subsequent review of your land use permit application may reveal issues not identified during the is initial review.

COPY

After Recording Return to:

George C. Nickum, Jr.
Attorney at Law
P.O. Box 10291
Bainbridge Island, WA 98110

#14.00 KITSAP COUNTY CHCK
FILED-BY: GEORGE C. NICKUM JR
NOV 15, 1991, 9:42 AM
KAREN FLYNN, AUDITOR
CLERK: CHIPPS

Exhibit
E

A.F. #: 9111150075
REEL 0616 FR 1855

EASEMENT ROAD MAINTENANCE AGREEMENT

The purpose of this agreement is to provide for the maintenance of an existing easement road which serves as access for ingress and egress for the following described properties:

Parcel 1 Owned by A. Clark Thompson

Beginning at the Northwest corner of Government Lot 3, Section 14, Township 25 North, Range 2 East, W.M., thence 165 feet East and 396 feet South to the Point of Beginning; thence South 198 feet; thence East 165 feet; thence North 198 feet; thence West 165 feet to the Point of Beginning. Situate in Kitsap County, Washington.

Parcel 2 Owned by Thomas L. & Nancy E. Kimzey:

The North half of that portion of Government Lot 3, Section 14, Township 25 North, Range 2 East, W.M., described as follows: Beginning at a point 165 feet East and 594 feet South of the Northwest corner of said Government Lot 3; thence South 198 feet; thence East 165 feet; thence North 198 feet; thence West 165 feet to the point of beginning. Situate in Kitsap County, Washington.

Parcel 3 Owned by James Kondek

The South half of that portion of Government Lot 3, Section 14, Township 25 North, Range 2 East, W.M., described as follows: Beginning at a point 165 feet East and 594 feet South of the Northwest corner of said Government Lot 3; thence South 198 feet; thence East 165 feet; thence North 198 feet; thence West 165 feet to the point of beginning. Situate in Kitsap County, Washington.

Parcel 4 Owned by Wilma J. Moen

That portion of Government Lot 3, Section 14, Township 25 North, Range 2 East, W.M., described as follows: Beginning at a point 165 feet East and 792 feet South of the Northwest corner of said Government Lot 3; thence South 130 feet; thence East 165 feet; thence North 130 feet; thence West 165 feet to the point of beginning; Except the East 15 feet for road; ALSO EXCEPT that portion, if any, lying within the following described tract: That portion of Government Lot 3, Section 14,

EASEMENT AND ROAD MAINTENANCE AGREEMENT - 1 EXCISE TAX EXEMPT

NOV 14 1991

KITSAP COUNTY
TREASURER

Township 25 North, Range 2 East, W.M., described as follows: Beginning 165 feet East and 403 feet North of the center of said Section 14; thence continuing North 12.18 feet to a point 922 feet South of the North line of said Government Lot 3; thence East parallel to the North line of said Government Lot 3, 165 feet; thence South 14.59 feet; thence West parallel to the South line of said Government Lot 3, 165 feet to the True Point of Beginning. Situate in Kitsap County, Washington.

M. Cammarota
Parcel 5 Owned by Wilma ~~Cammarota~~ Cammarota

The South 128 feet of the North 258 feet of the following described property: That portion of Government Lot 3, Section 14, Township 25 North, Range 2 East, W.M., described as follows: Beginning 165 feet East and 15 feet North of the center of said Section 14; thence East 165; thence North 518 feet; thence West 165 feet; thence South 518 feet to the True Point of Beginning; EXCEPT: the East 15 feet for road; situate in Kitsap County, Washington. TOGETHER with that portion of Government Lot 3, Section 14, Township 25 North, Range 2 East, W.M., described as follows: Beginning 165 feet East and 403 feet North of the center of said Section 14; thence continuing North 12.18 feet to a point 922 feet South of the North line of said Government Lot 3; thence East parallel to the North line of said Government Lot 3, 165 feet; thence South 14.59 feet; thence West, parallel to the South line of said Government Lot 3, 165 feet to the true point of beginning; EXCEPT the East 15 feet for road purposes. Situate in Kitsap County, Washington.

Parcel 6 Owned by Willison Paul Lavender

The South 130 feet of the North 388 feet of the following described property: Beginning at a point 165 feet East and 15 feet North of the center of Section 14, Township 25 North, Range 2 East, W.M.; thence East 165 feet; thence North 518 feet; thence West 165 feet; thence South 518 feet; EXCEPT the East 15 feet for road. Situate in Kitsap County, Washington.

Parcel 7 Owned by P. A. Walker

REEL # 06711150025
FR 1852

That portion of Government Lot 3, Section 14, Township 25 North, Range 2 East, W.M., described as follows: Beginning at a point 165 feet East and 15 feet North of the center of said Section 14; thence East 165 feet; thence North 130 feet; thence West 165 feet; thence South 130 feet; to the Point of Beginning; TOGETHER WITH: Beginning at a point 165 feet East and 15 feet North of the center of said Section 14; thence East 165 feet; thence South 30 feet; thence West 165 feet; thence North 30 feet to the Point of Beginning. Subject to Easement No. 661307 and 661308. Situate in Kitsap County, Washington.

There has been an easement granted for ingress and egress to each of the parties named above, said easement to serve and be appurtenant to and run with the real property

described above as being owned by each of the respective parties hereto. The legal description of the road easement serving said properties is as follows:

The North 12 feet of the following property: Beginning at a point 40 rods West of the Northeast corner of Government Lot 3, Section 14, Township 25 North, Range 2 East, running thence South 952 feet to the True Point of Beginning; thence West 20 rods parallel with the North boundary line of Lot 3; thence South 238 feet; thence East parallel with the North boundary of Lot 3 a distance of 20 rods; thence North to the Point of Beginning, AND the South 12 feet of the following Property: Beginning at a point 40 rods West of the Northeast corner of Government Lot 3, Section 14, Township 25 North, Range 2 East, running thence South 714 feet to the True Point of Beginning; thence West 20 rods parallel with the North boundary line of Lot 3; thence South 238 feet; thence East parallel with the North boundary of Lot 3 a distance of 20 rods; thence North to the point of beginning. Situate in Kitsap County, Washington; TOGETHER WITH an easement for ingress and egress over and across the East 15 feet of the South 258 feet of the North 388 feet of the following described tract: That portion of Government Lot 3, Section 14, Township 25 North, Range 2 East, W.M., described as follows: Beginning at a point 165 feet East and 16 feet North of the center of said Section 14; thence East 165 feet; thence North 518 feet; thence West 165 feet; thence South 518 feet; TOGETHER WITH an easement for ingress and egress over and across the following described tract: Beginning at the Northwest corner of Government Lot 3 in Section 14, Township 25 North, Range 2 East, W.M., thence East 165 feet; thence South 594 feet; thence East 150 feet to the True Point of Beginning; thence South 370 feet; thence East 345 feet; thence North 14 feet; thence West 330 feet; thence North 346 feet; thence West 15 feet to the True Point of Beginning. Situate in Kitsap County, Washington.

Said easement described abuts in part the respective property of the parties named herein and described above. In consideration of the mutual covenants and agreements contained herein and in consideration of the use of said easement for ingress and egress to their respective properties owned by the parties hereto, the parties hereby agree as follows:

1. That the easement roadway shall be maintained in a passable condition for year round use.
2. The parties hereto agree to use said easement for normal ingress and egress purposes to the above described properties. Any party making use of such roadway in such a manner or by such equipment which does significant damage to the roadway shall be responsible for repairing the same at their expense.
3. Each party to this agreement shall share on an equal cost basis with each other party, the actual amount necessary to adequately repair and maintain said roadway.

EASEMENT AND ROAD MAINTENANCE AGREEMENT - 3

REEL # 06711150025
FR 1857

4. It shall be necessary for four (4) out of the seven (7) parties to this agreement to authorize any repair or maintenance to said roadway. Authorization shall be in writing on the work order to the contractor performing said work. Cost of said work shall then become binding upon all seven (7) parties to this agreement in the proportionate share as specified above.
5. Payment of costs incurred in maintaining or repairing the access road shall be a charge upon the properties until paid. Each assessment shall also be the personal obligation of the person who was the owner of the property at the time the assessment or charge fell due. All assessments or charges shall bear interest at the rate of twelve (12) percent per annum after the date they are payable, and such interest, as well as costs, including reasonable attorney's fees if suit is necessary to collect such assessments, shall be additional charges on the property to which such overdue assessments relate.
6. No owner may waive or otherwise escape liability for the assessments by non-use of the access road or by abandonment of the property.
7. The lien of the assessments shall be subordinated to the lien of any first mortgage or first deed of trust. No sale or transfer of any property shall affect any lien which has already attached or which related to an assessment which has already become due, nor shall any sale or transfer relieve such liability from any assessments thereafter becoming due or from the lien thereof.
8. This agreement runs with the land regardless of any changes of ownership of property and the rights and liabilities it contains shall be assumed by the owners' heirs, assigns and/or successors.
9. In the event of suit to enforce any of the terms and conditions of this agreement, costs and reasonable attorney's fees shall be awarded to the prevailing party.
10. Invalidation of any provision of this agreement by judgment or court order will have no effect on any other provision and the remaining provisions shall remain in full force and effect.
11. The above property owners shall indemnify one another against all liability for injury to themselves or damage to their property when such injury or damage shall result from or arise out of the fault of any maintenance or repair undertaken in accordance with this agreement.
12. This agreement may be amended only with the written consent of four (4) out of the seven (7) property owners served by this road easement, and amendments shall be effective only upon recording with the Kitsap County Auditor's Office.

REEL #06711150025

13. This agreement amends and replaces that certain Easement and Road Maintenance Agreement dated October 20, 1980 and recorded with the Kitsap County Auditor under File Number 8010230046.

A. Clark Thompson
A. CLARK THOMPSON

Thomas L. Kimzey
THOMAS L. KIMZEY

James Kondek
JAMES KONDEK

Wilma M. Cammarota
WILMA M. CAMMAROTA

P. A. Walker
P. A. WALKER

Ethel N. Thompson
ETHEL THOMPSON

Nancy E. Kimzey
NANCY E. KIMZEY

Wilma J. Moen
WILMA J. MOEN

Willison Paul Lavender
WILLISON PAUL LAVENDER

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

REEL # 06711150075
FR 1859

I certify that I know or have satisfactory evidence that A. CLARK and ETHEL THOMPSON are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act and deed for the uses and purposes mentioned in the instrument.

DATED this 27th day of August, 1991.

Doyd Luckerath
NOTARY PUBLIC in and for the State of
Washington. My Appointment Expires: 11/16/93

STATE OF WASHINGTON)
) ss
COUNTY OF KING)
~~KITSAP~~

I certify that I know or have satisfactory evidence that P. A. WALKER is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in the instrument.

DATED this 4th day of October, 1991.

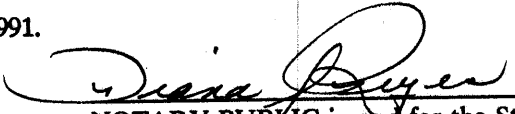
KATHERYN S. HOLSTE
STATE OF WASHINGTON
NOTARY PUBLIC
My Commission Expires 02-18-93

Katheryn S. Holste
NOTARY PUBLIC in and for the State of
Washington. My Appointment Expires: 2/18/93

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that JAMES KONDEK is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in the instrument.

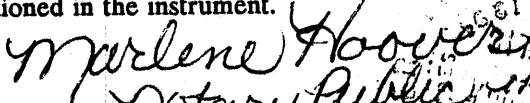
DATED this 9 day of ~~August~~ ^{October}, 1991.


NOTARY PUBLIC in and for the State of
Washington. My Appointment Expires: March 28, 1992

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that WILMA MOEN is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act and deed for the uses and purposes mentioned in the instrument.

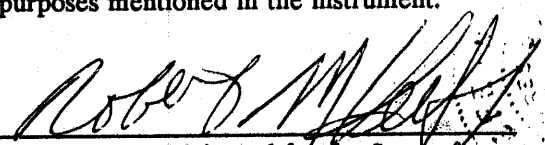
DATED this 6 day of ~~August~~ ^{November}, 1991.


Notary Public in and for
the State of Washington
Appt Expires 12-4-91

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that WILMA CAMMAROTA is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act and deed for the uses and purposes mentioned in the instrument.

DATED this 23 day of ~~August~~ ^{Oct}, 1991.


NOTARY PUBLIC in and for the State of
Washington. My Appointment Expires: 1993

REEL # 067111150075
FR 1860

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that WILLISON PAUL LAVENDER is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in the instrument.

DATED this ___ day of August, 1991.

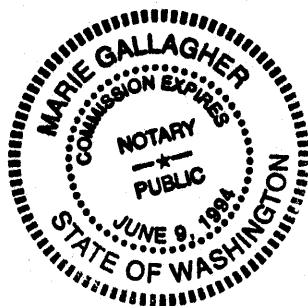
NOTARY PUBLIC in and for the State of
Washington. My Appointment Expires:

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

REEL # 5 711150075
0616 FR 1861

I certify that I know or have satisfactory evidence that ~~THOMAS L.~~ and NANCY E. KIMZEY, ~~husband and wife,~~ ^{she} are the persons who appeared before me, and said person~~x~~ acknowledged that ~~they~~ ^{she} signed this instrument and acknowledged it to be ~~their~~ ^{her} free and voluntary act and deed for the uses and purposes mentioned in the instrument.

DATED this 17th day of ~~August~~ ^{September}, 1991.



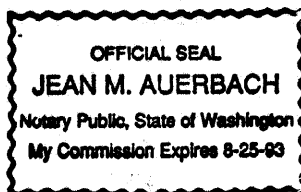
Marie Gallagher
NOTARY PUBLIC in and for the State of
Washington. My Appointment Expires June 9, 1994

REEL # 06711150075
FR 1862

STATE OF WASHINGTON)
County of Spoкане) ss.
)

I certify that I know or have satisfactory evidence that Thomas L. Rimsy signed this instrument and acknowledged it to be a free and voluntary act, for the uses and purposes mentioned in the instrument.

DATED: September 5, 1991.



Jean M. Auerbach
NOTARY PUBLIC in and for the State
of WA residing at Spoкане
My appointment expires: 8/25/93