

BEFORE THE BAINBRIDGE ISLAND HEARING EXAMINER

IN RE:

PERMIT APPLICATION FOR)	PLN50880 SPR/SUP
DEVELOPMENT OF HOTEL)	OBJECTIONS TO
AT 241-253 WINSLOW WAY)	PROPOSED PROJECT
BAINBRIDGE ISLAND, WA)	(PUBLIC COMMENT)

This objection is submitted by Allan D. Bogutz, a resident of Bainbridge Island, Washington, residing at 905 Cherry Ave NE, Bainbridge Island, WA 98110, and is submitted to the Hearing Examiner for the City of Bainbridge Island [COBI], to the City Manager and to Members of the City of Bainbridge Island City Council [Council].

The objections are that:

- A. the City Planning and Community Development Department [PCD] has not followed the law and the Comprehensive Plan of Bainbridge Island and has exceeded its authority;
- B. problems posed by the plan cannot be mitigated; and
- C. there are at least four very serious unaddressed non-mitigatable issues.

A. THE PLANNING DEPARTMENT MUST FOLLOW THE LAW

The members of the Council are the elected officials who determine the law and policies for the governing of Bainbridge Island. See RCW 35A.13.230. The Council delegates to the City Manager, Staff and Departments the day to day operation of the city and the implementation of Council Policy. The duties of the City Manager, who supervises and directs all staff include: *“(4) To see that all laws and ordinances are faithfully executed.”* RCW 35A.13.080. The Bainbridge Island Manual of City Governance provides *“2.5.2 Council-Manager Governance Depends on a Strong City Manager Role.”* A strong city manager is an asset for the city to assure that the departments are operating within their authority; she cannot, however, permit departments to go beyond the letter and spirit of the law set by the Council.

PCD recommends approval of the project in its findings of Notice of Mitigated Determination of Nonsignificance dated November 25, 2019. It determines inappropriately and inconsistent with Council rules, the Comprehensive Plan, municipal code and zoning regulations that the project can be modified to mitigate unmitigatable defects in the overall concept as proposed for this specific site. The proposed project is not consistent with the adopted comprehensive plan.

PCD has ignored the Guiding Principles of the island to *“Preserve the special character of the Island, which includes downtown Winslow’s small town atmosphere..... improve the quality of new development through a review process that implements the community vision and supports long-term goals for the preservation of the Island’s special character.”* and Chapter 2.16, *Land Use Review Procedures (Bainbridge Island Municipal Code)* but the conditional use is NOT harmonious and compatible in design, character and appearance with the intended character and quality of development in the vicinity of the subject property,

PCD has ignored the fundamental relevant zoning for this site, i.e., a 15-room inn. No matter how much lipstick PCD tries to put on this plan, it remains completely inconsistent with zoning. We are not discussing a minor change; PCD is over the top thinking that 87 rooms, a 200-seat event center, a bandshell, a shop, a spa and all of the back-of-the-house space and associated activity created is anything but a violation of the spirit and letter of the intent for this part of the island and its basic nature can be mitigated to be something it is not.

B. THE PROBLEMS POSED BY THE PLAN CANNOT BE MITIGATED

PCD has the authority to issue “conditional permits,” See Bainbridge Island Municipal Code Sec. 2.16..050 regarding Minor Conditional Uses. Conditional permits are NOT intended to try to make the unworkable workable or the unacceptable acceptable.

Instead, PCD has:

- (a) essentially ignored the non-binding but highly-persuasive recommendations of the Planning Commission, a citizens’ advisory group;
- (b) attempted by way of non-enforceable and illusory mitigation requirements to somehow make the project fit in an area which is completely incompatible with the proposed use; and
- (c) stretched credibility in imposing odd conditions that merely give the appearance of fitting the project into the proposed environment rather than to faithfully adhere to the Comprehensive Plan and the Zoning laws.

The City of Bainbridge Island Planning Commission’s ***Winslow Hotel Project Findings of Fact and Conclusions*** dated July 25, 2019 and unanimously adopted by the Commission. This document, in the Hearing Examiner’s file, is incorporated herein by reference. This is clearly the most thorough examination of the Application performed. The final conclusion is that **“the Planning Commission recommends the application for Major Site Plan and Design Review be denied,”** and that **“the project does not meet the CUP Decision Criteria. The Major Site Plan and Design Review are also not in conformance with the Comprehensive Plan and Winslow Master Plan goals and Policies.”**

PCD has responded to the Planning Commission’s thoughtful assessment of the project plan with Mitigation Measures to allow a conditional permit. PCD somehow expects the public and the hearing examiner to think that these mitigation measures address the real issue of the matter: ***The proposed hotel is not acceptable under the zoning requirements and the proposed hotel is totally inconsistent with the Comprehensive Plan.***

It is simply legally wrong for PCD to act as though PCD can independently rewrite these laws by fiat.

The Proposed Mitigation Measures:

Among other mitigation measures directed by PCD (such as archaeological and right of way matters, sidewalks and repaving), the following are included:

1. Operation of a **shuttle** between the hotel and the ferry. This is lip service to the unsubstantiated idea that visitors will walk on and off the ferry with luggage to get to the hotel. Will this be enforced? How? How would this impact the parking needs of a 200-person local event at the hotel? This is only a hope toward mitigation not a mitigation.

2. 36 **bicycles** and 36 bike parking spaces shall be required. Again, where does this ludicrous idea come from and what substantiation is there that those who visit the hotel will use bicycles? Winslow Way is not bicycle friendly. This is so beyond the scope of problem-solving and the purview of PCD as to be rejected outright.

3. The hotel will have **staggered check in times** that coincide with the Washington State Ferry Schedule. Staggered check in times???? Will guests have to sit and wait till their check in time? This will likely be the only hotel in the world with this process. This mitigates nothing in terms of traffic or other negative effects of this project. It does not even appear to mitigate. It is, whatever it is, fundamentally unenforceable.

4. **Parking spaces must be labelled** as to use by employee, delivery, shuttle, valet, etc. How does this ameliorate the fact that there are not enough spaces? Where are the 200 guests of the event facility to park? Note that this event facility could easily have up to three events a day — Breakfast meeting, Lunch Meeting, Dinner meeting. This is, again, not a mitigation but merely the appearance of a mitigation without substance or value.

5. **Monitoring and reporting:** A report on usage to be submitted by the “applicant.” The city Then can determine if additional conditions are necessary. Such conditions could include, according to PCD, limitations on room occupancy, size, hours, frequency and hours of events, offsite parking agreements, noise reduction measures, additional screening, infrastructure improvements or an event and courtyard management plan. Thinking that any such changes would be accepted without litigation is truly wishful thinking without foundation. This is not a mitigation and it is unclear whether the City would have legal authority to impose new conditions after the fact. Guaranteed litigation and extra cost to the city.

6. “To mitigate noise impacts, the applicant shall **inform immediately abutting neighbors of events** taking place on site to the extent possible.” It can notify by means of kiosk, a webpage, email listserv as examples — no specific form of notice is set out. . ***This is not a “mitigation,” it is a warning to stay in with your windows closed.*** Of course, they should check the kiosk at least daily. This is, however, also a clear acknowledgment by PCD of the fact that noise will be a continuing problem, not a mitigation of anything.

7. **“Solid waste pickup** shall occur between 10 am and 12 pm and solid waste facilities shall be enclosed within the building and pick up shall occur under the building.” This is another fanciful “remediation” if PCD believes that dumpsters can be unloaded quietly in a parking garage. What enforcement mechanism is there (none) for assuring this is done? Is PCD aware of the noise made by garbage trucks? People have a reasonable expectation of reasonable quiet even between 10 am and noon. It is not just the fact of solid waste being generated; PCD does not consider the magnitude of such waste from this project has compared to a 13-room inn. This is not a mitigation; simple a scheduling issue of unacceptable noise from an non-conforming proposal.

8. A **solid 6 foot wall or fence** shall be installed along the along the west property line to mitigate noise and light impacts to the adjacent townhomes. Another “feel good” paragraph by PCD. They cannot possibly believe this will reduce noise from an 87 room, 200 seat event center property. Is there some scientific basis to the six foot measurement or is this another feel-good requirement to push through this project? And what about privacy for neighbors of a multistory hotel? A six foot wall doesn’t help this issue. Again, this is not a “mitigation,” but it surely acknowledges the problem.

PCD, by these and its other proposed mitigations, clearly shows that the problems that this project creates. PCD knows there are serious uncorrectable noise issues, serious uncorrectable parking issues, serious uncorrectable issues of the number of rooms permitted. Yet PCD persists in unrealistic thinking that these problems can be mitigated. The need for the monitoring reports and the mythical ideas of reducing occupancy of a hotel at some future date (a great source of future litigation), getting offsite parking agreements (where there is already inadequate parking) and noise reduction after the fact is ridiculous. It also is clear indication of why this property is not zoned for this use and why it is inconsistent with the carefully drafted and adopted Comprehensive Plan. What is motivating PCD?

C. UNADDRESSED ISSUES

Both the Planning Commission and PCD have ignored and not addressed at least four other non-mitigatable critical issues that militate against the project:

a. **ODORS:** A full-service hotel and event facility will have at least one substantial kitchen operating seven days a week. In a facility of this size, regardless of corrective measures taken, a substantial amount of cooking odors will be emitted. For comparison, consider the emissions from the nearby Harbour Pub (a much smaller facility). On any given day and evening, food preparation there, depending on the direction of the wind, makes open windows and outdoor activities unpleasant or impossible at the adjacent condominiums (where I used to reside and about which I have personal experience). This issue is non-mitigatable and of unending duration.

b. **CONSTRUCTION:** The construction of an 87 room hotel, event facility for 200, restaurant and bar, spa and back of the house spaces is a huge project, exponentially more complex than a 15 room inn. Excavating, pouring underground parking concrete, paving, construction of the building and furnishing a hotel, kitchen, event facility require very heavy equipment, substantial delivery of materials, many construction workers (parking?) and the accompanying noise will severely disrupt the lives of those all around such a project for at least a two year construction period. Traffic diversions will be needed during the full term of the project and parking restrictions and reductions will likely be necessary. All of this will undoubtedly have a negative impact on both residents and businesses nearby. **These disruptions alone are adequate reason to prohibit the project and should have been foreseen and addressed by PCD.** This issue is not mitigatable.

c. **HOTEL OPERATION:** All of the mitigation attempts refer to the “applicant.” This is not who will actually operate the hotel. The applicant is the developer. Operation of the hotel will be done by a professional hotel operator whose name will undoubtedly define the hotel. This complexity of operation vs. ownership makes any enforcement of the mitigation measures yet more difficult. This issue is not mitigatable.

d. **ONGOING DAILY OPERATIONS NOISE:** After completion, large trucks are needed to supply a large hotel: there will be several vendors of different types of food, meats, produce; linen services for sheets, towels, tablecloths, etc.; soft drink deliveries; alcoholic beverage deliveries, paper supplies, gift shop items, spa items, concert equipment (usually packed up and trucked off late in the evening after performances); boutique inventory and numerous other daily or less frequent deliveries. This adds noise, more heavy traffic and unscheduled disturbances at the loading dock. The sounds of warning beeps from reversing trucks alone will be enough to upset the peace of neighbors. Substantial additional heavy traffic on

Winslow Way is unacceptable and inconsistent with the letter and the spirit of the Comprehensive Plan. This issue is not mitigatable and endures forever.

D. CONCLUSIONS:

It is clear from this analysis and from the Planning Commission's extensive report that PCD went far beyond existing law, regulation and the Comprehensive Plan in its finding of mitigated nonsignificance and its recommended remedial actions. This project should have been a complete non-starter because:

- It is non-compliant with the Comprehensive Plan.
- It is non-compliant with the Zoning Regulations.
- It will very substantially increase the noise in the vicinity.
- It will very substantially increase traffic in the vicinity.
- The conditional use will be materially detrimental to uses or property in the immediate vicinity of the subject property and the other criteria set forth in 2.16.
- It would degrade the town's small town atmosphere, a reason most people who live here and who want to move here choose Bainbridge Island as their home.
- This project sets a new baseline for the scale of building in Winslow and more and larger buildings can be expected in the future. There goes Winslow as a nice "village."
- Most importantly, and a guiding principle that all actions of our elected and appointed officials should apply is that this project must improve the lives of this island's residents and, indeed, must not adversely affect not only the persons living in the vicinity of the project but will adversely affect all present and future residents of the island.

REQUESTED ACTION:

For these reasons, it is respectfully requested that the Hearing Examiner in this matter;

A. Reject the recommendations of the Planning and Community Development Department and, deny the application.

B. Recommend that, in future matters, PCD apply the City's Ordinances and Policies with fairness and that PCD no longer presume that it should figure out how to approve all applications by finding ways to make them fit in places where they do not belong; and that PCD staff, regardless of length of service, receive training on their role in administering law and how to apply the spirit of the Comprehensive Plan.

Notes:

1. To be clear, I am not opposed to development on this island. Such development should meet the simple test of whether it improves the lives of those who currently live here and those who may live here in the future. This is really the ultimate goal of the Comprehensive Plan.

2. I am not fundamentally opposed to a hotel being developed. Whether it is needed or appropriate is a discussion for another time. I am opposed to this project at this site.

3. I am not opposed to development of this particular site; my position applies only to this proposed hotel at this site.

4. I do not believe we the resident or the government truly “own” Bainbridge Island; I believe we are custodians for those who come after us and that we have a duty to preserve and protect it for them. Bainbridge Island is unique and will remain so only if the government and its citizens work together for its preservation and its thoughtful, carefully controlled growth.

Finally, from “Big Yellow Taxi” by Joni Mitchell (<https://www.youtube.com/watch?v=94bdMSCdw20>)

*They paved paradise
And put up a parking lot
With a pink hotel, a boutique
And a swinging hot spot
Don't it always seem to go
That you don't know what you've got til it's gone?*