

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of	)	No. PLN 50589 SUB
	)	
<b>David Smith, Central Highlands, Inc.</b>	)	Wallace Cottages Housing Design
	)	Demonstration Project Subdivision
	)	
	)	<b>FINDINGS, CONCLUSIONS,</b>
<u>For Approval of a Preliminary Plat</u>	)	<b>AND DECISION</b>

**SUMMARY OF DECISION**

The request for a preliminary plat to subdivide four lots, totaling approximately 2.5 acres, into 19 lots, as a Tier 2 Housing Design Demonstration Project, at Wallace Way, between Madison Avenue and Nakata Avenue, is APPROVED. Conditions are necessary to mitigate specific impacts of the proposed development.

**SUMMARY OF RECORD**

Hearing:

The Hearing Examiner held an open record hearing on the request on April 20, 2018. At the outset of the hearing, Stephen Crampton entered into the record a claim of ownership of a portion of the property submitted by the Applicant for subdivision. Following a recital of applicable law by the Hearing Examiner, including an expression of concern about the advisability of processing the application if property ownership is disputed, the Applicant conceded that the property claimed by Mr. Crampton would be transferred to him so that the hearing could continue without a disputed ownership claim. The Hearing Examiner issued a Memorandum on Adverse Possession Claim to the Applicant, Mr. Crampton, and to the City of Bainbridge Island (City), dated April 23, 2018, requesting that these parties resolve the claim of ownership. The parties notified the Hearing Examiner that a settlement agreement has been reached, and the City determined that the application should be approved without further modification of conditions.

As a separate action, the City subsequently determined that some properties were inadvertently omitted from the original notice of application, SEPA comment period, and notice of public hearing. The City provided additional public notice, and the hearing was continued to July 11, 2018, to take testimony from those who had not been notified of the initial hearing.

Testimony:

The following individuals testified under oath at the initial April 20, 2018, open record hearing:

Kelly Tayara, Associate City Planner  
David Smith, Applicant

*Findings, Conclusions, and Decision*  
*City of Bainbridge Island Hearing Examiner*  
*Wallace Cottages HDDP and Preliminary Plat, No. PLN 50589 SUB*

Stephen Crampton  
Doug Hotchkiss  
Steve Matthews  
Venera Di Bella Barles  
Debbie Hollyer

Attorney Hayes Gori represented the Applicant

The following individuals testified under oath at the July 11, 2018, open record hearing:

Kelly Tayara, Associate City Planner  
Peter Corelis, P.E., City Development Engineer  
Sanjay Bhatt  
Stephanie Farwell  
Steve Matthews  
Stephen Crampton  
Barbara Hotchkin  
Kevin Curran  
Loanne Harmeling

Attorney Hayes Gori represented the Applicant

Exhibits:

The following exhibits were admitted into the record:<sup>1</sup>

1. Staff Recommendation, dated July 3, 2018
2. Preliminary plat maps
  - a. Draft homeowners' association agreement (Sheet 1 of 7), dated April 18, 2017
  - b. Legal descriptions (Sheet 2 of 7), dated April 18, 2017
  - c. Minimum Building Separation and Setbacks (Sheet 3 of 7), dated April 18, 2017
  - d. Revised preliminary plat (Sheet 4 of 7), dated April 10, 2018
  - e. Revised preliminary plat (Sheet 5 of 7), dated April 10, 2018
  - f. Revised preliminary plat (Sheet 6 of 7), dated April 10, 2018

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<sup>1</sup> As part of the continued July 11, 2018, hearing, City staff made changes to the exhibit list presented at the April 20<sup>th</sup> hearing: The revised Staff Recommendation is now listed as Exhibit 1, rather than Exhibit 27. The land use application is now listed as Exhibit 11, rather than Exhibit 1. The Notice of Application and SEPA Comment Period is now added to Exhibit 23, rather than Exhibit 11. The Notice of Public Hearing is now part of Exhibit 23, rather than Exhibit 26. Additional public notice material has been added to Exhibit 23. The Hearing Examiner Memorandum regarding an Adverse Possession Claim is now Exhibit 26. The Crampton Settlement Agreement is now Exhibit 27. An email from Stephen Crampton to PCD, dated April 19, 2018, is Exhibit 28. The April 12, 2018, Staff Recommendation is now Exhibit 29.

- g. Revised preliminary plat (Sheet 7 of 7), dated April 10, 2018
3. Utility plans
  - a. Utility Plan (C1 - 1 of 5)
  - b. Utility Plan – South (C2 - 2 of 5)
  - c. Wallace East Plan, Profile & Sections (C3 - 3 of 5)
  - d. Loganberry Rd Plan, Profiles & Sections (C4 - 4 of 5)
  - e. L.I.D. Site Assessment Plan (C5 – 5 of 5)
4. Preliminary Utility Report, Seabold Engineering, LLC, dated April 26, 2017
5. Landscape Plan, revised April 12, 2018
6. Traffic Impact Analysis, Heath & Associates, Inc., dated July 2017
7. Lot Closures, Job No. 17-6173, dated January 17, 2018
8. Subdivision Guarantee, First American Title, received April 9, 2018
9. Open Space Management Plan, Central Highlands, Inc., dated April 10, 2018
10. Environmental SEPA Checklist, with staff response, dated April 20, 2017
11. Master Land Use Application, received April 27, 20017; with Owner/Agent Agreement, dated December 5, 2016
12. Ordinance 2018-04, Duane Lane Right-of-Way Vacation, effective March 6, 2018
13. Public Benefit, Development and Permit Processing Agreement (Ohrt, CCHD, Mattis, and City), dated March 15, 2018
14. Public Benefit, Development and Permit Processing Agreement (Central Highlands, Wallace, Madison, and City), dated March 16, 2018
15. Madison Avenue Access Agreement (Ohrt, Madison Landings Company, CCHD, Central Highlands, and Wallace Cottages), dated March 16, 2018
16. Developer Agreement Map, undated
17. BIMC 2.16.020.Q; Tables 2.16.020.Q-1, Q-2 and Q-3 (Source: Ord. 2016-27)
18. Letter from Kelly Tayara to Central Highlands, Inc., dated April 6, 2017; with City Preliminary Notification of Qualification, undated, with attachments
19. Wallace Cottages – Vision Statement, with attachments; Built Green Single-Family/Townhome New Construction Checklist, received April 27, 2017
20. Table 2.16.020.Q-3 Innovative Site Development Scoring Method, with staff scoring, undated
21. Memo from Assistant Chief Luke Carpenter, Fire Marshal, to Kelly Tayara, dated May 17, 2017
22. Memorandum from Peter Corelis, P.E., to Kelly Tayara, dated March 7, 2018
23. Public Notices
 

Notice of Mitigated Determination of Nonsignificance (MDNS), issued March 22, 2018

Notice of Application and SEPA Comment Period; with Certificate of Posting, dated June 6, 2017

Notice of Public Hearing, dated March 30, 2018; with Memorandum from Kelly Tayara to Jane Rasely regarding hearing notice, dated March 19, 2018; with Affidavit of Notice
24. Public comments
  - a. Submitted May 11, 2017 – April 10, 2018
  - b. Submitted after April 10, 2018

25. Planning Commission Regularly Scheduled Meeting Minutes, Thursday, February 8, 2018; Planning Commission Regularly Scheduled Meeting Minutes, Thursday, February 22, 2018
26. Hearing Examiner Memorandum re: Adverse Possession Claim, dated April 23, 2018
27. Settlement Agreement, signed by Stephen Crampton and David Smith, dated May 11, 2018
28. Email from Stephen Crampton to PDC, dated April 18, 2018
29. Staff Recommendation, dated April 12, 2018
30. Memorandum from Kelly Tayara to the City of Bainbridge Island Hearing Examiner, dated May 25, 2018
31. Written comments of Sanjay Bhatt, presented at hearing on July 11, 2018
32. Planning Commission Regularly Scheduled Meeting Minutes, Thursday, February 8, 2018; Planning Commission Regularly Scheduled Meeting Minutes, Thursday, February 22, 2018, with attachments
33. Written comments of Steve Matthews, with attached news article, presented at hearing on July 11, 2018

The Hearing Examiner enters the following findings and conclusions based upon the testimony at the open record hearing and admitted exhibits:

## **FINDINGS**

### Application and Notice

1. David Smith, Central Highlands, Inc. (Applicant), requests approval of a preliminary plat application to subdivide four lots, totaling approximately 2.5 acres, into 19 lots, as a Tier 2 Housing Design Demonstration Project.<sup>2</sup> The development is located at Wallace Way, between Madison Avenue and Nakata Avenue.<sup>3</sup> *Exhibit 1, Staff Recommendation, page 1; Exhibit 2; Exhibit 3; Exhibit 5.*
2. The City of Bainbridge Island (City) determined the application was complete on May 30, 2017.<sup>4</sup> Since this date, the City has adopted a Landmark Tree Ordinance, as well as a

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<sup>2</sup> The proposed project is one of a group of developments that are the subject of four agreements between the City and two developers. In addition to Wallace Cottages, the agreements involve Madison Grove, Madison Place, The Reserve at Winslow, the Winslow Grove (all subdivisions), and Madison Landing (a multifamily project). *Exhibit 1, Staff Recommendation, page 2.*

<sup>3</sup> The preliminary plat identifies the property by Tax Assessor Parcel Nos. 272502-1-023-2005; 272502-1-153-2007; 272502-1-154-2006; and 272502-1-155-2005. A legal description of the property is provided on the preliminary plat map. *Exhibit 1, Staff Recommendation, page 2; Exhibit 2.b.*

<sup>4</sup> The City gave the Applicant preliminary notification that the project qualified for the Housing Design Demonstration Project Program on April 6, 2017. *Exhibit 27, Staff Recommendation, page 5.*

building moratorium, which the City determined do not apply to this application. The City issued a combined Notice of Application/SEPA Comment Period, with a publication date of June 2, 2017, and a comment deadline of June 16, 2017. The Planning Commission held a public meeting on February 22, 2018. The City issued a Notice of Public Hearing with a publication date of March 30, 2018. Because some properties were inadvertently omitted from the original notice and comment period, the City issued a combined Notice of Application/SEPA Comment Period and Public Hearing on June 1, 2018, with a comment deadline of June 15, 2018. *Exhibit 1, Staff Recommendation, pages 5 and 9; Exhibit 23.*

Prior to the meeting of the Planning Commission on February 22, 2018, the City received numerous comments. These included expressions of opposition to making Wallace Way a two-way street between Grow Avenue and Madison Avenue North, opposition to vacating Duane Lane, and opposition to extending Wallace Way NW east of Nakata. The Planning Commission passed a motion that recommended denial of the Wallace Cottages proposal status as a HDDP project, stating that the proposal is not consistent with the Comprehensive Plan or the goals and purposes of the HDDP. The Planning Commission noted concerns with the proposal, including traffic impacts, public safety impacts on surrounding neighborhoods resulting from the proposed traffic access from Wallace Way NW to Grow Avenue, tree retention issues, and lack of suitable open space. In response to the concerns expressed by the Planning Commission, the City planning staff determined that open space regulations would not apply to a HDDP project and that tree retention in open space is not required. The Applicant addressed the concern of the Planning Commission about traffic impacts by entering into agreements that provide access solely from Madison Avenue North. This action occurred before the open record hearing on the application and before additional notice of that hearing was given by the City. *Exhibit 1, Staff Recommendation, pages 6 through 10; Exhibit 12 through 15; Exhibit 24; Exhibit 25.*

#### State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. The Applicant's Environmental Checklist did not identify any birds, mammals, or fish as observed or known to be on or near the site. The City identified birds on or near the site, but noted that no threatened or endangered species are known to be on or near the site. No critical areas, such as wetlands or steep slopes, were identified.

The City issued a Notice of Mitigated Determination of Nonsignificance (MDNS) on March 22, 2018, with a comment and appeal deadline of April 5, 2018. On June 26, 2018, the City issued a Notice of Withdrawal of Mitigated Determination of

Nonsignificance and New SEPA MDNS, with a comment and appeal deadline of July 10, 2018. To mitigate recreation and transportation impacts, the MDNS contains a condition requiring construction of a four-foot-high fence, with a gate, along the perimeter of the northern open space. No appeals of the SEPA threshold determination were filed. *Exhibit 1, Staff Recommendation, page 5; Exhibit 10; Exhibit 20.*

#### Comprehensive Plan and Zoning

4. The proposed residential lots are located in the Urban Comprehensive Plan designation. The property is within the Winslow Master Plan Secondary Study Area. City staff identified Comprehensive Plan goals and policies that are relevant to the proposal, including Land Use Element Goal LU-5, to focus urban development in designated centers, and Goal LU-6, to ensure a development pattern that reduces the conversion of undeveloped land into sprawling development. Additional goals and policies identified by the City include: Housing Element Goal HO-6 (to facilitate diverse affordable housing stock); Transportation Element Goal TR-8 (to consider the special needs of neighborhood safety, pedestrian and bicycle facilities, transit use and facilities, and traffic flow in the development of transportation improvements that affect neighborhoods); and Cultural Element Goal CUL-3 (to preserve places where the Island's history can be experienced, interpreted, and shared with the general public). *Exhibit 1, Staff Recommendation, pages 4 and 5.*
5. The property is split-zoned, with the proposed residential lots located in the residential portion R-4.3 zone. A flagpole portion of existing tax Lot 272502-1-023-2005 extends as access east to Madison Avenue North within the City's Mixed Use Town Center-Madison Avenue Overlay District (MUTC-MAD). The municipal code includes Table 18.12.020-1, identified as the Flexlot Subdivision Dimensional Standards for Residential Zone Districts, with a minimum lot size of 5,000 square feet. It requires a minimum lot width of 50 feet; a base density of one lot per 10,200 square feet; a maximum lot coverage of 25 percent; building to building (on-site) setbacks at a minimum of 10 feet; building to exterior subdivision boundary line setbacks of five feet; a building to right-of-way setback of 10 feet; and a building to Open Space setback of 10 feet. *Exhibit 1, Staff Recommendation, pages 2, 3, 7, 13, 14, and 21.*
6. The purpose of the Mixed Use Town Center zone is to implement the Mixed Use Town Center sections of the comprehensive plan. The Mixed Use Town Center is intended to strengthen the vitality of downtown Winslow as a place for people to live, shop, and work; to provide a strong residential component in the area; and to encourage a lively community during both the day and night. *Bainbridge Island Municipal Code (BIMC) 18.06.030.A.* The purpose of the Madison Avenue overlay district is to provide for a mix of residential and small-scale nonresidential development. Within the Madison Avenue overlay district, all retail and office development must include a residential component. Retail development is permitted only on the ground floor. Residential development is only required for buildings greater than one story in height. *BIMC 18.06.030.A.3.* All

single-family residential subdivisions are subject to design under the City's Flexible Lot design requirements in Titles 17 and 18 BIMC. The City determined that the proposal is subject to the City's Open Space Standards (BIMC 17.12.030), General Residential Subdivision Standard (BMC 17.12.040), and Flexible Lot Dimensional Standards (BIMC Table 18.12.020-1). BIMC 2.16.020.Q provides that development standards in BIMC Titles 17 and 18 may be modified as part of a Housing Design Demonstration Project (HDDP). Single-family use is permitted in the R-4.3 zone. Adjacent properties are within the Urban Comprehensive Plan designation with properties to the north, east, and zone within the R-4.3 zone, and properties to the east zoned MUTC-MAD. *Exhibit 1, Staff Recommendation pages 2, 11, and 12.*

7. The purpose of the HDDP is to allow the development of housing design demonstration projects that increase the variety of housing choices available to residents across underserved portions of the socio-economic spectrum, and to promote compact, low-impact development where it is most appropriate. The HDDP program is intended to encourage innovation in building design, site development, and "green" building practices. The goals of this program are to increase the housing supply and the choice of housing styles available in the community; to promote socio-economic diversity by adding to the stock of income-qualified housing; to encourage development of smaller homes in neighborhoods attractive to a mix of income and age levels; and to demonstrate that innovative design and building techniques (conserving water and energy, using sustainably sourced materials, limiting environmental impacts) are compatible with market considerations. *BIMC 2.16.020.Q; Exhibit 1, Staff Recommendation, page 2.*
8. Utilizing the HDDP, the Applicant seeks relief from density, setback, lot size, lot coverage, open space, and road standard requirements that would otherwise apply to a subdivision of land. City staff determined that the open space requirements in BIMC 17.12.030 would be modified by HDDP incentives, which require that the project integrate at least 400 square feet of open space per unit in the R-4.3 zone. *BIMC 2.16.1020.Q.7.c.* The City determined that the effective amount of open space is approximately 15,000 square feet or 790 square feet per lot. This meets the City's open space requirements, as modified by the HDDP program. *Exhibit 1, Staff Recommendation, page 11.*
9. A Tier 2 HDDP project in the R-4.3 zone is eligible for a density bonus up to two times the base density. The project must provide 10 percent of the units as affordable housing, as defined in BIMC 18.36.030, and density may not exceed base density for the R-8 district. The project must achieve LEED Silver, BuiltGreen 4 or Evergreen Sustainable Development certification; it must achieve at least 25 points in the Innovative Site Development category and at least 12 points in the Housing Diversity category; and it must limit home size to 1,600 square feet. The City determined that the project would exceed the minimum points in the Innovative Site Development category and that the open space exceeds the HDDP program requirements. City staff also determined that the

proposed project meets the Housing Diversity requirements, with no residences more than 1,600 square feet and with a variety of unit types, including duplexes, age-in-place homes, and two-story residences. *Exhibit 1, Staff Recommendation, pages 15, 16, and 17; Exhibit 19; Exhibit 20.*

#### Existing Site

10. The subject property is undeveloped and vegetated with overgrown blackberry bushes and English ivy, interspersed with native conifer and deciduous trees. The land slopes evenly at about a 5 percent grade from northwest to southeast. The USDA Natural Resources Conservation Service maps the site as containing Kapowsin gravely ashy loam and Kitsap silt loam on the eastern flag lot near Madison Avenue North. *Exhibit 1, Staff Recommendation, page 3; Exhibit 4.*

#### Access, Parking, and Traffic

11. Madison Avenue North would provide access to the proposed subdivision with a road going west to access Lots 18 and 19, that would then turn south, as Loganberry Road, to access Lots 1 to 17, ending in the south end as a cul-de-sac. The Applicant would provide two vehicle parking spaces per dwelling unit.<sup>5</sup> *Exhibit 1, Staff Recommendation, page 4; Exhibit 3.a.*
12. City Development Engineer Peter Corelis reviewed the proposal and determined that the streets and pedestrian ways are adequate to accommodate the anticipated increase in traffic caused by the proposed project. He determined that the east/west plat access road extension of Wallace Way NW would meet the standards of an urban local access street. The plat access road would provide two, nine-foot travel lanes for two-way traffic, with one-foot gutter pans and vertical curbs to provide a curb-to-curb distance of 20 feet. Sidewalks would be provided on one side. A minimum 30 feet of right-of-way for the road section and sidewalk would be dedicated to the City. The City determined that site distance for the access road exceeds 300 feet in both directions, which is above the required site distance needed for outbound turns to Madison Avenue North. *Exhibit 1, Staff Recommendation, pages 24; Exhibit 3; Exhibit 22.*
13. Heath & Associates, Inc., prepared a Traffic Impact Analysis (TIA) for the Applicant, dated July 2017. The TIA analyzed three access alternatives: full-access to the west via Wallace Way NW, full-access to the west and one-way outbound to Madison Avenue North, and full access to the east to Madison Avenue North. The TIA identified the

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<sup>5</sup> Duane Lane is adjacent to the north boundary of Madison Landing. The City asserted that Duane Lane was public right-of-way, and the developer disagreed. The disagreement was resolved by vacating the Duane Lane right-of-way in exchange for a trail connecting The Reserve at Winslow and Winslow Grove, in addition to right-of-way dedication along the south boundary of the Madison Landing project. The right-of-way dedication affords both Wallace Cottages and Madison Landing access from Madison Avenue. *Exhibit 1, Staff Recommendation, page 2.*



existing level of service (LOS)<sup>6</sup> at seven surrounding intersections, all operating at LOS C or better. Based on the proposed increase of 19 dwelling units, the TIA determined that there would be a 181 average weekday daily traffic count, 14 AM peak-hour trips, and 19 PM peak-hour trips. The TIA noted that, for access to Madison Avenue North, the 2020 LOS at surrounding intersections would remain at LOS C or better. By 2035, the PM LOS would drop to LOS D for Madison Avenue North/Wyatt Way NW/NE and to LOS E for Madison Avenue North and Entrance/Wallace Way NE. The 2015 to 2020 City Capital Improvement Program includes intersection improvements at Madison Avenue North/Wyatt Way NW, with plans to reconstruct and improve the existing Wyatt Way segment from Madison Avenue North to Lovell Avenue using either signalization or a roundabout at the Wyatt Way/Madison Avenue North intersection. The TIA estimated traffic impact fees for 19 PM trips as \$31,016.93. *Exhibit 6.*

14. Kitsap Transit Routes 90 and 99 offer stops at the intersection of Madison Avenue North/Wallace Way NW. Routes 93, 95, 97, 98, and 106 also provide stops within one mile of the proposed site. *Exhibit 6.*

#### Trees, Landscaping, and Open Space

15. The Environmental Checklist listed significant trees on site. It identified 12 of 22 Douglas firs to be removed, 1 of 2 Madronas, and 19 of 22 cottonwoods. The Applicant provided a landscape plan depicting street trees and a planting plan. City staff noted that, although the Applicant intends to retain trees in designated open spaces, tree retention in open spaces is not required. The Applicant submitted an Open Space Management Plan (OSMP) with the application. The Applicant would record a final OSMP with the final plat and the OSMP would be referenced on the face of the plat. The Applicant would provide fencing along the perimeter of the northern open space area and along the open space boundary common to Lots 7 and 8. *Exhibit 1, Staff Recommendation, pages 11, 14, 15, and 21; Exhibit 5; Exhibit 10.*

#### Stormwater

16. The Applicant submitted a Preliminary Utility Report, prepared by Seabold Engineering LLC, dated April 26, 2017. A small amount of stormwater from adjacent single-family residential parcels drains toward the project site, which is located within the Kitsap Water Resource Inventory Area 15. The project parcels do not have any existing storm drainage conveyance systems. Downhill parcels connect to a drainage system in Madison Avenue North, which eventually discharges to the south near the shoreline of Eagle Harbor. The Applicant proposes a storm drainage collection and water quality system for the new impervious area runoff. Water quality treatment would be provided through a combination of bioretention swales and cells, roof downspout and footing drain collection

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<sup>6</sup> Capacity analysis is used to determine level of service (LOS), which is an established measure of congestion for transportation facilities. The range for intersection level of service is LOS A to LOS F, with the former indicating the best operating conditions, with low control delays, and the latter indicating the worst conditions, with heavy control delays. *Exhibit 6.*

systems, and surface water collection. The proposed stormwater collection system would connect to the existing storm drain system in Madison Avenue North, including replacement of approximately 110 feet of storm drain in Madison Avenue North. Mr. Corelis reviewed the proposal on behalf of the City and determined the proposal would meet the City's drainage regulations found in Chapters 15.20 and 15.21 BIMC. *Exhibit 1, Staff Recommendation, page 23; Exhibit 4; Exhibit 22.*

17. The Applicant would submit a Stormwater Pollution Prevention Plan prepared by a civil engineer, licensed in the State of Washington, prior to construction activities, including clearing, grading, and civil improvements for all phases of the project. Prior to final plat submittal, the Applicant would submit an operation and maintenance plan for the on-going maintenance of the storm drainage system. The on-site stormwater facilities would be privately owned and maintained. The Applicant would provide a sediment pond to handle the peak 10-year flow until storm drain capacity upgrades in Madison Avenue North are performed. *Exhibit 1, Staff Recommendation, pages 24 and 25.*

#### Utilities

18. The City has sufficient capacity to serve the plat with water and sewage service. A proposed eight-inch water main extension from Madison Avenue North to the Wallace Way NW right-of-way would allow a minimum 10 feet of separation of the water main from an existing sewer main. Alternatively, a looped water main system may be constructed. The Applicant would dedicate a 30-foot right-of-way for the existing sewer facilities, water, and stormwater facilities from Madison Avenue North to the extension of the Wallace Way NW right-of-way. The Applicant would obtain binding water and sewer availability letters from the City prior to application for a final plat. *Exhibit 1, Staff Recommendation, pages 2, 18, 23, and 25; Exhibit 22.*
19. Fire Marshal and Assistant Bainbridge Fire Department Chief Luke Carpenter provided comments on the proposal, dated May 17, 2017. He noted that the proposed project must comply with all provisions of the adopted Fire Code, including: the turning radius of the proposed cul-de-sac must be not less than 39 feet and there must be a 10-foot private road width with a five-foot flush sidewalk, but, if the sidewalk is raised, then the road width must be not less than 12 feet. He stated that the proposed fire hydrant locations are acceptable at this time. A Fire Marshal's Office fire flow test would be required prior to occupancy. *Exhibit 1, Staff Recommendation, pages 2, 5, 17, and 21; Exhibit 22.*

#### Schools and Parks

20. The Bainbridge Island School District would serve the proposed subdivision, but it did not provide any comments. The Applicant would construct an internal sidewalk system to the existing sidewalk located on Madison Avenue North. *Exhibit 1, Staff Recommendation, page 23; Exhibit 3.c.*

### Archaeological Resources

21. The Applicant would stop excavation or construction should any historical or archaeological artifacts be uncovered and immediately contact the City Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation. *Exhibit 1, Staff Recommendation, pages 20 and 21.*

### Testimony - April 20, 2018

22. Associate City Planner Kelly Tayara testified that the Comprehensive Plan has been amended since the date of complete application on May 30, 2017. She testified that access has been addressed by the City as part of Public Benefit, Development and Permit Processing Agreements, referencing Exhibits 13, 14, and 15. Ms. Tayara, as the City Planner, testified to her opinion that Madison Avenue would be the best place for access to the plat. *Testimony of Ms. Tayara.*
23. Public testimony was also given at the open record hearing. Doug Hotchkiss asked that access be provided to Madison Avenue North, not through Nakata Avenue. Steve Matthews also testified in favor of access from Madison Avenue. Venera Di Bella Barles asked that Madison Avenue, rather than Nakata Avenue or Wallace Way, be used for access. Debbie Hollyer testified in favor of a Madison Avenue access. Stephen Crampton and David Smith, Applicant, testified about Mr. Crampton's adverse possession claim. *Testimony of Mr. Hotchkiss, Mr. Matthews, Ms. Bartes, Ms. Hollyer, Mr. Crampton, and Mr. Smith.*

### July 11, 2018 - Testimony

24. Ms. Tayara testified that she made minor revisions to her previous staff recommendation for lot area and open space but that no significant changes to her recommendation were necessary following resolution of an adverse-possession claim. *Testimony of Ms. Tayara.*
25. Additional public comment was given at the continued open record hearing. Sanjay Bhatt testified to his concerns about notice of a public meeting. He stated that a November 2016 pre-applicant meeting<sup>7</sup> was held without notice to the Courtyards at Madison. He also objected to the lack of opportunity to comment on the SEPA MDNS threshold decision until June 1, 2018. He opined that the City and Applicant responded

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<sup>7</sup> BIMC 2.16.020.G provides:

1. Subject to certain exemptions, all projects are subject to and must complete the site assessment review process set forth and in accordance with Chapter 15.19 BIMC, and projects requiring a preapplication conference have the option of proceeding with the two processes concurrently. Chapter 15.19 BIMC is designed to ensure that future development integrates low impact development practices to the maximum extent practicable, as required by Chapters 15.19 and 15.20 BIMC.
2. The preapplication conference is an informal discussion between a potential applicant, interested citizens, city staff, and the design review board (if applicable) regarding a proposed project.

to concerns solely from the Nakata neighborhood and that, as a result, the project was redesigned with access solely from Madison Avenue North. In his opinion, Nakata area residents were treated differently than Madison Avenue North residents because they had an opportunity to express their concerns early in the process. He requested a remand of the application to the City to reconsider the access point to the proposed plat, including the use of Wallace Way NW. *Testimony of Mr. Bhatt.*

26. Stephanie Farwell testified about her concerns with the Planning Commission review process. She provided the meeting minutes of the February 8 and 22, 2018, Planning Commission meeting (Exhibit 32), and referenced its motion to deny approval of the proposed plat.<sup>8</sup> Steve Matthews submitted written testimony and testified in support of access to the Wallace Cottages proposed plat via Madison Avenue North. Barbara Hotchkin testified to her opinion that the City's transportation goals and policies in the Winslow Master Plan do not support a single access point to proposed subdivisions. Kevin Curran testified that he grew up in the neighborhood when it was a quiet place that was safe and sound. He stated that he does not want Wallace Way NW extended because of the increased traffic that it would introduce to the neighborhood. Loanne Harmeling testified to her opinion that Wallace Way should become a through street in order to help disperse traffic. *Exhibit 32; Exhibit 33; Testimony of Ms. Farwell, Mr. Matthews, Ms. Hotchkin; Mr. Curran, and Ms. Harmeling.*
27. Ms. Tayara responded for the City at the open record hearing. She testified to the City's determination that access should not go through the Nakata neighborhood but rather should be accessed from Madison Avenue North. She testified that the Planning Commission initially recommended denial because it didn't want to see access through the Nakata neighborhood but that, once that issue was resolved, the Planning Commission supported the proposal. Mr. Corelis testified that he was in favor of connecting the plat west to Grow Avenue at a preliminary meeting to provide connectivity but that he changed his mind when considering other factors, including the impacts of a Wallace Way NW extension. He testified that Madison Avenue North would be widened in the future and would include a round-a-bout at Wyatt Way. Finally, he noted that it is City policy to concentrate traffic in arterials, and not to disperse it. *Testimony of Ms. Tayara and Mr. Corelis.*
28. Applicant Attorney Hayes Gori stated that, except for a mailing error, it is his legal opinion that the notice given was reasonable. He also noted that he attended the Planning Commission meetings and that he corroborated the City staff testimony that, once the

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<sup>8</sup> Although minutes of Planning Commission meetings were provided for the hearing record for consideration by the Hearing Examiner, motions passed by the Planning Commission are not final land use decisions. The City Council has assigned the task of making most final land use to the Hearing Examiner. BIMC 2.16.020.C.2 provides that quasi-judicial decisions are to be made by the Hearing Examiner. To render a legally defensible decision, the Hearing Examiner must issue a decision consistent with the municipal code, state statutes and case law.

decision was made to provide access to Madison Avenue North, the Planning Commission was supportive. He stated for the record that the adverse possession claim was settled and that such settlement should be noted in the Hearing Examiner's decision. *Statement of Mr. Gori.*

#### Staff Recommendation

29. City staff reviewed the proposal and determined that the proposed plat, with 12 conditions, would be consistent with the City's Comprehensive Plan, municipal code, and development standards. City staff recommended approval of the application, with conditions. *Exhibit 1, Staff Recommendation, pages 20 through 25; Exhibit 22.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for preliminary plats under BIMC 2.14.030, and under BIMC 2.16.020.A and .125.G.5. The decision to approve or deny a housing design demonstration project shall be made as part of the underlying land use permit review. *BIMC 2.16.020.Q.3.e.*

#### Criteria for Review

BIMC criteria for subdivision approval are as follows:

The Hearing Examiner's decision must include findings of fact that the application meets all the requirements of the following subsections:

1. The preliminary long subdivision may be approved or approved with modification if:
  - a. The applicable subdivision development standards of BIMC Titles 17 and 18 are satisfied; and
  - b. The preliminary long subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and
  - c. The preliminary long subdivision has been prepared consistent with the requirements of the flexible lot design process, unless a flexible lot standard has been modified as part of a housing design demonstration project pursuant to BIMC 2.16.020.Q; and
  - d. Any portion of a long subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and
  - e. Any portion of a long subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and
  - f. The city engineer's recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:
    - i. The long subdivision conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and

- ii. The long subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and
    - iii. The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties; and
    - iv. The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic; and
    - v. If the long subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the long subdivision, and the applicable service(s) can be made available at the site; and
    - vi. The long subdivision conforms to the “City of Bainbridge Island Engineering Design and Development Standards Manual,” unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 17; and
  - g. The subdivision conforms to the requirements of this chapter and the standards in the “City of Bainbridge Island Design and Construction Standards and Specifications,” unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 17; and
  - h. The proposal complies with all applicable provisions of this code, unless the provisions have been modified as part of a housing design demonstration project pursuant to BIMC 2.16.020.Q; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and
  - i. The proposal is in accord with the city’s comprehensive plan.
2. A proposed subdivision shall not be approved unless written findings are made that the public use and interest will be served by the platting of such subdivision.

*BIMC 2.16.125.H.*

In addition to decision criteria required by the underlying planning permit or approval, an application for a housing design demonstration project may be approved if the following criteria are met:

- a. The applicant clearly demonstrates evaluation factors listed in subsection Q.4 of this section as shown in the housing design demonstration project scoring system as evaluated by the planning department;
- b. The applicant has demonstrated how relief from specific development standards, including setback reductions, lot coverage and/or design guidelines, is needed to achieve the desired innovative design and the goals of this chapter;
- c. The project does not adversely impact existing public service levels for surrounding properties;

- d. The project complies with all other portions of the BIMC, except as modified through this housing design demonstration project process;
- e. If a project will be phased, each phase of a proposed project must contain adequate infrastructure, open space, recreational facilities, landscaping and all other conditions of the project to stand alone if no other subsequent phases are developed; and
- f. The applicant is meeting required housing diversity standards.

*BIMC 2.16.020.Q.5.*

In addition, housing design demonstration project approval conditions must be included in the final permit approval and must address any ongoing compliance requirements, including compliance with approved design plans. The City may require that the applicant record covenants to ensure ongoing compliance or maintenance for required project components. *BIMC 2.16.020.Q.3.e*

The state subdivision criteria, codified at Chapter 58.17 RCW, are as follows:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislature body makes written findings that: (a) appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication.

*RCW 58.17.110(2).*

The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions Based on Findings

1. **With conditions, the proposed subdivision would be consistent with Housing Design Demonstration Projects decision criteria of BIMC 2.16.020.Q.** City staff determined that the Applicant's proposal exceeds the minimum required scoping for a Type 2 HDDP project. The project would be BuiltGreen 4, with a variety of home sizes, limited to no more than 1,600 square feet, thereby meeting the HDDP housing diversity standards. By using the HDDP approach, smaller residences can be constructed with relief from open space and setback standards. Adequate access to water, sewage, and other services is available and would not adversely impact existing public service levels for surrounding properties. Except for the HDDP project modifications, the proposed project would comply with all other portions of the BIMC.

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Conditions are necessary including those to ensure compliance with the criteria for approval in the municipal code, including those to ensure that the Applicant constructs a four-foot high fence along the perimeter of the northern open space; to ensure that the project conforms to the HDDP program Tier 2 requirements; to ensure that work will stop if any historical or archaeological artifacts are uncovered; to ensure that a final Open Space Management Plan is recorded with the final plat; to ensure that the final plat will comply with Fire Marshal conditions; and to ensure that the Applicant will comply with the recommended conditions of the City Engineer. *Findings 1-29.*

2. **With conditions, the applicable subdivision development standards of Titles 17 and 18 BIMC would be satisfied, as modified by the Housing Design Demonstration Projects decision criteria as described in Conclusion 1.** The proposed subdivision would provide common open space through the HDDP modification. Sidewalks would be provided to connect to Madison Avenue North. Two parking spaces per unit would be provided to meet the City's parking standard. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1, 6-21, and 29.*
3. **With conditions, the preliminary long subdivision makes appropriate provisions for the public health, safety, and general welfare and serves the public use and interest, including those items listed in RCW 58.17.110.** The City reviewed the proposed project, including environmental review under SEPA and issued an MDNS, requiring that the Applicant construct a four-foot-high fence along the perimeter of the northern open space. The MDNS did not address traffic impacts, a primary concern expressed in public testimony. Notice of the MDNS was properly given, and a second opportunity to appeal it was given, yet the MDNS was not appealed. The MDNS was issued on a proposal that, at the time the second notice was given, included access off of Madison Avenue North. Members of the public concerned about traffic impacts must be vigilant and diligent in review of development proposals that may impact them. Traffic impacts are addressed during environmental review, as well as during permit application review. Yet, if there is no appeal of the City determination that there will be no significant adverse impacts due to increased traffic, the review of that issue at the permit application review stage is constrained. If not appealed, the Hearing Examiner must accept the City determination that there will be no significant adverse impacts due to increased traffic. There are many criteria for approval that must be reviewed by the Hearing Examiner when deciding whether to approve a proposed plat. One is that there must be appropriate provisions for streets and roads, as required by RCW 58.17.110 (2). The evidence provided by the City during the open record hearing is that the existing street system can accommodate increased traffic associated with the proposed plat. Although there was passionate disagreement with that evidence expressed during the open record hearing, the evidence does not support a denial of the plat application.



The Applicant proposes a storm drainage collection and water quality system for the new impervious area runoff. Water quality treatment would be provided through a combination of bioretention swales and cells, roof downspout and footing drain collection systems, and surface water collection. The proposed stormwater collection system would connect to the existing storm drain system in Madison Avenue North. The City has adequate water and sewer capacity. The Bainbridge Island Fire Marshal reviewed the project and stated that the Applicant must comply with all provisions of the adopted Fire Code. Although the Bainbridge Island School District did not provide comments, the Applicant would provide internal sidewalks that would connect to Madison Avenue North. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1-29.*

4. **The City engineer's recommendation contains determinations that the decision criteria would be met, with conditions, and such determinations are supported by substantial evidence within the record.** The City's Development Engineer reviewed the proposed subdivision and determined that the proposed subdivision conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; that the proposed subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; that the streets and pedestrian ways as proposed align with, and are otherwise coordinated with, streets serving adjacent properties; that the streets and pedestrian ways, as proposed, are adequate to accommodate anticipated traffic; that there is capacity in the water and sewer system to serve the proposed subdivision; and that the proposed subdivision conforms to the "City of Bainbridge Island Engineering Design and Development Standards Manual," except as noted. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for plat approval. The City Development Engineer recommended conditions that have been included in this decision. *Finding 12.*
5. **With conditions, the proposal would be in accord with the Comprehensive Plan.** The proposed development would focus development in designated centers and would also facilitate the provision of a diverse affordable housing stock by allowing development compliant with HDDP criteria, including common open space, green-building certification, and landscaping along Madison Avenue North. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for plat approval. *Finding 4.*
6. **With conditions, the public use and interest would be served by the platting of the subdivision.** The City provided reasonable notice and opportunity to comment on the proposed preliminary plat. Single-family uses are permitted in the R-4.3 zone. The proposed subdivision to allow additional housing would be compatible with neighboring land uses, which are all developed with houses. The Applicant proposes a storm drainage collection system for the new hard surface areas, consisting of driveway, roof downspout

and footing drain collection systems, and surface water collection. Water quality treatment would be provided through a combination of bioretention swales and cells, roof downspout and footing drain collection systems, and surface water collection. City staff determined that, with conditions, the proposal would be consistent with all applicable City, county, and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1-29.*

### **DECISION**

Based on the preceding findings and conclusions, the request to subdivide four lots, totaling approximately 2.5 acres, into 19 lots, as a Tier 2 Housing Design Demonstration Project, at Wallace Way, between Madison Avenue and Nakata Avenue, is **APPROVED**, with the following conditions:<sup>9</sup>

#### ***SEPA Condition***

1. To mitigate recreation and transportation impacts, the perimeter of the northern open space shall be fenced and provide a gate which is located proximate to Wallace Way. To avoid adverse aesthetic impact, appropriate materials which afford visual access to the open space (e.g., picket fence rather than chain link) shall be used, and the fence shall be four feet in height.

#### ***Project Conditions***

2. The project must conform to the Housing Design Demonstration Project (HDDP) program Tier II requirements (BIMC 2.16.020.Q).
  - A. The project must provide at least two affordable housing units, as defined in the Municipal Code (BIMC 18.36).
  - B. The project must achieve LEED, BuiltGreen 4 or Evergreen Sustainable certification.
  - C. The project must provide homes no greater than 1,600 square feet in size.
  - D. The project shall substantially conform to the Innovative Site Development category scoring, as determined by staff, and shall provide and maintain the following:
    - 1) At least 16 percent of the lot area as open space which is well designed and integrated part of the project
    - 2) A neighborhood garden which is 1,140 square feet in size, at a minimum
    - 3) 20 percent or less turf in private yard areas
    - 4) At least 60 percent native or drought-tolerant plants
    - 5) A number of vehicle charging stations serving a minimum of three percent of the vehicle parking capacity of the subdivision: The stations shall be

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<sup>9</sup> Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development.

shall be accessible to all homeowners in the subdivision and shall be shown on the civil plan.

- 6) Covered bicycle parking for 10 bicycles, at a minimum. The bicycle parking shall be held in common and shall be shown on the civil plan. Additionally, a bike rack serving four bicycles, at a minimum, must be located in the northern open space.
3. Prior to any construction activities, the Applicant shall obtain the appropriate permits from the City of Bainbridge Island, including but not limited to clearing, grading, and/or building permits.
4. If any historical or archaeological artifacts are uncovered during excavation or construction, work shall immediately stop and the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.
5. A final Open Space Management Plan (OSMP) shall be recorded with final plat and the OSMP shall be referenced on the face of the plat. The final OSMP shall meet the requirements of BIMC 17.12.
6. In addition to the open space fencing required in Condition 1 above, the open space boundaries common to lots 7 and 8 shall be fenced.
7. Open Space fencing shall be installed on or installation financially assured prior to final plat approval. The fencing must be maintained in perpetuity and required locations of fencing shall be noted on the face of the plat.
8. Lot coverage of 35 percent shall be allocated between the lots as proposed and noted on the face of the plat, except: The final plat shall reflect a modest reduction in the per-lot allocation to provide lot coverage for open space buildings (e.g., garden shed, picnic shelter, covered climbing structure).
9. The following setbacks shall be noted and depicted on the final plat:

Building to building (on-site)	Minimum 10 feet
Building to exterior subdivision boundary line	Minimum 5 feet
Building to right-of-way or vehicular access easement	Minimum 10 feet
Building to Open Space	Minimum 10 feet
10. The final plat shall comply with the following conditions of the Fire Marshal:
  - A. The proposed project shall comply with all provisions of the adopted Fire Code.
  - B. A fire flow test is required prior to occupancy.

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11. The final plat shall comply with the following conditions of the City Survey Manager:
  - A. A boundary line adjustment between Parcel 272502-1-023-2005 and Parcel 272502-1-022-2006 will be completed before final plat.
  - B. Right-of-way and roadway plans connecting to Madison Avenue are dependent on approval of the boundary line adjustment and subsequent right-of-way dedication by others.
  - C. City utilities and related facilities located outside of dedicated right-of-way will require a separately recorded easement agreement with the recording information noted on the face of the final plat.
  - D. Easement agreements with the City will be prepared using the City's template with the legal description and map prepared by a licensed land surveyor.
12. The Applicant shall comply with the following conditions, to the satisfaction of the City Engineer:
  - A. Unless specifically exempted in these conditions or otherwise by the City Engineer, the project shall conform to the City of Bainbridge Island Design and Construction Standards, Surface and Stormwater Management regulations (BIMC 15.20 and 15.21), and the Stormwater Facilities Maintenance Program in accordance with the provisions of BIMC 2.16.070.G(5).
  - B. Public and private improvements, facilities, and infrastructure, on and off the site, that are required for the subdivision, shall be completed and have final inspection and approval prior to final plat approval unless the City Engineer accepts an assurance device in lieu of completion.
  - C. In accordance with the provisions of BIMC 2.16.070.N, the City Engineer may accept financial assurity<sup>10</sup> in lieu of completion of improvements, in an amount and in a form determined by the City Engineer, but not exceeding 125 percent of the cost of completing the improvements.
    - 1) Any such assurance device shall be in place prior to final plat approval, shall enumerate in detail the items being assured, and shall require that all such items will be completed and approved by the City within one year of the date of final plat approval. The assurity shall include preparation of all final plans and documents.
    - 2) Upon completion and the City's acceptance of facilities, the Applicant shall provide an assurance device securing the successful performance of improvements.
    - 3) While lots created by the subdivision may be sold, occupancy may not be allowed until the required improvements are formally accepted by the City. A prominent note on the face of the final plat shall state: "The lots created by this plat are subject to conditions of an assurance device held

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<sup>10</sup> The word "assurity" is not found in any dictionary that could be accessed by the Hearing Examiner. It is assumed the City means "surety" or "bonding". Conditions recommended by the City, however, are not altered by the Hearing Examiner unless reason to do so is given at the open record hearing.

by the City for the completion of certain necessary facilities. Building permits may not be issued and/or occupancy may not be allowed until such necessary facilities are completed and approved by the City of Bainbridge Island. All purchasers shall satisfy themselves as to the status of completion of the necessary facilities.”

D. General

- 1) Survey monumentation shall be provided consistent with the Standards, Section 8-03.
- 2) Civil improvement plans ready for construction shall be submitted with an application for a plat utility permit to COBI for review and approval to construct all necessary infrastructure serving the divided lots and the offsite improvements proposed in the Developer Extension Agreement (DEA) application.
- 3) Separate clearing and grading permits shall be required concurrently with the plat utility permit issuance to clear and grade the site.
- 4) No building permits for the newly created lots will be issued until the completion of the civil improvements or performance bonding is established to cover unfinished work to apply for final plat.
- 5) Performance bonding for plat civil improvements shall be released and re-bonded only as determined by a pre-approved work completion phasing plan to be developed with the plat utility permit application.
- 6) As-built civil construction plans stamped by a civil engineer shall be provided by the Applicant prior to final plat.

E. Facilities Extension

- 1) The Developer Extension Agreement (DEA) shall be executed at the plat utilities permitting application phase for the construction of roads and utilities to be inspected and accepted by the City. All property to be deeded to the City for the extension shall be provided with a Right of Way Warranty Deed, or, the DEA shall include all underlying property owners as applicants and the ROW may be dedicated on the face of the plat.

F. Utilities

- 1) The proposed 8-inch water main extension from Madison Avenue to the Wallace Way NW right-of-way extension shall be located to allow both a minimum 10 feet of separation of the water main from the existing sewer main and provide adequate setback from the northern property line to allow for construction, maintenance, and servicing of the new main. If additional ROW or easement is required it shall be provided. Alternatively, a looped water main system may be accomplished by routing the water line in from Wallace Way NW from Nakata Avenue NW.
- 2) The water main extension from the Fir Acres Drive ROW at the south end of the project shall be located within existing or proposed easements and provide a minimum 10 feet clearance to the edge of the easement.

- 3) A 30-foot ROW shall be dedicated to the City of Bainbridge Island to include the existing sewer facilities, water, and surface and stormwater facilities from Madison Avenue to the extension of the Wallace Way NW right-of-way.
- 4) Easement areas flanking the plat roads will require separate easement documents to be recorded as they are not within the ROW to be dedicated on the face of the plat.
- 5) Any and all permanent or temporary construction easements required to install the road and utility extension, or remove vegetation and disturb ground outside the future ROW areas shall be secured prior to the execution of the Developer Extension Agreement.
- 6) Sewer and storm drain improvements along with easements to be dedicated to the City through and over portions of existing Lot B of short plat SPT 06-07-91-1, also known as the Extendicare Parcel, are subject to restrictions of an easement with Lot A, also known as the Hanavan Parcel, of the same plat. The underlying easement agreement shall be amended to allow for the installation and maintenance of City facilities.
- 7) The routing of sewer and storm drain improvements through Lots A and B of the Hanavan Short Plat and the Courtyards at Madison Condominium sites requires a dedicated easement to the City totaling 20 feet in width to accommodate both the storm and sewer utilities. Additionally, the easement shall be extended to provide vehicular access for City maintenance vehicles and equipment from Fir Acres Drive NW through Lot A.
- 8) Extending the sewer beyond the Hanavan Short Plat lots at the southeast corner to tie into an existing 8-inch sewer line requires amendment of the existing sewer easement with the Courtyards on Madison Condominium Association to allow more than 2 residential lots to connect.
- 9) The north/south plat access road identified as Loganberry Road NE on the preliminary civil plans, shall meet the standards of an urban local access street per standard drawing DWG. 7-050 of the Standards, except as noted: The plat access road shall provide two (2) 9-foot travel lanes for two-way traffic circulation, with 1-foot gutter pans and vertical curbs to provide a clear curb-curb distance of 20 feet. Sidewalks shall be provided on one side with a minimum 3-foot wide planter strip. A minimum of 20 feet of right-of-way for the road section and 10-foot easements on either side shall be dedicated to the City to provide a combined 40 feet of ROW and easement dedication for access and utilities.
- 10) The east/west plat access road extension of Wallace Way NW shall meet the standards of an urban local access street per standard drawing DWG. 7-050 of the Standards, except as noted. The plat access road shall provide two (2) 9-foot travel lanes for two-way traffic circulation, with 1-foot gutter pans and vertical curbs to provide a clear curb-curb distance of 20 feet. Sidewalks shall be provided on one side. A minimum of 30 feet of right-of-way for the road section and sidewalk shall be dedicated to the City.

#### G. Stormwater

- 1) A Stormwater Pollution Prevention Plan (SWPPP) prepared by a civil engineer licensed in the State of Washington is required prior to construction activities including clearing or grading or civil improvements for all phases of the project that complies with BIMC 15.20.
- 2) A final stormwater report shall be submitted detailing compliance with all applicable minimum requirements as required by BIMC 15.20, prepared by a civil engineer licensed in the State of Washington.
- 3) On-site Best Management Practices for soil management and Low Impact Development shall be employed consistent with the Stormwater Management Manual for Western Washington (SWMMWW) BMP T5.13 for surfaces not converted to hard surfaces after construction.
- 4) Prior to final plat submittal, the Applicant shall submit an operation and maintenance plan for the on-going maintenance of the storm drainage system.
- 5) All on-site stormwater facilities shall remain privately owned and maintained. The owner(s) shall be responsible for maintenance of the storm drainage facilities for this development following construction. Annual inspection and maintenance reports shall be provided to the City. A Declaration of Covenant for stormwater system operation and maintenance will be required to be recorded before final plat submittal. The approved language for the Declaration of Covenant is found in BIMC Chapter 15.21, Exhibit A.
- 6) A hydrologic and hydraulic analysis must be performed to demonstrate that the future build-out conditions from the site combined with the existing offsite drainage tributary to the storm drain system will not exceed the capacity of the existing or proposed storm drain system in Madison Avenue North. Where the existing capacity of the system is insufficient, the project shall mitigate on-site to match the existing 100-year storm flows leaving the project site, or, upgrade the storm system to provide the needed capacity as defined below.
- 7) The capacity analysis shall include an assessment of all backwater effects on the existing system up Madison Avenue North. The design storm for capacity analysis is a 25-year storm event. The 25-year hydraulic grade line (HGL) shall be below the rim elevations of all drainage structures. The 100-year storm event shall be shown to not overtop the crest of any roadways.
- 8) Clearing and grading of the site may not begin until the storm drain extension to Madison Avenue is completed. A sediment pond shall be provided sized handle the peak 10-year flow until the time the storm drain capacity upgrades in Madison Avenue are performed. Once upgrades are performed the on-site sediment pond storage requirement may be reduced to the standard 2-year peak flow per the Department of Ecology SWMMWW BMP C241:  
Temporary Sediment Pond.

#### H. Permitting

- 1) In addition to a clearing and/or grade and fill permit, a right-of-way (ROW) construction permit will be required prior to any construction activities within the existing right-of-way. The ROW permit will be subject to separate conditions and bonding requirements.
  - 2) Application for a final plat shall require binding water and sewer availability letters from the City.
  - 3) The proposed action(s), phased or concurrent, in their totality would result in more than one (1) acre of earth disturbance on the site and drain to waters of the State. A Construction Stormwater General Permit shall be obtained from the Washington State Department of Ecology and the site shall be monitored for discharge of pollutants and sediment to the wetlands and stream for the duration of the project. No land clearing or construction permits shall be issued prior to obtaining the State permit.
13. The following conditions shall be noted on the face of the final plat: Conditions 2; 3; 4; reference to open space plan and requirements in Conditions 1; 5; 6 and 7; 8; 9; applicable portions of 13.

**DECIDED** this 25<sup>th</sup> day of July 2018.



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THEODORE PAUL HUNTER

Hearing Examiner

Sound Law Center