RESOLUTION NO. 2011-21

A RESOLUTION of the City of Bainbridge Island, Washington approving the Tawresey Cave Landing subdivision (File No. SUB15353)

WHEREAS, on December 23, 2009, the preliminary plat application was submitted by John and Alice Tawresey to the Department of Planning and Community Development; and

WHEREAS, the preliminary subdivision application facilitates creation of five residential lots on a 2.39 acre site; and

WHEREAS, the Department of Planning and Community Development reviewed and forwarded its recommendation for conditional approval to the Hearing Examiner; and

WHEREAS, on October 1, 2010, the Hearing Examiner conducted an open record public hearing on the preliminary subdivision upon proper notice;

WHEREAS, on October 25, 2010, an order remanding the application for additional analysis was entered; and

WHEREAS, on December 8, 2010, the Department of Planning and Community Development filed its response to the Order; and

WHEREAS, on March 9, 2011, the applicants filed an alternative plan revising their subdivision; and

WHEREAS, on March 18, 2011, the application was remanded to the Department for review; and

WHEREAS, on May 27, 2011, the public hearing on the revised subdivision was held; and

WHEREAS, on June 24, 2011, the Hearing Examiner issued a recommendation of denial to the City Council due to the request for a reduction to the geologically hazardous area buffer; and

WHEREAS, on August 2, 2011, the applicant filed an alternative plan revising their subdivision to eliminate their request for a geologically hazardous area buffer reduction; and

WHEREAS, on September 9, 2011, the public hearing on the revised plan was held; and

WHEREAS, on September 29, 2011, the Hearing Examiner recommended conditional approval of the preliminary subdivision and entered Findings of Fact, Conclusions of Law and Recommendations; and

WHEREAS, on October 26, 2011 and pursuant to BIMC 17.04.095, the City Council considered approval of the proposed preliminary subdivision at a closed record public meeting; now, therefore

THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section1. The Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner (File No. SUB15353), as set forth in Exhibit "A", which is attached and incorporated by reference, is adopted as the final decision of the Bainbridge Island City Council.

Section2. The proposed preliminary subdivision is in conformance with the zoning ordinance, the comprehensive plan, the subdivision regulations and standards, and all applicable land use ordinances and applicable state law in effect at the time the fully completed application for preliminary subdivision approval was submitted to the Department of Planning and Community Development.

Section 3. The final subdivision shall be subject to the conditions of approval set forth in this resolution and Exhibit A.

PASSED by the Council of the City of Bainbridge Island, Washington, this 26th day of October 2011.

APPROVED by the Mayor on the 26th day of October 2011.

Kirsten Hytopoulos, Mayor

ATTEST/AUTHENTICATE

Rosalind D. Lassoff

Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK: October 10, 2011
PASSED BY THE CITY COUNCIL: October 26, 2011
RESOLUTION NUMBER: 2011-21

Attached: Exhibit A
Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner

EXHIBIT A

RECOMMENDATION OF THE HEARING EXAMINER
TO THE CITY COUNCIL
CITY OF BAINBRIDGE ISLAND

In the Matter of the Application of

John and Alice Tawresey **SUB15353**

For a Preliminary Subdivision Approval

Introduction

John and Alice Tawresey seek preliminary subdivision approval for a multifamily subdivision of four parcels totaling 2.39 acres located between Cave Avenue North and Highway 305 into five multifamily lots. The current application is a revision of the original application and eliminates an earlier requested critical areas buffer reduction.

Public Hearings: An open record public hearing was initially held October 1, 2010. After the close of the hearing, additional public comment was accepted until 4 p.m. and additional City response until October 4, 2010, 4 p.m. At the request of the applicant, the time for Applicants' response was extended until October 15th. On October 25, 2010, an order remanding the application for additional analysis was entered. The Department of Planning and Community Development filed its response to the order on December 8th and other parties filed their comments to that response. Applicants filed an alternative plan revising the proposed plat on March 9, 2011, and the application was then remanded to the department for review. A public hearing on the revised plat was held May 27, 2011, at the end of which the record was closed. After the hearing examiner's recommendation was forwarded to the City Council, Applicants withdrew that application and modified it to show conformance to the requirement for a geologically hazardous area buffer. The public hearing on the revised application was held September 9, 2011. Heather Beckmann, Associate Planner, represented the Director, Department of Community Development at the hearing and Applicants appeared for themselves.

Record: The record on the application includes Exhibits 1-135 and testimony from the two earlier hearings, and Exhibits 1-12, which shall be referred to with a "R" suffix (for revised) to differentiate them from those of the same number from the earlier hearings, and testimony adduced at the September 9th hearing.

Code References: All references to sections in this decision are to the Bainbridge Island Municipal Code, unless otherwise indicated.

After due consideration of all the evidence in the record including testimony and written submittals, the following shall constitute the findings, conclusions, and recommendation of the Hearing Examiner to the City Council on the revised application.

Findings

1. John and Alice Tawresey, hereafter "Applicants", applied on December 23, 2009, for approval of the preliminary subdivision (Cave Landing) of four parcels totaling 2.39 acres into eight multifamily lots. After a remand of the application to City departments for additional analysis and information and the City's response to the remand, Applicants revised the application to propose division into five multifamily lots, a smaller buffer reduction, and a sidewalk on Cave Avenue. On July 21, 2011, Applicants further revised the application to eliminate the buffer reduction entirely. In all other respects, the application is identical to the first revised application.

2. The subject site is located largely to the west of the lots at 263-487 Cave Avenue NE, a dead end street, and east of State Route 305, but also includes a lot with street frontage at 439 Cave Avenue NE. The proposal includes a reduction to the minimum lot area and a density bonus based on open space.

3. The subject site is currently undeveloped except for a single-family house on the lot at 439 Cave Avenue, and a pedestrian trail. The site has a moderate coverage of coniferous and deciduous trees with some understory.

4. The Comprehensive Plan and zoning designations for the site are Urban Residential District (UR, R-4.3) and zoning of R-4.3, 4.3 units per acre for the single lot fronting on Cave Avenue, and Urban Multifamily District (UMF, R-8) and zoning of R-8, eight units per acre, for the remainder. The site is within the Winslow Master Plan Study Area.

5. The site adjoins the Winslow Ravine to the north of the property and the land on the subject site slopes about 6 percent down toward the west and south from an elevation of approximately 150 feet in the northeast corner to approximately 115 at the southern tip.

6. State Route 305 separates the site from development and uses to the west. Development of the surrounding properties to the south, east, and north across the ravine is single family and multi-family residential plus a preschool and daycare center.

THE PROPOSAL

7. Applicants propose that each of the five lots to be created would be developed with at least two dwelling units for a maximum of 22 dwelling units. The allowed density based on the zoning of the site is 17 dwelling units, including the unit for the R- 4.3 lot, however Applicants propose to utilize the density bonus in Section 18.15.080 by providing 23,253 square feet of the proposed open space, or 27 percent of lot area zoned R-8, i.e., proposed Lots A, B and E, to be permanent public open space which would allow a 50 percent bonus or eight units for a total of 24 plus one unit for the lot in the R-4.3 zone. Exhibit 133; Testimony of Beckman. Applicants chose to propose the lower number of units to be sensitive to neighborhood character. Testimony of J. Tawresey. The density bonus

proposal is not part of the preliminary subdivision approval but would be considered at the time that applications for building permits exceed 17 units.

8. In addition to the residential lots, the subdivision would provide a combination of public and private open space areas totaling 43,914 square feet or about 44 percent of the total area. Exhibit 135. The triangular parcel at the south end of the site would be retained as open space, along with additional open space to the north of the entrance roadway, along the east perimeter north of the access roadway to the slope buffer, the northern geologically hazardous area buffer, and the 25 ft. wide vegetative buffer next to SR 305.

9. Lot sizes in the plat would vary from 7,006 to 28,548 square feet. The minimum lot size in the R-8 zone is 5,400 square feet per unit (10,800 for two units) or 5,000 square feet for single family, but an open space option is available to allow smaller lots if an additional 15 percent of permanently protected open space above that otherwise required is provided, which Applicants propose. Sections 17.04.082D.3 and 17.04.085D. A multifamily subdivision is not required to provide open space beyond that required by the Critical Areas Ordinance and Shoreline Master Plan, when applicable. The proposal meets the requirements of those code provisions.

10. Section 18.15.050 limits lot coverage to 40 percent when the bonus density provisions are utilized. The proposed plat shows 40 percent but compliance with the lot coverage limitation would be reviewed during the required site plan review and during building permit review. Testimony of Beckmann.

CRITICAL AREAS BUFFER

11. The south slope of the ravine, adjacent to proposed lots A and B, is designated as a geologically hazardous area. The minimum no-disturbance buffer required from the edge of the geologically hazardous area is 80 feet, based on the height of the slope, Section 16.20.150E.2(a), "except where no other reasonable alternative exists." Section 16.20.150 E.2 (a)(iii) requires that all buildings and structures be set back a minimum of 15 feet from the outer edge of the buffer. This is depicted on the site plans. Section 16.20.150E.2(b-h) establishes standards regarding development design and location that apply at the time of development proposals. Applicants initially proposed a reduction of the required buffer to 25 ft. plus the required 15 ft. building setback but amended their proposal to provide 60 feet of buffer plus the 15 ft. building setback. The current proposal is to provide the full 80 ft. buffer and the 15 ft. building setback so complies with the minimum required buffer and setback.

12. A critical area report (Exhibit 4) was submitted as required by Section 16.20.150. The engineering geologist analyzed the slope's stability and concluded that it appears to be stable now and historically but that making cuts or fills or increasing moisture through the addition of drain fields or stormwater ponds and runoff from impervious surfaces may increase the potential for slope instability. The City's technical review committee reviewed and commented on the report and received comments from its third party geotechnical review consultant. The comments were forwarded to Applicants' geotechnical engineer for response. Exhibit 52. The technical review committee observed that the proposal provides the required stream buffers and that the development would have little impact on stream or wildlife habitat because the property is not part of a wildlife

corridor and because of the narrowness of the strip of forest between SR 305 and existing residential development. Applicants' consulting engineering geologist prepared an addendum to the critical area report with information from additional subsurface exploration and laboratory analyses and using a different computer program for stability analysis. Exhibit 56. The additional work confirmed the initial value of 1.5 factor of safety for static conditions and 1.2 for dynamic conditions. Though all the samples were moist, no groundwater was encountered and the nature of the soils suggested low permeability. It found the site isolated from the surrounding shallow groundwater regime because of the ravine to the north and west. The addendum again found that even a 25 ft. buffer with 15 ft. building setback would be adequate to protect the proposed development and the critical area and would not decrease the factor of safety for slope failure.

13. The proposal provides the required stream buffers. Exhibit 52.

VEHICULAR AND PEDESTRIAN ACCESS

14. Cave Avenue is classified as a residential-urban street with a standard 40 ft. wide right-of-way except for some portions where the full width has not been dedicated, with a paved roadway on average 19 ft. wide narrowing to just over 18 ft. at one point. Exhibit 45. The street dead ends at the north and terminates at its intersection with Winslow Way, where it is controlled by a stop sign. The intersection is 160 ft. east of the intersection of SR 305 and Winslow Way. A marked crosswalk across Winslow Way on the east side of the intersection serves pedestrians.

15. The southern portion of Cave Avenue serves an office building and commercial parking lot and provides access for a residential condominium/retail development on Winslow Way, among other uses. The more northern portion serves about 20 single-family residences, a residential condominium, a day care facility and a nursery school facility. Sidewalks extend some 300 feet northerly from Winslow Way but the remainder of Cave Avenue does not have sidewalks and, because of conditions such as brush and a steep slope lining the street, pedestrians must walk in the street for most of the distance. Exhibit 45.

16. According to residents of the neighborhood, the posted speed limit on the street is 15 miles per hour, contrary to the statement in Exhibit 104. It is often exceeded. Exhibit 45.

17. A pedestrian trail runs through the SR 305 right-of-way next to the northern portions of the subject site and then through the southern open space designated for Lot E. Applicants conveyed an easement for the path in that portion of the site to the City. To connect with Cave Avenue, the easement continues across a lot owned by Applicants to the south of the site. Testimony of J. Tawresey.

18. There are four streetlights on the west side of Cave Avenue, but they are reported to be far enough apart that much of the street is unlit. Exhibit 45. The pedestrian trail is not lighted. Though described by some residents as unusable in rainy periods due to mud, the surface is crushed rock and was not muddy after two days of rain. Exhibit 101.

19. Vehicular access to the new lots would be via a new roadway through a 40 ft. wide public right-of-way from Cave Avenue NE across the lot with frontage on Cave Avenue

(existing Lot 10) and ending in a cul-de-sac. A sidewalk is to be installed on both sides of the new street and around the cul-de-sac. All five lots would have at least 25 feet of frontage on the new right of way. A 5 ft. wide pedestrian easement, with 2.5 feet on each of Lots B and C, would extend from the cul-de-sac to the existing pedestrian trail.

20. Section 17.04.080C requires that the existing roadway character be maintained where practical and that roads and access be consistent with the City's Design and Construction Standards and Specifications. The Public Works Department found that the proposed public right of way, access easement and roadway widths are not greater than the minimum requirements. The City Engineer has recommended conditions of approval regarding street standards, the sidewalk, etc.

21. Applicants' consultants, RTC Transportation Consulting, provided a memorandum identifying estimated trip generation and potential impacts of the proposed development as initially proposed. Exhibit 16. The consultant estimated that the development would generate a total of 9 new trips during the PM peak hour and 107 in the average weekday. With a 25 percent reduction for location within the core area of Bainbridge Island, those numbers would be 7 trips during the PM peak hour and 80 for the average weekday.

22. Residents describe delays at the intersection, especially during ferry commuter times, due to backup from the congested intersection of Winslow Way and SR 305. Exhibit 83, among others. Residents pointed out that the addition of 20 dwelling units would double the residential use of the street; that the evaluation of impacts did not and should have considered the two children's facilities' traffic, and the impact on safety of pedestrians, both existing and future, on a street without sidewalks. The Bainbridge Cooperative Nursery School serves 40 families in two sessions, and estimates that 15-20 cars are using Cave Avenue at 9:00 a.m., 11:15 a.m., 12:30 p.m. and 3:00 p.m. The Bainbridge Island Child Care Center with 34 students and seven staff reports that the students arrive between 7 and 9 a.m. with half of the students leaving at 1:00 p.m. and half between 3 and 6:30 p.m. Staff members arrive at 6:30 a.m. and leave at 6:30 p.m. Exhibit 46. Many residents walk to the ferry, to the bus, their children walk to the school bus stop on Winslow Way (Exhibit 29), residents walk to the town center, etc. Those using the pedestrian trail are forced to walk in the street as the trail joins the street before the sidewalk begins. In addition to the residents on Cave Avenue, some residents of Vineyard Lane also use the trail. The 46-unit Housing Resources Board's "Ferncliff Project," on which construction is to begin in 2011, is to be connected by trail to the north end of Cave Avenue as well. Exhibits 83, 89. Vehicles using a small road, Gilmore, for access would also add to the hazard to pedestrians. Testimony of Barbo.

23. Section 15.32.030A provides that a concurrency test is to be conducted for applications for preliminary plats, site plans and design review, and "any other land use plan or permit the granting of which would increase the demand for transportation facilities by 50 or more trips per day." Certain development permits are exempt from the concurrency requirement including applications vested prior to the requirement and "any development permit for development that generates less than 50 trips per day, except as provided for in subsection A of this section." Section 15.32.030B.

24. The concurrency test is passed if the capacity of the transportation facilities affected by the proposed development is equal to or greater than the capacity required to maintain the level of service (LOS) standard with the addition of the trips generated by the proposed development. Section 15.32.040B.

25. Members of the Cave Avenue neighborhood contended that the City may not informally exempt a project that does not qualify for exemption under these provisions. A memorandum from the city engineer in response to the contention (Exhibit 99B) provided an expanded discussion on the issuance of a certificate of transportation concurrency explaining that in accordance with Section 15.32.040B it reviewed the Applicants' initial traffic study, the Island Wide Transportation Study (2004), and the traffic analysis for the Ferry Gateway Environmental Impact Study (EIS). The 2004 study identified Cave Avenue as a residential street within the urban zone of the City with a standard level of service (LOS) C. LOS C is defined as a stable operating condition with average traffic delays at intersections, with a volume to capacity ratio of 0.7-0.8, and an unsignalized delay per vehicle at intersections of between 15 and 25 seconds. The 2007 study for the EIS indicated that the intersection was maintaining a LOS C during the PM peak hour. Department of Public Works determined that the proposed development would meet the concurrency test in that: 1) little or no traffic-generating development has occurred in the vicinity or on Cave Avenue since time of the 2007 study; 2) the addition of one vehicle every seven minutes on average due to the proposal would not likely cause the wait times to exceed 25 seconds per vehicle and noted that signage was added earlier this year indicating that vehicles are not permitted to block north-bound turning movements; and 3) it is unlikely that the capacity of the intersection would be further degraded because land along Cave Avenue will be almost fully developed with the proposed development. The hearing examiner, understanding the evidence that a complete transportation analysis had not been performed showed a failure to do the required concurrency, remanded the application for that purpose, among others. In response, Planning and Community Development Department again explained that the concurrency test was performed but, because the information was several years old, the city engineer asked Applicants to provide updated information. Exhibit 104.

26. Applicants' consultants arranged for an updated traffic count at the Cave Avenue-Winslow Way intersection. Data was collected in January, 2011, between 4:15 and 6:30 p.m. The peak hour for the intersection was observed to be 5:15 to 6:15 p.m. with a total of 544 trips during that hour. Ten percent of those trips utilized Cave Avenue. The Highway Capacity Manual 2000 methodology was used to calculate the LOS with and without the proposed development. The report of the analysis, Exhibit 123, states that the model used accounts for the effect of traffic backed up beyond Cave Avenue from Winslow Way's intersection with SR 305, pedestrian traffic, etc. The current intersection operation is at LOS B with 12.9 seconds of delay. Using the volume of trips estimated by the ITE to be generated by 25 units, instead of the maximum of 22 proposed, and with reductions allowed for the core area, there would be nine PM peak hour trips generated by the project. The LOS would remain "B" after the proposed development, with 13.0 seconds of delay. That meets the City's LOS standard, LOS C, for Cave Avenue, and the concurrency requirements.

27. Community members testified that this traffic analysis is flawed for failing to take into account the heavy traffic associated with the preschool not at the PM peak hour and the potential build-out of the area, given there is around seven acres still vacant on Cave Avenue. Testimony of Johannsen. The methodology, however, properly utilized the peak hours for residential uses, either AM or PM. Testimony of Wierzbicki. The peak hours for the preschool and daycare would be around the morning arrivals from 7-9 a.m. and the afternoon arrivals and departures spread from 12:30-6:30 p.m. Because the greatest number of trips generated by the new residential development would be during the p.m. commute hour that does not coincide with the preschool and day care peak hours, the methodology used should show the greatest impact on the operation of the intersection. Forecasting the effect of traffic generated by total build-out of the area is not a requirement for reviewing the effect of a specific project on the existing system. Testimony of Wierzbicki

28. The Cave Avenue Community Council submitted a traffic report (Exhibit No. 8R) prepared by Vince Mattson, PE, who was a design engineer during part of his career with the Washington State Highway Department, at the most recent hearing. Mr. Mattson reviewed the applicants' consultant's study and conducted traffic counts on August 17th, 18th and 23rd and again on September 1st at the intersection to validate the study. He found the numbers comparable and that the difference that did appear was likely attributable to the on-going construction work on Winslow Way. In his opinion, the controlling factors for the LOS determination for the intersection would be the volume of westbound traffic on Winslow Way and the timing of the signal on SR 305 and that only by ignoring the effect of that signal, such as back-up across the Cave Avenue intersection that inhibits right turns from Cave, could the traffic analysis produce an LOS B for the Cave Avenue intersection. He also considered the Island-Wide Transportation Study adopted in 2004 that showed the pm peak hour LOS in 2002 for the SR305/Winslow Way intersection to be "D" for westbound and a forecast for the year 2008 of LOS E, but felt that even with less population and development than projected the LOS would not have improved from the LOS D.

29. Given the probable effect of the construction activity on traffic and the preferred non-summer months for LOS analyses, the January traffic counts likely reflect the more typical condition. Testimony of Davies.

30. The intersection analysis methodology used by the City, from the Highway Capacity Manual, determines the LOS for a stop-controlled intersection by the delay associated with the controlled movement, or in this case the southbound stop-sign controlled leg, though there are "inputs" that consider the effect of the signalized intersection on the operation of the stop-controlled intersection. The results of the August 23rd observation of vehicle delay show a maximum delay of vehicles southbound on Cave Avenue, the controlled leg during one fifteen minute period of 21 seconds, which would result in an LOS C, and using the average delay over the entire hour, the LOS would be "B", both meeting the City's standard for a residential street.

31. The pedestrian and bicycle circulation and access to and within a subdivision are to be consistent with the non-motorized transportation plan, Ordinance 2002-09. Staff found

that plan did not recommend any improvements for the area. However, after doing further analysis after the remand, the Department determined that the approximately 50 percent increase in the amount of vehicular traffic on the more southerly part of the street would impact pedestrian traffic from the existing residences that use Cave Avenue so that improvements to pedestrian safety must be provided. Exhibit 104. As the subject site does not have Cave Avenue frontage beyond the one lot, the improvements need to extend beyond that frontage. Given the lack of, and uncentered, right-of-way, private structures adjacent to the paved street, etc., the city engineer decided to require a five foot wide sidewalk on the west side of Cave Avenue north from the existing sidewalk to the trail head and a three foot wide gravel shoulder where right-of-way is available on the east side of Cave Avenue north from the "Maes" property for some separation from vehicles in the travel lane. Exhibit 104.

32. Applicants responded with a proposal to provide a sidewalk from the entrance road of the new subdivision extending south on Cave Avenue to meet the existing sidewalk on the west side of Cave Avenue south of Gilmore Way. Though Applicants communicated with the owners of vacant property on the east side regarding an easement or dedication so that the sidewalk could be extended the entire way on one side, they were unable to obtain agreement. So, the sidewalk may start on the east side with a signed, mid-block pedestrian crossing to connect to the west side. The Director proposes a condition to assure this improvement. Though requiring pedestrians to cross the street to use a sidewalk is not to be desired, the city engineer's approval indicates that it is acceptable. Even with the additional foot and vehicular traffic, the proposed sidewalk configuration appears to be an improvement over the existing conditions.

33. To comply with American Disabilities Act regulations for accessible routes, sidewalks must provide the minimum clear width of 36 inches. Exhibits 126 and 127. Any obstructions such as utility poles or fire hydrants in the width to be improved with a sidewalk would have to be moved.

UTILITIES AND PUBLIC SERVICES

34. Natural drainage of the site is to the west and south toward SR 305 and runoff now flows over the highway cut slope to a rock drain along the east edge of the highway. Storm drainage from new impervious surfaces is proposed to be directed to the SR 305 drainage system. The initial proposal had road surfaces first drain into rain gardens located in the cul-de-sac, south of the access roadway, and in a portion of one of the lots. In response to community concerns about mosquito breeding and safety of children, those rain gardens have been removed from the proposal. Runoff from roofs and other impervious surfaces would also be conveyed to the highway system. Exhibit 62. Concern was expressed about affect on the aquifer, however the city engineer has reviewed and approved the preliminary drainage plans that ensure the subdivision will not cause an undue burden on the drainage basin or water quality as meeting the standards of Chapter 15.20. Exhibit 82. The City Engineer has approved preliminary drainage plans. Exhibit 133.

35. The City issued a Non-binding Commitment for Water and Sewer System Capacity, Exhibit 9, determining that the property is within the City's service areas, that water and sewer mains are adjacent to the property, and that the mains are in service. The

Commitment letter shows that the City currently has sufficient water and sewer capacity for the proposed development.

36. Residents of the Cave Avenue neighborhood complained of low water pressure at the upper end of Cave and expressed concern about the effect of additional users. Exhibit 47 and others. The community called attention to the 2006 Winslow Water System Plan that identifies the Cave Avenue neighborhood as an area that cannot meet fire flow standards due to undersized water mains in the 2006 Winslow Water System Plan. The Public Works Department provided an analysis by Browne Engineering, Inc. (Exhibit 9R) that determined fire flow capacity and expected water pressures with the addition of the proposed subdivision. Cave Avenue is served by the low pressure system fed through a 6 inch main from the Ferncliff pressure reducing valve and from Winslow Way through 8 inch, 4 inch and 6 inch mains running along Cave Avenue. The pressure in the upper portion of the Cave Avenue area is "well below" the standard of 30 psi during peak demand periods, according to the analysis. Because the flow standard would not be met at the proposed fire hydrant location within the proposed subdivision, and the pressure would drop to less than 30 psi under peak hour demand conditions, various alternatives for upgrade were evaluated. The Director recommended that approval of the preliminary subdivision be conditioned (Condition No. 13, Exhibit 10R) on working with the City to meet the fire flow capacity and water pressure standards for the project. The alternative upgrades would not necessarily improve water pressure for the existing development on the upper portion of Cave Avenue, contrary to the desires of the community.

37. The non-binding sewer availability letter, May 11, 2010, states that the sewer system has capacity for the proposed development. Exhibit 10R. The sanitary sewer line, as proposed initially, would run along the eastern side of the southerly triangular open space parcel. The owners of two lots adjacent to the open space parcel, 317 and 327 Cave Avenue, on its east side, hold an easement, Greenbelt Easement (Exhibit 36), that preserves the existing condition of the area and limits the use. It allowed the pedestrian path that is now through the area and installation of utilities under that path. The initially proposed location of utilities may be contrary to the terms of that easement. Applicants had identified several alternatives for locating the new sewer line such as accessing the public line on Cave Avenue via the proposed new right-of-way, or over an existing sewer easement on Lot 8 where there is an existing sewer line, and now propose a direct connection to the public line on Cave Avenue. Testimony of A. Tawresey. Staff has proposed a condition requiring showing the location on the final plat drawings.

38. The Bainbridge Island Fire Department requires locating the proposed fire hydrant at the entrance of the project on Cave Avenue. It found that the access to the subdivision is acceptable and will be required to meet all City standards. Exhibit 17.

39. The Department of Public Works and the city engineer have reviewed the proposal for consistency with the City's Design and Construction Standards and Specifications and state and federal regulations and have determined that the proposal is in conformance with those that are applicable at this stage and recommended conditions to assure that the subdivision will conform to all applicable standards and regulations.

40. The subject site is not in an aquifer recharge area or a fish and wildlife conservation area. Exhibit 101.

41. The payment of school impact fees pursuant to Chapter 15.28 has been waived for all new development per Resolution 2011-05. A condition is proposed to require fees if they have been reinstituted.

OPEN SPACE AND VEGETATION

42. Section 18.85.060 requires that all trees in the perimeter landscape areas be retained and that either 15 percent of the total number of significant trees on the entire site or 30 percent of the significant tree canopy be retained. A tree retention plan was submitted. Exhibit 7. It shows a total of 116 significant trees and that approximately 49 percent of those trees would be retained. A schematic landscape plan, Exhibit 66, shows the retention of significant trees in perimeter areas, plus other native trees and understory. A condition is required to assure those standards will be met.

43. To take advantage of the open space incentive for reduction in lot size, the open space must meet the objectives, criteria and standards of Section 17.04.082. The proposed open space at the steep slope and ravine accomplishes the objective of protecting the stream and conservation of soils and the SR 305 buffer preserves some visual qualities. The design guidelines are satisfied in that there are concentrated, consolidated, usable areas of open space. The proposal addresses several of the valued features listed, namely critical areas and buffer, native forests and significant trees, and trails.

44. An open space management plan has been proposed showing proposed ownership of the various open spaces and approved uses, Exhibit 67, but with the revised plans, staff recommends a condition requiring a final open space management plan.

45. Comprehensive Plan policy for Winslow Residential Districts, W7.3, is to "Provide landscape buffers between any multi-family and existing single family." Section 18.85.070 establishes a maximum perimeter width of 20 ft. and a minimum of 15 ft. with a partial screen buffer for urban multifamily districts abutting single-family zoning or use. The Director found that the proposed twenty feet along the east perimeter north of the access roadway, fifteen feet adjacent to proposed Lot E and 25 feet along the east perimeter of the bonus open space associated with Lot E is an appropriate amount of screening between the multifamily and single family districts.

46. SR 305 is defined in the comprehensive plan as a scenic road and by statute is designated a scenic highway. RCW 47.39.020. For a multifamily subdivision, Section 17.04.085B establishes the requirement for a minimum 25 ft. vegetative buffer adjacent to scenic roads. The proposal includes a 25 ft. full screen buffer meeting the minimum requirement. Neighborhood residents urge that a 25 ft. buffer in this location would be anomalous as wider buffers, 50 feet with a 35 ft. minimum, are required in the abutting districts to the north and south and urge that a deeper buffer be required to maintain the rural character of the highway and avoid aesthetic impact along SR 305 and to avoid increased highway noise and pollution from vehicles in their neighborhood. Exhibit 49; Testimony of Johansen, Schmid, and others. The buffer would actually be deeper than 25 ft. because part of the highway right-of-way is not developed, at least until such time as the

highway is widened. Testimony of Beckman. Staff pointed out that if the site were developed with a multifamily structure, which would not require further subdivision, only a 15-20 ft. partial screen buffer would be required under the landscape standards of Section 18.85.070 that do not establish any perimeter landscape requirement specific to scenic highways in urban multifamily districts, so the 20 ft. partial screen requirement would presumably apply. Testimony of Beckman. Staff proposed conditions for the recording of open space easements or covenants, recording of a management plan, and signage along its border.

COMPREHENSIVE PLAN POLICIES

47. The Winslow Master Plan targets the Winslow Master Plan Study Area to accommodate fifty percent of the future population growth for the island through denser single-family and multifamily development.

48. The proposed density amounts to approximately nine units per acre. The density of the Cave Avenue single-family subdivision is approximately three units per acre. The density of the development to the north, the Vineyard Lane condominium development, is approximately 14 units per acre; of the Cave Avenue condominiums to the south is approximately twelve units per acre; and of the Harbor Square mixed-use development is approximately 43 units per acre. Community members urge that the appropriate comparison is the more immediate single-family subdivision and that the density proposed is incompatible with that.

49. The proposed preliminary subdivision is consistent with the designation in the Comprehensive Plan's land use map for Urban Multifamily District.

50. The Comprehensive Plan policy TR 1.5, SR 305 scenic character, is to "(r)etain the scenic character of SR 305 by minimizing the placement of signs, discouraging new access points, and maintaining vegetative buffers." There are no signs or new access points proposed and a buffer would be maintained, consistent with this policy.

51. Comprehensive Plan Policy W 7.4 is to have regulations addressing the compatibility of multi-family developments with adjacent uses and to retain the scale of development in Winslow. During site plan and design review, required by Section 18.105.020, the design standards addressing compatibility and scale would be applied to the proposal to assure compliance with the policy. The Director recommends a condition addressing the requirements for site plan review.

PROCEDURAL COMPLIANCE

52. The City's responsible official issued a Mitigated Determination of Nonsignificance (MDNS) August 20, 2010. Exhibit 59. Though the hearing record contains comments critical of the MDNS, Exhibit 97, the MDNS was not appealed. Conditions of the MDNS are proposed to be listed as conditions of subdivision approval.

53. Notice of the revised application was published, mailed and posted on August 12, 2011. Notice of the September 9, 2011, public hearing was published in the official newspaper, mailed to interested persons and to property addresses within 300 ft. of the subject property, and posted August 19, 2011. Exhibits 4R and 5R.

54. An objection was lodged that the community association's attorney provided unsworn testimony at the initial hearing. An examination showed that the record did not support the objection in that the attorney provided argument based on facts in the record.

55. The requirements that must be met for preliminary subdivision approval are set out in Section 17.04.094 and RCW 58.17.110.

56. The Hearing Examiner is authorized by Section 2.16.110C to hold a public hearing and make a recommendation to the City Council on a preliminary subdivision.

Conclusions

1. The Hearing Examiner has jurisdiction to hear and make a recommendation on this application.

2. Notice was given as required by Section 2.16.085D.

3. The findings show that the subdivision standards of Section 17.04.085 for multifamily subdivisions are met as required by Section 17.04.094A.1 in that:

A. Through use of the incentive for open space in a multifamily subdivision, the sizes of the proposed lots do comply with Code requirements for the zoning district;

B. The proposed preliminary plat provides for the minimum 25-foot full screen vegetative buffer along SR305, a scenic road. Without a clearer statement of intent or criteria for requiring more than the minimum, and recognizing that the City Council has determined that an even lesser buffer would be allowed in multifamily districts if it were not for the proposal to subdivide the property, the minimum width must be regarded as acceptable.

C. Road, bicycle and pedestrian access performance standards, pursuant to Section 17.04.080.C and with the new sidewalk proposal are satisfied. The proposal maintains existing roadway character and minimizes impervious surfaces as the width of the new roadway and access easements are not greater than the minimum required consistent with the performance standards of the section. The design for roads and access is consistent with City standards. The proposed sidewalk, though not optimum with its mid-block crossing, is an improvement over the current condition and provides for adequate pedestrian safety. Conditions proposed by the city engineer are appropriate and should be imposed.

D. Open space satisfies the requirements of Section 17.04.082 for flexible lot design.

4. Appropriate provisions have been made for the public health, safety and general welfare and public use and interest including those listed in RCW 58.17.110. The findings show that the preliminary subdivision provides open spaces, for drainage, adequate streets and sidewalks, for sanitary waste, and for schools through the condition requiring payment of impact fees if reinstituted. A condition is appropriate to assure adequate fire flow and water pressure. While there is concern about the density proposed, and the change to the

immediate area, the Comprehensive Plan and regulations have determined the density desired for the wider area that this subdivision would help to accomplish, and the density proposed would be less than could be achieved through development without the subdivision.

5. The findings show that the city engineer has determined that preliminary plans demonstrate that the subdivision conforms to regulations concerning drainage, will not cause undue burden on the drainage basin or water quality, the streets and pedestrian ways are properly coordinated with other streets and are adequate to accommodate the anticipated traffic, and the subdivision conforms to subdivision chapter requirements and construction standards and specifications or that with conditions of approval recommended will do so.

6. With the recommended conditions, the preliminary plat will comply with applicable provisions of the Bainbridge Island Municipal Code, Chapters 58.17 and 36.70A RCW, and other state and federal regulations.

7. The proposed subdivision, with the recommended conditions, will be consistent with the Comprehensive Plan in that it will provide perimeter landscape buffers between single-family residential development and the proposed multifamily development; site plan review will assure compatibility of the development with adjacent uses; the retention of the scenic character of SR 305 will not be affected by signage and a 25 foot wide, vegetative buffer, though not as deep as the community desires, will respect the scenic character of the island; and the additional density is consistent with the target to accommodate 50 percent of future population grown in the Winslow Master Plan Study Area.

8. The findings show that the public use and interest would be served by the platting of the proposed subdivision, with approval subject to the recommended conditions.

Recommendation

The proposed preliminary subdivision should be approved subject to the conditions recommended by staff as modified herein, and contained in Appendix A.

Entered this 22nd day of September 2011.

Margaret Klockars

Margaret Klockars
City of Bainbridge Island
Hearing Examiner *pro tem*

Concerning Further Review

The City Council will hold a public meeting to consider the application pursuant to Sections 17.04.093, 17.04.094 and 17.04.095 and Chapter 2.16. A decision by the City Council is final unless, within 21 days after its issuance, a person with standing appeals the decision in accordance with Ch. 36.70C RCW.

APPENDIX A

SEPA Conditions:

1. All graded materials removed from the subdivision shall be hauled to and deposited at City approved locations (Note: local regulations require that a grade/fill permit be obtained for any grading or filling of 50 cubic yards of material or more, and that a SEPA Threshold Determination be issued for any fill over 100 cubic yards).

2. Prior to any construction activities, the applicant shall apply for a Construction Stormwater General Permit through the WA State Department of Ecology. More information about this permit can be found at: http://www.ecy.wa.gov/programs/wq/stormwater/construction/ or by calling Charles Gilman at (360) 407-7451, email chgi461@ecy.wa.gov.

3. Prior to final subdivision application, the Storm Water Pollution Prevention Plan (SWPPP) for the proposed development shall be provided for City review and approval in accordance with BIMC 15.20. The plans must be approved, the improvements constructed (or a construction bond provided if applicable), and an acceptable final inspection obtained. The design submittal shall incorporate all proposed subdivision improvements including complete civil plans, grading and erosion control plans, roadway plan & profile, storm drainage facilities and drainage report, and shall be prepared by a professional engineer currently licensed in the State of Washington. A Construction Stormwater Permit (NPDES) will be required prior to construction plan approval in accordance with BIMC 15.20.030.B (4).

4. To mitigate impacts on air quality during earth moving activities, contractors shall conform to Puget Sound Clean Air Agency Regulations, which ensure that reasonable precautions are taken to avoid dust emissions. (BIMC Section 16.08.040).

5. Prior to any construction activities associated with this project, the applicant shall acquire a Washington State Department of Transportation (WSDOT) storm water discharge permit to be able to discharge storm water to State Route 305 (SR305) right of way.

6. Any non-exempt tree harvesting shall require the appropriate Forest Practices Permit from the Department of Natural Resources.

7. On site mobile fueling from temporary tanks is prohibited unless the applicant provides and is granted approval for a Permit and Best Management Plan that addresses proposed location, duration, containment, training, vandalism and cleanup. (Reference 1. Uniform Fire Code 7904.5.4.2.7 and 2. Department of Ecology, Stormwater Management Manual, August 2001, see Volume IV "Source Control BMPs for Mobile Fueling of Vehicles and Heavy Equipment".) (Chapter 173-304 WAC)

8. In order to mitigate any noise impacts, all construction activities must comply with BIMC 16.16.025, Limitation of Construction Activities.

9. All lighting within the subdivision shall comply with the City's Lighting Ordinance, BIMC Chapter 15.34.

10. Contractor is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.

NON-SEPA Conditions:

11. Prior to the development of a second unit and/or multifamily unit on each lot, the applicant of said development shall first apply for and receive site plan review approval. The units are subject to the multifamily design guidelines and the BIMC 18.105.080 (9) density bonus design requirement: building design shall incorporate features such as pitched or terraced roof forms, upper level stepbacks, wall recesses and/or other architectural treatment to minimize building bulk and scale as perceived from adjoining streets and neighborhoods.

12. The final plat submittal shall include street names and indicate the location of any traffic regulatory signs and approved mailbox locations from the United States Postal Service.

13. Prior to final subdivision approval, the applicant shall submit to the City for review and approval complete civil plans and drainage report for the proposed development, and the proposed 4' wide public sidewalk along Cave Avenue (from the proposed development south to meet existing improvements). The plans shall include all road, sewer, water pressure, fire flow and stormwater improvements required by the City or other governmental agency, and any required easements. The plans shall also address surface and stormwater pollution prevention. The plans shall be prepared by a professional engineer licensed in the State of Washington and shall be in accordance with BIMC

15.20 Surface and Stormwater management and the City's Design and Construction Standards.

14. Open space easements or covenants shall be recorded together with the land division and represented on the final plat.

15. Prior to final plat submittal, the applicant shall install signage designating the open space along the open space boundary. The signs shall be a minimum of 64 square inches and made of metal, hard plastic, or engraved wood. The signs shall be placed at approximate 50-foot intervals along the open space perimeter.

16. Prior to final subdivision submittal, the applicant shall submit a revised Schematic Landscape Plan for 439 Cave Avenue that includes ornamental native trees, native and drought tolerant shrubs and a bench. Prior to the issuance of a building permit for the first unit, the applicant shall install or provide a performance assurance device for said landscaping and improvements as approved in the revised landscape plan.

17. A final Open Space Management Plan shall be submitted with the final plat application. The Plan shall designate the amount of open space per lot and it shall list the permitted uses within that open space. The buffer to the geologically hazardous area shall be reviewed for compliance with 16.20.150.

18. The following shall be submitted with the final plat submittal:

    a. A plat certificate; and
    b. Binding water availability and sewer availability letters. The location of the connections shall be indicated on the final plat drawings.

19. School impacts fees may be required. If school impact fees are in effect at the time of submittal for the final plat, the applicant shall pay one half of the school impact fees for 17 of the multifamily units. The remaining half of the fees shall be paid at the time of building permit issuance for the first 17 units (BIMC Chapter 15.28). The school impact fee for any building permit beyond the 17th unit shall be paid by the applicant of said building permit prior to the issuance of the building permit.

    If the fees are in effect at the time of building permit submittal rather than subdivision submittal, than each applicant constructing a residence shall pay the full impact fee at the time of building permit issuance for each residence.

20. At the time of Building Permit Application, demonstration of compliance with applicable stormwater management requirements shall be required in accordance with BIMC 15.20.

21. Prior to clearing and grading activities, the applicant shall apply for a Construction Stormwater General Permit thru the Washington State Department of Ecology.

22. Prior to final plat submittal, all lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes. The right-of-way centerlines shall be monumented, including the center of the cul-se-sac. A survey of the property must be completed and submitted with the final plat application.

23. The entrance road to this plat (on Cave Avenue) shall have curb returns on both with a minimum radius of 30 feet. Both curb returns shall have two wheelchair ramps constructed to WSDOT Standard Plan No. F-40.12-00. The sidewalk shall terminate at the north and south property lines of this development. The throat of said entrance shall be paved with asphalt and have a painted cross walk. There shall be a stop sign for exiting vehicles.

24. All rights-of-way proposed to be dedicated to the City shall be 40 feet in width as identified on the Standard Drawing No. 7-050 for a Residential Urban Street. Only the required right-of-way width shall be conveyed to the City.

25. A right-of-way (ROW) construction permit will be required prior to any construction activities within the right-of-way. The ROW permit will be subject to separate conditions and bonding requirements.

26. The proposed water main shall be required to meet the Washington State Administrative Code 246-290-230 (5) which requires a minimum of 30 psi at the water meter for a single-family residence connecting to the proposed water main.

27. All storm water infrastructure and/or amenities outside existing and/or proposed rights-of-ways shall remain private property and maintained as such.

28. The proposed fire hydrant shall be placed at the intersection of the entrance road and Cave Avenue per the Fire Marshals request. Said fire hydrant shall also have a Storz Adapter on one of the service ports. Also it shall be the responsibility of the applicant to verify the adequacy of the proposed water main to meet fire flow requirements pursuant to the City of Bainbridge Island Municipal Code 13.10.065 and meet the Fire Marshals requirements for this site.

29. In lieu of completion of improvements according to conditions for a final plat approval, the city council may accept an assurance device, other than a bond, in an amount and in a form determined by the city council, which secures and provides for the actual construction and installation of the improvements or the performance of the conditions within one year, or such additional time as the city council determines is appropriate after final plat approval. In addition, the city council shall require an assurance device, including a bond, securing the successful operation of improvements for one year after city's acceptance of the

improvements; provided, that the city council may, upon recommendation of the city engineer or the director, extend the term of the assurance device for up to two years for improvements that will not demonstrate compliance with construction or installation requirements within one year.

30. Except for modifications reflecting compliance with these conditions of approval, final plat documents shall substantially conform to the documents submitted with the subdivision application, with the exception of those revised documents that were submitted on August 2, 2011 and any revisions requested per the conditions of preliminary plat approval.

31. The final plat shall contain the following conditions for recording: 1, 2, 4-13, 17, 21-23.