

RESOLUTION NO. 2012-12

A RESOLUTION of the City of Bainbridge Island, Washington
approving the Grow Community subdivision (File No. SUB13551)

WHEREAS, on April 10, 2012, the preliminary subdivision application was submitted by Bainbridge Community Development, LLC to the Department of Planning and Community Development; and

WHEREAS, the preliminary subdivision application facilitated the creation of 26 (22 single family and 4 multifamily) residential lots on a 2.6 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 August 2, 2012, the Hearing Examiner conducted an open record public hearing on the preliminary subdivision upon proper notice; and

WHEREAS, on August 7, 2012, a notice of continuance briefing deadline was ordered on August 7, 2012; and

WHEREAS, on August 15, 2012, the deadline for submitting briefing comments ended; and

WHEREAS, on August 24, 2012, the Hearing Examiner (incorrectly) issued a recommendation of approval to the City Council for the preliminary subdivision; and

WHEREAS, on August 29, 2012, the Hearing Examiner issued a correction notice making his decision the final decision on the preliminary subdivision and correcting various clerical citations; and

WHEREAS, in response to a condition from the Hearing Examiner and interested purchasers of the lots, the applicant made minor changes to the final subdivision to reduce the number of single family lots by one and to simplify lot lines throughout the plat to create fewer lot corners; and

WHEREAS, on October 9, 2012, the final subdivision application was submitted by Bainbridge Community Development, LLC to facilitate the creation of 24 (20 single family and 4 multifamily) residential lots to the Department of Planning and Community Development; now, therefore

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

Section 1. The Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner (File No. FSUB13551), together with the correction notice dated August 29, 2012, 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.

Section 1. The conditions imposed through the preliminary subdivision have been met.

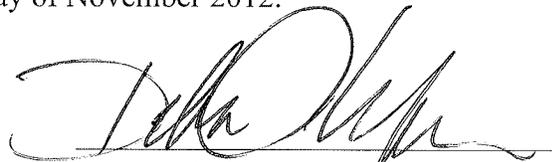
Section 2. The Grow Community subdivision (File No. FSUB13551) proposed for final subdivision is in conformance with the zoning ordinance, the comprehensive plan, the subdivision regulations and standards, and all applicable land use ordinances and applicable state law in effect at the time of preliminary plat approval.

Section 3. In accordance with BIMC 2.16.160.H, the City Council finds that bonds and assurance devices submitted by the applicant adequately assure completion of all required subdivision improvements.

Section 4. The Mayor is authorized to sign the original of the final plat for recordation with the Kitsap County Auditor.

PASSED by the Council of the City of Bainbridge Island, Washington, this 7th day of November, 2012.

APPROVED by the Mayor on the 7th day of November 2012.



Debbi Lester, Mayor

ATTEST/AUTHENTICATE


Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	November 2, 2012
PASSED BY THE CITY COUNCIL:	November 7, 2012
RESOLUTION NUMBER:	2012-12

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

**OFFICE OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND, WASHINGTON**

CORRECTION NOTICE

Project: Grow Community Subdivision
File number: SUB13551
Applicant: Bainbridge Community Development, LLC
Location: Corner of Wyatt Way and Grow Avenue

The City's Planning Director has pointed out that the Hearing Examiner decision issued on August 24, 2012, was incorrectly denominated a recommendation to the Bainbridge City Council. The currently adopted procedure identifies preliminary subdivision applications as final decisions appealable directly to Superior Court. In addition, both the Hearing Examiner decision and Planning Department conditions contain clerical citation errors, mostly arising out of the recently completed recodification process. These mislabeling errors require the following minor revisions to the August 24, 2012, decision:

1. The document title is corrected to read "Findings, Conclusions and Decision".
2. Conclusion number 2 on page 6 is revised to read as follows:
 2. But what we have here is in reality an intramural debate – a discussion among the different departments and offices within a single municipal agency. The entire discussion is internal to a single agency, the City of Bainbridge Island. The final decision of the City, by whomever made, is entitled to deference if the matter is ultimately appealed to Superior Court. But no single element of the internal City dialogue that preceded its final decision is subject to such deference.
3. The phrase "for purposes of making a recommendation to the City Council" is deleted from the first sentence of conclusion number 13 on page 8.
4. The following citations are corrected: p. 7, #7 - 2.16.040, not 20.16.040; p.8, # 14 & 15 - 2.16.020(Q), not 18.38; p.8, #18 - 2.16.125, not 17.04.094; p.10, condition 8 - 18.18.030, not 18.41.

In all other respects the August 24, 2012 decision is affirmed as issued. Any appeals of the decision must be made to Superior Court, not to the City Council. This minor corrections notice does not revise or extend applicable deadlines for filing appeals or requests for reconsideration.

ORDERED this 29th day of August, 2012.

/s/ Stafford L. Smith
Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

**OFFICE OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND, WASHINGTON**

**FINDINGS, CONCLUSIONS AND
RECOMMENDATION TO CITY COUNCIL**

Project: Grow Community Subdivision
File number: SUB13551
Applicant: Bainbridge Community Development, LLC
Location: Corner of Wyatt Way and Grow Avenue

FINDINGS OF FACT

A. Procedural History

1. The applicant has requested approval for a Tier II, Built Green 5 Housing Design Demonstration Project (HDDP) subdivision. The proposal is to subdivide a 2.6 acre parcel into 26 lots to accommodate 45 dwelling units (21 single family, one accessory building and 24 multifamily units). On March 9, 2012, this 2.6 acre parcel received site plan and design review (SPR) approval as part of a larger, 8 acre project (Exhibit 1). Overall SPR approval was granted as a phased, Tier II, Built Green 5 Housing Design Demonstration Project (HDDP) for the development of 131 residential units, a school and a community building. Under the SPR the project received HDDP approval to modify the residential parking requirements, increase the density, reduce setbacks and road side buffers and increase the height. Under the SPR, the layout of the site was approved, including the size, type, amount and design of the residential units, pedestrian amenities, and the location of pea patches, park nodes and parking spaces.

2. A public hearing on this application was held at Bainbridge City Hall on August 2, 2012, where testimony was received and eleven exhibits entered into the record. The hearing was continued to provide parties an opportunity to brief a code interpretation issue. The record was closed administratively on August 24, 2012, at which time a further six exhibits (nos. 12 through 17) were admitted to the record by the Hearing Examiner. Because the parties have not had an opportunity to review and offer objections to the receipt of these exhibits, they have been admitted provisionally; parties may file a timely motion for reconsideration to lodge objections to any of the newly admitted exhibits. The list of exhibits is attached at the end of this report, and copies are available for inspection at the Hearing Examiner's office.

3. The subdivision project is subject to State Environmental Policy Act (SEPA) review as provided in Washington Administrative Code (WAC 197-11). Utilizing the optional DNS process provided in WAC 197-11-355, the City issued a combined Notice of Application/SEPA comment period on June 22, 2012 (Exhibit 2). The 14-day comment period ended on July 6, 2012. The City, acting as lead agency, issued a Mitigated Determination of Nonsignificance (MDNS) threshold determination (Exhibit 3) on July 10, 2012; the appeal period ended on July 25, 2012 and no appeal of the SEPA determination was received.

4. In addition to the relief from standards already granted under the SPR, the applicant is now proposing a second HDDP modification of development standards through the subdivision review process to alter lot dimensions, sizes and buffers and project open space on the 2.6 acre parcel subject to this application. The City's planning staff concluded that multiple HDDP applications are appropriate for this project because the regulatory standards being varied are different for the current subdivision application than for the prior SPR approval.

5. At the public hearing held on August 2, 2012 the Hearing Examiner opined that this multiple HDDP approach seemed problematic, for the following reasons:

- ▲ A proliferation of review procedures tends to confuse members of the public and dilutes their opportunities for effective participation in the decision making process.
- ▲ Procedural proliferation simply adds another layer of complexity to an already arcane process, increasing the expenditure of time and resources for all involved without adding any resultant public benefit.
- ▲ The stated intent of the SPR procedures is to provide a comprehensive project design process. Unproductive fragmentation of the review process undermines the fundamental purpose of the SPR.

6. Both the applicant's representative, Marja Preston, and City planning staff explained their rationale for deeming multiple HDDP applications for a single project to be acceptable. They emphasized that no standards previously altered under the SPR process were again being modified as part of the subdivision review. Even so, the Examiner concluded that an interpretive question involving multiple code sections merited a briefing opportunity. Accordingly, the hearing was continued to allow parties to submit written comments. Timely statements on HDDP issues were received from attorney Ryan Vancil, representing the applicant; Katharine Cook, City Planning Director; the Chair and Vice-chair of the City's Design Review Board; and residents Larry Koss, Charles Schmid and Sally Adams. The matters raised by the continuance are issues of legal interpretation that will be discussed below in the Conclusions section.

B. Regulatory review

7. The subject property is located within the Winslow Master Plan Study Area as designated by the Comprehensive Plan and is currently served by urban infrastructure and facilities; these will be upgraded as necessary to meet the needs of the project. As proposed, the overall development will be a pedestrian-oriented, energy efficient, multi-generational neighborhood

comprised of 131 residential units, 45 of which will be located in the proposed subdivision on 26 lots. To reduce reliance on the automobile and encourage pedestrian activity, the project will include a car sharing program and will provide pedestrian trails through the site, connecting to Madison Avenue. The project will also include multiple electric charging stations to further offset the impacts of automobile use.

Land Use Element. The Urban Multifamily District is intended to provide for moderate to high-density residential development that may include some office and governmental uses. The proposed subdivision project will provide moderate-to-high intensity residential development at a density of one unit per 2,516 square feet. The project is serviced by city water and sewer and is in close proximity to schools and a fire station. The project has been reviewed for compliance with the buffering requirements of the Zoning Code and has been conditioned accordingly. During the SPR review phase, the City's Design Review Board (DRB) and staff reviewed the project over a series of seven meetings to ensure compliance with the City's adopted design guidelines for multi-family development. Since the SPR approval, the DRB has reviewed the project at three additional meetings for changes to the row house buildings and for the landscape plans specific to Grow and Wyatt.

Housing Element. This subdivision project is utilizing the Housing Design Development Program, which in alignment with the housing policies requires the use of innovative site development practices. The development increases the variety of housing choices suitable to a range of household sizes and incomes in a way compatible with the character of existing neighborhoods by providing a mixture of unit sizes and types. The subdivision proposes 26 lots, which will provide for 45 of the approved 131 SPR housing units. Housing types include small detached homes, townhomes, cottages, lofts and apartments. The single family home sizes range from 882 square feet to a maximum of 1,565 square feet. The multifamily rowhouse units will provide ground floor flats of 477 square feet, ground floor two bedroom flats of 866 square feet, and two story townhouses of 989 square feet. While none of the homes will be mandated to serve income-qualified residents, the smaller unit size may result in housing that is more affordable relative to other choices on the island.

Nonmotorized Transportation Element. To conform to nonmotorized goals and policies, improvements approved as part of the SPR for Grow Avenue include a bicycle lane and a sidewalk. Improvements for Wyatt Way include a 10' dedication of right-of-way, a sidewalk and a bicycle lane. ADA compliant, publicly accessible trails throughout the development will provide a continuous connection from the corner of Wyatt Way and Grow Avenue to Madison Avenue. The trails easements shall be recorded prior to final plat approval.

8. On August 12, 2009 the City Council passed Ordinance 2009-06 establishing the Housing Design Demonstration Project (HDDP) Program as a pilot procedure for the development of

projects designed to increase the variety of housing choices available to residents of all economic segments and to encourage sustainable development through the use of regulatory incentives. If a second round of HDDP modifications is permitted, the proposed subdivision can meet the purpose and the goals of the HDDP by providing a variety of housing choices to all economic segments and implement innovative building design and practices by incorporating Built Green standards into the development. The project was originally reviewed and approved as an HDDP through the SPR process, but as part of its effort to qualify as a new HDDP subdivision the applicant submitted a new HDDP checklist, and on June 12, 2012, the applicant and staff hosted another public participation meeting.

9. The largely *pro forma* character of the second HDDP application is underscored by the fact that the development standard modifications requested all appear to have been tacit assumptions of the original SPR review, where the project sought relief from standard residential parking requirements, setbacks, roadside buffers, and height and density limits. Now, in addition to the relief granted by the SPR, the applicant is proposing to further modify development standards through the HDDP subdivision process for lot dimensions and size and for open space, and to formalize setback reductions. These latter set of modifications appears to have been disclosed as part of the SPR review but were not approved at that time in their entirety. The feasibility of smaller lot sizes and widths is largely a function of having urban utility services available and providing stormwater facilities for increased impervious surfaces; these issues have been addressed within the technical review process.

10. There are also differences between the proposal now before us and the one approved as an SPR that are not directly implicated in the second round of HDDP review. A comparison of the originally proposed April 10, 2012 preliminary plat map with the December 12, 2011 site plan submitted to the Planning Commission (as illuminated by a short letter on project phasing from Brown Engineering, Inc., dated January 13, 2012) demonstrates some significant design changes. What the Browne letter described as Phases 1 and 2 are now melded into a single first phase.

11. More significantly, the number of single family lots proposed for the northwest corner was increased from 20 to 24 within the April plat map. And the multi-family units, while still totaling 24 as in the SPR site plan, were concentrated entirely in two buildings fronting on Wyatt Avenue. This potentially increased the proposed intensity of multi-family development on Wyatt directly across from a single-family zone from 19 to 24 units. But more recently a site plan modification dated July 5, 2012, (exhibit 10, attachment 16) was approved by the Planning Department as a minor site plan adjustment. This adjustment represents a lesser deviation from the approved SPR than did the original April plat map. It would create 22 single family lots (now 21 with elimination of the orphan "accessory" lot) and restore 4 of the rowhouse units to a location away from the Wyatt Avenue frontage. It is noted that the July 3, 2012, revised plat open space lot coverage drawing (exhibit 7) does not incorporate new the layout shown in the July 5, 2012 site plan modification. For our purposes, however, the July 5, 2012, minor adjustment describes the currently approved configuration of the project's northwest corner and provides the basis for current review.

12. Compliance with BIMC 18.15 development standards is mostly about providing adequate parking. Citizen complaints are endemic about overflow parking impacts from smaller municipal center living units where everyone is assumed to walk to shopping and the ferries but somehow

Findings, Conclusions and
Recommendation to City Council

have failed to get the eco-friendly message. The SPR process first authorized reduction of the standard zoning code parking requirements under the HDDP and then reduced the resultant figure another 25% for ferry proximity – an exercise in double-dipping in this observer's opinion. But there is also a safety-net condition that allows the City to require increased parking requirements after issuance of the 36th residential unit building permit if a “guest parking demand study” warrants it. Since one does not know how reliable a data base will exist to inform that study, it remains unclear how effective such a condition will actually prove to be. On a more concrete level, both the Design Review Board and Planning Commission expressed a strong sense that the project's credibility as pedestrian-oriented development depends upon providing the northwest to southeast diagonal pathway connection at Phase 1; the conditions regulating this requirement (nos. 7, 11 and 19) have been further elaborated.

13. No new internal roads are proposed as part of this subdivision. Area residents Fred McGinnis, Louis Richard and Sally Adams all testified as to the traffic problems currently experienced in the neighborhood, which this development will no doubt exacerbate. Neither Grow Avenue nor Wyatt Way were designed for the arterial loads they now carry. Wyatt has become a major commuter access route to the ferry from the south end of the Island, with increasing amounts of Wyatt traffic now cutting south along Grow to Winslow Way to avoid the congestion at the Wyatt/Madison intersection. Neither the Wyatt/Madison nor the Wyatt/Grow intersections are projected to degrade to LOS F with the addition of project traffic, but the leisurely ambience of a small community can be compromised long before LOS F is reached. As Mr. McGinnis suggested, the ultimate solution to the ferry cut-through traffic along Grow Avenue might be to restrict right-turns from Winslow Way into the ferry lane; that would also lessen congestion on Winslow Way and sooth the irritation of ferry commuters queued patiently on SR 305. Engineering staff also agreed to consider the need for a traffic-calming stop sign at the Grow Avenue/Shepard Drive intersection, as suggested by public testimony.

CONCLUSIONS

A. Relationship between the subdivision application and the existing SPR

1. Both Ryan Vancil, the applicant's attorney, and City Planning Director Kathy Cook offered a variety of arguments why multiple HDDP applications for a single project are appropriate procedures. The least tenable contention is probably Mr. Vancil's suggestion that the Hearing Examiner is obligated to confer “considerable judicial deference” on the code interpretation of the Planning Department as representing the special expertise of the administrative agency charged with enforcement of the City's zoning code. The fatal flaw with this argument is that the case law that gives rise to it deals with a completely different institutional framework – the relationship between a state court and a local municipality. The municipality is the agency to whom deference is owed by a state court.

2. But what we have here is in reality an intramural debate -- a discussion among the different departments and offices within a single municipal agency. The entire discussion is internal to a single agency, the City of Bainbridge Island. The final decision of the City, by whomever made, is entitled to deference if the matter is ultimately appealed to Superior Court. But no single element of the internal City dialogue that preceded its final decision is subject to such deference. The difficulty with Mr. Vancil's position becomes immediately clear when one recognizes that in this instance the Hearing Examiner merely supplies a recommendation to the City Council. If it were to be taken seriously, the implication of Mr. Vancil's position would be that the City Council could not overrule a code interpretation made by the Planning Director. One notes that the Planning Department itself has not embraced Mr. Vancil's position and adopted his argument. There is a sound reason for that.

3. In her memo Planning Director Cook points out that BIMC 2.16.170 provides generically that projects needing multiple permits have the option (indeed are encouraged) to consolidate review procedures but are not required to do so. And more specifically, BIMC 2.16.040(D)(5) provides for optional consolidated project review in the context of a SPR application. Based on these optional review consolidation procedures, she argues that the code establishes that multiple HDDP applications are authorized. The essential logic of her position is this: both the SPR and subdivision provisions authorize HDDP applications to modify certain development standards; if review consolidation is not mandatory, then multiple HDDP applications must be contemplated.

4. This argument could carry the day if all the other relevant code materials are silent on the subject. But it needs to be appreciated that consolidation provisions are at bottom simply processing pathways. They only are required to answer the question about what to do *if* you have multiple applications. They are not normally intended to tell you *whether* you need multiple applications or *how* they interrelate. There is nothing intrinsically wrong or unfair about a code saying that while you are not forced to consolidate applications, if you fail to do so certain consequences may follow. So the relevant question becomes one of ascertaining whether other code sections supply substantive content bearing on the relationship among multiple applications that overcomes a rather weak inference arising out of what is essentially a processing provision.

5. Among the many informative submissions received in response to the Examiner's briefing notice, perhaps the most thorough review of the relevant code provisions was provided by Sally Adams, who also testified at the public hearing. Her comment letter was the only one to identify the importance of BIMC 2.16040(B)(3), which reads as follows:

The provisions of this section supplement those of BIMC 2.16.020 and 2.16.030 when the application is for site plan or design review. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

BIMC Section 2.16.040 contains the City's site plan and design review provisions, while BIMC Sections 2.16.020 and .030 supply general review and administrative procedures. As noted by Ms Adams, the HDDP regulations are a subsection of BIMC 2.16.020.

6. In short, the code structures the interpretation process. There is a code-mandated hierarchy: the SPR provisions trump procedures found in other related sections if there is a conflict. More specifically, Ms Cook's assertion that the "HDDP program simply functions as an overlay process to the City's other land use applications, including site plan reviews, subdivisions and conditional use

permits” is not correct. First, an overlay zone is a geographic designation, not a processing construct (see BIMC 18.36.030(175)). Second, in the event of conflict or inconsistency between HDDP and SPR provisions, the SPR provisions control.

7. The primary task is thus to ascertain whether BIMC Section 20.16.040 answers our central question about whether an SPR approval containing an HDDP element also contemplates later HDDP approvals affecting the same project. If BIMC 20.16.040 provides a satisfactory answer to that question, one need look no further. If the answer is vague or incomplete, one may look to other related code sections for guidance consistent with the .040 framework.

8. Within BIMC Section 2.16.040 the principal elements bearing on our discussion seem to be subsections (A) dealing with purpose; (B)(3), which specifies the regulatory hierarchy described above; (D)(5), providing the optional consolidation procedure; decision criteria (E)(1) and (5), which acknowledge the availability within a site plan review of the HDDP process; and (G), which places rather strict limitations on modifying an approved SPR without a further City review and approval of a major adjustment application.

9. Of these the most critical appear to be subsections (A) and (G). The former identifies the main purpose of the SPR process as being “to establish a comprehensive site plan and design review process that ensures compliance with the adopted plans, policies, and ordinances of the city.” A further stated purpose is to create an “overall site design” to guide future development in an orderly and expedient manner. The purpose subsection (A) thus emphasizes the desirability of establishing some sort of co-ordinated site master planning process.

10. Once a SPR is approved for a project site, BIMC 2.16.040(G) discourages alterations by means other than a formal new or amended SPR application. Small adjustments, described as “minor changes in dimensions or siting of structures or the location of public amenities,” can be approved by the Planning Director upon request. But anything more than that is deemed a major adjustment requiring a new or amended SPR application: “Major adjustments are those that change the basic design, intensity, density, or character of the use.”

11. The proper reading of BIMC 2.16.040 is that it does not directly prohibit multiple HDDP approvals on a single SPR site, but the window of opportunity provided for such procedures is rather small. In the absence of a formal minor adjustment application, one could arguably take the view that a subdivision-based HDDP application that proposes minor adjustments to an SPR has been granted *de facto* approval by the Planning Department if it goes to public hearing accompanied by a favorable Department recommendation. But if the proposed alterations involve major adjustments to an approved site plan, BIMC 2.16.040(G) prevents them from being approved by any path other than an SPR amendment.

12. The Planning Department has maintained from the outset that the subdivision HDDP under review is little more than a procedural formality and does not alter the approved site plan. The record supports this viewpoint. Approval of subdivision standard modifications for lot sizes, buffers and dimensions cannot violate the integrity of a site plan that as yet has no lot lines on it. In the context of comparing the current preliminary plat proposal to the existing SPR, the critical issue is whether the northwestern site quadrant has been reconfigured by the plat in a way that

fundamentally changes the approved SPR's basic design, character or intensity. This is not a question of lot line placement so much as the composition and arrangement of uses, particularly with reference to increasing offsite impacts. While the original April 10, 2012, preliminary plat map did indeed raise questions about whether it might constitute an unauthorized major adjustment of the SPR, the relatively smaller changes documented in the July 5, 2012, minor adjustment present no similar concerns. As for the open space waiver, the situation is slightly more convoluted. The site plan provides a substantial quantity of open space but none is actually required for SPR approval. The subdivision HDDP allows a more generic open space criterion to be applied and thus offers the applicant some regulatory relief. But the bottom line remains that the subdivision HDDP approval for open space does not in itself alter the approved SPR and accordingly does not involve an unpermitted adjustment to it.

B. Subdivision review

13. The Hearing Examiner has jurisdiction over this proceeding for purposes of making a recommendation to the City Council. Public hearing notice requirements have been met.

14. The provisions of BIMC Chapter 18.38 creating Housing Design Demonstration Projects overlay applicable subdivision requirements and authorize modification of such requirements to achieve Chapter goals for housing diversity and innovative site development and design. Planning staff has evaluated the proposal and determined that it qualifies for treatment as a Tier II Green 5 Housing Design project under the HDDP.

15. The applicant has requested modification under HDDP authority of subdivision standards for minimum lot size and dimensions, open space and buffers. HDDP approval requires compliance with the applicable general criteria stated at BIMC 18.38.070. These criteria are met by the application, and due to their largely *pro forma* character the modifications requested do not constitute an unauthorized major adjustment to the underlying SPR. All other applicable zoning and subdivision standards will be met.

16. Adequate urban public services already exist in the neighborhood and, as upgraded, will possess the capacity to accommodate the proposal without significantly impacting current service levels.

17. The City Engineer has determined that the preliminary subdivision will meet the City's drainage, road and traffic requirements, including applicable design and construction standards. These determinations are supported by the evidence of record.

18. The underlying preliminary subdivision application meets the decision criteria stated at BIMC 17.04.094, except as modified pursuant to HDDP approval. As conditioned, the preliminary subdivision makes appropriate provision for the public health and safety and serves the public use and interest. The dedications and easements required as a condition of plat

approval are necessary to meet applicable subdivision and zoning code standards and the goals and policies of the comprehensive plan.

RECOMMENDED DECISION

The Hearing Examiner recommends that the Bainbridge City Council APPROVE the Grow Community Subdivision (file no. SUB13551) as a Tier II Built Green 5 Housing Design Demonstration Project in the configuration generally depicted on the July 5, 2012 site plan modification (exhibit 10, attachment 16), subject to the following conditions:

SEPA CONDITIONS:

1. A Stormwater Pollution Prevention Plan (SWPPP) is required prior to building and civil construction activities. Stormwater quality treatment, erosion and sedimentation control shall be designed in accordance with BIMC 15.20. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The SWPP shall include off-street accommodation for construction vehicle parking.
2. To ensure the survivability of the significant trees designated to be preserved, the applicant shall follow the recommendations as provided in BIMC 18.15.010.C.2.b:
 - i. An area of prohibited disturbance, generally corresponding to the dripline of the significant trees and/or tree canopy of tree stands shall be identified by the applicant and approved by the department before commencement of site plan preparation; and
 - ii. A temporary four-foot high chain link or four-foot high plastic net fence shall delineate the area; and
 - iii. No impervious surfaces, fill, excavation, vehicle operations, compaction, removal of native soil or storage of construction materials shall be permitted within the area defined by such fencing; and
 - iv. A rock well shall be constructed if the grade level around the tree is to be raised more than one foot. The inside diameter of the well shall be equal to the diameter of the dripline of the tree or tree canopy of tree stands; and
 - v. The grade level shall not be lowered within the larger of (a) the dripline of the tree, or the tree canopy of tree stands, or (b) the area recommended by a consulting arborist certified by the International Society of Arboriculture.
3. All construction activities are subject to noise regulations in BIMC Chapter 16.16.
4. To limit the impact on lighting, any proposed lighting shall comply with BIMC Chapter Findings, Conclusions and Recommendation to City Council

15.34.

5. To ensure appropriate recreational opportunities, park nodes and associated facilities shall be created for each phase of development as indicated on the site plan (page 10A of the Site Plan packet).
6. To reduce car dependency and mitigate the impacts of traffic, the applicant shall provide a car sharing program, electric charging stations and covered bicycle storage areas.
7. The applicant shall provide pedestrian connectivity improvements as indicated in SPR13551 for this 2.6 acre portion of the project proposed to be subdivided, including but not limited to those improvements along Grow Avenue, Wyatt Way, through the 2.6 acre portion of the site and the trail connectivity from Shepard to the Pavilion development. The Shepard to Pavilion development shall include a five foot wide trail at a minimum and the removal of the fencing between the Pavilion development and the 8 acre project site. The applicant shall record public access easements and signages indicating the pathways are public.

NON-SEPA CONDITIONS (specific to this subdivision application)

8. Any variations to the proposed multifamily dwelling units are subject to the regulations contained in "Design Guidelines for Multifamily" (BIMC 18.41) and may be subject to review by the City's Design Review Board. This shall be noted on the final plat.
9. The preliminary plat map shall be revised to conform with the July 5, 2012, site plan modification (exhibit 10, attachment 16). Proposed Lot 1 (the "accessory" lot) shall be deleted and its area incorporated into the adjacent open space tract. The total number of single-family lots approved hereunder is 21. Lot coverage shall be recorded on the face of the final plat generally as indicated on Sheet 7 (exhibit 7) but may be reconfigured with Planning Department approval so long as the 40% maximum coverage total is not exceeded.
10. Approved setbacks shall be recorded on the face of the final plat.

	Minimum
All interior subdivision setbacks	0 feet
Building to exterior subdivision boundary	5 feet
Building to right-of-way	10 feet

11. The traffic and parking assumptions plus the basic credibility of the subdivision as a pedestrian-oriented development require provision within Phase 1 of a functional diagonal path between the northwest and southeast corners of the entire 8-acre project site as depicted in the December 12, 2011 approved site plans. If construction of this diagonal route in the locations shown in the December 12, 2011, site plans is shown to be infeasible during Phase 1, the Planning Director may approve an alternative temporary route (pending completion of the entire project) that provides comparable pedestrian connectivity. Construction of the

diagonal pathway, either as shown in the December 12, 2011, site plans or along an alternative route approved by the Planning Director, shall be completed prior to final plat recording. An approved open space management plan also shall be recorded with the final plat that indicates the maintenance and allowed uses within the open space areas that reflect the open space requirements of the HDDP Ordinance (BIMC 2.16.020.Q).

12. The location of mailboxes and bicycle storage areas shall be provided on the final plat submittal along with the pedestrian signage. Prior to final plat submittal, the applicant shall revise the plat plan to contain the bicycle storage area completely within Tract A.
13. The applicant shall coordinate with the City's Design Review Board on the design of the bus shelter and shall indicate its location prior to submittal for final subdivision.
14. The applicant shall comply with applicable recording requirements as provided in RCW Title 58. Approval of the preliminary subdivision shall constitute authorization for the applicant to develop the facilities and improvements in strict accordance with the standards established by BIMC 2.16.125, as modified by BIMC 2.16.020, including approvals related to bonus density and modified development standards, subject to the conditions imposed herein. As provided in RCW 58.17, if a final subdivision application meeting all of the requirements of BIMC 17.04 has not been filed within seven years of the date of the preliminary subdivision approval, such approval shall expire and become void.
15. Prior to the final occupancy of any building, a final plat utility is required for that building.
16. All lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes along with all other applicable survey provisions.
17. A plat certificate shall be provided with the final plat application.

NON-SEPA CONDITIONS (from the approved SPR)

18. The following note shall be included on the face of the plat: Pursuant to BIMC 18.15.010, the installation of landscaping shall be verified by a Landscape Professional or owner and a landscaping declaration signed. Landscape buffers shall be maintained with a maintenance assurance device for a period of three years. No vegetation within the buffers shall be disturbed without approval of the Department of Planning and Community Development through an approved clearing, grading or civil plan.
19. The development shall provide non-motorized public trail right-of-way easements for the trails as depicted in the site plan drawings, with the addition of an easement from the southeast corner of the site from Shepard through the Pavilion to Madison.
20. Any off-site location(s) for community solar arrays shall require a separate permit review and are not approved as part of this application.

21. Storm drainage facilities are to be maintained by the applicant. The applicant shall provide a declaration of covenant prior to final occupancy that guarantees that the system will be properly maintained. The covenant shall include language that will allow the City to inspect the system to ensure is properly performing.
22. The 15 designated guest parking spaces shall have adequate 'guest parking' signage.
23. The applicant shall submit a report that analyzes the demand for guest parking prior to the issuance of a building permit for the 37th unit. The City shall analyze the report to determine the appropriate amount of guest parking spaces needed to meet the guest parking demands of the development. Any changes to the parking requirement will require an amendment to the subdivision to accommodate the additional parking demand. Prior to final plat approval, the applicant shall indicate the location for the additional off-site guest parking spaces. This condition shall be noted on the face of the plat.
24. To address the requests of the Fire Marshal, the applicant shall install residential sprinklers to the units, as found necessary.
25. To address the requests of the Health District, the applicant shall have a licensed well driller decommission any existing wells prior to final plat approval.
26. As conditioned by the plat utility permits, the applicant shall install signage that indicates the trails are public at each entry point on the perimeter of the site.
27. The subdivision shall conform to the HDDP program criteria for housing diversity, innovative site development and innovative building design. Prior to the issuance of a building permit for a residential unit, the application will be reviewed for compliance with the following:
 - a. The dwelling units shall be at or below 1,600 square feet of floor area;
 - b. 20-30% water use reduction;
 - c. 25-35% improved energy performance;
 - d. Innovative building design elements including alternative energy, energy efficiency, water efficiency, green building materials and accessibility;
 - e. Landscaping, recreational opportunities, open space and transportation elements that substantially conform to the plat utility permits,
 - f. Built Green 5. Building permit applications, construction and final occupancy shall comply with the certification provisions of BIMC 2.16.020.3.f;
 - g. Proof of ongoing certification with the Built Green building rating system shall be

required during construction and project certification shall be completed prior to final occupancy.

This condition shall be recorded on the face of the final plat.

28. Following the completion of a microneighborhood, Staff shall be able to access the site for tours no more than once every three months with permission and cooperation of the property owner.
29. Significant trees shall be retained and a significant tree plan shall be provided and recorded as part of the final plat. Only diseased, dying and/or hazard significant trees can be removed with a report by a certified arborist. Any removed significant tree must be replaced with three native trees of at least 6 inches in caliber and 6 feet in height. These conditions shall be recorded on the face of the final plat.
30. Each building shall meet the height requirement and shall not exceed 40' above average existing grade.
31. One covered bicycle space for every five parking spaces for the multifamily development shall be provided, for a minimum total of five spaces.
32. Pursuant to BIMC 15.08, the applicant shall apply for a permit for any regulated signs.
33. Prior to the issuance of any building permits, the project shall be reviewed for compliance with the lighting guidelines.

Recommended this 24th day of August, 2012.


Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The public hearing exhibit list is attached to this report. Parties wishing to object to admission of any or all of exhibits 12 through 17 may do so by filing a motion for reconsideration within 10 days of the date of this recommended decision. Such motions shall be filed in writing with the Hearing Examiner's Office at Bainbridge City Hall and state the basis for the objections. Please note that filing a motion for reconsideration does not stay applicable deadlines for bringing any administrative or judicial appeal.

Findings, Conclusions and
Recommendation to City Council

EXHIBIT LIST

Application

Preliminary Subdivision

Grow Community SUB13551

Applicant: Asani LLC

Location of Proposal: Corner of Wyatt and Grow

Staff Contact:
Heather Beckmann, Associate Planner

Public Hearing: August 2, 2012, at 9:00 am
Location: City of Bainbridge Island
City Hall Council Conference Room

Hearing Examiner:
Stafford Smith

EX. NO.	DOCUMENT DESCRIPTION	DATE RECEIVED	NO. OF PAGES
1	Application and COBI Letter of Receipt	04/10/2012	12
2	COBI Letters of Transmittal for Review	04/10/2012	4
3	Open Space Management Plan	04/10/2012	4
4	Title Report	04/10/2012	79
5	Lot Closures	04/10/2012	23
6	Preliminary Site Plat Drawings	04/10/2012	8
7	Open Space & Lot Coverage Drawing (Revised sheet 7 only)	04/03/2012	1
8	Certificate of Posting (Signs)	07/19/2012	2
9	Certification of Distribution and Posting	07/20/2012	12
10	City's Project Report Re Grow Community Subdivision with Attachments as follows: <ul style="list-style-type: none">• Attachment 1 Project Report Re Grow Community Site Plan Review (3/1/12)• Attachment 2 NOA and SEPA Checklist (6/22/12)• Attachment 3 MDNS (7/11/12)• Attachment 4 Preliminary Plat Drawings (4/10/12)• Attachment 5 Summary of Community Meeting (6/12/12)• Attachment 6 Comment Letters (7/5/12 to 7/22/12)• Attachment 7 BIFD Memo (4/26/12)• Attachment 8 Health District Approval (4/27/12)• Attachment 9 Applicant's HDDP Checklist• Attachment 10 City's HDDP Checklist• Attachment 11 Applicant's Ltr Re Relief Description (4/27/12)• Attachment 12 Tree Retention Plan Phase 2 (6/29/12)• Attachment 13 Kitsap Transit Memo (7/12/12)• Attachment 14 Title RCW 58• Attachment 15 City Development Engineer Memo (7/5/12)• Attachment 16 Site Plan Modification (7/5/12)	07/30/2012	34 (plus 130 pages Attachments)

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EX. NO.	DOCUMENT DESCRIPTION	DATE RECEIVED	NO. OF PAGES
11	Staff PowerPoint Presentation at 8/2/12 Hearing	08/02/2012	16
12	Davis Studio and Design revised Planning Commission site plans and profiles.	12/12/2011	35
13	Browne Engineering, Inc. letter to Marja Preston re: Grow Community Phasing	01/13/2012	2
14	COBI Joint Notice of Administrative Decision and SEPA Determination for SPR	03/09/2012	5
15	Summary of community meeting held June 6, 2011 by Kelly Dickson	06/10/2011	6
16	COBI public comment letter file for SPR	08/2011 to 02/2012	35
17	COBI Planning Commission meeting minutes for February 9 and 23, 2012	02/02/2012 and 02/23/2012	13