

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

In the Matter of

UPPER BLAKELY/HARBOR MEADOW

CUP/RUE13379

Application for Conditional Use Permit
and Reasonable Use Exception

**ORDER ON
MOTION FOR
RECONSIDERATION**

The Hearing Examiner's decision in this matter was issued on January 9, 2007. On January 18, 2007, the applicants filed a Request for Reconsideration requesting clarification and/or amendment of the decision. The applicants requested changes in: Findings 7, 8 and 11; Conditions 3 and 51; and, Sections 1.5.1, 1.5.3, and 1.10 of the Open Space Management Plan.

DISCUSSION

Finding 7 and Finding 8: The terms "family compound" and "family members" are sourced in the description of the proposal provided by the applicants (see *e.g.*, Exhibit 15, Item A11; Exhibit 16, page 1, Paragraph 2; Exhibit 21, page 10, Item 8; Testimony of Shelton]. Similarly, the references to the anticipated rate of development came directly from the applicants [see *e.g.*, Exhibit 15, Item A6; Exhibit 16, page 1, Paragraph 4; Exhibit 21, page 10, Item 8; Testimony of Shelton]. Unless the information provided by the applicants is false, grossly inaccurate, or contradicted by more credible evidence in the record, Finding 7 and Finding 8 are properly Findings of Fact for this decision. The Findings do not, however, control the nature of future ownership or the rate of development. Further, the zoning code, not Finding 8, controls development of "accessory dwelling units".

Condition 3: This condition requires a temporary erosion and sedimentation control plan and restricts construction to between "May 1 and September 30, unless specifically allowed by the City Engineer..." This language is identical to that used in the Director's Recommended Condition #3. The City Engineer routinely applies conditions of the type and disagreement and/or misapprehension about its application should have been raised at hearing.

Condition 51: The language of this condition was intended to make clear that the applicants' responsibility for improvement was limited to the applicants' side of the road. This condition should be revised to make that clear. See below.

Open Space Management Plan (OSMP):

Section 1.5.1 does not (and should not) endeavor to provide a comprehensive list of "permitted activities". The phrase (emphasis added) "including, but not limited to..."

regarding “installation and use of facilities commonly associated with recreation areas” in 1.5.1(ii) makes that clear; as does (emphasis added) “patios, decks, gazebos or similar accessory structures” in 1.5.1(iv).

Section 1.5.3 regarding permitted activities in “[e]xpansion of the designated Meadow” or in other meadows created within Open Space Area 2, refers to Section 1.5.1 for “permitted activities”. That is, the activities permitted by 1.5.1 in the proposed meadow, would be permitted in an expanded or new meadow (*i.e.*, it is the same “list” of activities).

The provision in **Section 1.5.3** that require “the majority of the Owners” in order to enlarge the designated Meadow and/or create other meadows, comes directly from a draft OSMP prepared by the applicant. In Exhibit 73, Section 1.3 provides (for the entire OSMP) that: “Changes and amendments can only be made by a majority vote of the landowners.” The provision of Section 1.5.3 requiring majority approval for changes in meadow designation is considered appropriate and necessary.

Section 1.10.3 needs to be revised to provide for the tree retention intended. The “30%” retention provision for individually owned building sites should refer to “existing significant trees”, not the “tree canopy”. This provision is similar to, but not as restrictive as the retention proposed in applicants’ draft plan (see *e.g.*, Exhibit 72, Section 1.6.3; Exhibit 73, Section 1.7.3). See revised Section 1.10.3 below.

ORDER

The decision in this matter is hereby **ORDERED REVISED** as follows:

Condition 51 is revised to read:

51. Prior to issuance of the first building permit, the applicants shall, to the satisfaction of the City Engineer, **improve the subject property’s Toe Jam Hill Road frontage to City standards.**

The Open Space Management Plan (in Appendix A) is revised to read:

1.10.3 Vegetation Retention. A minimum of 30% of the existing significant trees (as defined by BIMC 18.06.089) shall be retained on each individually-owned building site. Hazard trees, noxious weeds, invasive, non-native plants may be removed. To promote slope stability, significant trees and native vegetation should be retained on slopes exceeding 15%.

Entered this 24th day of January 2007.

signed in original

Meredith A. Getches
Hearing Examiner