

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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

SUMMARY

Applicant: Winslow Properties I LLC/ Jim Theros
P. O Box 10628
Bainbridge Island, WA 98110

File No: SUB14613

Request: Preliminary Subdivision - Estates at Wing Point

Location: Northeast corner of the intersection of Wing Point Way and Ferncliff Avenue. The site is resultant Parcel B of the Boundary Line Adjustment recorded under Kitsap County Auditor's File No 200702130002. Situated in SW1/4NE1/4 Section 26, T25N, R2E, W.M.

Comprehensive Plan/Zoning: Comprehensive Plan: Semi-Urban Residential (SUR)
Zoning: R-2.9, 15,000 square feet per unit.

Summary of Proposal: To divide 2.42 acres into seven lots.

Public Hearing: After reviewing the report of Planning and Community Development, the Hearing Examiner conducted a public hearing on February 4, 2010. Following the hearing the Examiner visited the site.

Recommendation: The Examiner recommends that the preliminary plat be approved, subject to conditions.

FINDINGS OF FACT

1. Winslow Properties I LLC (Jim Theros) seeks approval of a seven lot preliminary plat (SUB14613).
2. The subject property consists of 2.42 acres at the northeast corner of the intersection of Wing Point Way and Ferncliff Avenue. The parcel is resultant Parcel B of the Boundary Line Adjustment recorded under Kitsap County Auditor's File No. 200702130002. The property is within the SW1/4NE1/4 Sec. 26, T25N, R2E., W.M.
3. The Comprehensive Plan designation for the property is Semi-Urban Residential (SUR). The zoning is R-2.9, 15,000 square feet per unit.
4. The site is undeveloped. It is generally flat with a gentle slope from west to east. The northern portion is heavily vegetated. The southern part has largely been cleared. There are no critical areas on site. Public water and sewer are available.
5. The western boundary along Ferncliff Avenue NE runs north-south approximately 436.61 feet. The southern boundary along Wing Point Way NE measures 221.50 feet east-west. The eastern boundary runs northerly from Wing Point Way approximately 320 feet where there is a 73.50 foot jog to the east. From the end of this jog, the boundary runs another 116.61 feet to the north. The northern boundary is approximately 295.00 feet long.
6. To the immediate north of the subject property is the undeveloped four-lot Ferncliff Short Plat. To the immediate east along the northerly 116 feet of the east boundary is the developed Plat of Tiffany Meadows. To the immediate east of the southerly 340 feet of the east boundary is a cleared area encompassing the four-lot Wing Point Short Plat. To the west, on the other side of Ferncliff Avenue is undeveloped property where there is a potential development of 48 affordable housing units. No application for this development has yet been submitted.
7. Across Wing Point Way to the south is residentially developed property zoned R-4.3. (Comprehensive Plan designation: Urban Residential) The adjacent properties on all other sides of the subject site are zoned R-2.9 (Comprehensive Plan designation: Semi-Urban Residential).
8. Notice of Application for the subject proposal was published on August 14, 2009. Six public comments were received regarding the proposal. One, from the Tiffany Meadows Homeowners Association, had 27 signers. The letters were primarily concerned with density, water and sewer, traffic, buffers, land clearing, and stormwater management.
9. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued by the City on January 5, 2010. The DNS elicited no public comments. It was not appealed.
10. The proposed seven-lot subdivision complies with the density requirements of the Land Use Code. The minimum lot size has been modified by the flexible lot standards contained

in BIMC 17.04.080. The minimum lot size is 5,000 square feet if served by public sewer. The smallest lot is approximately 9,069 square feet. The lots contain the minimum lot width. Required building setbacks will be met.

11. The application was circulated to various City departments. With the addition of conditions, the City departments approved of the proposal. The conditions recommended by the City departments are reflected in the conditions of approval recommended by the Examiner.

12. It was preliminarily determined that there is adequate capacity to serve the property with existing public water and sewer facilities. Binding water availability and sewer availability letters shall be required for final plat approval.

13. Likely traffic impacts were reviewed and the Public Works Department issued a Certificate of Concurrency for the project, determining that "the capacity of transportation facilities affected by the proposed development is equal to or greater than the capacity required to maintain the level of service standard for the impact of the development."

14. In connection with the road system and traffic, the applicants agreed to the following:

- a. Dedication of a 30-foot right-of-way along the property's Ferncliff Avenue and Wing Point Way frontage.
- b. Dedication of property at the corner of Wing Point Way and Ferncliff Avenue, resulting in a minimum 35-foot return radius tangent.
- c. Vacation and restoration of the three existing curb cuts on Ferncliff Avenue.
- d. Installation of a five-foot-wide concrete sidewalk within the newly dedicated right-of-way along Ferncliff Avenue, and just outside and adjacent to the newly dedicated right-of-way along Wing Point Way.
- e. Construction of a crosswalk (with appropriate signs) on Wing Point Way at the intersection with Ferncliff Avenue.

15. The initial drawings proposed access to the seven parcels using existing curb-cuts on Ferncliff Avenue. Staff review resulted in reconfiguration of the access-ways, so as to preserve perimeter buffers and eliminate awkward turning movements. The reconfiguration, using different access points from Ferncliff, is reflected on revised drawings dated 2/1/10. Lots were slightly redrawn to accommodate the access changes.

16. The property currently contains a vegetated roadside area approximately 230 feet in length from the north boundary along Ferncliff Avenue. A 50-foot wide roadside vegetation buffer is to be provided along this 230 feet. The remainder of the Ferncliff Avenue frontage will have a 25-foot landscaped buffer. A 25-foot landscaped buffer will also be provided along the

property's Wing Point Way frontage, and the perimeter buffer along other boundaries will be 25 feet as well. Significant trees in the roadside and perimeter buffers will be preserved. As proposed, the plat will retain 36% of the existing canopy.

17. A landscaping plan will be required, calling for the planting within the 25-foot buffer areas along Ferncliff Avenue and Wing Point Way to meet full screen standards. Other 25-foot buffer areas shall, at a minimum, meet filtered screen standards. All planting is to be installed or assured prior to final plat approval. The buffers to be provided meet City standards.

18. The project is conditioned to provide access-ways and utilities corridors perpendicular to the buffers to minimize disturbance to the buffers. Two cuts only through the required buffers will be allowed for access and utilities.

19. Prior to any construction, including clearing or grading, the applicant shall install a temporary four-foot high chain link fence along the interior boundary of the buffers and along either side of the access/utilities easements for the width of the buffer. Additional fencing may be necessary to protect the drip line of significant trees within the buffers.

20. The property within the Wing Point Short Plat, immediately to the east of the subject property has been cleared to its boundaries, in violation of the conditions of its approval. This clearing was not performed by the present applicant, but by subsequent owners of the property. The applicant here has stated that clearing on the subject property will conform to the conditions placed on plat approval.

21. As the plat is designed, there will be adequate room for two parking spaces on each lot for each residence. There will be no need for street-side or off-property parking.

22. There is an existing storm swale along Wing Point Way which may receive some stormwater from the developed area. However, the drainage concept for the subdivision is for stormwater to be accommodated by on-site infiltration. Pervious materials will be used on the access-ways. Such features will need to demonstrate compliance with State Department of Ecology standards. A report detailing storm drainage facilities must be reviewed and approved by the City Engineer and the Department of Planning and Community Development prior to final plat submittal.

23. Impact fees will be paid to compensate for the influence of the development on schools. One half the school impact fee for each lot shall be paid by the applicant prior to final subdivision approval. The purchaser constructing a residence on a lot shall pay one half of the school impact fee at the time of building permit issuance.

24. At the hearing, public testimony was presented by four citizens. Their concerns mirrored those expressed in the earlier written comments. The Staff Report thoroughly discusses the concerns raised by the public and amply demonstrates that the applicant's proposal, as conditioned, is consistent with the City's Comprehensive Plan and Land Use Code. The Examiner concurs with the Staff analysis. The Staff Report is by this reference incorporated herein as though fully set forth.

25. In sum, the proposal makes appropriate provisions the public health, safety and general welfare, including open space, drainage, streets, potable water supplies, sanitary wastes, schools and other relevant planning considerations. Creating additional residential sites, consistent with the Comprehensive Plan will serve the public use and interest.

26. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding.
2. The requirements of SEPA have been met.
3. An application for preliminary plat approval may be approved if the following criteria are met (BIMC 17.04.094):
 - (1) The subdivision development flexible lot standards of BIMC 17.04.480 have been satisfied.
 - (2) Appropriate provisions have been made for the public health, safety and welfare, and the public use and interest, including those items listed in Chapter 58.17.110 RCW.
 - (3) The subdivision has been prepared consistent with the required flexible lot design process and flexible lot design standards.
 - (4) Any portion of the property containing critical areas as defined in BIMC 16.20 conforms to all requirements of that chapter.
 - (5) As conditioned, the proposed preliminary subdivision application meets the decision criteria for City Engineer approval. The subdivision conform to regulations concerning drainage (Chapter 15.20 BIMC). The subdivision will not cause undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream. The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties. The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic. The subdivision conforms to the subdivision requirements (Title 17 BIMC) and the standards contained in the "City of Bainbridge Island Design and Construction Standards and Specifications" manual.
 - (6) The proposal complies with all applicable provisions of the Bainbridge Island Municipal Code, applicable state regulations governing Subdivision (Chapter 58.17 RCW) and Growth Management (Chapter 36.70A RCW) and all other applicable provisions of state and federal laws and regulations.

(7) The proposal is in accord with the City's Comprehensive Plan.

4. The findings above support a conclusion that the above criteria for preliminary plat approval are met by the proposal as conditioned. The public use and interest will be served by the subdivision.

5. Any finding which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. Except for modifications reflecting compliance with these conditions of approval, the final subdivision shall substantially conform to the preliminary subdivision drawings dated February 1, 2010.

2. A plat certificate shall be provided with the final subdivision application.

3. The applicant shall pay one half of the school impact fee for each lot prior to final subdivision approval. An applicant constructing a residence on each lot shall pay one half of the school impact fee in effect at the time of building permit issuance.

4. The subdivision shall conform to the City of Bainbridge Island Design and Construction Standards. Public and private improvements, facilities, and infrastructure, on and off the site, that are required for the subdivision shall be completed and have final inspection and approval prior to final plat approval. The applicant shall comply with the following conditions to the satisfaction of the City Engineer:

a. A Transportation Facility Certificate of Concurrency has been issued for this project. Acceptance by the applicant of this preliminary plat approval shall constitute agreement in writing to construct and install all street improvements and make necessary dedications as conditioned. All dedications shall be shown on the final plat.

b. The subdivision shall be limited to two access and utility easements from Ferncliff Avenue.

(i.) The northerly access shall be centered approximately 90 feet from the north property boundary, the line common to Lots 1, 2, 3 and 4 and shall provide a 30-foot width internal roadway/utility easement to benefit Lots 1, 2 3 and 4.

(ii.) The southerly access shall be centered approximately 315 feet from the north property boundary, the line common to Lots 5, 6 and 7, and shall provide a 30-foot width internal roadway/utility easement to benefit Lots 5, 6 and 7.

(iii.) Access and utility easements shall be located to avoid impacts to significant trees.

(iv) At a minimum, the access portions of the easements must be 20 feet in width. The roadways shall consist of 12-foot width driving surfaces with three-foot shoulders on each side, together with appropriate storm drainage facilities; storm drainage facilities may be located within utility easements.

(v) Easements for sanitary sewer lines shall be a minimum of 15 feet in width and shall be centered on the sewer line. The roadways and related utilities must be installed or bonded prior to final subdivision submittal.

c. The existing curb cuts shall be vacated, and the applicant shall restore the curbs. The existing cuts are located at the north property boundary, approximately 185 feet south of the north boundary, and approximately 350 south of the north boundary.

d. The applicant shall install a painted or thermoplastic crosswalk (and appropriate related signs) across Wing Point Way at its intersection with Ferncliff Avenue.

e. The applicant shall install a five foot width concrete sidewalk within the right-of-way for the length of the subject property along Ferncliff Avenue.

f. The applicant shall install a five-foot width concrete sidewalk within the right-of-way for the length of the subject property along Wing Point Way. Subject to City Engineer and Planning Director approval, the applicant may construct the walk adjacent to the right-of-way, providing a public easement or additional right-of-way over the sidewalk as constructed. Any sidewalks constructed adjacent to the existing right-of-way shall avoid impacts to significant trees.

g. The applicant shall provide a 30-foot width right-of-way dedication from the existing center line along the entire length of the property's Ferncliff Avenue frontage, including any areas previously dedicated.

h. The applicant shall provide a 30-foot width right-of-way dedication from the existing center line along the entire length of the property's Wing Point Way frontage, including any areas previously dedicated.

i. The applicant shall dedicate property at the corner of Ferncliff Avenue and Wing Point Way to result in a minimum 35-foot return radius tangent.

j. Prior to final subdivision submittal, the applicant shall submit complete civil plans and drainage report for the proposed development to the City Engineer and

the Department of Planning and Community Development for review and approval. The plans shall include roadway, sidewalk, curb and gutter details and profiles. The plans shall depict all required frontage improvements, sanitary sewer, water and storm drainage facilities. The plans shall also depict all significant trees within the roadside landscape buffers. The plans shall address grading, erosion and sedimentation control and include a Surface and Stormwater Pollution Prevention Plan. The design shall be prepared by a Professional Engineer licensed in the State of Washington, and shall be in accordance with Chapter 15.20 BIMC. Any Low Impact Development (LID) practices for stormwater mitigation must demonstrate compliance with the Washington State Department of Ecology Stormwater Management Manual for Western Washington and shall be approved on a case-by-case basis.

l. Prior to final subdivision approval, the applicant shall provide an Operations and Maintenance Plan and Declaration of Covenants approved by the City Engineer for all constructed stormwater facilities.

m. Binding water availability and sewer availability letters shall be submitted with the final plat application. The location of the connections shall be indicated on the final plat drawings.

n. The applicant shall demonstrate compliance with Fire Code requirements and Public Services provisions to the satisfaction of the Fire Marshal and the City Engineer.

o. All lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes along with all other applicable survey provisions of state and City ordinance.

p. An assurance device acceptable to the City may be used in lieu of installation to secure and provide for the completion of necessary facilities which are not considered by the City Engineer to be life, health, or safety related items. Any such assurance device shall be in place prior to final subdivision submittal, shall enumerate in detail the items being assured, and shall require that all such items will be completed and approved by the City Engineer within one year of the date of final subdivision approval. While lots created by the recording of the final subdivision may be sold, no occupancy of any structure will be allowed until the required improvements are formally accepted by the City. A prominent note on the face of the final subdivision shall state: *"The lots created by this subdivision are subject to conditions of an assurance device held by the City for the completion of certain necessary facilities. Building permits may not be issued and/or occupancy may not be allowed until such necessary facilities are completed and approved by the City of Bainbridge Island. All purchasers shall satisfy themselves as to the status of completion of the necessary facilities."*

5. The building setbacks are as follows and shall be noted on the final subdivision:

Building to building:	Minimum 10 feet
Building to subdivision boundary	Minimum 15 feet
Building to right-of-way (Ferncliff Avenue)	Minimum 50 feet
Building to right-of-way (Wing Point Way)	Minimum 50 feet
Building to access easement:	Minimum 10 feet

6. The maximum lot coverage of 25 percent of lot area at time of preliminary plat application, 3,524 square feet per lot, shall be shown on the face of the final plat.

7. Along the existing vegetated areas of the Ferncliff Avenue frontage (the northerly 230 feet approximately), a 50-foot width roadside landscape buffer shall be provided. Along the remaining section of the Ferncliff Avenue frontage, a 25-foot width roadside landscape buffer shall be provided. The buffer areas shall be indicated on the face of the final subdivision.

8. A 25-foot width roadside landscape buffer shall be provided along the property's Wing Point Way frontage. The buffer shall be indicated on the face of the final plat.

9. Except as noted in Conditions 7 and 8 above, a perimeter landscape buffer shall extend 25 feet from the subdivision boundary and shall be indicated on the face of the final plat.

10. Prior to final subdivision approval, the applicant shall submit a landscape plan in accordance with Chapter 18.85 BIMC, Landscape Requirements. The planting plan shall provide for plantings within the 25-foot width buffer areas along Ferncliff Avenue and Wing Point Way to, at a minimum, full screen standards (BIMC 18.85.070.B.1). The plan shall provide for planting within the 25-foot perimeter buffer areas to, at a minimum, filtered screen standards (BIMC 18,85.070B.3). Landscaping shall be installed or assured prior to final plat approval, and a maintenance device shall be provided.

11. Roadside landscape buffers and perimeter landscape buffers shall be maintained in conformance with the required vegetated screen standards. No vegetation within the buffers shall be disturbed without the approval of the Department of Planning and Community Development through an approved landscape, clearing, grading, or civil plan.

12. Significant trees designated for preservation shall be shown on the final subdivision. A minimum of 30 percent of the existing significant tree canopy on the site, or 15 percent of the existing significant trees on site at the time of preliminary plat application, shall be retained. No building, clearing or grading within the critical root zone of a significant tree designated for preservation shall occur without a report from a consulting arborist indicating how the tree will be preserved. If any significant trees are determined to be hazardous by a professional arborist, they may be removed after a replanting plan has been approved by the Department of Planning and Community Development.

13. Prior to any construction activities, appropriate permits, including but not limited to right-of-way , road approach, clearing, grading, and building, shall be obtained from the City.

14. Prior to any construction activities, including clearing or grading, the applicant shall install temporary chain link fencing four feet in height along the interior boundary of the buffers and along either side of the access/utility easements for the width of the buffer. Additional construction fencing shall be installed in such a manner as to protect the drip line of significant trees within the buffers.

15. For any non-exempt tree harvesting, the appropriate Forest Practices Permit shall be obtained from the Washington State Department of Natural Resources.

16. All site activities shall comply with applicable permissible noise level requirements in accordance with Chapter 173-60 WAC, Maximum Environmental Noise Levels. At time of building permit application, the applicant shall submit plans demonstrating compliance with noise level requirements; any structures that emit noise, including but not limited to heat pumps and generators, shall be indicated on the plans.

17. At the time of building permit application, the applicant shall submit outdoor lighting plan that demonstrate compliance with Chapter 15.34 BIMC, Outdoor Lighting on Public and Private Property. Freestanding lighting shall have a maximum height of 14 feet, including the base and casing.

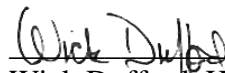
18. If any historical or archaeological artifacts are uncovered during excavation or construction, the contractor is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation.

19. Applicable portions of the following conditions shall be listed on the final plat mylar: 3-6, 11-18.

RECOMMENDATION

It is recommended that the proposed Preliminary Subdivision for the Estates at Wing Point (SUB14613) be approved, subject to the above conditions.

DONE this 16th day of February, 2010.



Wick Dufford, Hearing Examiner Pro Tempore