

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

In the Matter of the Appeal by
Stephani and B. Dean Mar-Horstman
of the Director's Approval of the

HOLLY LANE GARDENS

CUP 11649

Conditional Use Permit Application for
Property Addressed as 9432 Holly Farm Lane

INTRODUCTION

The Applicant seeks a Conditional Use Permit (CUP) to allow the following uses in the R-0.4-zone: four-bedroom bed and breakfast, agricultural retail, and commercial hosting of weddings and other outdoor events. The Director approved the requested CUP and that decision was appealed by neighboring property owners. The Hearing Examiner held a prehearing conference with the parties on June 13, 2007. The appeal hearing began on June 28, 2007 and concluded on June 29, 2007. Parties represented at the hearing were: the Appellants, Stephanie Mar-Horstman and B. Dean Horstman; the Applicant, Patricia Dusbabek; and, the Director, Planning and Community Development (Department or PCD), by Bob Katai, Manager, Current Planning.

After due consideration of all the evidence in the record, the following constitutes the findings, conclusions, and decision of the Hearing Examiner on this application.

FINDINGS

SITE AND VICINITY

1. The 8.63-acre site, addressed as 9432 Holly Farm Lane, is located north of New Brooklyn Road, south and west of Mandus Olson Road [see aerial photo and parcel map, Exhibits 8 and 9 respectively]. The Assessor's tax parcel number 212502-2-056-2009. [Exhibit 1, Staff Report, pages 1-2 and Attachment A; Exhibits 8 and 9; Testimony of Katai; K. Crawford]
2. Development on the subject site includes a large single-family residence and a separate dwelling unit ("cottage"), both located in the northeastern part of the property. The house has a licensed commercial kitchen (for cooking food served to bed and breakfast guests and at events, and baked goods sold at a farmers' market – see Finding 13). The cottage and several bedrooms in the house are used as a bed and breakfast (B&B). North of the driveway, in the northwest part of the property, there is a barn and a large garage. [Exhibit 1, including Attachment A, SEPA Checklist, pages 6-7; Exhibits 8 and 9; Testimony of Mar-Horstman; K. Crawford; Dusbabek]

3. In 2002 there was an estimated 4.4 acres of cleared land around the house (including a large oval-shaped field west of the house and one smaller area; see Finding 6). The Applicant indicates that those fields are for vegetables, flowers, herbs, and berries and that there are also fruit trees. East of the house, a large grassy area, where the outdoor events occur, extends north/south through most of the eastern part of the site (a smaller grassy area is located west of the residence) [see in Exhibit 8]. Second-growth forest covers most of the southern part of the site and the northeastern and southeastern corners. [Exhibit 1, Attachment A, including Attachment A, SEPA Checklist, pages 6-7; Exhibits 8, 9, 13; Testimony of Dusbabek]

4. The subject property resembles the shape of a pipe: the driveway, extending approximately 1250 ft. east from Holly Farm Lane, looks like the ‘stem’, with the bulk of the property forming the ‘bowl’ [see parcel map and aerial photo, Exhibits 8 and 9]. The property to the west shares the driveway and the northern boundary of the Appellants’ property is adjacent on the south side of the “pipe stem”. [Testimony of Mar-Horstman; K. Crawford; Dusbabek]

5. Access is via Holly Farm Lane, a private road that extends north from New Brooklyn Road. Holly Farm Lane, which serves 16 parcels [see Exhibit 26], is a narrow, single-lane gravel road which the Director determined to measure 8 ½ to 9 ½ feet wide. The road is not wide enough for two cars to pass one another; at several places driveways connecting to the road provide enough space for one car to pull off or back up so that another can pass. The road is dusty in summer and can be extremely muddy in wet weather. [Exhibit 1, Staff Report, pages 1-2; Exhibits 8, 9, and 11; Testimony of Katai; Mars-Horstman; K. Crawford]

6. In 2002, Kitsap County approved an “Open Space General” classification for 7.63 acres of the site for tax purposes (including approximately 4 acres of second-growth forest). This use classification provides a 60% tax reduction on those acres. The Applicant had sought an “Open Space – Agriculture” classification, which requires a minimum gross of \$1500 from agriculture in three of five years. There was no evidence presented to indicate that the \$1500 threshold has been achieved or that the “Agriculture” classification has ever been approved or rejected. The property was farmed as early as 1951, but as of the 1980’s it was no longer being farmed. The applicant indicates that the strawberry crops grown here 40 years ago exhausted the soil and a large part of her current efforts are focused on restoring the health of the soil. [Exhibits 16, 18 and 34; Testimony of Dusbabek]

7. The “Agricultural Retail Plan” application for the property indicates that five acres of the site are used for agricultural activity. This overstates the agricultural acreage as the total includes the large forested areas. (The tax classification research done in 2002 – see Findings 3 and 6 and Exhibit 16 – makes note of a 0.6-acre field and another, smaller field as “being planted to [sic] commercial crops.”) No harvest (volume of crops) information was provided and the Agricultural Retail Plan application lists as “all crops and value-added products”: wreaths, baskets, candles, vinegars, jams, bread. The Plan application indicates weddings as special events. [Exhibits 16 and 34]

8. The zoning designation of the subject property is residential (R-0.4, one dwelling unit per 2.5 acres) and the Comprehensive Plan designation is OSR-0.4, Open Space

Residential (2.5 acre minimum lot size). [Exhibit 1, Staff Report, page 3; Testimony of Katai]

9. Adjacent property in all directions is also designated R-0.4 and OSR-0.4. A recent aerial photo [see Exhibits 8 and 9] show that eight of the ten properties that share property boundaries with the subject site are developed with single-family residences (south: Mar-Horstman, Christian; west: Crawford; north: Quintua, Lord; northeast: Galvin; east: Bunn; southeast: Gable/Tupper/O'Brien). There is considerable undeveloped property in the vicinity and many of the developed parcels are large enough to be subdivided into 2 or more lots, each meeting the 2.5 acre minimum lot size. Short plats are currently anticipated on two parcels adjacent to Holly Farm Lane at the New Brooklyn Road intersection. [Exhibits 8, 9 and 13]

10. The homes in this area are separated from each other by several hundred feet of open space [see aerial photo, Exhibit 8]. The low residential density and large undeveloped areas of second-growth forest make for a quiet, "end-of-the-road" rural setting. Residents in the vicinity highly value the tranquility and natural beauty of the area; they established their homes here because of those qualities and desire to maintain them. [Exhibit 1, Attachment D; Exhibits 11, 28 and 32; Testimony of Dusbabek; S. Mar-Horstman; D. Horstman; Grabo; Lord; Bunn; Galvin; Gable; O'Brien]

11. Agricultural activities are common in the vicinity (*e.g.*, row crops, orchards, corrals, pastures and other fields are evident in the aerial photo). The "Grand Forest" public park is located not far to the northwest and northeast, across the east/west section of Mandus-Olson Road. [Exhibits 8]

PROPOSAL

12. The Applicant purchased the subject property about 6 years ago (apparently in 2001) and began operating a B&B. The website for this "Holly Lane Gardens Bed & Breakfast" [see Exhibit 28] describes the B&B as "a flower farm with developing gardens, many acres of woodlands, streams, walking paths, end-of-the road quiet." Homemade breads, pastries, homegrown fruits, and herbs are included in the meals served to guests and Craft items made by the Applicant (wreaths, candles, weavings, hand-spun hats, and scarves, embroidery, dolls) are sold on-site. The website shows a one-bedroom cottage and, in the main house, the "Moroccan Room", "Tropical Room", "Hemmingway Room" and the "Guest Suite". The facility is offered as available to "host a party, wedding, special occasion event or holiday." [Exhibit 1, page 3; Exhibit 28; Testimony of Dusbabek]

13. Some of the food prepared and served to B&B guests and attendees at the wedding events (*e.g.*, baked goods, pastries), incorporate ingredients grown on site (*e.g.*, herbs, some vegetables, and fruits). The baked goods are also routinely sold at the local farmers' market. The Applicant also makes and sells wreathes and candles that incorporate holly and other natural materials that grow on the site. [Exhibit 1, Staff Report Attachment A: Exhibit 28; Testimony of Dusbabek]

14. The Applicant identifies herself as a farmer and refers the subject property as "a farm" and, more specifically, "a flower farm". In her CUP Application [letter August 21, 2006], she notes that, rather than growing the flowers as a crop for sale, she is selling the

flower gardens as a “setting” for the weddings hosted on the site. She plants the farm “knowing that this is a scene I am creating for future weddings.” (The application indicates that “many” of the gardens are “grown exclusively for wedding settings.” During the growing season the Applicant may sell 6-8 bouquets at a weekly farmers’ market. The flowers grown on-site are also used for wedding decoration, but what is being ‘sold’ here are the “wedding-settings” that the gardens form. Quoting the Applicant: “People pay me for the privilege of standing in the midst of my flower garden to say their wedding vows.” [Application, Attachment A, Exhibit 1; Exhibit 28; Testimony of Dusbabek]

15. The Applicant asserts that providing “gardens in which couples can be married” is a “*crop-related*” activity within the meaning of “*Agriculture*” in BIMC 18.06.070, and that all the activities on her land are “farm related”. [Exhibit 1, Attachment A, Letters dated: 08/21/06, 08/22/06, and 09/17/06]

16. A pre-application waiver for a modification from a two-bedroom to a four-bedroom B&B was submitted January 15, 2003. No application was filed at that time. [Exhibit 1; Testimony of Katai]

17. Beginning in the summer of 2005, the property began to be used as a venue for weddings/receptions and other outdoor events. Three weddings were held in 2005 and eight events (including 7 weddings) were held in 2006. The largest events had 120-150 attendees, the smaller gatherings had 65-70, and 80-100 was typical. Wedding events included posting balloons and directional signs along the lane and parking was provided on-site, along the driveway and in cleared areas near it. Parking 40-50 cars was normal. [Exhibit 1; Testimony of Katai; Dusbabek; S. Mar-Horstman]

18. On August 3, 2006, in response to complaints, the Department issued a Code enforcement letter giving notice to the Applicant that the property was not permitted for a four-bedroom B&B and that use for weddings and other events required a Conditional Use Permit (CUP). [Exhibit 1; Exhibit 28; Testimony of Katai; Dusbabek]

19. The CUP application filed on August 15, 2006 [Attachment A, Exhibit 1] lists the proposed uses as.

- Lodging
- Processing
- Direct sales of farm products
- Renting of garden settings for activities, including weddings
- Catering
- Crafting
- Training

20. In addition to hosting of weddings and other events, 3-4 “Christmas in the Country or similar farm-sale” activities are mentioned [see Applicant’s letters dated August 21 and 22, 2006 and September 17, 2006, included with the CUP Application, Attachment A, Exhibit 1]. Sales of wreaths, candles, and knit items (such as those shown on the website; see Exhibit 28) would seem likely products to be sold.

DIRECTOR'S REVIEW AND DECISION

21. Notice of Application was published by the Department on September 27, 2006. [Exhibit 1, Attachment C] During the SEPA comment period, the Department received a number of public comment letters from residents in the vicinity opposed to the hosting of events, expressing their concern about the noise and traffic impacts they had experienced during the past events. Comments received included letters of support for the Applicant's proposal, including several written by satisfied B&B guests who had enjoyed their stay there. [Exhibit 1, Attachment D]

22. The Kitsap County Health District commented on the application [Exhibit 1, Attachment E]. The District's approval (water and on-site septic) for the proposal (B&B and events) included the special condition that "portable toilets are required for all weddings and special activities". This requirement is Condition 4 in the Director's approval [see below; Testimony of Katai; Exhibit 1, Attachment E].

23. The Director determined the project to be consistent with the Comprehensive Plan and the applicable sections of the Bainbridge Island Municipal Code, including the criteria for Conditional Use Permit approval [see Exhibit 1, Staff Report, pages 4-6].

24. On April 30, 2007 the Director issued a SEPA threshold determination of non-significance (DNS) and a Notice of Administrative Decision [Exhibit 2] approving the CUP with conditions. The Director's approval imposed the following Conditions [Exhibit 1, page 2]:

1. In order to limit the traffic impacts during events at the Gardens, a shuttle shall be used to transport guests to the property to the extent possible.
2. Outdoor noise shall be limited during weddings and events and shall cease at 10:00 p.m. No speakers or amplification equipment shall be used outside of enclosed buildings on the property.
3. The mature, forested buffers along the southern and eastern property lines shall remain. No native, significant trees shall be removed from these buffers. Hazardous trees may be removed if a report from a qualified arborist, along with a replanting plan, is submitted to and approved by the Director.
4. To the satisfaction of the Kitsap County Health District, portable toilets shall be installed for all weddings and special events.
5. To the satisfaction of the Bainbridge Island Fire Department, fire suppression concerns shall be addressed, including wall mounted 2A10BC fire extinguishers on each floor and signage for adequate access for emergency vehicles.

APPEAL HEARING

25. On April 13, 2007, the Appellants timely filed notice of appeal [Exhibit 3]. The appeal objects to the Director's approval and specifically cites Conditions 1 and 2 as inadequate to mitigate the traffic and noise impacts associated with use of the property to host wedding and other events.

26. Notice of the hearing was properly given and complete as of June 6, 2007. [Exhibit 4] The Hearing Examiner conducted the appeal hearing on June 28 and 29,

2007; all parties were present, each party had opportunity to present evidence, including calling and cross examining witnesses.

Noise Impact

27. Condition 2 of the Director's approval requires that events cease at 10 p.m. and prohibits outdoor amplification. Condition 2 is relied upon to achieve noise reduction essential to the Director's conclusion that the use would be compatible with the residential neighborhood. That is, Condition 2 is imposed to reduce noise impacts in order to satisfy the CUP criteria [BIMC 18.108.040]. Appellants challenge this conclusion asserting that noise from the events would disturb the uphill neighbors (to the north and northeast) for many hours on an unlimited number of days. Appellants also note that the prohibition on amplifiers outside would not be effective mitigation as the equipment could be inside and windows left open. [Exhibit 1, Attachment A, SEPA Checklist, page 6]

28. As credibly testified to by neighbors, in the summers of 2005 and 2006 the noise from the outdoor events was noticeable and uncharacteristic for the neighborhood. The party sounds (loud music, DJ comments, announcements/toasts, cheering, loud voices and laughter, *etc.*) readily traveled uphill (to the north and northeast) and those with open yards and/or sparsely wooded areas between them and the festivities, complained that they had to go inside their homes and close doors and windows to avoid the noise. Some reported that they could distinguish the words of conversations and lyrics of songs, and that even inside, with their windows and doors closed, noise from the event got through. [Testimony of S. Mar-Horstman; D. Horstman; Lord; Bunn; Galvin; Gable; O'Brien]

29. Sound can be diminished by intervening structures acting as barriers between source and the receiver. Sound will travel through inadequate barriers and across open areas and can reach uphill receivers, over intervening barrier. An intervening vegetative buffer 200 ft. or wider will diminish the sound reaching the receiving property. [Exhibit 1; Testimony of Mar-Horstman]

30. Not all neighbors were disturbed by the sounds coming from the events. Mr. and Mrs. Crawford, whose property is just west of the subject property, heard the only the "loudest" sounds and occasionally some laughter. They reported that they had not been disturbed as they were "ready for it" and thought of it as "happy noise". Mr. Crawford noted that the only problem had been some fireworks.

31. It is worth noting that the Crawfords, unlike the uphill neighbors, have two structures (an earth berm on the east side of their property and the Applicant's residence) between their residence and the location of the open area on the far eastern side of the subject property where the outdoor events were held. These structures may have served as barriers so that, despite their proximity, they received less noise than uphill residents who have no such intervening structures.

32. Another Holly Farm Lane neighbor, Ms. Charvet, although concerned about traffic and noise in this "bucolic" area, has not been bothered by the events. Ms. Charvet, whose home-based business "Sacred Groves" is a gathering place for various spiritual activities, enjoys hearing people outside having fun (the first "event" on the subject site was her daughter's wedding). Ms. Charvet's property is on the west side of Holly Farm

Lane, west of the starting point of the ¼ mile driveway leading to the subject property. [Attachment D, Exhibit 1; Exhibits 8 and 9; Testimony Charvet; Dusbabek]

33. Mr. Kotz, a neighbor to the east who operates a small sawmill and kiln, only heard loud music from a couple of the earliest events. (In order to mitigate the noise impacts of his own business, he limits mill operations to weekdays between 9 a.m. and 4 p.m.)

34. The Applicant asserts in the CUP application that that noise created by or associated with the events would be “minimal”. As to the past events, she testified that when she became aware of loud music, she quieted it, and that she had listened from various locations on her property and did believe that sounds of the events could reach far enough to disturb neighbors. She indicated that she had used a sound meter and the readings did not exceed 60-dBA (which she believes is the maximum allowed). No information was provided as to the type of meter used or when it was used or where it was located when used. [Chapter 16.16 BIMC (see also Appendix A; Exhibit 1, Attachment A, SEPA Checklist, page 10; Exhibit 25; Testimony Dusbabek)]

35. As both the “source” property (subject site) and the receiving properties (neighbors) are residential, the maximum noise level would be 55 dBA (at the property line of the receiving property) the not limit of 60 dBA (for commercial property) that the Applicant believes applicable.

Traffic Impact

36. Event attendees traveling to and from the site add noticeable traffic, and generate dust and vehicle noise along Holly Farm Lane [see Finding 5]. Traffic counts for the road were not provided. However, witness testimony supports the reasonable assumption that as a private, narrow, unpaved deadend road, volumes are very low. There has been only one accident on Holly Farm Lane in recent years, but there have been close calls due to the narrowness of the road and drivers going too fast and/or being unfamiliar with the conditions of the road. Testimony at hearing included instances in which event-attendees were involved in such close calls. [Exhibit 1; Testimony of Katai; K. Crawford; Dusbabek; Charvet; Wilcox; S. Mar-Horstman; Moravec; Grabo]

37. Director’s Condition 1 requires that the Applicant use a “shuttle” to transport guests “to the extent possible.” The Director relies on this condition to provide effectively mitigation for traffic impacts so that the use would be harmonious with the residential character of the neighborhood. There is no shuttle and no plans for a shuttle and it is not indicated what trip reduction might be achieved if a shuttle were to be used. There is no reason to believe that this condition would achieve any reduction in the number vehicle trips on Holly Farm Lane. The “to the extent possible” language is vague and unenforceable as it provides no way to evaluate compliance.

BAINBRIDGE ISLAND MUNICIPAL CODE (BIMC)

38. Various sections of the Code (BIMC) were referenced during this proceeding, including those excerpted in Appendix A at the end of this decision. All sections applicable to this appeal were reviewed in making this decision this decision, whether included below or in Appendix A.

39. The R-0.4 zone, with one dwelling unit per 2.5 acres, is the City’s lowest density residential zone. The purpose of this zone [BIMC 18.36.010, emphasis added] is to: *“provide low density housing in a rural environment consistent with other land uses, such as agriculture and forestry, and the preservation of natural systems and open space. The low density of housing does not require the full range of urban services and facilities.”*

40. BIMC 18.36.020 provides that the following uses are permitted in the R-0.4 zone:

- A. Accessory dwelling units;
- B. Accessory uses and buildings;
- C. Agriculture;
- D. Family day care homes;
- E. Forestry;
- F. Manufactured homes;
- G. Minor home occupations;
- H. Parks, active recreation;
- I. Parks, passive recreation;
- J. Single-family dwellings built to IBC standards.

41. Both *“agricultural retail”* (and *“Bed and breakfast establishments”* may be allowed in the R-0.4 zone as Conditional Uses [see BIMC 18.108.030].

42. A conditional use may be permitted if it meets all the conditions specified in BIMC 18.108.040 (emphasis added).

- A. A conditional use may be approved or approved with modifications if:
 - 1. The conditional use **is harmonious and appropriate** in design, character and appearance **with the existing or intended character and quality of development in the immediate vicinity** of the subject property and with the physical characteristics of the subject property;
 - 2. The conditional use **will be served by adequate public facilities including roads**, water, fire protection, sewage disposal facilities and storm drainage facilities;
 - 3. The conditional use **will not be materially detrimental to uses or property in the immediate vicinity** of the subject property;
 - 4. The conditional use **is in accord with the comprehensive plan**;
 - 5. The conditional use complies with all other provisions of this code;
 - 6. The conditional use **will not adversely affect the area or alter the area’s predominantly residential nature**; and
 - 7. **All necessary measures have been taken to eliminate the impacts that the proposed use may have on the surrounding area.**

43. BIMC 18.108.040B authorizes the imposition of conditions with CUP approval and directs that *“If no reasonable conditions can be imposed that ensure the application meets the decision criteria of this chapter, then the application shall be denied.”*

44. BIMC 2.16.025B.1 authorizes the Hearing Examiner to hear and decide appeals from the Director’s administrative decisions (including CUP decisions and SEPA threshold determination). Following the decision procedures of BIMC 2.16.130, the Hearing Examiner may do one of the following [see BIMC 2.16.130F.1]: affirm the Director’s decision; reverse the decision; affirm the decision with modifications; or, remand the decision to the department director for further consideration.

45. In making a decision on appeal, the Hearing Examiner is required by BIMC 2.16.130F.2, to give “*substantial weight to the decision of the department director.*”

CONCLUSIONS

1. The Hearing Examiner has jurisdiction to hear and decide this matter. To overcome the substantial weight accorded the Director’s decision, it must be shown that the decision is clearly erroneous. Under this standard of review, the Director can be reversed if the Hearing Examiner is left with the definite and firm conviction that a mistake has been made.

2. The Applicant sought an after-the-fact Conditional Use Permit for uses that began several years ago, including a four-bedroom bed and breakfast and the on-site sale of agricultural products grown or value-added on-site. The appeal does not dispute the Director’s decision to approve a CUP for these uses. The demonstrated impacts of the bed and breakfast consist of some additional vehicle trips on Holly Farm Lane and a few instances of B&B guests wandering onto neighboring properties. While these impacts are noticeable, they have been relatively minor and not disruptive to the residential character of the neighborhood. Approval of this part of the proposal has not been shown to be a mistake and accordingly, the Director’s decision with regard to it should be affirmed.

3. As with the bed and breakfast, Appellants did not dispute the Director’s decision approving on-site agricultural retail sales (including wreaths and other “value added products” and edibles grown on-site). This use is proposed to include a few seasonal “farm-sale” events [see Applicant’s August 22, 2006 letter with regard to “Christmas in the Country” or similar activity; Attachment A, Exhibit 1]. This kind of minor agricultural retail sales (with no more than four special events) would not likely be inconsistent with the residential character of the neighborhood. Approval of this part of the proposal has not been shown to be a mistake and accordingly, the Director’s decision with regard to it should be affirmed.

4. Appellants focused their objections on the Director’s approval of the CUP for hosting an unlimited number of weddings and other social events. Appellants presented evidence to show that (based on past experience), these events would have adverse noise and traffic impacts, and they argued that the Director’s approval was erroneous because this use would be inconsistent with and disruptive to the existing residential character of the area. The Applicant’s fundamental argument for approval is that her property is a “farm” and because of that, anything done there is “agriculture” or an agricultural activity (or agriculture-related or agri-tourism). The evidence in the record, and an objective reading of the Code, provides virtually no support for Applicant’s view. The undersigned is not persuaded that planting gardens to create “wedding settings” [see Finding 14] is “agriculture”, or that the settings are properly considered a “crop”, or that renting out the settings for large outdoor social events is a “crop related” activity or “agricultural retail”.

5. The proposal, even with the Director’s conditions, does not satisfy the CUP criteria. The Director erred in concluding that the hosting an unlimited number of

weddings and other social events would meet the all the criteria of BIMC 18.108.040A. It was a mistake to disregard and/or give insufficient weight to information regarding past events which provide the evidence in this record that:

- The unlimited hosting of weddings and other special events would create noise and traffic uncharacteristic in this otherwise quiet, low-density residential area and that these large social events would not be harmonious with the existing (and intended) character of the immediate vicinity [BIMC 18.108.040A.1];
- The narrow, single-lane, deadend gravel access road is not adequate (*i.e.*, not wide enough for two-way travel) to safely handle the volume of traffic associated with such use [BIMC 18.108.040A.2];
- The noise and traffic from these events would adversely affect and/or alter the neighborhood's predominantly residential character [BIMC 18.108.040A.6]; and,
- As the conditions imposed by the Director could not reasonably mitigate all potential adverse noise and traffic impacts; all the measures necessary to eliminate the impacts of the use, have not been taken [BIMC 18.108.040A.7].

6. The conditions imposed by the Director would be inadequate to achieve appreciable lessen noise and traffic volumes. The Director erred in approving the CUP without effective mitigation measure to ensure that the decision criteria of BIMC 18.108.040A would be met.

7. There is nothing in this record to sustain the Director's confidence that Condition 2 would be effective to eliminate the noise impacts. Even if Condition 2 were to be followed faithfully and to the letter, there could still be amplified music (inside with windows open) and the sounds of large crowds celebrating until 10 p.m. throughout the summer months could still disrupt neighbors' peaceful enjoyment of their properties. This is not a reasonable or effective condition to mitigate noise impacts. The Director erred in finding that it would achieve satisfaction of the approval criteria of BIMC 18.108.040A and 18.108.040B.

8. Similarly, the record does not support the Director's confidence in the effectiveness of Condition 1 to reduce traffic impacts. There is no evidence that use of a shuttle "to the extent possible" would eliminate any trips on Holly Farm Lane. Given the equivocal language, enforcing compliance would be unworkable. This is not a reasonable condition that would mitigate traffic impacts so that the proposal would satisfy BIMC 18.108.040A and 18.108.040B. The Director erred in finding that it would.

9. A peaceful, quiet, rural-residential area, characterized by single-family homes on large lots with sizeable areas of undeveloped forested land and a scattered assortment of small farms, literally surrounds the subject property. Permitting the unlimited commercial hosting of large parties here would be inconsistent with the character of this neighborhood. There may be R-0.4 zoned locations with different topography and patterns of development (*i.e.*, where noise would not travel so readily or would be substantially buffered) and with adequate access (*i.e.*, to safely accommodate the additional traffic). These locations could have this type of use consistent with the CUP criteria. The subject site is not such a location. The conditional use process allows for use of property where that use is otherwise not permitted, if that use meets the requisite

conditions to be harmonious in character and not adversely impact the neighborhood. Here, the criteria are not met: unlimited large outdoor parties would have unmitigated volumes of noise and traffic that would repeatedly disturb some residents and alter the quiet, end-of-the-road character of the neighborhood.

10. The events facility element of the conditional use proposal does not satisfy BIMC 18.108.040A and 18.108.040B. The Director erred in making this approval and that part of the proposal should be denied.

DECISION

The decision of the Director approve the application for a Conditional Use Permit (CUP) to allow: (1) a four-bedroom “bed and breakfast”; (2) agricultural retail; and, (3) commercial hosting of events (social events including weddings and associated receptions) at property addressed as 9432 Holly Farm Lane, is **REVERSED IN PART** as follows:

The Director’s approval for unlimited hosting of social events including weddings and wedding receptions, is **REVERSED**; this use does not satisfy the criteria of BIMC 18.108.040A and it should be, as directed by BIMC 18.108.040B, **DENIED**.

Entered this 27 day of July 2007.

signed in original
Meredith A. Getches
Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of a person seeking review of a Hearing Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine rights and responsibilities relative to appeal.

Request for judicial review of this decision by a person with standing can be made by filing a land use petition in superior court within 21 days in accordance with the Land Use Petition Act, Revised Code of Washington, Chapter 36.70C.

APPENDIX A

Bainbridge Island Municipal Code (BIMC)

TITLE 18.36 BIMC: R-0.4 ZONING

BIMC 18.36.010 Purpose

The purpose of the R-0.4 zone is to “provide low density housing in a rural environment consistent with other land uses, such as agriculture and forestry, and the preservation of natural systems and open space. The low density of housing does not require the full range of urban services and facilities.”

BIMC 18.36.020 Permitted Uses

The following uses are permitted in the R-0.4 zone:

- A. Accessory dwelling units;
- B. Accessory uses and buildings;
- C. Agriculture;
- D. Family day care homes;
- E. Forestry;
- F. Manufactured homes;
- G. Minor home occupations;
- H. Parks, active recreation;
- I. Parks, passive recreation;
- J. Single-family dwellings built to IBC standards.

BIMC 18.36.030

The following uses may be permitted in the R-0.4 zone as Conditional Uses [see BIMC 18.108.040]:

- A. Agricultural retail as established in BIMC 18.99.060;
- B. Bed and breakfast establishments;
- C. Cemeteries;
- D. Clubs;
- E. Cultural facilities;
- F. Day care centers...
- G. Educational, governmental, religious or health care facilities;
- H. Group care facilities;
- I. Major home occupations;
- J. Mining and quarrying;
- K. Multiple-family dwellings;
- L. Open air sales for garden supplies;
- M. Park and ride lots;
- N. Public and private utility buildings and structures;
- O. Recreation activities, indoor;
- P. Recreation activities, outdoor;
- Q. Recycling centers...
- R. Shared-use park and ride lots.

BIMC 18.36.040

The R-0.4 zone has the largest minimum residential lot size (100, 000 sq. ft. minimum lot area) and the lowest density (1 unit per 2.5 acres)

CHAPTER 18.99 BIMC: AGRICULTURE

BIMC 18.36.010 Purpose

The purpose of this chapter is to provide for all forms of the keeping of livestock and crop related activities, e.g., crop growing and processing, for commercial and noncommercial agricultural ventures. To the extent possible, agriculture shall be treated as a preferred use in zones in which it is a permitted use.

18.99.020 Permitted uses

When permitted as a use in a zone, agriculture shall be subject to the following conditions:

A. Annual and perennial crops from plants, bushes and trees are permitted subject to compliance with soil erosion considerations and impact on the water resources...

** * **

18.99.030 Accessory uses

The following are accessory uses to agriculture:

A. Processing agricultural products produced on the Island. Certain zones may permit agriculture but only allow processing as a conditional use.

B. Storage of heavy equipment used for agricultural purposes.

C. A produce stand and consequent seasonal agricultural retail sales of products grown or livestock raised primarily on the Island is allowed.

D. Retail sales, in R-0.4, R-1 and R-2 zoning districts, of crops grown, or livestock raised primarily on the Island, or value added products made from those crops or livestock or agricultural-tourism associated with the growing of crops or raising of livestock, or incidental associated agricultural products, that meets the criteria found in BIMC 18.99.04, are allowed year-round.

18.99.040 Accessory use with review

A. Purpose. To provide for the economic viability of Bainbridge Island farmers by allowing certain year-round on-site retail activities as an accessory or administrative conditional use in zoning districts where agriculture is an allowed and preferred use.

B. Procedure.

1. Agricultural retail complying with the criteria established in BIMC 18.99.050 shall be considered minor and permitted in zones R-0.4, R-1 and R-2, in which agriculture is a permitted and preferred use. An administrative review by the planning department will be conducted within 30 days of the city's receipt of an agricultural retail plan application to determine compliance with this chapter.

2. Agricultural retail plans that meet the established criteria shall be kept on file at the city and the applicant shall be notified about review of the plan, and the criteria required by this chapter for the agricultural retail activity.

3. The agricultural retail plan shall be updated by the applicant as necessary to reflect current and accurate retail operation conditions.

4. Agricultural retail activity complying with the criteria established in BIMC 18.99.060, thresholds for major agricultural retail operations, shall follow an administrative conditional use permit process as outlined in Chapte 18.108 BIMC...

18.99.050 Criteria for minor agricultural retail sales

Agricultural retail in zones R-0.4.. shall meet all of the following criteria:

A. The retail activity shall be on site(s) where crops are grown or livestock is raised, and joint use of farmstands by multiple producers is allowed, including use of retail sites for pick-up of community supported agricultural (CSA) deliveries.

B. The retail activity shall be subordinate to the agricultural activity on-site.

C. Products sold shall be primarily Island grown crops, value added products if the defining ingredient was Island grown, and associated products that are incidental to the agricultural activity on the site.

D. Parking shall be provided on-site that does not adversely impact sensitive areas or water quality and accommodates the anticipated traffic volumes.

E. Noise thresholds as established in Chapter 16.16 BIMC shall not be violated.

** * **

G. Shall be allowed up to four special events per year.

H. No more than 24 (round trip) retail-related automobile trips per day (on average, annually) shall be generated except that:

I. An agricultural retail operation activity within an R-0.4, R-1 or R-2 zoning district that is located on a road classified as a secondary arterial or above, and has the capacity on-site to accommodate the required parking may generate an unlimited number of automobile trips per day for agricultural retail activities.

I. Agricultural-tourism activities are allowed as defined in Chapter 18.06 BIMC.

J. All applicable local, county, state and/or federal requirements must be met.

18.99.060 Major agricultural retail

A. Major agricultural retail shall be determined as follows:

1. Agricultural retail in zones R-0.4, R-1 and R-2 with volumes, that are located on a roadway classified as a collector or lower, that are expected to exceed the allowed thresholds of 36 (round-trip) trips per day average; or

2. Agricultural retail in zones R-0.4, R-1 and R-2 offering more than four special events on-site per year.

B. All agricultural retail activity that exceeds the thresholds set in this section shall be considered major agricultural retail operation and shall be processed according to BIMC 18.108.020.C, Administrative Conditional Use.

BIMC 18.108.040 Conditional Use Permit Decision Criteria

A. A conditional use may be approved or approved with modifications if:

1. The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property;

2. The conditional use will be served by adequate public facilities including roads, water, fire protection, sewage disposal facilities and storm drainage facilities;

3. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property;

4. The conditional use is in accord with the comprehensive plan;

5. The conditional use complies with all other provisions of this code;

6. The conditional use will not adversely affect the area or alter the area's predominantly residential nature; and

7. All necessary measures have been taken to eliminate the impacts that the proposed use may have on the surrounding area.

B. A conditional use may be approved with conditions. If no reasonable conditions can be imposed that ensure the application meets the decision criteria of this chapter, then the application shall be denied.

C. 1. Educational, cultural, governmental, religious or health care facilities in residential zones must be processed as regular conditional use permits and meet the following criteria, in addition to those listed above:

a. Applicants are required to submit a traffic report, showing the effects on level of service on affected roads. Proposed mitigations for degradation of the LOS must be submitted as part of the application.

b. All sites must front on roads classified as residential suburban or above on the Bainbridge Island Functional Road Classification Map.

c. Noise levels shall be in compliance with BIMC 16.16.020 and 16.16.040A.

d. The appropriate approvals of sewer and water supply must be submitted at the time of application.

e. A fencing plan or alternative methods to protect the public health, safety and welfare must be submitted at the time of application.

f. The applicant shall provide perimeter buffers of vegetation either retaining existing or planting a new one in compliance with BIMC18.85.070 D.4 (this only applies to residential districts outside Winslow).

* * *

h. Vehicular, pedestrian, and bicycle access and site circulation must be submitted at the time of application and approved by the city. The city engineer may modify the requirements of BIMC18.81.020D.

i. The applicant shall submit a site and building design proposal that meets the design principles and guidelines found in BIMC18.41.070 Light manufacturing design guidelines, and incorporates conditions deemed applicable by the director in accordance with this chapter. Each proposal will be evaluated for adequate vegetated roadside views, landscaping buffers for parking and service areas, scale of proposed construction including bulk and height and harmonious architectural design features compatible with the surrounding neighborhood.

2. All of the above facilities which have attendees and employees numbering fewer than 50 or an assembly seating area of less than 50 may have any or all the above requirements waived by the director, except those required elsewhere in the city code.

3. Educational programs in residential zones that are temporary or of short duration, as determined by the director, may be exempt from conditional use permit requirements.

CHAPTER BIMC 18.06: DEFINITIONS

16.26.020A “Agricultural land” means land primarily devoted to agricultural operations.

16.26.020B “Agricultural operation” means any facility or activity for the production or intent of production for commercial or family use purposes of dairy, apiary, livestock, camelids, ratites, vegetable or animal products, and crop products including, but not limited to, ornamental crops. Incidental vegetable gardening, landscaping and keeping common pets are not defined as agriculture.

18.06.060 “Agricultural processing” means the preparing and manufacturing of commodities primarily from island farms except for small-scale incidental processing such as a cider press.

18.06.065 “Agricultural retail” means the sale of crops grown or livestock raised by a farmer or value added products made from crops grown or livestock raised by the farmer, agricultural-tourism, and incidental associated agricultural products sold on-site where agricultural crops or livestock are grown or raised that is subordinate to the actual agriculture on-site. (Ord. 2004-11 § 2, 2004)

18.06.067 “Agricultural retail plan” means a document, filed with the city, which contains information on agricultural activity occurring at a specific location. Different from, but may be supplemented by, Trust for Working Landscapes or Kitsap County conservation district farm plans.

18.06.068 “Agricultural-tourism” means agriculturally related accessory uses that are subordinate to the growing of crops or the raising of livestock, designed to bring the public to the farm on a temporary or continuous basis, such as U-pick farm sales, retail sales of farm products, farm mazes, pumpkin patches, farm animal viewing and petting, wagon rides, farmland and facility tours, horticulture nurseries and associated display gardens, cider pressing, classes or workshops, wine or cheese tasting, etc.

18.06.070 “Agriculture” means all forms of crop-related activities, such as growing crops and processing island-grown crops as part of a farm, and animal husbandry using best management practices. Incidental vegetable gardening, landscaping and keeping common pets are not defined as agriculture. Agricultural land and agricultural operations shall be as defined in Chapter 16.20 BIMC.

18.06.071 “Associated products and/or activity” means a required agricultural input, product or activity related to the primary crop, product or activity.

BIMC 16.16 NOISE

BIMC 16.16.001 Declaration of policy

The city council finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Therefore, it is declared to be the policy of the city to minimize the exposure of citizens to the harmful, physiological and psychological effects of excessive noise. It is the express intent of the city to control the level of noise in a manner which promotes use, value and enjoyment of property, sleep and repose, and quality of the environment and commerce.

BIMC 16.16.020 Maximum environmental noise levels

WAC 173-60-020, 173-60-040 and 173-60-090 are adopted by reference. WAC 173-60-050 is also adopted by reference, except as to WAC 173-60-050(3)(a).

WAC 173-60-020 Definitions:

(6) "EDNA" means the environmental designation for noise abatement, being an area or zone (environment) within which maximum permissible noise levels are established.

WAC 173-60-030 Identification of environments:

- (1) (a) Class A EDNA - ...
 - (i) Residential
 - (ii) Multiple family living accommodations
 - (iii) Recreational and entertainment, (e.g., camps, parks, camping facilities, and resorts)
 - (iv) Community service...
- (b) Class B EDNA...
 - (i) Commercial living accommodations
 - (ii) Commercial dining establishments
 - (iii) Motor vehicle services
 - (iv) Retail services
 - (v) Banks and office buildings
 - (vi) Miscellaneous commercial services...
 - (vii) Recreation and entertainment, property not used for human habitation...
 - (viii) Community services, property not used for human habitation (e.g., educational, religious, governmental, cultural and recreational facilities).
- (c) Class C EDNA - ...involving economic activities of such a nature that higher noise levels than experienced in other areas is normally to be anticipated...
 - (i) Storage, warehouse, and distribution facilities.
 - (ii) Industrial...
 - (iii) Agricultural and silvicultural...the production of crops, wood products, or livestock.

* * *

WAC 173-60-040 Maximum permissible environmental noise levels:

(1) No person shall cause or permit noise to intrude into the property of another person which noise exceeds the maximum permissible noise levels set forth below in this section.

(2)(a) The noise limitations established are as set forth in the following table... [Table show is from Exhibit 25]

Noise Source	Receiving property		
	Class A	Class B	Class C
Class A	55 dBA	57 dBA	60 dBA
Class B	57	60	65
Class C	60	65	70