

**FINDINGS AND RECOMMENDATION
OF THE
HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of

TIM KEATING

SUB13586

for preliminary plat approval of the
5-Lot "Madison Ridge" Subdivision

BACKGROUND

Tim Keating has applied for preliminary plat approval for the 5-lot "Madison Ridge" subdivision. The Director has recommended approval of the subdivision, subject to numerous conditions. The public hearing was held on May 25, 2006 and the parties were represented as follows: the Director, Planning and Community Development Department (PCD or Department), by Marja Preston, Planner, and the Applicant, Tim Keating, *pro se*.

The hearing was continued to June 8, 2006 to allow the Applicant an opportunity to propose an alternate tree retention area and for the Director to look into the possibility of a wetland on the subject site. At the reconvened hearing on June 8th, the parties (Mark Adam represented the Applicant) presented information, public comment was received, and Exhibits 50-55 were admitted into the record. The location of the northern boundary of the site was challenged and the Hearing Examiner left the record open for PCD to do additional research and submit information responsive to that challenge. On June 27, 2006, that information [Exhibit 56] was submitted and on June 30, 2006 notice [Exhibit 57] was given as to the availability of that information and the opportunity for public review and comment. Comment was received and is included the record as Exhibit 58.

On July 6, 2006, the Applicant submitted a revised Tree Retention/Open Space Plan [Exhibit 59] and the record was subsequently reopened to allow opportunity for public review and comment [Exhibit 60]. No comments were submitted. The record closed at the end of the comment period on July 24, 2006.

For the purposes of this recommendation, all section numbers refer to the Bainbridge Island Municipal Code (BIMC or Code), as amended, unless otherwise indicated. Recommended Conditions comprise Appendix A found at the end of this document.

After due consideration of all the information in the record, including that presented at the public hearing, the following shall constitute the findings, conclusions, and recommendation of the Hearing Examiner regarding this subdivision application.

FINDINGS

SITE DESCRIPTION

Location

1. The subject site (tax lot #102502-4-001-2004), is located at the southwest corner of the intersection of NE Lovgren Road* and Madison Avenue NE (bound on the east by Madison Avenue and on the north by Lovgreen Road). The site is rectangular, with Lovgren Road on the long axis running east-west.

*Note: Documents in the record use various spellings for this street name: “Lovgren”, “Lovgreen”, “Lovegren”, and “Lovegreen”. “Lovgreen” is the spelling used by neighbors who submitted written comments [see *e.g.*, Exhibits 24, 26, 29, 32, 35, 36]. However, consistent with the spelling used by the surveyor on the plat maps [see Exhibit 3], “Lovgren” has been used throughout this recommendation. Should the City Council find that a different spelling is preferred, a condition of approval should be included to require that spelling on the final plat.

2. The site is zoned residential, R-1 (one unit per 40,000 sq. ft.), and the Comprehensive Plan designation is ORS-1, Open Space Residential. Surrounding uses are all single family residential, as are the zoning and Comprehensive Plan designations. [Exhibit 43, Staff Report, pages 8; Testimony of Preston]

3. As can be seen in the aerial photo [Exhibits 46A and B], the Idel Weis plat is immediately to the south and there are single-family residences (and undeveloped residential property) on both sides of Lovgren Road. The proposed plat is generally consistent (*i.e.*, similar in size, shape and orientation to the street) with the platting pattern that is developing in the vicinity [see Sheet 1, Exhibit 53]

4. Lovgren Road is classified as a “Suburban Collector” (with design standards that call for 13-ft. wide driving lanes and 3-ft. wide gravel shoulders in a 50-ft. wide right-of-way; Dwg. 7-040). Madison Avenue is a “Suburban Secondary Arterial” (with design standards that call for 15-ft. wide driving lanes and 5-ft. wide gravel shoulders in a 60-ft. wide right-of-way; Dwg. 7-020). [Exhibit 44]

Size

5. The legal description of the property [Exhibit 5, Statutory Warranty Deed] is as follows:

THE NORTH 5 ACRES OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 25 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON.

EXCEPT THE EAST 30 FEET THEREOF FOR COUNTY ROAD;

AND EXCEPT ROAD ON NORTH.

6. There is a recorded right-of-way deed for Madison Avenue (*i.e.*, the “Except East 30 feet for County Road” that is noted in the legal description). Finding no record of a conveyance for a Lovgren Road right-of-way, the Applicant’s surveyor used the southerly edge of the pavement to mark the existing right-of-way (*i.e.*, the “Except for Road” noted in the legal description). [Exhibit 3, Sheet 2/5; Exhibit 5]

7. The subdivision application indicates the site to total 4.61 acres (200,800 sq. ft.) with the east-west dimension of approximately 1301 ft. (this excludes the “East 30 feet” for the Madison Avenue right-of-way). The north-south dimension, beginning the southerly edge of the pavement, is 157 ft. at the western boundary, and 153 ft. at the eastern boundary (this excludes the “Road”). [Exhibit 7; Exhibit 43, Staff Report, page 1; Sheet 3/5, Exhibit 51]

8. The size of the site [see Finding 7] was challenged during the hearing. Mr. Vince Mattson contended that the property has less than the 200,000 sq. ft. that is necessary for five lots. In comments made at both sessions of the public hearing [Exhibits 48 and 55] and in writing after the hearing [Exhibit 58], Mr. Mattson provided information and analysis in support of this view. The fundamental argument is that the “Road” referred to in the deed is not just the paved roadway, but a 15-ft. wide prescriptive “right-of-way” for the “public”. By Mr. Mattson’s calculations, with the northern property line located 15 ft. south of the section line (to incorporate the prescriptive right-of-way as he sees it), the size of the subject property would be approximately 194,600 sq. ft.

9. The City Surveyor testified with certainty that the Public Works Department has reviewed the situation and determined that right-of-way in this location is coincident with the southerly edge of the pavement. The licensed surveyor who prepared the preliminary plat maps and the Director also look to the edge of the pavement as the extent of the “road” [see “ROAD ON NORTH” in deed, Finding 5]. [Testimony of Sproffske; Testimony of Preston]

10. The facts here do not establish that the area beyond the edge of the pavement has been used as public right-of-way or that it is reasonably necessary for the “public easement of travel” [see Finding 61]. The neighbors’ consistently mention that there is no place to walk off the pavement. Also, the ditch appears irregular and informal, not “built” or maintained as a public facility. The permit documents referring to “right-of-way” beyond the pavement are not persuasive. The references to “right-of-way” are part of ‘boilerplate’ permit provisions and conditions applied to all the roads involved, not proof of the extent of a “right-of-way” here.

Physical Characteristics

11. The site is forested and undeveloped except for an existing single family residence located in the central portion of the property within proposed Lot 3, about 500 ft. west of Madison Avenue. [See “Existing Conditions”, Sheet 3/5, Exhibit 51]

12. Site vegetation generally consists of mature trees (*e.g.*, western red cedar, big-leaf maple, red alder, and Douglas fir) with an understory of sword fern, woody shrubs and herbaceous groundcover. In some localized areas, vegetation is dominated by red alder, willow, and an understory suggesting “seasonally very moist to wet soil conditions.” [Exhibit 7, page 2]

13. The site reconnaissance for the geotechnical evaluation noted evidence of seasonally perched groundwater and information provided by neighbors [Findings 34 and 56] suggested the possibility that wetland areas are present on site. Following the public hearing, PCD staff inspected the site and a wetland consultant evaluated the property for the presence of critical areas. One suspect wet area was identified and it was determined that it did not meet the parameters for a regulated wetland. [Exhibit 50; Testimony of Preston]

14. Site topography is characterized by a gentle to moderate slope down to the west with grades generally gentle (4 to 10%) on the east side and moderate (4 to 20%) on the west. While the majority of the site has slopes less than 15%, there are grades in the west that exceed 15% and are mapped as “severe”. Two areas in the west half of the site are identified on Sheet 3/5 [see Exhibit 51] as having slopes exceeding 15%. [Geotechnical Evaluation, Exhibit 7]

15. Because of the potential that the steeper slopes could be “geologically hazardous” under the Critical Areas Ordinance [BIMC 16.20], a geotechnical evaluation was required [see Exhibit 7]. The site reconnaissance found no evidence of recent or historic slope instability and the slopes are underlain with dense glacial till soil. (A soil log prepared for the Applicant with regard to on-site septic systems, notes up to “loamy fine sand” over “compacted glacial till” [Exhibit 10].)

16. The stability analysis in the geotechnical evaluation indicates “a static factor of safety of approximately 5.0 for the residential foundation soils. (A factor of safety of 1.5 or more is generally recommended for static conditions for residential construction.) The geotechnical engineer suggested several measures be included where site grades exceed 15%. [Exhibit 7, pages 2-5] The Director recommends that all those suggestions in the geotechnical evaluation (*i.e.*, foundations in dense soils 3-4 feet below grade; redundant drainage systems for daylight basements; upgradient curtain drains; drainage systems designed to avoid increasing stormwater downslope; maintain existing vegetation outside building envelopes; erosion control and site revegetation) be made conditions of plat approval. [Exhibit 43, page 2, #3].

17. The Applicant would dedicate right-of-way and construct the approved improvements [see Finding 39] along the entire Lovgren Road frontage. The Applicant has also volunteered to construct a pedestrian trail (with a 10-ft. wide easement for public use) in the roadside buffer along the Lovgren Road frontage [see description in Finding 39].

SUBDIVISION PROPOSAL

18. Application for the “Madison Ridge” subdivision [Exhibits 3 and 14, as amended by Exhibit 59] was filed on November 10, 2005. The application proposes division into five residential lots. The most recent version of the plat is comprised of: **Sheets 1, 2, and 4 in Exhibit 3** and **Sheets 3 and 5 in Exhibit 59**.

Proposed Lots

19. The proposed lots would all be rectangular in shape and would range in size from 31,128 sq. ft. to 43,584 sq. ft. [see “Lot Details”, Sheet 4/5]:

Lot 1	43,560 sq. ft.
Lot 2	43,584 sq. ft.
Lot 3	29,073 sq. ft.
Lot 4	31,128 sq. ft.
Lot 5	34,083 sq. ft.

20. The existing residence on proposed Lot 3 would continue to have driveway access to Lovgreen Road (with the existing culvert replaced and a new driveway “approach” constructed between road and driveway). The other lots would also have driveway access: a driveway for Lot 1, another for Lot 2, and one (wider) driveway to be shared by Lots 4 and 5. [Exhibit 53, Sheets 2-4]

Infrastructure/Utilities/Schools

21. The subject property is within Kitsap Public Utility District #1. The Utility has issued a Binding Water Availability Letter for water service [Exhibit 9] from the existing main in Lovgren Road [see Exhibit 53].

22. A fire hydrant is on the south side of Lovgren Road, near the western property boundary of the subject site [see Sheet 3/5, Exhibit 53]. The Fire Department noted [Exhibit 19] that there is sufficient flow available and new hydrants would be required at intervals not exceeding 600 ft. Hydrant location is subject to Fire Department and Public Works approval and would be addressed by Recommended Condition 8].

23. The Kitsap County Health District regulates on-site septic systems. A minimum lot size of 12,500 sq. ft. is required and individual system design and location within the lot must get Health District approval at the building permit stage of development. There is an existing on-site system serving the residence located on proposed Lot 3 and the

District has given preliminary approval for the subdivision, conditioned on and having individual applications for each new system [Exhibit 38]. Recommended Condition 13 includes this requirement.

24. Stormwater would be collected from impervious surfaces (*e.g.*, roofs, driveways) and conveyed to the public stormwater system. The City Engineer regulates stormwater drainage [see BIMC, Chapter 15.20, Surface and Stormwater Management]. Recommended Conditions 18 and 20 would require that stormwater control facilities be designed by an engineer and constructed in conformance with the applicable City and DOE regulations as determined by the City Engineer.

25. The Applicant has paid a “school impact fee” [\$54,875, see Exhibit 27] as would be required by Recommended Condition 19.

Preserving Existing Trees

26. As can be seen in the aerial photos [Exhibits 46A and B], the tree canopy, estimated to cover 168,700 sq. ft. [Exhibit 52 and Exhibit 59, Sheet 5] covers most of the subject site. Only the area around the existing house located on proposed Lot 3 is not forested.

27. In the R-1 zoning district where there is “*established vegetation of a forested nature*” adjacent to the road, “*roadside buffers*” are required. A 50-ft wide buffer is required along arterials and collectors. In situations (as here) where a site has frontage on two roads, the one with the lesser classification may be 25-ft wide. [See BIMC 17.04.080.A.4.b] Madison Avenue, an arterial, should have a 50-ft. wide buffer and Lovgren Road, a collector, a 25-ft. buffer.

28. The original “Tree Retention Plan” [Exhibit 3, Sheet 5/5] that was submitted with the application and considered at the initial public hearing, consisted of both roadside buffers and the western 108 ft. of proposed Lot 1. The designated “retained canopy” would total an estimated 50,490 sq. ft. and would comprise the required “Open Space” [Sheet 4/5 in Exhibit 3].

29. Questions arose at hearing whether the entire area of the buffer along Lovgren Road should be counted as “retained” as an unidentified number of significant trees in the designated canopy would be removed for right-of-way improvements and driveways. As there has been no survey to identify significant trees, it was impossible to determine the effectiveness of the designated “Retained Canopy”. The Applicant was asked to do a tree survey or to consider including other areas to ensure effective retention. In response, the Applicant submitted a revised “Tree Retention Plan” [Exhibit 52]. The revised plan maintains the 50-ft. wide roadside buffer along the Madison Avenue frontage (in proposed Lot 5), increases the width of the retention area in the western portion of Lot 1 from 108 ft. to 150 ft., adds the western 50 ft. of proposed Lot 2, and adds areas on both the east and west sides of the house on Lot 3. This “Retained Canopy” would total approximately 50,600 sq. ft. (the equivalent of approximately 25% of the total site), but

the 25-ft. wide roadside buffer along Lovgren is no longer designated as included in the retained canopy.

30. The revised plan identifies areas which would not be reduced or disrupted by planned construction activities (as is the case with the Lovgren roadside buffer). However, without the Lovgren roadside buffer, the proposal no longer satisfies the requirements of BIMC 17.04.080.A.4. Without this roadside buffer, the open space areas would not be connected. In addition, without the roadside buffer much of the frontage could be cleared to create a front yard to the road [similar to front yards in Idel Weis Court; see Exhibit 46]. If this occurred, the proposed pedestrian trail would be, for a significant portion of its length, passing through front yards instead of a forested buffer.

31. The northern 25 ft. of the subject site (after the proposed dedication) should be identified as a roadside buffer and included in the designated Open Space. To accomplish this, the Applicant need not designate more Open Space than the total proposed in the revised Tree Retention Plan (the Applicant can designate more, but more than 25% cannot be required.) With the inclusion of the 25-ft. wide Lovgren Road buffer and the 50-ft. wide buffer along Madison Avenue, the 50,600 sq. ft. total could be maintained by a commensurate reduction in the width of the other tree retention areas shown in Exhibit 52. Reductions in the designated widths could include: reducing the width of the Lot 1 open space from 150 ft. to 50 ft. wide; reducing open space on the east side of Lot 2 and on the west side of Lot 3, each to 25-ft. wide (leaving a contiguous area of at least 50-ft. wide); and, reducing designated area on the east side of Lot 3, to as little as 0.

32. An "Open Space Management Plan" (OSMP) Form was submitted with the application [Exhibit 8]. The OSMP identifies the individual lot owners as the "entity" with ownership and management responsibility for the Open Space (presumably each owner would be responsible for the Open Space designated on his/her own lot). Approved uses would be: passive recreation; planting of native vegetation; planting non-invasive, non-native vegetation; septic and stormwater systems; low impact fencing; and, trimming/limbing vegetation for view corridors. No buildings would be allowed and the retention of the existing vegetation would be required (except as needed for driveways, utilities, and trail). The open space areas would have to be protected from damage during construction and on-going maintenance would be up to individual owners. Significant trees that became diseased, died, or determined to be a hazard could be removed and replaced following the procedures of BIMC 18.85.060. To put prospective owners on notice as to the restrictions and responsibilities for the Open Space, there should be a note on the final plat stipulating that the lots are subject the provisions of the OSMP

DIRECTOR'S REVIEW AND RECOMMENDATION

33. As part of its consideration of the subject application PCD did environmental review, including a SEPA threshold determination. An Environmental Checklist [Exhibit 6] was included with the application. Notice of the application and the SEPA comment

period was published on November 19, 2005 [Exhibit 23]. The Applicant provided the required posting of land use action signs on November 21, 2005 [Exhibit 21].

Public Comment

34. Neighbors and other concerned citizens provided comments during review of this application and the PCD Staff Report includes the Director's responses [Exhibit 43, Staff Report, page 7]. The issues raised are summarized below. (Each written comment has been assigned an exhibit number and is included in the record to be used by the City Council in making its decision on this subdivision.)

- Sara and Neal McCulloch [Exhibit 22]: Lovgren has no sidewalk or shoulder and traffic exceeds speed limit; dangerous for children walking to school (1/2 mile west to Wilkes); would support the proposal if it included sidewalk with vegetation barrier along Lovgren.
- Berit Bergquist and John Fossett [Exhibit 24]: Lovgren crests in this location so that fast moving vehicles cannot be seen until very close; walking conditions are hazardous for pedestrians, including children walking to school; would support the proposal if it included sidewalk with vegetation barrier along Lovgren.
- Cay Vandervelde [Exhibit 25]: The existing drainage problems in the area should not be exacerbated by development on this site; traffic on Lovgren travels too fast, speed bumps or other mitigation is needed; wants both sidewalk and road widening to accommodate safe pedestrian travel.
- Briary Yeates [Exhibit 26]: Would be supportive of the proposal if it included sidewalk with vegetation barrier; daughter cannot walk to Wilkes because of dangerous conditions on Lovgren; sidewalk is needed.
- Dwight Shappell [Exhibit 28]: Lives downslope and has concern that runoff from subject site will adversely affect his property; there are dead trees on subject site that are endangering his property – this situation will be worsened if removal of trees for construction changes the wind currents; sidewalk from Madison to Viewcrest Place should be required.
- Michael and Kara Gerlek [Exhibit 29]: No safe place for people to walk and fast moving traffic make for a dangerous situation; subdivision will add more cars, pedestrians and driveways on Lovgren; want entrance designed to maximize visibility of traffic on Lovgren; wants sidewalk from Madison to Viewcrest.
- Petition circulated by Hansen [Exhibit 30]: 15 neighbors signed petition urging that a sidewalk along Lovgren be required.
- Katherine Wohlford [Exhibit 31]: Resident of Idel Weis Court. Concerned about septic systems (could interfere with operation of their existing systems and need ensure proposed systems won't run onto neighboring property); removal of trees for new development will adversely affect the ability of the trees on the adjacent Idel Weis properties to survive in the 15-ft. wide dedicated open space (perimeter buffer) that their subdivision was required to retain.

- Vince Mattson [Exhibit 33]: Has reviewed the deed and subdivision plans and has believes that it was a mistake for the southern edge of the Lovgren Road pavement to be used as the northern property boundary; if the other features (ditch, *etc.*) beyond the paved travel way are included in “road”, the subject site would measure 194,600 sq. ft., enough land for 4 lots, not 5.
- Frank Baldwin [Exhibit 34]: The west end of the site may contain some wetlands as neighboring Idel Weis plat has wetland area.
- Stephen and Noyuri Soderland [Exhibit 35]: Agree with the McCullochs that sidewalk along Lovgren should be required.
- J. Dax and Leslie Hansen [Exhibit 36]: Lovgren has limited visibility and an increasing volume of fast moving traffic; a sidewalk along Lovgren should be required.
- John Grinter [Exhibit 41]: Concerned that the “numerous driveways” proposed would be an obstacle in creating a pedestrian pathway separate from the road. Urges that the Non-Motorized Transportation Committee be given the opportunity to create a better design than that proposed by the Applicant.
- Phyllis Snyder [Exhibit 61]: Disapproves of the removal of trees and shrubs that provide habitat for birds and other animals; advocates for the retention of some “mature vegetation”.

Review and Comment by Other Agencies

35. During its review of the application, PCD requested that City departments review the subdivision application and provide comment. The comments received by PCD are summarized below.

<u>Dept/Agency</u>	<u>Exhibit</u>	<u>Comment</u>
▪ Non Motorized Transportation Advisory Committee	37	Committee “unanimously supports” the Applicant’s inclusion of trail for public use.
▪ Kitsap County Health District	38	Recommends approval; each septic system must have individual application before building permit issuance.
▪ Fire Marshall	19	Adequate fire flow available; new hydrants to be located at intervals not to exceed 600 feet, locations as approved by Public Works and Fire Department. Access is approved.
▪ Public Works	54	Plans for erosion control and applicable permits will be required for construction; stormwater collection and conveyance requires design by civil engineer; must submit agreement letter regarding frontage improvements [Exhibit 39]; design for frontage

improvements must be by licensed civil engineer [Exhibit 53]; any work in the right-of-way will require permit.

36. In lieu of providing a traffic study [see BIMC 15.40.060], the Applicant has agreed [Exhibit 39] to make the improvements and right-of-way dedications enumerated in the Public Works Department comments dated March 15, 2006 [Exhibit 44].

37. BIMC 15.32.030 provides that preliminary plats of five or more residential lots shall be subject to a concurrency test to determine if adequate capacity exists on affected transportation facilities. If adequate capacity exists, the City Engineer is to issue a certificate of concurrency [BIMC 15.32.040.B].

38. On March 16, 2006, the Public Works Department issued a Certificate of Concurrency [see Attachment to Exhibit 44] in conformance with BIMC Chapters 15.32 and 15.40. As defined by BIMC 15.32.020, “concurrency” indicates that affected transportation facilities have adequate capacity to serve a particular development without adversely affecting the level of service standards and that there is capacity available for the property described in the certificate.

39. The Public Works Department has approved the dedication of 25-ft. south of the section line and the construction of the improvements by the Applicant. The plans approved by Public Works for the proposed improvements [Exhibit 53] were submitted at the reconvened hearing held on June 6, 2006. Madison Avenue improvements consist of widened the western lane and matching existing pavement and gravel shoulder to the south. The half-street improvements for Lovgren Road would include widening the southern lane to 13 ft., adding a 3-ft. wide gravel shoulder, constructing a roadside ditch, installing culverts under driveway approaches, and relocation and/or addition of fire hydrants as required by the Fire Department.

40. The Public Works Department reviewed the proposed subdivision and has recommended approval with a number of conditions.

Zoning and Land Use

41. The Director concluded that the proposal is consistent with the density provisions of BIMC Chapter 18.33 for the R-1 zone. That is, with a total area of 200,800 sq. ft. (prior to right-of-way dedication) and density of one unit per 40,000 sq. ft. [Finding 2], the allowable number of lots would be five (*i.e.*, divide the total site area by the minimum lot size. [Sheet 3/5, Exhibit 59 includes lot sizes, configuration and dimensions])

42. The Director recommends that setback requirements be shown on the final plat. As BIMC 17.04.080.A.3.a(C)(1) specifies that 50 ft. is the minimum distance between buildings and streets designated “Collectors”, distance between buildings and Lovgren Road should be 50 ft. Recommended Condition 4 would require that the following setbacks be noted on the final plat:

- Distance between buildings: 10 ft. minimum
- Distance between buildings and subdivision boundary: 15 ft. minimum
- Distance between buildings and trail or Open Space: 15 ft. minimum
- Distance between buildings and Madison Avenue: 50 ft. minimum
- Distance between buildings and Lovgren Road: 50 ft. minimum

43. The R-1 zone allows a maximum of 15% lot coverage. The Director has determined the maximum allowable coverage here would be 6,024 sq. ft. [Exhibit 43, Staff Report, page 10] Recommended Condition 4 would require this limitation to be noted on the final plat.

Environmental Impacts and Mitigation

44. To avoid and/or decrease adverse impact(s) to the trees in the perimeter buffer established on the adjacent Idel Weis plat, significant tree within the 15-ft. wide building setback along the south property line should be protected during construction and the retained. Removal of significant trees from the subject site would cause changes in the wind exposure which could result in trees in the Idel Weis required buffer being damaged or felled.

45. During construction, all areas slated for preservation (Open Space, buffers, and southern building setback) must be protected (*i.e.*, temporary construction fencing installed prior to any clearing or grading activities and maintained throughout construction) to avoid and/or reduce damage to the trees being retained. Recommended Condition 24 would make this a condition of approval. Recommended Condition 23 would also prohibit construction staging within these areas.

46. Grading would be necessary for construction of driveways and residences. The quantity of graded material has not been estimated, but clearing and/or grading would require a permit [see *e.g.*, Recommended Conditions 9 and 13] and all graded materials hauled from the site would be required to be properly disposed of [see Recommended Condition 32]. A plan for erosion control (TESCP) would be required by Recommended Conditions 17 and 22. Also, measures would have to be implemented as determined by the Puget Sound Clean Air Agency to be necessary to control dust emissions [see Recommended Condition 33].

47. All new septic systems must have design approved by the Kitsap County Health District and no adverse impacts are anticipated. See Recommended Condition 13.

48. Hours of construction would be limited [see Recommended Condition 26] to mitigate potential noise impacts.

49. Adverse impact to historical or archaeological resources would be avoided and/or minimized by implementation of Recommended Condition 34 which requires work cease and proper agencies notified if any such resources are uncovered during construction.

Director's Recommendation

50. On March 31, 2005 the Director issued a SEPA Determination of Nonsignificance (DNS) [Exhibit 40] with proper notice. The DNS was not appealed [Exhibit 43, Staff Report, page 1; Testimony of Preston].

51. The Staff Report regarding the subdivision application was issued on May 5, 2006. The Director recommends that the subdivision be approved with numerous conditions [Staff Report, pages 2 through 5, Exhibit 43]. The Recommended Conditions in Appendix A at the end of this Recommendation are based upon the Director's conditions, modified by the Hearing Examiner in response to information received during the hearing process.

52. Having concluded that the proposed subdivision, with the proper conditions, would be consistent with the Comprehensive Plan and the applicable sections of the Bainbridge Island Municipal Code, including the Subdivisions Ordinance and the Zoning Ordinance, the Director recommended approval.

53. The Director's analyses [Exhibit 43, Staff Report, pages 10-12] are hereby incorporated by reference and, except where this Recommendation differs, are adopted as Findings.

PUBLIC HEARING

54. Notice of the public hearing to be held on May 25, 2006 was complete by May 10, 2006 [Exhibit 42].

55. During the public hearing, the Department's representative summarized the proposal and reviewed the conditions recommended by the Director [Testimony of Preston]. The Applicant contributed information about the subdivision proposal and the subject property [Testimony of Keating; Testimony of Adam]. Several members of the public commented [see below].

56. The comments of those members of the public who gave testimony about the proposed subdivision at the hearing are summarized below:

- Pat Marshall: Resides in adjacent "Idel Weis" plat to the south; concerned that there will be insufficient buffer and runoff coming onto her property could be increased and adversely affect the operation of existing septic systems.
- John F. Fossett [see Exhibit 47]: Lovgren Road is not safe for pedestrians as it lacks shoulders, has a "blind" hill, and is heavily traveled.
- Vince Mattson [see Exhibit 48]: Believes that the subject property has too little land area to be divided into 5 lots; provided print out of County Assessor's data and his

own measurements and calculations in support of his conclusion that “only 4 lots should be approved for this subdivision.”

57. Prior to the May 25th hearing, written comment was received from Sara McCulloch [Exhibit 61] urging careful consideration of the public comments and reiterating her request that a 6-ft. wide sidewalk with vegetation barrier be required for the entire Lovgren frontage. Photographs were included to illustrate the existing safety problems for pedestrians.

58. At the hearing on May 25, 2006, questions arose regarding: the sufficiency of the amount of Open Space proposed (“Retained Canopy”, Exhibit 3, Sheet 5/5); the possibility of a wetland on the site; and, the improvements approved by Public Works relative to the right-of-way along Lovgren. The hearing was reconvened on June 8, 2006 to consider the information gathered in response to those questions.

59. At the reconvened hearing, PCD staff reported that the site does not have a protected wetland [see Finding 13]. The Applicant submitted a revised “Tree Retention Plan” [Sheet 5/5, Exhibit 52] without the Lovgren Road buffer designated as “retained canopy” and designating areas in Lots 1, 2, 3 and 5 for a total of 50,600 sq. ft. (This submittal creates an ambiguity in that the “Open Space” designated in the application [Sheet 4/5, Exhibit 3] was coincident with the “Retained Canopy” in the original “Tree Retention Plan” [Sheet 5/5, Exhibit 3]. The buffer along Lovgren Road is not included in the revised “Tree Retention Plan” [Sheet 5/5, Exhibit 52], but the designated “Open Space” which still includes that buffer [Sheet 4/5, Exhibit 3]. [Testimony of Preston; Testimony of Adam]

60. Mr. Mattson also testified at the reconvened hearing [see Exhibit 55] regarding his research into Public Works maintenance activities that have extended beyond the edge of the Lovgren Road pavement. A letter from the Assistant Public Works Director indicates that modest roadside maintenance would have occurred along this segment of Lovgren Road (where “...public rights of way are of varying widths...”) “to preserve the functionality and safety of the roadway...” “Roadway” refers to the road surface. Mr. Mattson also testified regarding permits treating installation of a water main some distance (estimated 2-3 ft.) south of the edge of the pavement, as in the “right of way”.

61. The record was left open for PCD staff to check into right-of-way history, public works maintenance activities, and get more information from the City Attorney. Staff reported on June 27, 2006 [Exhibit 56]. It was clarified that the water line permit was for installation in a large area (involving Miller and Day Roads as well as Lovgren Road), and not a specific determination of the right-of-way along Lovgren Road. Follow-up with Public Works disclosed no work plan for maintenance along the south side of Lovgren. The City Attorney provided case citations on the subject of prescriptive easements indicating that the size of a right-of-way acquired by the public is determined based on the facts of each situation, as what is “reasonably necessary” for the “easement of travel”.

62. During the period for review and comment on the PCD report, Mr. Mattson submitted a letter [Exhibit 58] with copies of documents related to the “Lovegren/Miller/Day Transmission Main” project mentioned above. On Lovgren Road the work was to be done “...off pavement, south side of Lovegren.”

BAINBRIDGE ISLAND MUNICIPAL CODE

Appendix B includes pertinent excerpts from sections of the Bainbridge Island Municipal Code.

REQUIRED FINDINGS

Flexible Lot Standards: BIMC 17.04.080

63. The Flexible Lot Standards of BIMC 17.04.080 would be satisfied by this subdivision with the Recommended Conditions as follows (with supporting Finding(s) noted on the right).

<u>Code Section</u>	<u>Finding</u>
BIMC 17.04.080.A Development Standards	
1. Density Limits: Does not exceed the 1 lot per acre permitted in R-1.	41
2. Minimum Lot Size Requirements: All lots meet 12,500 sq. ft. minimum size for lots with on-site septic systems.	18
3. Lot Setbacks and Dimensional Requirements: a. All lots are 50 feet wide at the minimum lot width. b. The lots are appropriate size, shape, and orientation. c. All setbacks meet minimum requirements. d. Maximum lot coverage (6024 sq. ft.) is within R-1 maximum.	42, 43
4. Landscape Buffers: Roadside: 25-ft. wide on Lovgren; 50 ft. on Madison. Park or Conservation Easement Buffers. Not applicable. Landscape Perimeter Buffers. Not applicable.	29, 31
5. Cluster Development Option. Not applicable.	
BIMC 17.04.080.B Landscape Standards	27, 31
Landscaping consistent significant tree retention requirement.	
BIMC 17.04.080.C Roads and Pedestrian Access Standards	
1. Roadway character would be maintained.	29
2. Road improvements consistent with City’s Design Standards.	15, 28
3. Not applicable	
4. Mailboxes location must be indicated on final plat.	Condition 4
5. No transit stops have been recommended by Kitsap Transit.	
6. Trail provides pedestrian access consistent with the Non-Motorized Transportation Plan.	35

Subdivision Decision Criteria: BIMC 17.04.094

64. BIMC 17.04.094.A.1 requires that applicable subdivision development standards be satisfied. Here, the applicable development standards are the **Flexible Lot Standards** of BIMC 17.04.080. As conditioned, the proposed subdivision would meet the applicable standards.

65. As conditioned, the proposed subdivision would be consistent with BIMC 17.04.094.A.2 as it would make appropriate provisions for the **public health and safety** by providing the necessary and appropriate utilities, improvements, and dedications. See also Finding 71.

66. As conditioned, the subdivision would be **consistent with the flexible lot design process** in satisfaction of BIMC 17.04.094.A.3.

67. A finding regarding conformance to the **Critical Areas Ordinance** (BIMC Chapter 16.20) is not necessary as the Director has determined that there are no critical areas. However, the recommendations of the geotechnical engineer [Exhibit 7] should be required as conditions of approval.

68. BIMC 17.04.094.A.5 requires that the City Engineer determine that a subdivision conforms to the applicable regulations and standards pertaining to **drainage and water quality**. The Public Works Department has reviewed the preliminary subdivision submittals and has final approval authority for the construction of those improvements.

69. This subdivision **complies with all applicable provisions of the Bainbridge Island Municipal Code** and other applicable regulations in BIMC 17.04.094.A.6.

70. As required by BIMC 17.04.094.A.7, the proposed subdivision is in accord with the **Comprehensive Plan**. Consistent with its R-1 residential designation, the subdivision, as conditioned, would be compatible with existing neighborhood character, including minimizing disturbance of roadside buffers and retaining significant trees.

71. As required by BIMC 17.04.094.B, **public use and interest** would be served. The subdivision, as conditioned, would provide the necessary and appropriate utilities [domestic water, fire flow, and on-site electric systems] and public improvements [Lovgren and Madison brought up to City design standards, right-of-way dedication] consistent with the public use and interest. The public use and interest would also be served by the provision of Open Space and the pedestrian trail and easement.

CONCLUSIONS

1. The Hearing Examiner's jurisdiction in this matter, BIMC 2.16.110.C.2, directs that the Hearing Examiner hold a public hearing and make a recommendation to the City Council on subdivision applications.

2. All requirements for notice and opportunity to comment have been met. This matter will be properly before the City Council consistent with the provisions of BIMC 17.04.095 that govern Council's consideration of preliminary subdivisions.

3. The "ROAD ON NORTH" is not part of the Keating property [see Finding 5]. If that "road" includes more than just the pavement, the subject property would not have sufficient land area for subdivision into five lots.

4. In these circumstances, the southerly edge of the pavement is the proper location of the northern boundary of the subject site. There is no dispute that "EXCEPT EAST 30 FEET THEREOF FOR COUNTY ROAD" refers to the Madison Avenue right-of-way not just the paved travel surface. Different language, "...EXCEPT FOR ROAD ON NORTH", identifies the northern limit of the property. Different language in the same document is usually and reasonably interpreted as intending a different meaning. Here, if a right-of-way, not just the road itself had been intended, then parallel language (e.g., "EXCEPT NORTH 25 FEET THEREOF FOR COUNTY ROAD") should have been used. "ROAD" here means the paved surface. This interpretation may not defeat a prescriptive easement for a public right-of-way, but, the City, the voice of the "public", has not asserted that a wider public right-of-way has been established or is reasonably necessary for easement of travel. Indeed, the City Surveyor has reviewed the circumstances and made a specific determination that the right-of-way stops at the edge of the pavement.

5. The maximum density permitted on this R-1 zoned site is five. The proposed subdivision and development of four new single-family residences is consistent with the Comprehensive Plan designation. The size and configuration of the proposed lots is in line with the existing uses and platting in this neighborhood.

6. A SEPA Determination of Nonsignificance (DNS) was issued by PCD. That determination was not appealed, but the Recommended Conditions should be imposed to ensure the necessary and expected mitigation of potential environmental impacts. The Recommended Conditions (see numbers bracketed below) would provide mitigation of potential environmental impacts as follows:

a. Mitigation of environmental impacts associated with construction as related to: erosion/sedimentation, runoff, and pollution [17, 22, 24]; air quality [33]; protection for significant trees [7, 14, 16, 24, 27, 30]; noise [26]; historic/archaeological resources [34].

b. Mitigation of environmental impacts associated with long-term residential use of the site as related to: stormwater control [18, 20]; preservation of significant trees [4, 5, 6, 7]; schools [19]; light and glare [36].

c. Provision of: adequate access [31]; appropriate utility infrastructure and improvements [8, 13, 14, 15]; compliance with zoning requirements and conditions of subdivision approval [4].

7. Removal of trees within the 15-ft. wide building setback along the southern boundary would expose the adjacent trees in the required perimeter buffer of the Idel Weis plat to greater or different wind conditions. This exposure could adversely impact the health and chances of survival for that required buffer. Appropriate mitigation to avoid and/or minimize this potential impact is to disallow removal of significant trees, except for hazard trees [see Recommended Condition 4.b].

8. Development of the proposed lots would involve the loss of many trees and would be a major change in the appearance of the site. The required roadside buffer is needed along Lovgren Road to provide screening and the preservation of significant trees and native vegetation. Retaining existing vegetation within the buffer would have the additional benefit of providing a “home” for the pedestrian trail. (Without the Lovgren roadside buffer to prevent it, yards could be cleared to the right-of-way and the trail would meander across front lawns.) Requiring the inclusion of this roadside buffer in the designated Open Space does not require the Applicant to designate more than the 50,600 sq. ft. total proposed. Recommended Condition 6 would require the roadside buffers to be included as designated Open Space, but would allow the Applicant to reduce the size of other tree retention areas in order to have the net total equal 50,600 sq. ft.

9. The Applicant would construct improvements to bring both Lovgren Road and Madison Avenue up to the City’s design standards (and dedicate right-of-way as required by the City for those improvements). The trail that Applicant proposes through the Lovgren Road roadside buffer would be a direct benefit for the residents of the five lots. The easement for public use of the trail would (as can be see from the comments of neighbors) be a substantial and welcome addition to the neighborhood. Safe and pleasant pedestrian passage would certainly be in the public interest.

10. With the Recommended Conditions, the subject subdivision would comply with the flexible lot standards of BIMC 17.04.080, would meet all the preliminary subdivision decision criteria of BIMC 17.04.094.A, and would serve the public use and interest [BIMC 17.04.094.B], including by providing new housing opportunities.

RECOMMENDATION

It is the recommendation of the Hearing Examiner that the application of Tim Keating for the 5-lot "Madison Ridge Subdivision" [SUB13586], be **APPROVED WITH CONDITIONS 1-37 THAT COMPRISE APPENDIX A.**

Entered this 21st day of August 2006.

signed in original
Meredith A. Getches
Hearing Examiner

Concerning Further Review

The City Council makes the City's final decisions on preliminary subdivision applications. City Council decision procedures are found at BIMC 2.16.110.

APPENDIX A

RECOMMENDED CONDITIONS MADISON RIDGE SUBDIVISION [SUB13586]

PRIOR TO FINAL PLAT APPROVAL

1. The Applicant shall provide a **survey of the subject property**, prepared by a licensed surveyor. All lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes and the survey shall be in compliance with all other state and local regulations.
2. The Applicant shall dedicate 25 feet for the **Lovgren Road right-of-way** as shown in the civil plans [Exhibit 53] approved by the Public Works Department on May, 10, 2006.
3. Show accessible **mailbox locations** (that do not restrict pedestrian access) on the construction drawings that shall be submitted prior to final plat.
4. a. Building **setbacks** and lot coverage requirements shall be clearly noted on the final plat as follows:

▪ Building to Building separation	Minimum 10 feet (25 ft. proposed)
▪ Building to Exterior Property Line	Minimum 15 feet
▪ Building to designated Open Space/Buffer	Minimum 10 feet
▪ Building to Lovgreen Road	Minimum 50 feet
▪ Building to Madison Avenue	Minimum 50 feet

b. Within the 15-ft. wide building setback from the southern property boundary, all construction activities (including cutting, clearing, grading, staging, *etc.*) and, except for trees hazard trees) removal of significant trees shall be prohibited and those restrictions shall be noted on the final plat.
5. The northern 25 ft. of the site (as measured after the right-of way dedication, Condition 2) shall be designated as a **roadside buffer** and included in the Open Space designated on the final plat [see Condition 6]. The northern 10 ft. of this roadside buffer shall be established and designated on the final plat as an **easement** for public pedestrian use of the trail within the easement [see Condition 14].
6. Designated **“Open Space”** shall be clearly delineated as on the final plat and shall include: the 25 ft. roadside buffer along Lovgren Road frontage [see Condition 5]; the 50-ft. wide roadside buffer along the Madison Avenue frontage; and, areas in Lots 1, 2, and 3 designated **“Retained Canopy”** in the Tree Retention Plan [Sheet 5/5, Exhibit 59]. In order to include the Lovgren Road buffer and maintain a minimum total Open Space of 50,600 sq. ft. as proposed for **“Retained Canopy”**, some of the areas in Lots 1, 2, and 3 designated in the Tree Retention Plan may, at the Applicant’s discretion, be reduced so that the net total is the same. If the Applicant chooses to not exceed the 50,600 sq. ft. open space proposed, the east-west dimensions in Lots 1, 2, and 3 may be reduced: west side of Lot 1 can reduce from 150-ft. to as little as 50-ft.; east side of Lot 2 can reduce from 25-ft. to as little as 25-ft.; west side of Lot 3 from 50 ft. to as little as 30-ft.; and, on the east side of in Lot 3 can be reduced to as little as 0.
7. The **Open Space Management Plan** [Exhibit 8] shall be revised and approved by the

Director of Planning and Community Development as consistent with BIMC Chapter 17.04. This revised Open Space Management Plan (OSMP) shall note that is to be applied for all Open Space designated on the final plat [see Condition 6]. The OSMP approved by the Director shall be recorded with the final plat and shall include, but not limited to, the following provisions.

- a. No construction activities or staging shall be permitted in the Open Space areas and temporary chainlink fencing, orange construction fencing, or other construction fencing satisfactory to the Director, shall be placed around all those the Open Space areas within the site. Hazard trees within any Open Space area can and should be removed with the approval of the Director during the clearing and grading phase of construction.
- b. The designated open space and buffers shall be utilized and maintained in accordance with this Open Space Management Plan consistent with BIMC Sections 17.12.090.G. and H.
- c. No buildings are permitted in the open space areas.
- d. Existing vegetation shall retained and maintained except for City-approved driveways, utility corridors, and trails; provided that hazard trees may be approved for removal utilizing the procedures outlined in BIMC 18.85.060.A.2.b and c. Significant trees approved for removal shall be replaced by trees of similar species.
- e. Significant trees within the Open Space areas that are dead or otherwise determined by a certified arborist to be a hazard to life or property may, as approved by the Director, be removed and must be replaced following the procedure of BIMC 18.85.060.
- f. No cutting or clearing or other removal of existing and/or native vegetation shall be allowed in the designated Open Space in to provide lawns, gardens, patios, decks, recreation facilities, or other built features.
- g. The approved uses within the Open Space are: passive recreation (walking, bird watching, *etc.*); planting of native vegetation; planting of non-native, non-invasive vegetation; low impact fencing (split-rail, *etc.*); removal of non-native, invasive vegetation. Construction and maintenance of new septic systems and storm drainage facilities may be permitted, provided that there is no reasonable location outside the Open Space.
- h. Individual lot owners shall be responsible for the maintenance of the Open Space, including maintaining the trail within the easement, in accord with the Open Space Management Plan.

8. **Public and private improvements, facilities, and infrastructure, on and off the site that are required for the subdivision shall be completed, have final inspection and approval prior to final plat approval.** Approval of public facilities will be shown by a formal letter of acceptance from the City Engineer. An assurance device acceptable to the City may be used (in lieu of physical completion) to secure and provide for the completion of necessary facilities which are not considered by the Engineering Department to be life, health, or safety related items. Any such assurance device shall be in place prior to final plat approval, shall enumerate in detail the items being assured, and shall require that all such items will be completed and approved by the City within one year of the date of final plat approval. While lots created by the recording of the final plat

may be sold, no occupancy of any structure will be allowed until the required improvements are formally accepted by the City. Additionally, a prominent note on the face of the Final plat drawing shall state:

“The lots created by this plat 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.”

9. The following note must be placed on the final plat:

“Prior to any clearing, or grading on individual lots, clearing, grading, or building permit(s) must be obtained from the City.”

10. The following note must be placed on the final plat:

“The lots in this subdivision are subject to the provisions of an Open Space Management Plan.”

11. The following conditions shall be placed on the final plat: 4-6, 8, 9, 12, 15-18, 21, 23, 26, 27, 31, 33-36.

12. The Final Plat shall be in substantial conformance with the subdivision date-stamped November 10, 2005 [Exhibit 3] as revised dated 59, except as modified by the City Council in its preliminary plat approval decision and conditioning.

PRIOR TO PERMIT ISSUANCE FOR CLEARING, GRADING, BUILDING

13. A **plat utilities permit** must be submitted, reviewed, and approved by the City and the design and location of individual **septic systems** must be approved by the Kitsap County Health District, before any on-site clearing or grading, drainage facilities, trails or any other subdivision improvements can occur.
14. With the Plat Utilities submittal, the Applicant shall submit civil drawings [Exhibit 53] that show the approximate location of a 3-4 ft. wide **trail** within the roadside buffer [see Condition 5]. This trail, located between the back side of roadside ditch (as improved) and the southern boundary of the easement, shall be constructed so as to meander as necessary to preserve significant trees. The inside/roadside edge of the path shall not be closer than 20 feet from the centerline of the roadway.
15. Prior to issuance of any building or utility permit for improvement activities, **final construction plans** in compliance with the City of Bainbridge Island Design and Construction Standards and Specifications, shall be submitted to and approved by the City of Bainbridge Island Public Works Department.
16. Any non-exempt tree harvesting shall require the appropriate **Forest Practices Permit** from the Department of Natural Resources. The conditions of the Madison Ridge Subdivision SUB13568 shall become conditions of the Forest Practices Permit.
17. To avoid degradation of surface water quality, a **Temporary Erosion and Sedimentation Control Plan** (TESCP), must be reviewed and approved by Public Works City prior to any clearing, grading, or construction within this subdivision. [See also Condition 22.]

18. Surface **storm water collection, conveyance and treatment facilities/systems** must be designed by a civil engineer registered in the State of Washington and all civil plans must be designed in accordance with the City of Bainbridge Island Municipal Code (BIMC 15.20 and BIMC 15.21). The Applicant is required to obtain a US Environmental Protection Agency (EPA), National Pollutant Discharge Elimination System (NPDES), Phase II Construction General Permit (CGP). Should the Applicant choose not to exceed 8,000 square feet of clearing on each lot, the NPDES permit will not be required.
19. **School impact fees** shall be paid for each of the created lots (*i.e.*, Lots 1, 2, 4, and 5), prior to final plat approval. (This condition has been fulfilled; see receipt for fees Exhibit 27.)
20. All design work for the **stormwater plans and right-of-way work shall be completed by a civil engineer** registered in the State of Washington. All plat **surveying and construction staking shall be accomplished by a surveyor** registered in the State of Washington.
21. The **recommendations of the geotechnical report** prepared by Meyers Biodynamics, Inc. dated October 6, 2005 [Exhibit 7, pages 4-5] are conditions of this plat, to be incorporated into construction plans and permit conditions as appropriate.

PRIOR TO CONSTRUCTION

22. Prior to any construction between October 1 and April 31, a **TESCP** specifically addressing wet weather conditions must be reviewed and approved by the City Engineer [see Condition 17].
23. No construction activities or construction staging shall be permitted in any **Open Space**, buffer, or within the southern 15-ft. building setback and a notice to that effect shall be posted on-site.
24. Prior to issuance of any permit that allows clearing in the vicinity of the open space, temporary **construction fencing** or silt fencing shall be placed at the edge of the open space, buffers, and southern building setback on the subject property. This fencing shall remain throughout construction to identify and protect these areas. All construction **staging areas** shall be located outside of these designated areas.

DURING CONSTRUCTION AND PRIOR TO OCCUPANCY

25. All work within the City rights-of-way will require a **Right-of-Way Permit**, issued by the Department of Public Works and Engineering.
26. **Construction activities shall be limited to 7:00 AM to 7:00 PM weekdays and 9:00 a.m. to 6:00 a.m. on Saturdays that are not legal holidays.** No construction activities shall be permitted on Sundays and/or on legal holidays.
27. **No construction or construction staging** shall occur within the designated Open Space, buffers, or southern building setback.
28. Applicant shall **construct improvements as shown in the civil plans** as approved by Public Works [Exhibit 59].
29. Existing vegetation in the roadside buffer along the Madison Avenue frontage must be left in its natural state, except for removal of hazard trees and invasive plants and, within the Lovgren Road roadside buffer, clearing and grading essential for construction of the driveways that cross the buffer and for construction of the pedestrian trail within the 10-ft. wide easement [see Condition 30]. All reasonable efforts must be employed to avoid removal of or damage to significant trees.

30. Consistent the civil plans approved by Public Works [Exhibit 59], the Applicant shall **construct a pedestrian trail** [minimum width 3 ft.; maximum width 4.5 ft.] between the back side of the ditch (as improved) , and the southern boundary of the 10-ft. wide easement in the designated roadside buffer along Lovgreen Road. The trail shall extend from Madison Avenue to the western boundary of the subdivision. Removal of vegetation shall be limited to the trail itself (no soil disturbance or tree removal shall occur outside of the trail itself). The trail shall be “field-fit” between or around existing trees, so that tree removal shall be allowed only as a last resort. Limbs and branches up to 9 ft. over the trail and within 1 ft. of the trail edges shall be removed. Any native, non-invasive plants removed for construction of the trail itself, shall be replaced as approved by the Department of Planning and Community Development.
31. The **access driveways** shall be constructed to “minimally adequate” standards and approved by the Fire Department and constructed of an all weather surface.
32. All **graded materials** removed from the subdivision, if deposited on Bainbridge Island, shall be at a City approved location. (Note: local regulations require that a grade/fill permit is obtained for any grading or filling of 50 cubic yards of material or more.)
33. To mitigate potential adverse impacts on air quality during earth moving activities, contractors shall **conform to Puget Sound Clean Air Agency Regulations** to ensure that reasonable precautions are taken to avoid dust emissions.
34. 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 if any **historical or archaeological artifacts** are uncovered during excavation or construction.
35. On site mobile **fueling from temporary tanks is prohibited** unless the Applicant provides and is granted approval for a Permit and Best Management Plan that addresses proposed location, duration, containment, training, vandalism and cleanup. Reference 1. Uniform Fire Code 7904.5.4.2.7 and 2. Department of Ecology, Stormwater Management Manual, August 2001, see Volume IV “Source Control BMPs for Mobile Fueling of Vehicles and Heavy Equipment”). (Chapter 173-304 WAC).
36. All exterior **lighting** shall comply with the City’s Lighting Ordinance, BIMC Chapter 15.34.
37. Final **“As-Built” plans** are required and shall be drafted by the civil engineer of record and the surveyor of record and submitted to the City for review and acceptance. Final “As-Built” plans shall be submitted on mylars and also in digital form acceptable to the City surveyor prior to issuance of the first building permit in the subdivision.

APPENDIX B

BAINBRIDGE ISLAND MUNICIPAL CODE

Subdivision Review Process

72. BIMC 2.16.025.B.2 classifies action on a subdivision application as a quasi-judicial land use decision. BIMC 17.04.093 provides that subdivisions are to be reviewed by the City Council in accordance with the decision procedures of BIMC Chapter 2.16 and the decision criteria of BIMC 17.04.094.

73. The decision procedures of BIMC Chapter 2.16 include, at BIMC 2.16.110, that the Hearing Examiner, following a public hearing, is to make a recommendation to the City Council prior to the final decision on a subdivision application:

74. The express “*Purpose*” of the subdivision chapter [BIMC 17.04.020] includes the following:

...to regulate the subdivision of land to promote the public health, safety and general welfare...To carry out this purpose and further the comprehensive plan policies addressing residential subdivision of land...this chapter establishes a flexible lot process that promotes the preservation of open space, consolidation of open space, and clustering of development within residential subdivisions. This process...limits the development impact area, minimizes impervious surface area and provides for greater flexibility in the division and establishment of residential lots.

Subdivision Approval Criteria

75. The criteria for preliminary subdivision approval, found at BIMC 17.04.094, require that:

- A. *The subdivision may be approved or approved with modification if:*
 1. *The applicable subdivision development standards of BIMC 17.04.080, 17.04.082, and/or 17.04.085 are satisfied;*
 2. *The preliminary subdivision makes appropriate provisions for the public health, safety and general and public use and interest...*
 3. *The preliminary residential subdivision has been prepared consistent with the requirements of the flexible lot design process;*
 4. *Any portion of a subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter;*
 5. *The city engineer determines that the preliminary subdivision meets the following:*
 - a. *The subdivision conforms to regulations concerning drainage...*
 - b. *The subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream.*

c. *The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties.*

d. *The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic.*

e. *The subdivision conforms to the requirements of this chapter and the standards in the “City of Bainbridge Island Design and Construction Standards and Specifications,” except as otherwise authorized by in BIMC 17.04.080.C.3;*

6. *The proposal complies with all applicable provisions of this code, Chapters 58.17 and 36.70A RCW, and all other applicable provisions of state and federal laws and regulations; and*

7. *The proposal is in accord with the city’s comprehensive plan.*

B. *A proposed subdivision shall not be approved unless written findings are made that the public use and interest will be served by the platting of such subdivision.*

76. No subdivision can be approved “until the owner of the affected property dedicates to the city the portion of land designated on the official street map or required by the engineering design and development standards as a street right-of-way.” [BIMC 12.30.010]

Definitions

77. The “Definitions” section [BIMC 17.04.040] of the Subdivision chapter include the following definitions of interest in reviewing this application:

“Flexible lot design” means a design process which permits flexibility in lot development and encourages a more creative approach than traditional lot-by-lot subdivision. The flexible lot design process includes lot design standards, guidance on the placement of buildings, use of open spaces and circulation which best addresses site characteristics...

* * *

“Open space” means any area of land which is predominately undeveloped and which provides physical and/or visual relief from the developed environment in perpetuity; that is generally unimproved and set aside, designated or reserved for public use or enjoyment, or used for the private use and enjoyment of property owners. Open space may consist of undeveloped areas, such as pastures and farmlands, woodlands, greenbelts, critical areas, pedestrian corridors and other natural areas which provide recreational opportunity and visual relief from developed areas.

Open space excludes tidelands, areas occupied by buildings, and any other developed areas such as driveways, all rights-of-way and any other impervious surfaces not incidental to open space purposes. For the purposes of this title, open space shall be established consistent with the criteria and standards of BIMC 17.04.080...

* * *

“Preliminary plat” means a drawing of a proposed subdivision, which shows the general layout of lots, tracts, streets, and other information required by this

chapter, resolutions, ordinances or administrative rules of the department...the basis for approval or disapproval of the general layout of a subdivision.

78. BIMC 18.85.010 defines “*Significant tree*” to mean:

A. *Evergreen tree 10 inches in diameter or greater, measured four feet above existing grade; or*

B. *Deciduous tree 12 inches in diameter or greater, measured four feet above existing grade...*

Flex Lot Provisions

79. BIMC 18.33.010 states that the purpose of the R-1 zone is to

“...provide residential neighborhoods in a rural environment consistent with other land uses such as agriculture and forestry, and the preservation of natural systems and open space...does not require the full range of urban services and facilities.”

80. Subdivisions established pursuant to the flexible lot design process are subject to the development standards of BIMC 17.04.080., including the following.

A. *Development Standards...*

1. Density.

a. The number of residential lots created in a subdivision shall not exceed the density provisions of BIMC Title 18; [Maximum density permitted in the R-1 zone is one unit per 40,000 square feet of land. See BIMC 18.33.040.]

* * *

2. Minimum Lot Size Requirements.

b. Twelve thousand five hundred square feet...if septic drainfield is located within the lot...

* * *

3. Lot Setbacks and Dimensional Requirements.

a. All lots shall be 50 feet wide at the minimum lot width...

b. Insofar as practical, side lot lines shall be at right angles to street lines...size, shape, and orientation of lots shall be appropriate for the type of development and use contemplated...

c. Setbacks.

i. Building to building...minimum 10 feet separation;

ii. Building to exterior property line...Minimum 15 feet;

iii. Building to right-of-way:

(B) Arterial...Minimum 50-foot setback.

(C) Collector...Minimum 50-foot setback.

iv. Building to trail, open space or access easement.....minimum 15 foot setback.

* * *

d. Maximum Lot Coverage...as specified in BIMC Title 18...shall be assigned to each lot...[Maximum coverage permitted in R-1 zone is 15%. See BIMC 18.33.050.]

4. *Landscape Buffers.*

* * *

b. Roadside Buffers. For all flexible lot design subdivisions located in...R-1...where established vegetation of a forested nature is located adjacent to public roads that are designated as collector or arterial roads on the adopted road classification map, a 50-foot-wide vegetative buffer shall be maintained.

* * *

ii. ...To accommodate an existing house that is located within 50 feet of the property line adjacent to a collector...to maintain the character of the neighborhood and reflect neighboring development patterns, the existing landscaping may serve as the roadside buffer.

* * *

iv. Multiple Street Frontages. For properties subject to the roadside buffer requirement along two property boundaries, the roadside buffer abutting the street with the lower classification may be reduced to 25 feet in width....

* * *

e. Allowed Landscape Buffer Activities:

i. ...wells and well houses;

ii. On-site storm water infiltration...

iii. Ingress and egress, where the access runs approximately perpendicular...;

iv. Underground utilities...disturbance is minimized...buffer is revegetated...

v. Nonmotorized trails and trail maintenance ...and

vi. Planting of vegetation.

B. *Landscape Standards.* *Landscaping shall be established consistent with the requirements of subsection A.4 of this section and street tree planting requirements of Chapter 18.85 BIMC, and any other significant tree retention requirement.*

C. *Roads and Pedestrian Access Performance Standards.*

1. Existing roadway character shall be maintained where practical...

2. Roads and access shall be consistent with the standards set forth in "City of Bainbridge Island Design and Construction Standards and Specifications." To minimize impervious surfaces, public rights-of-way, access easements and roadways shall not be greater than the minimum required to meet standards...

3. Variation from Road Requirements. A variation from the road requirements and standards contained within the "City of Bainbridge Island Design and Construction Standards and Specifications" may be approved by the city engineer, if such a reduction meets the purposes of this chapter.

4. Street names, traffic regulatory signs and mailboxes shall be provided. The location of these shall be indicated on the plat.

5. Transit stops shall be provided as recommended by Kitsap Transit.

6. Pedestrian and bicycle circulation and access within a subdivision and onto the site shall be provided through walkways, paths, sidewalks, or trails and shall be consistent with the nonmotorized transportation plan, Ordinance 2002-09. Special emphasis shall be placed on providing pedestrian access to proposed recreational and/or open space areas.

81. Subdivisions (except where Applicant selects the “cluster development option” of BIMC 17.04.080.A.5) are subject to the **open space standards** of BIMC 17.04.082, including the following:

B. ...The area designated for open space preservation shall be configured in a manner that enhances and promotes the natural character of the Island and open space characteristics of the property. Open space configuration shall satisfy the following guidelines:

1. Open space should be concentrated in large, consolidated, usable areas...

2. Open space should connect to adjacent off-site open space areas, designated greenways and/or critical areas;

3. Open space should be designed to preserve views from off-site of the subject property;

4. Open space should be designed to preserve established vegetation on ridgelines; and

5. Open space should enhance or retain the Island character through the minimization of disturbance of roadside vegetation.

** * **

D. Open Space Area Requirements.

1. ...The area provided for open space area shall be a minimum of 25% percent of the area of the property being subdivided

** * **

E. Calculation of Open Space Area. ...the open space area shall generally be consolidated and contiguous and meet the open space definition, criteria and standards of this chapter...Landscape buffers may be included in the open space calculation as specified in BIMC 17.04.080.A.4.g.

F. Open Space Ownership. Ownership of open space area shall be established consistent with one of the following forms of ownership:

1. Private Ownership. Open space may be held in private ownership if established by easements, restrictive covenants, or other similar legal means; or

2. Common Ownership. Open space may be held in common by a home or property owner’s association or other similar organization...appropriate covenant, conditions, and/or restriction shall be required; or

3. Public Ownership. The city or other public agency may choose to accept ownership of open space. Upon approval and acceptance by the director

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H. ...Open space areas shall be permanently maintained. An Applicant shall submit a draft open space management plan (OSMP) for review as part of the preliminary plat application. Final approval of the OSMP will occur at the time of final plat approval.

1. ...include a list of all approved uses for the open space areas...

2. ...include a maintenance plan...that clearly describes the frequency and scope of maintenance activities...Such a plan shall include, but not be limited to, the following:

a. A forest management plan, if the open space is to be managed as forested open space pursuant to Chapter 84.34 RCW or as timberland under RCW 76.09.050.

b. For open space areas that are forested and are not part of a forest management plan...provisions shall be included for replacing significant trees that may later become diseased or die or are determined to be a hazard to life or property.

c. An identification of the management entity responsible for the maintenance of the open space areas. Open space areas shall be maintained permanently by the individual property owners, property owner's association, a conservancy organization, special public district or the city for properties owned by the city.

d. A plan for protecting open space features and existing vegetation within all open space areas, both during and after the construction phases including provisions for replacing significant trees and other vegetation that are damaged as a result of construction actions. Such a plan shall include temporary fencing to be installed around the open space during construction phases to prevent accidental damage to the open space.

e. A plan for irrigating and otherwise ensuring the survival of any newly established vegetation.

f. Provisions for the removal of invasive species and for the general enhancement of fish and wildlife habitat, consistent with guidelines developed by the city.

g. ...low impact fence (e.g., split rail) or signs delineating the boundary... not be required for the landscape buffers.

3. In the event that the open space area is not maintained consistent with the OSMP, the city shall have the right to provide the maintenance thereof, and bill the owner for the cost of the maintenance.