

BEFORE THE HEARING EXAMINER

CITY OF BAINBRIDGE ISLAND

In the Matter of the Application of

John and Alice Tawresey

SUB15353

**ORDER REMANDING
APPLICATION**

For a Preliminary Subdivision Approval
Order remanding

The application of John and Alice Tawresey for a multifamily subdivision of 2.39 acres of property located east of SR 305 and west of 263-487 Cave Avenue NE plus the lot at 439 Cave Avenue NE came on for hearing before the undersigned hearing examiner on October 1, 2010. The record remained open to give the public, the Department of Planning and Community Development, and the applicants opportunity for additional comment and response. Members of the public and counsel for the Cave Avenue Community Association requested that the matter be remanded for further consideration of a number of issues. The hearing examiner has determined that remand is necessary as follows:

Geologically Hazardous Area Buffer Reduction

The south slope of the Winslow Ravine adjacent to three of the proposed lots at the north end of the site is designated as a geologically hazardous area because of a steep slope. The minimum no-disturbance buffer required from the edge of the area is 80 feet, based on the height of the slope “except where no other reasonable alternative exists.” , Section 16.20.150E(2)(a), Applicants propose a reduction in the required buffer to 25 ft. The buffer reduction also must be determined not to reduce the level of protection to the proposed development, other properties and associated critical areas. The director obtained the reviews necessary to satisfy the latter criterion.

The record shows that rather than determining whether any other reasonable alternative exists, the director determined that the reduction was reasonable to allow development of the 20 units proposed by the applicants. The proposed buffer was judged reasonable because that number of units would increase density in the Winslow Master Plan study area as intended by the plan and because similar reductions have been approved on the north side of the ravine. The record does not show that there was a determination that no other reasonable alternative exists. The Code does leave to the director the interpretation of what would be a reasonable alternative but an uncritical acceptance of the applicants’ proposed number of units without consideration of the number of units that could be developed with the full or a less reduced buffer is not a determination that there is no other reasonable alternative. As there is a separate provision, Section 16.20.080, for a reasonable use exception when the critical area and its

buffer would deny all reasonable use, the requirement that there be no other reasonable alternative necessarily contemplates a lesser showing for buffer reduction than that for the reasonable use exception. The record needs to reflect that the proper analysis was conducted if the reduction is to be approved.

Transportation Concurrency

Applicants' consultant provided a memorandum identifying trip generation and potential impacts of the proposed development, estimating that the development would generate a total of 9 new trips during the PM peak hour and 107 for the average weekday. With a 25 percent reduction for location within the core area of Bainbridge Island, those numbers would be 7 during the PM peak hour and 80 for the average weekday. Though the proposal would not be exempt from the concurrency test required by Section 15.32.040 because the trips would exceed 50 per day, the City did not perform the concurrency test because the City uses of rule of thumb that when a project would generate fewer than ten trips during the PM peak hour, it would not be expected to alter the existing level of service (LOS) at intersections. While the rule of thumb of fewer than ten trips appears to be a reasonable measure, the City Council has not delegated authority to establish any further exceptions to the requirement for the concurrency test so it must be performed.

Pedestrian Safety

The record shows that the site of the proposed subdivision is within walking distance of the ferry terminal and town center; that pedestrians from residential development to the north of the site, residents of the Cave Avenue neighborhood, and future residents of the proposed subdivision may use the trail to avoid part of Cave Avenue that does not have sidewalks but that the trail is unlighted so is unlikely to be used at night; that Cave Avenue has no sidewalks at the point the trail joins the street so even users of the trail are forced to walk in the street; that children walk on Cave Avenue to reach their school bus stop; that residents walk in the street to the transit stop; that parents and children walk on Cave Avenue to and from the children's facilities at the north end of Cave; that one resident in a wheel chair uses Cave Avenue; and that it is estimated that the proposed subdivision will add 80 cars per day to the street.

The city engineer has determined that "the streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic," Section 17.04.094A.5.d, which addresses the new public and private streets, sidewalks, and trails provided on and adjacent to the site. The Code also requires that the subdivision make appropriate provisions for the public safety. Section 17.04.094A.2. The city engineer did not address whether the additional vehicular traffic from the proposed subdivision onto the existing street would increase the hazard to pedestrian travel in the street to the extent that mitigation would be necessary to allow for the required finding that the public safety is provided for by the preliminary subdivision. The decision makers will need a response to the safety concerns raised in the record.

ORDER

Therefore, the application is remanded to the Department of Planning and Community Development for determination of whether there is no other reasonable alternative to the reduction of the buffer as required by Section 16.20.150E.2(a), and to the Public Works Department for application of the concurrency test required by Section 15.32.040 and an opinion as to whether the preliminary subdivision makes appropriate provision for pedestrian safety.

The record shall be reopened for the filing of memoranda detailing those determinations and for any responses from persons who have provided substantive testimony or comment to the existing record. Notice of the availability of the memoranda and a 14-day opportunity to file comments shall be given to those persons when the memoranda are filed. Additions to the record are limited to those issues. Following receipt of the required memoranda, the 14-day comment period, and any applicant response to comments, the hearing examiner will make a recommendation to the City Council.

Entered this 28th day of October 2010.

/s/ Margaret Klockars

Margaret Klockars
City of Bainbridge Island
Hearing Examiner *pro tem*