September 26, 2014

CITY OF BAINBRIDGE ISLAND, WASHINGTON
HEARING EXAMINER

THIRD NOTICE OF CONTINUANCE

Project: Rolling Sunrise Subdivision

File number: **SUB18840**

Applicant: BGH Development, LLC
2442 Market Street, #378
Seattle, WA 98107

Location: The project site is located at the south end of Sunrise Drive, immediately south of 10781 Sunrise Drive.

Request: Preliminary long lot subdivision approval to create 7 single-family lots and open space areas in accordance with the City's open space and flexible lot design subdivision provisions.

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1. The public hearing on the above referenced preliminary subdivision application was opened on July 23, 2014, at which time exhibits were entered and testimony received from City staff, the applicant and neighborhood residents. The focus of the discussion was the inadequacy of the City's road system serving the applicant's parcel. The hearing was continued until August 21, 2104, based on a need to obtain more information concerning site road access. Interim deadlines were set for receipt of documentary information. At the reopened hearing on August 21, 2014, further testimony was received from the applicant, City staff and members of the public. Additional exhibits were entered. The applicant and staff requested and were granted an opportunity to respond in writing to the various comments offered and questions raised.

2. A second notice of continuance issued August 21, 2104, resulted in the submission of a few conceptual details from the applicant as well as further analysis from City staff regarding access issues north of the plat. In response to these materials a number of additional comments were received from neighborhood residents, including a package of legal and technical documents submitted on behalf of Patrick and Barbara Ebert by attorney Alan Wallace and engineer Norm Olson. Since the Ebert documents both raise some new issues, including ones concerning the applicable review framework, as well as expand on matters previously discussed, a further round of comments targeting these issues appears to be warranted. Mr. Wallace also requested an additional opportunity for oral public hearing

testimony, a question that will be addressed at the conclusion of the written comment process.

ORDER

Further written comments may be submitted to the Hearing Examiner's Office by Friday, **October 10, 2014,** limited to a discussion of the following questions, in the manner described below:

Roads/Access

- Staff's position appears to be that the 50-trip threshold for triggering a traffic impact assessment (TIA) can be applied to each independent site access separately because the cumulative trips at any offsite point will not reach the threshold level. Ebert argues that the 50-trip threshold must be applied to the proposal site as a whole regardless of access connectivity. Which view is correct? At this relatively late date what valuable new information, if any, would be generated by performing a TIA?
- To what extent and in what context, if any, should the City's road design and construction standards be applied to existing offsite roads serving the plat proposal?

Stormwater Management

- The applicant and Ebert's engineer disagree whether plat development must strictly comply with the Minimum Requirements stated in the WDOE 2005 Stormwater Management Manual for Western Washington. Ebert's engineer contends that compliance with the 2005 Manual is triggered by the plat's quantity of proposed new impervious surfaces. The applicant claims this threshold can be permissibly waived pursuant to local rules and policies that effectively operate to exempt the project from the Minimum Requirements. Which is the correct view?
- If the WDOE 2005 Minimum Requirements do in fact apply to the project, can they be met by the current plat design? If not, how should the plat design be revised to effect compliance? Should additional site studies be required at this stage to assess compliance feasibility?
- If the project can be exempted from meeting WDOE 2005 Minimum Requirements based on local rules and policies, are these alternative local standards met by the applicant's proposed design? If not, what design changes are required?

Appropriate Provisions

- It is generally understood that the existing road and drainage systems both north and south of the plat do not meet applicable current design standards. It is also true that the City cannot legally require a developer to simply fix any and all existing offsite infrastructural deficiencies that may be encountered. In what way, if any, will plat development either make these existing offsite deficiencies worse or increase their resultant adverse impacts to the neighborhood? Can such impacts be quantified?
- Understanding that the applicant's small project cannot be required to bring all existing offsite road and drainage amenities up to current standards, what level of contribution from this applicant should be deemed an “appropriate provision?” Does this standard require more than mitigation sufficient to avoid a net increase in the current level of adverse conditions?

Documentation of Regulatory Citations

- Many of the foregoing questions involve issues of legal interpretation. To the extent that the analysis or argument submitted within a comment document relies on citations to adopted codes, statutes, plans or policies, relevant textual portions of such cited authorities should be appended to the comment document.
- Any suggestion by City staff that new or revised plat conditions are warranted should be accompanied by proposed amendatory language.

Review Framework

- Preliminary plat application review is a complicated bureaucratic process which at the Hearing Examiner level is mostly focused on the feasibility of complying with applicable regulatory requirements. Once feasibility is ascertained, detailed technical analyses typically can be deferred to subsequent staff review. In addition, there may be questions about which agency has authority to make a particular technical decision. Comments should undertake to discuss technical issues in the context of how they relate to making determinations of regulatory feasibility required at the Hearing Examiner level.
- Any person may submit comments by the deadline specified, but no further new substantive issues will be entertained. Unlike the other participants, City staff should deem its obligation to respond to this notice as mandatory, not optional.

ORDERED September 26, 2014.

/s/ Stafford L. Smith

Stafford L. Smith, Hearing Examiner
City of Bainbridge Island