WILLIAMS KASTNER™

September 23, 2014

29182.0101

VIA US MAIL & E-MAIL DRose@bainbridgewa.gov

Hearing Examiner Stafford Smith
City of Bainbridge Island
280 Madison Ave. North
Bainbridge Island, WA 98110

Re: Rolling Sunrise Subdivision
File No. SUB 18840

Dear Hearing Examiner Smith:

On behalf of Pat and Barb Ebert, we respectfully object to entry of the letter from Browne-Wheeler Engineers, Inc., dated September 19, 2014, into the public hearing record of the Rolling Sunrise subdivision application, File No. SUB 18840 (the "Proposal"). Submission of this letter is outside the authorization of the SECOND NOTICE OF CONTINUANCE, ORDERED August 21, 2014. This ORDER set a deadline of September 2, 2014 for the applicant to submit "any comments." The applicant's submission of the September 19, 2014 letter is untimely pursuant to this ORDER, and thereby must be struck from the record.

We certainly appreciate that you can issue a new Order allowing submission of additional documents by parties of record. However, until doing so, we respectfully submit to you that any weight or consideration given to the untimely submission would be a procedural error tainting a decision on the Proposal.

If deciding to issue a new Order to authorize applicant's untimely submission, then we respectfully request that you reopen the public hearing to allow testimony on important questions posed by the September 19th letter and its new site plan for the proposal, which include:

1. Whether it is lawful and appropriate to avoid application of WADOE 2005 Stormwater Manual "Stormwater Minimum Requirements" 6 through 10 by asserting Low Impact Development practices allow removal of impervious surfaces from the Manual's "threshold determination;

2. The elimination of required open space and location of septic drainfields in areas previously designated for open space;

Williams, Kastner & Gibbs PLLC
Two Union Square
601 Union Street, Suite 4100
Seattle, Washington 98101
main 206.628.6600 fax 206.628.6611
www.williamskastner.com
SEATTLE . TACOMA . PORTLAND

3. Evidence concerning noncompliance with vertical and horizontal curve and minimum stopping site distance standards within Hyla and Sunrise Avenues; and

4. Feasibility of Proposal's ability to satisfy turning sight distance regulations where the proposed local access road intersects a 90-degree radius curve of Hyla Avenue.

Please review the attached Technical Memorandum authored by Norm Olson, PE, dated September 22, 2014. Our stormwater expert sharply disputes the core assertion made by the Browne-Wheeler September 19th letter at page two of Olson's September Memo:

> Avoiding compliance with the 2005 WDOE Manual by simply stating that a project storm system will be designed to infiltrate 100% of runoff is not allowed. Although application of certain LID techniques can result in flow credits, they are not applicable in this case.

Mr. Olson's prior Technical Memorandum, dated September 10, 2014 and my letter of September 12, 2014 further evidence the above issues and substantial questions of noncompliance with City codes, other regulatory standards, and RCW 58.17.110. In view of all this, we again request that you order re-opening of the public hearing to allow testimony. This is necessary to enable informed decision making by the Hearing Examiner on these important questions. Absent an Order re-opening the public hearing, we respectfully request that you either strike the September 19, 2014 Brown-Wheeler letter from the record, or open the record to allow entry of both the Brown-Wheeler September 19th letter and the attached Technical Memorandum dated September 22, 2014.

Sincerely,

WILLIAMS, KASTNER & GIBBS PLLC

Alan Wallace

Alan L. Wallace

cc: Sean Conrad
Pat and Barb Ebert
Norm Olson, PE

N.L. OLSON & ASSOCIATES, INC.
Engineering, Planning & Land Surveying

2453 Bethel Avenue
Port Orchard, WA 98366
P. 360-876-2284 / F.360-876-1487
www.nlolson.com

TECHNICAL MEMORANDUM

Project:	**BGH, LLC, Rolling Sunrise Preliminary Plat**
To:	Alan Wallace – Attorney at Law, Williams Kastner
From:	Norman L. Olson, P.E. – N.L. Olson & Associates
Subject:	**Response to Browne & Wheeler 9-19-14 Letter**
cc:	Pat Ebert
Date:	September 22, 2014

N.L. Olson & Associates, Inc. (N.L. Olson) provides this Technical Memorandum (TM) in response to the Browne & Wheeler letter dated September 19, 2014 that provides their response to N.L. Olson's prior review TM dated September 10, 2014.

N.L. Olson's design review does indeed focus on compliance with the provisions of the 2005 WDOE Manual as that is the guiding regulatory document that has been adopted by the City of Bainbridge Island along with the 2009 Edition of the Kitsap County Low Impact Development (LID) Guidance Manual.

The BIMC 15.20.060 "Approval Standards" provides the list of COBI amendment provisions from the 2005 WDOE Manual. It is not apparent that these amendment provisions would justify the storm system proposed for the project.

The 2005 WDOE Manual provides detailed criteria for analysis and design of infiltration facilities from small lot infiltration systems to regional infiltration facilities. These detailed requirements are provided to ensure the infiltration systems constructed will adequately serve to protect downstream critical water bodies, groundwater and downstream or adjacent properties. The **Threshold Determination** is the method provided in the Manual to determine if a proposed development is significant enough in size and scope to warrant compliance with these detailed infiltration design criteria to ensure this high level of protection is achieved.

Avoiding compliance with the 2005 WDOE Manual by simply stating that a project storm system will be designed to infiltrate 100% of runoff is not allowed. Although application of certain LID techniques can result in flow credits, they are not applicable in this case.

The proposed storm system designed to serve the roadways that is outlined in Browne and Wheeler's March 24th drainage report does not comply with the provisions of the 2005 WDOE Manual and it is not apparent how BIMC would allow such deviations. Runoff from a gravel roadway draining through a grass shoulder into an infiltration ditch is not an approved Best Management Practice (BMP) nor is it an approved LID technique.

In general, when downstream constraints are severely limited and private properties are at risk of damage from potential runoff from a project, the infiltration system design is very important and often additional factors of safety are warranted. In such circumstances, compliance with the detailed criteria and requirements of the 2005 WDOE Manual for infiltration analysis and design is important and should not be avoided.

In regards to the infiltration system **setback requirements from a septic drainfield** Browne and Wheeler reference Table IB of Kitsap County Public Health (KCPH) Ordinance 2008A-01 as amended June 7, 2011 as justification for 30 foot setback distances. However, the 30 foot up-gradient distance specified is for an "individual lot infiltration system". The setback in KCPH Table 1B is 100 feet for a "Regional Infiltration Facility" that is equivalent to that referenced from the 2005 WDOE Manual.

Most often the term "regional", in the context of stormwater control, is used to help define a system serving more than one individual lot. BIMC 15.20.020 defines a regional system as follows: *"Regional retention/detention system" means a storm water quantity control structure designed to correct existing excess surface water runoff problems of a basin or sub-basin for* ***two or more properties****. The area downstream has been previously identified as having existing or predicted significant and regional flooding and/or erosion problems. This term is also used when a detention facility is used to detain storm water runoff from a number of different businesses, developments or areas within a catchment.* Therefore, although the 30 foot setback may be appropriate for each of the "individual lots" based on Table 1B, it may not be appropriate for infiltration system(s) designed for the roadway(s) that will serve **two or more properties**.

Based on review of the preliminary site drainage exhibit prepared by Browne and Wheeler that is attached to their September 19th letter, it appears that the proposed septic drainfields to serve lots 2 – 7 would be placed within the proposed open space area. This exhibit does not appear to match the lot details exhibit of the Preliminary Plat of Rolling Sunrises prepared by Adam & Goldsworthy, Inc., dated December 2, 2013. The latter has the septic drainfields located outside the proposed open space.

Deborah Rose

From: Kristin Easterbrook <kristineast@yahoo.com>
Sent: Thursday, October 09, 2014 2:03 PM
To: Deborah Rose
Subject: Re: BGH - Rolling Sunrise - Third Continuance

Hi Debbie,
Please forward these comments onto Hearing Examiner Smith. Thank you!

Road Access.
On access, please keep Sunrise Dr. NE a local, one-lane road. It keeps our neighborhood quiet, and slow.

Accessing the plats from Hyla and Beachcrest would cause fewer conflicts than accessing the plats from Sunrise. The intersection is already at a tipping point in terms of volume and disfunction. Adding more homes accessed from this point will worsen the already chaotic commercial confluence of customers, delivery trucks, and residents trying to pull in and out onto Valley. Sunrise is not up to standard to handle its existing uses. Adding trips coming and going from BGH Development will make it worse.

Will a TIA factor in these functional aspects?

Stormwater Management
"Local rules and policies that effectively operate to exempt the project from the minimum requirements"...
Why is this development exempt from minimum regulations? Who's decision is that and why? Seven homes isn't a 'small project' by Rolling Bay standards. I would describe it as a 'medium project'. Due to the projects proximity to Murden Cove Watershed, regulations should apply.

"What should Rolling Bay Sunrise do to comply?"

- Build fewer homes on this plat.
- Install permeable surfaces where applicable.
- Install a Rain Garden catch basin, similar to the one at 10918 Sunrise Dr. built by local developer, Lisa Martin of the Rolling Bay Land Co.

Provisions:
In what way, if any, will plat development either make these existing offsite deficiencies worse or increase their resultant adverse impacts to the neighborhood?

Adding 3 homes to Sunrise Dr. NE will increase these existing deficiencies: poor visibility, speeds, wear and tear of our street from heavy equipment. In addition, the confluence of residential and commercial at the intersection is already strained. Sitelines are blocked due cars parking on corners, and Mail Delivery trucks park in such a way that pulling out of the neighborhood, onto Valley, is at time, %100 blind, and there is no stop sign for travelers going east/west.

"What level of contribution from this applicant should be deemed an "appropriate provision?"

As far as the offsite roads and drainage amenities go, one suggestion is to request a reserve fund of 3% of the total cost of the BGH project, to be kept in reserve, for road repair after construction. Or, another possibility is a partial contribution to the cost of bringing the extension access roads up to standard. (40% of the cost of the upgrade).

Thanks,
Kristin and Scott Easterbrook

On Monday, September 29, 2014 12:36 PM, "DRose@bainbridgewa.gov" <DRose@bainbridgewa.gov> wrote:

Attached is the Hearing Examiner's Third Notice of Continuance dated 9/26/14.

Regards,
Debbie Rose
Hearing Examiner Assistant

Deborah Rose

From: Randy Groves [randomgrace@gmail.com]
Sent: Monday, September 29, 2014 1:59 PM
To: Deborah Rose
Cc: Melissa Sherrow
Subject: Re: BGH - Rolling Sunrise - Third Continuance
Attachments: Topo_RollingSunrise.pdf

As the owners of the property adjacent to a large portion of the west edge of this development (parcel: 142502-2-081-2007), we obviously have an interest in the progress.

We just recently realized, upon reading the description of the BGH property more closely, and researching the original easement agreement for the easement created when my parents sold the parcel in the early 80's, that the easement granted to the BHG parcel on the lower west corner through the corner of our property is for 'ingress and egress' but NOT for utilities. I am consulting our lawyer on the implications, but we thought it was appropriate to bring this to your attention. We apologize if this information is being provided late in the process - we are new to the development/government hearing game.

Is this the kind of information that may impinge on this continuance process, or is this a matter that would be settled between us and BGH?

I've attached one of the BGH drawings, where the easement provisions for access on the lower west corner are clearly stated. The BGH drawing is the second page - please ignore the topographic drawing on the first page.

-randy

On Mon, Sep 29, 2014 at 12:36 PM, <DRose@bainbridgewa.gov> wrote:

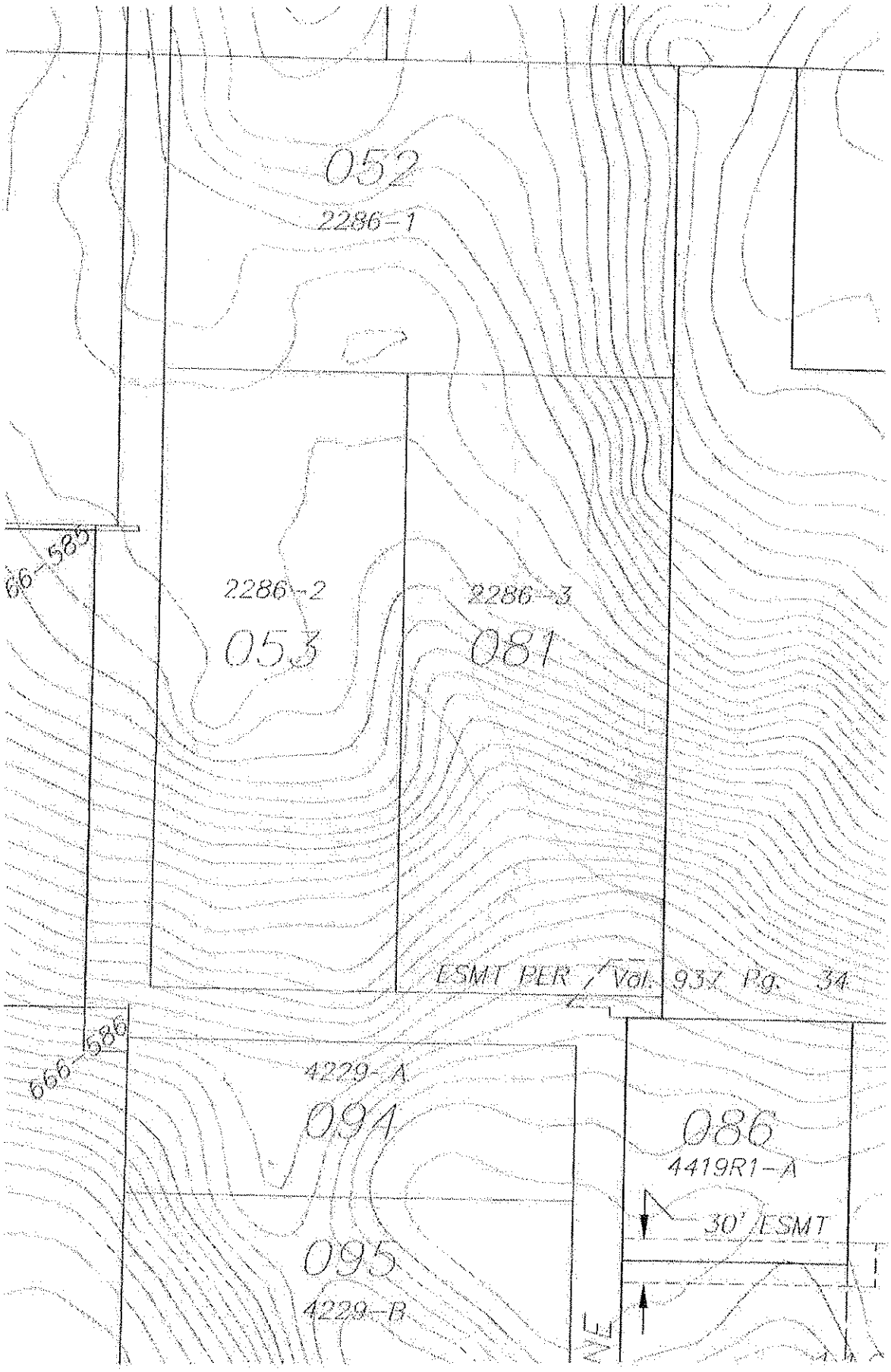
Attached is the Hearing Examiner's Third Notice of Continuance dated 9/26/14.

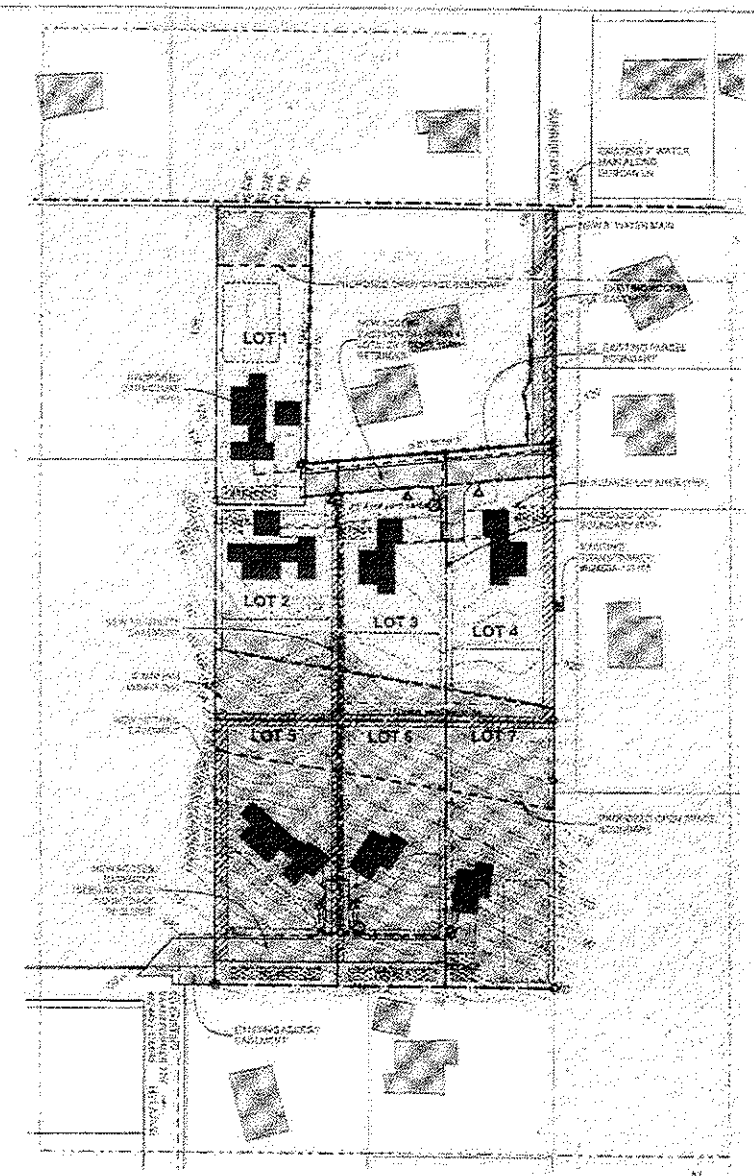
Regards,

Debbie Rose

Hearing Examiner Assistant

1" = 60'

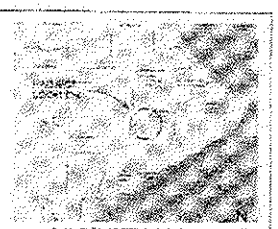

052
2286-1
66-585
2286-2
053
2286-3
081
ESMT PER / Vol. 937 Pg. 34
66-586
4229-A
094
086
4419R1-A
30' ESMT
095
4229-B
N



COMPOSITE SITE PLAN

LEGEND

- [illegible]
- [illegible]
- hydrant
- water valve
- water meter
- sewer cleanout
- manhole
- catch basin
- fire garden
- proposed open space



VICINITY MAP

NOT TO SCALE

PROJECT INFORMATION

SITE INFORMATION

QUARTER SECTION-SECTION-TOWNSHIP-RANGE
NW 14-25-2E

ASSESSOR'S PARCEL NUMBER
142502-3-001-0000

LEGAL DESCRIPTION
THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 25 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING 299 FEET WEST OF THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE WEST 80 FEET; THENCE SOUTH 200 FEET; THENCE EAST 200 FEET; THENCE NORTH 451 FEET; THENCE WEST 209 FEET; THENCE NORTH 226 FEET TO BEGINNING; TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS TO AND FROM THE ABOVE DESCRIBED PROPERTY OVER THE FOLLOWING DESCRIBED TRACT: BEGINNING AT A POINT 35.10 FEET WEST OF AND 40 FEET SOUTH OF THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY; THENCE EAST 35.10 FEET TO THE WEST LINE OF SAID PROPERTY; THENCE SOUTH 40 FEET ALONG SAID LINE TO THE NORTHWEST CORNER OF SAID PROPERTY; THENCE WEST 35.10 FEET ALONG AN EXTENSION OF THE SOUTH LINE OF SAID PROPERTY; THENCE NORTH 40 FEET ALONG A LINE PARALLEL TO THE WEST LINE OF SAID PROPERTY; THENCE WEST 35.10 FEET ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID PROPERTY; THENCE NORTHEAST ALONG A STRAIGHT LINE TO THE BEGINNING POINT, AND TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS DESCRIBED IN INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 8503240100

EASEMENTS
As described in legal description and auditor's file no. 8503240100

TOTAL AREA
1.48 acres

ZONING
R-2 on property and within 150'

FEMA FLOOD RATE INSURANCE MAP DESIGNATION
ZONE C (FIRM)

COMPREHENSIVE PLAN DESIGNATION
URN-2

CONTACT INFORMATION

OWNER
Michael Gerard
BGH, LLC
2540 NW Market St. #278
Seattle, WA 98107
Ph: 206.706.1664
mike@BGHdevelopment.com

ARCHITECT
Matt Hutchins
CAST Architecture
115 N 36th St.
Seattle, WA 98103
Ph: 206.298.9896
matt@castarchitecture.com

SEPTIC
David A. Grafe
Grafe Septic Services Inc.
PO Box 826
Gorst, WA 98360
Ph: 360.930.9898
davegrafe@wavecable.com

SURVEYOR
Kevin Carr, PLS, LEED AP, Project Manager
Adam and Galloway Land Surveying
1915 NE Hostmark Street, Suite 102
Poulsbo, Washington 98370
Ph: 360.779.4294 or 206.842.9336
kevin@agpls.com

LOT	LOT AREA	IMPERVIOUS AREA	BUILDING AREA	SEPTIC AREA	OPEN SPACE AREA	RAIN GARDEN AREA
1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
6	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
7	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

All areas in square feet

DEC 1 1 2013

RECEIVED

BGH: Sunrise

Sunrise Dr NE, Bainbridge Island, WA 98110

REDUCED: NOT TO SCALE

CAST

ARCHITECTURE

00

City of Bainbridge Island

EXECUTIVE DEPARTMENT

TO: Stafford Smith, Hearing Examiner

FROM: Lisa Marshall, City Attorney

DATE: October 10, 2014

RE: Rolling Sunrise Subdivision, SUB18840

This memorandum addresses the Hearing Examiner's questions contained in the Third Notice of Continuance dated September 26, 2014.

Concurrency Certificate and Traffic Impact Analysis (TIA).

The proposed Rolling Sunrise development is exempt from the TIA and concurrency requirements because each access road will generate fewer than 50 average daily trips (ADTs). For the reasons that follow, ADTs are measured on each access roadway, not on the development as a whole.

The Hearing Examiner received a letter from counsel for the Eberts which states that a TIA is required because the development, as a whole, will generate more than 50 ADTs. Counsel argues that the development does not fall within the exemption set forth in BIMC 15.40.060:

> "The requirements of BIMC 15.40.010 through 15.40.050 shall not be required for a proposed development or improvement that generates less than 50 average daily trips (ADT) or five a.m. or five p.m. peak hour trips per the latest edition of the ITE Trip Generation Manual."

The exemption contained above *does* apply to the proposed development because the City has measured the ADTs for each "improvement" – each access road – not for the development as a whole. The City has measured each access road and not the development as a whole because the turning movements on each access road are unlikely to intersect, thereby rendering it unnecessary for one access roadway to handle the capacity of another. This approach is consistent with the concurrency requirements within the BIMC, which states in pertinent part:

> "Concurrency" means that adequate transportation improvements or strategies needed to maintain the adopted **level of service** standards are in place at the time of development or that a financial commitment is in place to provide the improvements or strategies within six years. [Emphasis added].

BIMC 15.32.020.

> A "level of service standard" means a measurement of the quality of service provided by a facility **including traffic conditions along a given roadway or at a particular intersection**. Descriptions and measuring methodology shall be as provided in the "levels of service" section of the transportation element of the comprehensive plan and are in accordance with the Transportation Research Board's Highway Capacity Manual (HCM)." [Emphasis added].

BIMC 15.32.020

The Rolling Sunrise Subdivision does not require a certificate of concurrency because the "traffic conditions along a given roadway" do not generate 50 average trips per day (ADTs):

> "The following development permits are exempt from this chapter, and applicants may submit applications, obtain development permits and commence development without a certificate of concurrency: Any permit for development that generates less than the number of trips described in subsection A.3 of this section.

BIMC 15.32.020(B)(2). BIMC 15.32.030(A)(3) requires a concurrency certificate for "[a]ny development permit that generates 50 or more average trips per day (ADT) or five or more a.m. or five or more p.m. peak hour trips, per the latest edition of the ITE Trip Generation Manual."

Here, all traffic from three of the lots will utilize the Hyla access, and all the traffic from the remaining four lots will utilize Sunrise Drive. There will likely not be any "intersection" of traffic movements within the subdivision for purposes of BIMC 15.32.020 (which defines "level of service.") As there is no intersection within the subdivision, the City must measure ADTs along "a given roadway." BIMC 15.32.020. Accordingly, the City evaluated each roadway – the Hyla access roadway and the Sunrise Drive access – and the ADTs from each "given roadway" are less than 50. The 2022 forecasted level of service in the vicinity of the project is shown to meet the minimum level of service in the 2004 Island Wide Transportation Study.

A TIA for the development, if completed, would not evaluate the roadway to determine whether it meets minimum design standards. Moreover, a TIA is not required to determine whether existing transportation facilities contain capacity adequate for the proposed development because the proposed development does not produce enough ADTs to require a concurrency certificate. In this case, the only thing a TIA would evaluate is whether any traffic indents have occurred in the vicinity of the proposed development. No accidents were reported by the police in the vicinity of the development in the last five years.

BIMC Road Design and Construction Standards

In the Third Notice of Continuance, the Hearing Examiner inquired "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?" If a required TIA shows that existing transportation facilities are such that concurrency cannot be met, then the applicant must amend the application to reduce the need for capacity or arrange to provide capacity for transportation facilities. If the

applicant provides additional transportation facilities, the facilities provided need to meet the City's road design and construction standards.

Here, as explained above, the provision of access from Hyla for three lots and from Sunrise Drive for the remaining four lots will adequately serve the proposed development because the ADTs are below the threshold to require a TIA and a concurrency certificate. The City cannot legally require a developer whose proposed development does not rise to the concurrency certification requirement to improve offsite transportation facilities, as there is no nexus between the impact of the development and the requirement for the improvement. *Nollan v. Cal Coastal Comm'n* 483 U.S. 825 (1987); *Dolan v. City of Tigard,* 512 U.S. 374 (1994); *Benchmark Land Co. v. City of Battleground,* 146 Wn.2d 685 (2002).

Stormwater Management

BIMC 15.20.050(A) and BIMC 15.20.050(C) adopt the 2005 Edition of the Washington State Department of Ecology Stormwater Management Manual (the "Manual") and the 2009 Edition of the Low Impact Development (LID) Guidance Manual – A Practical Guide to LID Implementation in Kitsap County (the "Guide"), respectively. The proposed development will create more than 5,000 square feet of new impervious surface and 7,000 square feet of land disturbing activities. The development is therefore required to comply with Minimum Requirements 1 through 10 of the Manual. However, with the application of the Guide's stormwater best management practices (BMPs), the *effective* impervious surface area on a site can be reduced pursuant to Chapter 1 of the Guide. The development's preliminary drainage plan indicates that infiltration of 100% of roadway runoff is possible as are bioretention or rain gardens to mitigate stormwater runoff from the home sites. A final engineering plan for mitigation of stormwater runoff will be required in conjunction with the Plat Utilities permit application.

Counsel for the Eberts and Norman Olson, P.E., argue that the development must comply with the Manual's Minimum Requirements 6 – 10. This is correct, and the development complies as follows::

<u>Minimum Requirement No. 6, Runoff Treatment</u>. The Guide's BMPs establish basic treatment as required by the Manual and the BIMC. Section 2.5.6 of the Manual requires stormwater treatment facilities for projects in which the total effective, pollution-generating impervious surface is 5,000 square feet or more in a threshold discharge area of a project. As stated above, the proposed development is able to infiltrate 100% of roadway runoff and therefore reduce the impervious area.

<u>Minimum Requirement No. 7 Flow Control</u> – The development is able to infiltrate 100% of roadway runoff. One hundred percent (100%) infiltration **is** flow control and no additional flow control is required. Additionally, Section 2.5.7 of the Manual states that

> "The following require construction of flow control facilities and/or land use management BMPs that will achieve the standard requirement for western Washington: Projects in which the total of effective impervious surfaces is10,000 square feet or more in a threshold discharge area. … ."

As stated above, the use of BMPs such as infiltration will reduce the effective impervious surface area.

Minimum Requirement No. 8: Wetlands Protection. This requirement applies only to projects from which stormwater discharges into a wetland either directly, or indirectly through a conveyance system. This requirement does not apply to the Rolling Sunrise development.

Minimum Requirement No. 9: Basin/Watershed Planning. This requirement applies to areas with Basin/Watershed Plans. There is no Basin/Watershed Plan in the area of the proposed subdivision.

Minimum Requirement No. 10: Operation and Maintenance. This requirement was amended in BIMC 15.20.060(E) and all private stormwater facilities and BMPs will require an operation and maintenance plan. This Plan is required under Condition No. 22 of the City Project Report to the Hearing Examiner dated July 18, 2014.

Appropriate Provisions

The City will not and cannot compel a developer to correct infrastructure deficiencies when those deficiencies are not occasioned by the development. *Nollan v. California Coastal Comm'n,* Id., *Dolan v. City of Tigard,* Id. The proposed Rolling Sunrise subdivision will not generate enough ADTs to compel a concurrency certificate or to compel a TIA. Because the traffic impacts do not rise to the threshold to require a certificate or TIA, it necessarily follows that the impacts do not rise to the threshold whereby the City can legally exact road improvements. *Nollan,* Id*; Dollan,* Id. Counsel for the Eberts argues that

> "Severe issues of both vertical and horizontal curves present at both Hyla and Sunrise Avenues, severe difficulty and possible infeasibility of meeting turning sight distance at the proposed Hyla Avenue entrance, narrow road surfaces and pedestrian safety issues all call preparation of a TIA by a well-experienced and qualified experienced and qualified expert."

In support of the foregoing argument, the Eberts retained Norman Olson, P.E., who prepared a Memorandum outlining the improvements he believes the developer must be required to complete. These improvements generally consist of the redesign of developer's planned stormwater drainage, re-grading of Hyla and Sunrise Drive, installation of All Weather road surfaces, and installation off-site roadway and drainage improvements.

Regarding the stormwater runoff from the roadway surfaces and the home sites, 100% of roadway runoff may be addressed by infiltration. Stormwater runoff from the home sites may be addressed by bioretention and rain gardens. No discussion of the implementation of these BMPs is contained in the Norman Olson report. The Hearing Examiner is free to, and encouraged to, impose these BMPs as conditions of the proposed development. As stated above, a final engineering plan for mitigation of stormwater runoff will be required in conjunction with the Plat Utilities permit application

Regarding sight distance, the Norman Olson report states:

> "The engineering calculation to determine the minimum SSD (150 ft in this case as specified in the COBI Design Standards) is based on a single vehicle approaching a stationary object. **The minimum Stopping Sight Distance calculation does not address two vehicles traveling at design speed heading directly toward each other. ...** Simply adding turnouts *"to afford room for vehicles to move right of the roadway"* really doesn't make sense because without adequate SSD it may be too late to make the decision to actually move off the road."

Here, "design speed" is 25 mph. Staff has suggested, and the Hearing Examiner has spoken to, the possibility of reducing the speed limit in the area of reduced sight distance. No mention of this alternative is addressed in the Norman Olson report. The combination of signage, reduced speed limits, and turnouts should be more than adequate to address Mr. Olson's concerns.

Regrading of Hyla and Sunrise Drive, installation of All Weather road surfaces, and installation of offsite improvements are improvements that either address preexisting conditions not caused by the proposed development (grade of Hyla and Sunrise Drive) or are not necessary. The Bainbridge Fire Department has accepted the proposed subdivision as adequate for its access. Offsite drainage improvements are not necessary because, as discussed above, the proposed development's impervious surface area may be reduced and 100% of roadway runoff and home site runoff eliminated through BMPs.

The proposed development should be approved consistent with the recommendations of staff and the arguments herein.

10432 Duncan Lane NE
Bainbridge Island WA 98110
October 9, 2014

Hon. Stafford L. Smith
Hearing Examiner
City of Bainbridge Island
Bainbridge Island, WA 98110

RE: Comments in Response to Third Notice of Continuance regarding Rolling Sunrise Subdivision, SUB 18840

Dear Judge Smith:

This letter constitutes public comment regarding the proposed "Rolling Sunrise" development, pursuant to your September 26, 2014 "Notice of Third Continuance."

We now have had an opportunity to review the materials submitted by the Williams Kastner law firm on behalf of Pat and Barb Ebert, including the September 10 and September 22 Technical Memoranda from N.L. Olson & Associates, Inc., engineers. We concur with Olson's conclusions that the City has done far too little to analyze and address the legal requirements for mitigation of likely adverse impacts of the Rolling Sunrise project.

Your Notice of Third Continuance posed the question of whether the developer could be required to address more than the mitigation necessary to avoid a "net increase in adverse conditions." But the Rolling Sunrise proposal as it currently stands does not even address the minimum mitigation necessary to avoid "a net increase in adverse conditions."

With regard to the proposed Sunrise Road access, the "turnouts" proposed by the developer and City staff do not meaningfully address the question of inadequate site distance and the admitted grade of at least 16% on this one-lane road. As we have previously noted, adding turnouts is simply window dressing because, with the steep grade and impossibility of seeing over the roadway crest, a driver probably would not have time to use a turnout before being hit head-on by a car coming the other way. The

Rolling Sunrise development would substantially increase the number of vehicles using that roadway, constituting a "net increase in adverse conditions." The Olson analysis elaborates on this serious safety concern, and observes that the 150-foot SSD (the City's requirement for roads serving two to 20 residences) applies only to two-lane roadways; even the COBI Design Standard on which City staff has relied is not applicable where vehicles are heading directly towards each other on a one-lane road.

The Hearing Examiner asks, in the Third Notice of Continuance, what purpose would be served in requiring a Traffic Impact Analysis ("TIA") at this "late" stage. We, and the other neighbors affected by the Rolling Sunrise project, have been asking for a TIA for months. Approval of the Rolling Sunrise project should not be a foregone conclusion. Because of the current safety concerns for vehicles using Sunrise and the inevitable worsening with increased vehicle traffic, combined with the heavy use of the road by walkers and children, a TIA is the very least that should be required of the developer and the City.

The Olson memoranda appear to imply that all access by all seven residences in the Rolling Sunrise project should be via Sunrise. We vehemently oppose such a result. This would make the traffic safety situation far worse, substantially magnifying the "net increase in adverse conditions." If the Hearing Examiner concludes that no access should be via Hyla, and that the developer should not be required to explore alternative access such as via "Falk Lot D" (see our previously submitted Letter), then Rolling Sunrise should not be approved at all, or should be limited to only a few residences with meaningful and appropriate roadway upgrades to ensure reasonable traffic safety.

The storm water and drainage issues also illustrate that the Rolling Sunrise project as currently proposed would entail a "net increase in adverse conditions" that has not been meaningfully addressed either by the City or the developer. We agree with the need for additional analysis as set out in the Olson Technical Memoranda. Another important consideration that apparently has not been addressed by Olson is the likely effects of increased storm water, drainage, and water pollution from the Rolling Sunrise project on the Murden Cove watershed in which the project is located. Rolling Sunrise is only about two-tenths of a mile from Murden Cove, which has been found to contain high levels of fecal coliform bacteria and other harmful nutrients that have resulted in low dissolved oxygen levels. No

approval should be given to Rolling Sunrise unless and until its effects on Murden Cove are considered.

In closing, it appears to us, and to many of the Sunrise residents with whom we have spoken, that the primary goal of the City is to remove all obstacles to development as quickly as possible, rather than to meaningfully address the legitimate concerns of those neighbors who would be adversely affected by it. This public process involving the Hearing Examiner is our only opportunity to moderate the City's "damn the torpedos" approach. We respectfully request that you require an independent Traffic Impact Analysis and the additional storm water and drainage analysis set forth in the Olson Technical Memos.

Sincerely,

Katherine Kennedy
Megan Kennedy
206-201-3614
206-842-4644