September 21, 2015

CITY OF BAINBRIDGE ISLAND, WASHINGTON
HEARING EXAMINER

REPORT AND DECISION

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.

FINDINGS OF FACT

Site Characteristics and Application Submittal:

1. Tax Assessor Information:
   A. Tax Lot Numbers: 142502-2-051-2003
   B. Owners of Record: BGH, LLC
   C. Lot Size: 3.42 acres or 149,039 square feet
   D. Land Use: Open Space Residential
2. Terrain: The site is located along a north-south trending hillside. The northern half of the site is flat with slopes of less than 5%. The south half of the site has slopes ranging from less than 5% to upwards of 15%. The site includes a variety of evergreen and deciduous trees with an understory of ferns and grasses.
3. Soils: Soil mapping indicates that the site is made up of Harstine gravelly sandy loam, with slopes of 6% - 15%. (Soil Survey of Kitsap County Area, Washington; U.S. Department of Agriculture, Soil Conservation Service, 1977).
4. Existing Site Development: The site is undeveloped at this time.

5. Proposed Access: The site will be accessed from Sunrise Drive on the north half of the site and Hyla Avenue on the south half.

6. Public Services and Utilities: The property is serviced by KPUD water.

7. Zoning/Comprehensive Plan Designation: The subject property is zoned as R-2, 20,000 square feet per dwelling unit. The Comprehensive Plan Designation is Open Space Residential, 2 dwelling units per acre (OSR-2).

8. Surrounding Zoning/Comprehensive Plan Designation:

   A. North: R-2, OSR-2

   B. South: R-2, OSR-2

   C. East: R-2, OSR-2

   D. West: R-2, OSR-2

9. Surrounding Uses:

   A. North: Single-family residences

   B. South: Single-family residences

   C. West: Singe-family residences

   D. East: Single-family residences

10. Application Submittal:

    A pre-application conference was conducted on July 30, 2013, a public participation meeting held on October 8, 2013, and the subdivision application submitted on December 3, 2013. The application was deemed complete on January 8, 2014, and noticed on January 10, 2014. A SEPA Mitigated Determination of Non-Significance (MDNS) was issued on June 6, 2014 with the 14-day appeal period ending on June 20, 2014, prior to the Public Hearing scheduled for July 23, 2014. No appeals were received. The property was posted for the public hearing on July 9, 2014.

Hearing Procedural History:

11. 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 primary focus of the discussion were the obvious limitations that characterize the City's road system serving the applicant's parcel. The hearing was continued until August 21, 2104, based on the objective of obtaining more information concerning site road access options. Interim deadlines were set for receipt of documentary information. At the reopened hearing on August 21, 2014, further evidence was received from the applicant, City staff and members of the public.

12. A second notice of continuance issued August 21, 2104, resulted in the submission of a few more conceptual details from the applicant as well as further analysis from City staff regarding access

issues north of the plat. 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 raised new issues, including ones concerning the applicable review framework, as well as expanded on matters previously discussed, a further round of comments targeting these issues was authorized.

13. Timely further submittals were received from City staff, the applicant's engineers, the Eberts' representatives and individual neighborhood residents in response to a third notice of continuance dated September 26, 2014. Based on the record established at this point the Examiner concluded within an October 20, 2014, order that the application should be remanded to City staff for further specific studies and documentation. Upon satisfactory submission of the additional materials specified in remand order the hearing was to be deemed ready for reopening to receive further evidence on the new information presented.

14. As specified within the October 20, 2014, order, the scope of the remand was defined as follows:

> (1). Documentation of the application's compliance with Minimum Requirements 1 through 10 of the state Department of Ecology's 2005 Stormwater Management Manual for Western Washington shall be provided. Particular attention should be paid to Minimum Requirement #7. In order to demonstrate the feasibility of the proposed infiltration onsite of 100% of stormwater runoff, site geotechnical conditions will need to be assessed and all post-development surfaces modeled. The plat site plan should be revised, as needed, to accurately depict all required stormwater facilities and their relationship to other plat and relevant offsite development. If 100% of stormwater cannot be infiltrated onsite, downstream flow paths and impacts will need to be described and assessed.
>
> (2). A limited scope Traffic Impact Assessment shall be performed focused on defining the sight distance requirements at the locations of the project's two proposed connections to the City's public road network, assessing whether such requirements will be met under existing conditions, and proposing mitigations to correct any identified deficiencies.
>
> (3). A written stipulation between the City and applicant shall be negotiated identifying the various improvements and maintenance activities as proposed within this proceeding for achieving a minimum of 12 feet in driving width and 13.5 feet of overhead clearance on both Sunrise Drive and Hyla Avenue; the responsibilities for the implementation of these measures; and an overall timeline containing applicable deadlines synchronized with the anticipated stages of plat development (including transport onsite of modular units).

15. Following submission of the documents specified in the remand order (City staff opted to suggest proposed additional conditions in lieu of a stipulation), the Rolling Sunrise preliminary plat hearing was reopened on September 4, 2015, for the limited purpose of introducing the documents generated in response to the remand order and receiving further testimony and evidence as to their import and adequacy. The hearing was then continued until September 11, 2015, for receipt of legal briefing and a possible voluntary mitigation agreement.

16. Besides the briefs received from the attorneys for the applicant and project opponents Patrick

and Barbara Ebert, a number of neighborhood residents submitted additional comment letters. These will be admitted to the record as timely but can only be considered in this decision to the extent that they are compliant with the purposes of the continuance. The questions of how best to allocate lots among the various potential access routes were discussed and resolved in the remand order, which resolution informed the terms and requirements imposed by that order. It would be confusing and illogical to revisit those questions now. The request of Frank Gremse for a further continuance to pursue matters subject to a public information request is beyond the scope of the continuance and cannot be granted.

Subdivision Review Issues:

17. Rolling Sunrise is a small development proposing relatively sizable residential lots in an established neighborhood zoned for such purpose. The issues that warranted a remand of the application were derived more from shortcomings identified within the City's review process than from any unique aspects of the proposal. The City has yet to adopt a complete set of basic public amenity standards for subdivision approval, so regulatory uncertainty existed as to minimum public road access requirements applicable to a historically rural neighborhood characterized by one-lane, mostly gravel roads. This gap can be filled primarily by reference to general provisions within the state platting statute and City standards based on safety and emergency services needs.

18. In addition, the City had informally adopted a policy that allowed mandatory state stormwater requirements to be dismissed or circumvented based on references to a trade association workbook – an egregious misunderstanding of applicable legal standards that resulted in an absence within the record of preliminary drainage data sufficient to support findings of minimum compliance feasibility. These, then, were the fundamental underlying regulatory problems that necessitated a remand order.

19. The July 18, 2014, Department of Planning and Community Development staff report contains a largely adequate recital of the conventional subdivision approval requirements and the proposal's ability to meet applicable standards, which discussion need not be fully repeated here. The staff report competently discusses Comprehensive Plan consistency; BIMC Title 18 zoning requirements regarding landscaping, lighting and flex lot dimensional standards; and BIMC Title 17 subdivision standards for open space and general residential development. The proposal exceeds mandatory requirements in offering to provide a public trail through the development. Except as may be specifically modified in the findings and conclusions stated below, the City's July 18, 2014, staff report, from the middle of page 11 through the top of page 20, is found to be generally adequate and is adopted herein by reference.

20. Regarding access issues, the project site lies about midway between Valley Road to the north and Manitou Beach Drive to the south and proposes to connect to each via Sunrise Drive and Hyla Avenue respectively. The problems attendant to using either of these connecting access roads were freely acknowledged at the initial July 23, 2014, public hearing by City staff planner Sean Conrad and development engineer Janelle Hitch. The connections both north and south of the site are under-built and poorly maintained gravel or marginally paved one-lane public roads. The present driving lanes average about 11 feet in width where unconstrained, but narrow down to as little as 9 feet where large trees or topographical limitations are encountered. Sight distance problems occur along both routes in certain locations due to vegetation, hills and curves. The applicant originally proposed to construct modular housing units on the seven lots, which units would have required trucking into the site in 15.5

foot-wide sections; this problematic situation has been eliminated by the applicant's abandonment of the modular construction plan.

21. At a continued hearing held on August 21, 2014, City staff outlined its recommendation (see exhibit 14) for the Rolling Sunrise project to make upgrades to Sunrise Drive and Hyla Avenue sufficient to meet the City's "minimally adequate" road design standard. Table 7.2 (Optional Suburban Street Requirements) within the City's "Design and Construction Standards and Specifications" allows a residential roadway to be reduced to a 12-foot width for two-way traffic if parking is prohibited and turnouts are provided. An existing City Engineer interpretive memorandum addresses existing substandard public roads and lists the requirements that should be met for them to be deemed "minimally adequate." In addition to the 12-foot width "along the entire access route," the memo specifies at least 13.5 feet of overhead clearance, an inside turning radius, maximum grades and fire truck turnaround sizing. Such standards have continued to underlie the staff analysis throughout this review, as well as informing the October 20, 2014, remand order.

22. Traffic from Rolling Sunrise will make a minor additional contribution to these problems. A requirement that the applicant totally remedy the various existing access deficiencies within the neighborhood thus greatly exceeds the level of obligation that can be legally placed on any single small development. Further, no compelling case has been made for concentrating all plat traffic at one access location and eliminating the other route. Area residents also generally prefer retaining the present bucolic one-lane road configuration with its inconveniences to any major two-lane upgrade alternative that may threaten their prized semi-rural ambience. Constructing a major road upgrade is thus not desired by the community, its cost would far exceed any burden that can fairly be placed on a single small project, and the City itself has no plans to make such an investment.

23. The City and applicant have come up with a reasonable menu of modest upgrades and maintenance actions that they are jointly willing to implement in the expectation that, while systemic problems will remain, the level of improvement will be sufficient to offset the modest increase in traffic impacts that plat development will entail. The essential plan remains that both access routes adjacent to the plat will be made compliant with the City's minimum fire safety standards outlined in exhibit 14 as implemented in Table 7.2 and the appended City Engineer memo. The improvements along the Hyla route will be performed by the City as maintenance activities while Rolling Sunrise will be mainly responsible for the Sunrise upgrades, which will include a turnout.

24. Much of the additional neighborhood testimony offered at the reopened public hearing on September 4, 2015, focused on the existing sight distance issues encountered on Hyla Avenue between the plat and Manitou Beach Drive to its south. Both horizontal and vertical curve sight barriers exist along the route due to topography and development patterns, and tales of harrowing close calls with vehicles exceeding safe speeds along the Hyla Avenue were related. Since it is clear that no legal authority exists to require the applicant to fully mitigate existing problems well removed from the site, the only defensible cures are either to simply deny the plat application (as argued by the Eberts) or shift all lot accesses north to Sunset Drive (an option explored earlier and rejected by the remand order). As recommended by the Heath study, the applicant will be required to provide adequate sight distance at and adjacent to both access points as well as warning signage. The Examiner finds that such requirements are satisfactory mitigation for and proportional to the limited increase in impacts to be expected from adding four new lots to the Hyla Avenue route.

25. The attorney for the Eberts also offered the testimony of Bob Merritt, a retired fire chief from Snohomish County, to the effect that national service standards would require a 20-foot road width for optimal fire and emergency vehicle access and maneuvering. No one has suggested that a 12-foot road width is ideal, and it is not difficult to imagine scenarios where width limitations could result in service delays. It appears, however, to be the considered opinion of the City's fire marshal that the proposed 12-foot width is workable at this location, viewing the circumstances in their totality. But the conditions will be modified to clearly specify that at building permit review the fire marshal is authorized to add a requirement for the installation of sprinklers at any proposed residence determined at such time to be at risk of receiving inadequate fire service.

26. Patrick and Barbara Ebert reside downslope from the Rolling Sunrise property adjacent to the western half of its southern boundary. Their septic drainfield abuts the Rolling Sunrise property. They testified that major storm events frequently result in rain water running down Hyla Avenue and ponding in a closed depression, where it sits until infiltrated. The Eberts are concerned that the increased runoff caused by forested vegetation removal and development of the Rolling Sunrise site with impervious surfaces will cause adverse impacts to their septic drainfield, potentially threaten their residence and cause an increase in flooding on Hyla Avenue near their residence.

27. Because no roadside ditches exist and stormwater collects and remains in a closed depression downstream from the site, the one unanimously held opinion among the technical reviewers was that achieving 100% infiltration at the Rolling Sunrise property is probably essential to avoid unacceptable offsite drainage impacts. There is simply no viable offsite stormwater conveyance system available to receive offsite flows from Rolling Sunrise. While the applicant's engineers have embraced this basic premise, the October 20, 2014, remand order concluded that their preliminary work fell short of demonstrating the feasibility of compliance with the fundamental requirements of the state Department of Ecology's 2005 Stormwater Management Manual for Western Washington ("the DOE Manual"). The DOE Manual has been adopted as a regulatory control by the City pursuant to BIMC 15.20.050.A, subject to a handful of amendments. While a local jurisdiction also has the option of adopting its own alternative stormwater technical manual, for any such alternative to become effective it must be submitted to Ecology for review, specify how it differs from the DOE Manual and *"demonstrate how the alternative manual is substantively equivalent to Ecology's"* (DOE Manual Vol. I, Sec. 1.6.4, p. 1-13). Needless to say, only a handful of the state's larger jurisdictions possess the resources necessary to independently undertake such a major regulatory exercise.

28. In addition to adopting the DOE Manual, pursuant to BIMC 15.20.050.C the City has made formal reference to a second external stormwater document as follows: *"The 2009 Edition of the Low Impact Development (LID) Guidance Manual – A Practical Guide to LID Implementation in Kitsap County is hereby adopted by reference and is hereinafter referred to as the LID manual for use in meeting the relevant sections of the manual."* This second document (the "LID Manual") was created under the auspices of the Kitsap Home Builders Foundation with the collaborative participation of a large number of other stakeholders in the greater stormwater management enterprise, including Ecology. Next to its cover page it prominently displays a June 2, 2009, letter from Bill Moore of Ecology indicating the scope of the Department's review of the Kitsap County LID Guidance Manual:

> Ecology did not review the document for equivalency, but based on this review, did find that it is consistent with and complements the guidance in the relevant sections of the *Stormwater Management Manual for Western Washington*, 2005 (SMMWW)....

The Kitsap County LID Guidance Manual presents a great compilation of the various LID techniques, their application, and design and a great resource for developers and designer(s) to use.

29. The Rolling Sunrise access driveway system alone proposes to create more than 8000 square feet of new impervious surfaces, well in excess of the level that triggers review pursuant to all ten Minimum Requirements stated in the Manual. Under both Section 2.4.1 of the Manual and BIMC 15.20.060.C the full menu of Minimum Requirements are mandated whenever a project *"[c]reates or adds 5,000 square feet, or more, of new impervious surface area."*

30. But the City and the Rolling Sunrise applicant initially adopted the position that if the plat commits to implementing LID Manual best management practices (BMPs), this can operate to reduce the effective impervious area of the project below the 5000 square foot DOE Manual threshold and thus exempt the project from having to comply with Minimum Requirements #6 through #10. In support of this approach, the applicant's engineers, Browne Wheeler, contended in a letter dated September 19, 2014, that the 2005 DOE Manual "allows impervious areas managed by Low Impact Development (LID) practices to be removed from the impervious area used in threshold determination" and that the City "has adopted a policy that impervious areas conveyed to facilities that infiltrate 100% can be given the same credit for threshold determination."

31. These assertions were disputed by the Eberts' engineer, Norm Olson, who maintained that the 5000 square foot threshold is to be applied before any adjustments or reductions are made to the impervious area calculation. In other words, all ten Minimum Requirements of the DOE Manual apply if an increase of more than 5000 square feet in gross impervious surfaces are proposed. Adjustments and reductions are appropriate only in later stages where the individual Minimum Requirements are actually being applied – after the threshold analysis first step has been completed.

32. There can be no doubt that the good folks who wrote the DOE Manual heartily agree with Mr. Olson's interpretation. His second memorandum contained as an attachment a strongly worded email dated October 7, 2014, from Ed O'Brien at Ecology, who was identified as the Technical Lead for the 2005 Manual and listed as a participant in the LID Manual creation process. This email addresses the question of whether the Manual allows a demonstration of infiltration feasibility to be assumed at the threshold stage:

> It was not the intent of the 2005 West. Wash. Stormwater manual to use the infiltration exemption imbedded within M.R.#7 when making threshold determinations. To make a claim that it should be used, and then allow engineers to use whatever methods they want to make that claim is preposterous. It subverts the regulatory intent.
>
> So, don't use the infiltration claim for the threshold determination. Once the project has triggered MR#7, then they have to use the approved engineering methods to demonstrate that they can remove certain surfaces from the modeling requirement....[O]ther LID BMPs, such as bioretention..., must still be entered into the model so that the model predicts their performance.

33. In terms of the City's review framework, the bottom line appears to be this: despite the adoptive reference in BIMC 15.20.050.C, the Kitsap County LID Guidance Manual does not, and without

Ecology review and approval cannot, legally alter the requirements for compliance with the 2005 Ecology Manual. One observes first that BIMC 15.20.050.C itself asserts no claim to specific regulatory effect; it merely identifies the LID Manual as some type of undefined resource. Second, the LID Manual is basically a cook book of potential mitigation strategies. The ongoing experimental nature of the enterprise is fully recognized by the LID Manual itself (see, e.g., p. 30). While design guidance is offered, it is generalized and acknowledged to be incomplete. For example, regarding bioretention specifically, the LID Manual points out that *"[a]dditional design requirements (including infiltration rate testing methods, infiltration rate correction factors, setbacks, and vertical separation from the bottom of the facility to the underlying water table) are presented in the SMMWW 2005."* (LID Manual, p. 137.)

34. But most fundamentally, as noted above the 2005 Manual sets forth rigorous requirements for the regulatory recognition of alternative technical manuals. Ecology review must determine that such proposed alternative manuals are substantively equivalent to the 2005 Manual. The June 2, 2009, letter from Bill Moore of Ecology quoted above explicitly documents that the LID Manual was not reviewed for equivalency. Accordingly, a commitment to construction in accordance with the Kitsap LID Manual that is unsupported by the technical analysis specified by the DOE Manual cannot be deemed to constitute legally effective substitute compliance with the DOE Manual's Minimum Requirements.

35. Turning to the Rolling Sunrise application itself, Mr. Olson's core contention was that effecting compliance with the DOE Manual necessitates an actual showing of the feasibility of infiltrating 100% of onsite stormwater before preliminary approval of the plat is conferred. The critical focus here is on Minimum Requirement #7, the flow control standard, as applied to the proposed southern tier of lots within Rolling Sunrise, which are located uphill from a residential property with an existing septic drainfield adjacent to its common boundary with the plat. Mr. Olson's memos identified resultant issues to be resolved that, he argued, could mandate a significant revision of the plat design if the applicant's undocumented assumptions proved to be untenable. Mr. Olson contended under these facts that the DOE Manual requires the feasibility of total site runoff infiltration to be clearly demonstrated, not merely assumed as possible. The remand order agreed with this contention and required the plat application to demonstrate the feasibility of attaining compliance with all ten of the 2005 Manual Minimum Requirements prior to preliminary approval.

36. Similar questions as to what level of compliance with the DOE Manual is actually required at preliminary plat review were raised at the reopened hearing held on September 4, 2015. Browne Wheeler submitted two new documents in response to the remand order. The first, dated November 6, 2014, contained the preliminary soil logs for the seven proposed lots compiled in summer 2013 by Dave's Septic Services. For most of the test holes, including lots 5 and 6 adjacent to the Ebert property, septic designer Dave Ghylin reported encountering sandy loam soils. He recorded "compaction" at a depth of 29 inches in the lot 5 test hole and at 39 inches for lot 6, which in the worst case scenario implied encountering an impermeable till layer above which seasonal groundwater may perch. Mr. Ghylin's logs contained no moisture observations, but at the September 4, 2015, reopened hearing Kelsey Laughlin of Browne Wheeler recalled generally observing no standing water in the test holes during a site visit conducted at some unidentified time later in 2013.

37. Using standard values for soil infiltration rates, the November 6, 2014, Browne Wheeler letter posited an infiltration rate of 1 inch per hour for sandy loam, reduced to 0.5 inches for facility design purposes "after a correction factor of 2 was applied." The letter included a copy of Table 3.7 from

Volume III of the DOE Manual, which provides both the standard infiltration rates and the correction factors to be applied. As Mr. Olson pointed out, the Table 3.7 correction factor for sandy loam is 4, not 2, resulting in a 0.25 inches per hour design rate.

38. As summarized in its May 11, 2015, letter, there are two distinct infiltration strategies embodied in the Browne Wheeler materials pertaining to Rolling Sunrise. First, there are the north and south gravel access driveways that the applicant will construct as part of the plat prior to final City approval. These will result in a total of approximately10,800 square feet of impervious driveway surfaces, with 1970 square feet of the total already existing on the site. This runoff is proposed to be infiltrated into adjacent trenches running parallel to the driveways.

39. In addition, there will be a presently unknown quantity of residential development on each lot that will take place after the plat is finally approved and the lots are sold. For this future occurrence Browne Wheeler modeled for each lot a typical array of impervious surfaces that included 2000 square feet of rooftop area and 1000 square feet of driveway. Based on these assumptions (including, presumably, an erroneous soils infiltration correction factor of 2), the applicant's engineers concluded that a 200 square foot rain garden on each lot would be sufficient to achieve 100% infiltration.

40. Both Browne Wheeler and Norm Olson were in agreement that at some point this collection of assumptions will need to be tested against site-specific data. Browne Wheeler's May 11, 2015, letter stated that "[p]rior to Plat Utility Permit submittal, a geotechnical engineer will need to perform soil investigations to verify site suitability of the soil for infiltration via trenches...", with individual lot infiltration requirements deferred to the residential building permit stage. Mr. Olson's position was that soil depths, types and infiltration rates, plus groundwater levels in the wet season, need to be determined before preliminary plat approval in order to make a finding of compliance feasibility. His argument was that if the infiltration capacity of the Rolling Sunrise site has been significantly overestimated the entire plat might need to be reconfigured, including a major revision of the access driveway layout. He suggested that a radically altered plat design could generate new impacts that are not presently discernible.

41. The remand order called for the applicant "to demonstrate the feasibility of the proposed infiltration onsite of 100% of stormwater runoff," specifying that "site geotechnical conditions will need to be assessed and all post-development surfaces modeled." Strictly speaking, the record does not support a finding that these objectives have been achieved. Most fundamentally, site geotechnical conditions have yet to be assessed. Describing more expansively untested assumptions is not the same thing as providing a demonstration. Surely, if the stakes were critically higher and the margin of error less, serious thought would need to be given to denying preliminary approval to this plat application on the basis that too many essential facts remain unknown to support the required determination of feasibility.

42. But here are the overriding realities concerning this application: a rather small plat has been proposed with relatively large lots, and we are approaching the upper limits of regulatory micromanagement that can usefully be employed at preliminary plat review. Common sense suggests that adequate room likely exists on the Rolling Sunrise parcel, if required, for making infiltration facilities somewhat larger than initially estimated, especially since the main focus of concern is only on lots 5 and 6. Flexibility exists, if needed, to make these lots slightly larger and shift open space boundaries. It is improbable that these sorts of adjustments would create significantly altered offsite

impacts. A redesign procedure can be structured so that an acceptable framework exists for accommodating future residential development. The conditions attached to this approval have been amended to provide such a format. For each individual lot a presumptive assignment of 400 square feet for rain garden installation will be required, subject to adjustment when actual geotechnical data is generated.

43. Finally, although Mr. Olson's contributions to the process for the most part have been edifying, two of his criticisms seem problematic. First, the Kitsap County Board of Health regulations clearly authorize infiltration facilities to be sited within 30 feet of septic drainfields. While the DOE Manual may or may not suggest a larger setback, the issue of appropriate septic drainfield setbacks is a public health matter lying primarily within the jurisdictional purview of the local health department. Septic setbacks are only tangentially related to stormwater management, so the health regulation should be applied.

44. Second, Mr. Olson's August 26, 2015, memorandum appeared to argue that the DOE Manual threshold gross impervious area requirement for triggering all ten Minimum Requirements should also be applied individually to the Minimum Requirement #7 flow control analysis. Minimum Requirement #7 does in fact pose its own threshold mechanism for determining when flow control facilities are required which substantially parallels the full menu trigger. It is not tied, however, to gross impervious area but to "effective impervious surfaces," which is by definition an adjustment to the gross area figure. Effective impervious surfaces are those that create offsite flows, which means necessarily that a reduction for appropriate infiltration strategies is subject to recognition. Ed O'Brien's cryptic October 7, 2014, email may be somewhat vague on this point, but the logic of the situation seems apparent.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this proceeding and is authorized under City ordinances to make a final decision on the Rolling Sunrise preliminary subdivision application. Public hearing notice requirements have been met.

2. BIMC 2.16.15.H states the standards for approval of a preliminary plat application:

> *1. The preliminary long subdivision may be approved or approved with modification if:*
>
> *a. The applicable subdivision development standards of BIMC Titles 17 and 18 are satisfied; and*
>
> *b. The preliminary long subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and*
>
> *c. The preliminary long subdivision has been prepared consistent with the requirements of the flexible lot design process, unless a flexible lot standard has been modified as part of a housing design demonstration project pursuant to BIMC 2.16.020.Q; and*
>
> *d. Any portion of a long subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and*

e. Any portion of a long subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and

f. The city engineer's recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:

i. The long subdivision conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and

ii. The long 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; and

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

iv. The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic; and

v. If the long subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the long subdivision, and the applicable service(s) can be made available at the site; and

vi. The long subdivision conforms to the "City of Bainbridge Island Engineering Design and Development Standards Manual," unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 17; and

g. The subdivision conforms to the requirements of this chapter and the standards in the "City of Bainbridge Island Design and Construction Standards and Specifications," unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 17; and

h. The proposal complies with all applicable provisions of this code, unless the provisions have been modified as part of a housing design demonstration project pursuant to BIMC 2.16.020.Q; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and

i. The proposal is in accord with the city's comprehensive plan.

2. 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.

3. As conditioned, the preliminary plat complies with applicable provisions of the flexible lot standards. The completed development will provide 7 single-family residential units in proximity to the Rolling Bay commercial area. The proposal is not for a housing design demonstration project. As discussed above in the context of existing neighborhood development, the proposed infrastructure will adequately meet the transportation, fire protection, water and sewage disposal, and storm drainage needs of the project. The conditions of approval from the Kitsap County Health District, Bainbridge Island Fire District, and City's Development Engineer are incorporated into this preliminary approval.

4. The site neither contains critical areas nor lies within shorelines jurisdiction. As conditioned, the proposed subdivision meets the decisional criteria for City Engineer approval. The City Engineer's recommendation for preliminary approval, as modified, contains determinations that the City's decisional criteria for drainage, streets and pedestrian ways, road standards and utilities can be met, and, as conditioned below, such determinations are supported by substantial evidence within the record. The proposal is conditioned to comply with the "City of Bainbridge Island Design and Construction Standards and Specifications." The applicant is not proposing a variation to the road standards. The proposal, as conditioned, will be consistent with applicable provisions of state and federal regulations.

5. The subdivision will provide mid-size lots adequate to accommodate a variety of unit types and sizes, while protecting open space and providing a pedestrian trail linking Sunrise Drive to Hyla Avenue. If conditioned in the manner provided below, and as documented with the findings stated above, the plat application for Rolling Sunrise meets the decisional criteria stated at BIMC 2.16.125.H for preliminary approval of a long subdivision. It complies with the applicable facility, land use and subdivision development standards of BIMC Titles 15, 17 and 18, and, as conditioned, makes appropriate provisions for the public health, safety and general welfare and for the public use and interest, including all items listed in RCW 58.17.110. The proposed development will be consistent with the City's Comprehensive Plan.

DECISION

The preliminary subdivision application for Rolling Sunrise (file no. SUB18840) is APPROVED, subject to the following conditions of final plat approval:

SEPA CONDITIONS

1. A Storm Water Pollution Prevention Plan (SWPPP) for the proposed development shall be provided for City review and approval in accordance with BIMC 15.20. The plans must be approved, the improvements constructed (or a construction bond provided if applicable), and an acceptable final inspection obtained prior to final subdivision application. The design submittal shall incorporate all proposed subdivision improvements including complete civil plans, grading and erosion control plans, roadway plan and profile, storm drainage facilities and drainage report, and shall be prepared by a professional engineer currently licensed in the State of Washington.

2. The site is greater than one acre in size, therefore prior to construction activities, the applicant shall apply for a Construction Stormwater General Permit (NPDES) through the Washington State Department of Ecology.

3. The limits of clearing and grading shall be clearly marked in the field and inspected by the City of Bainbridge Island prior to beginning any clearing or grading on site.

4. No construction activities, storage of materials or vehicles, or soil stockpiling shall take place within any designated open space except for the following activities:
    - Installation of the water main
    - Construction of a pedestrian trail

- Moving the off-site manufactured homes to lots 5, 6 and 7

5. 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)

6. 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.

7. To mitigate impacts on air quality during earth moving activities, contractors should conform to Puget Sound Air Pollution Control Agency Regulations which insure that reasonable precautions are taken to avoid dust emissions.

8. To mitigate potential impacts on air quality, cleared vegetation shall be removed from the site, processed by chipper or processed using other methods of disposal that does not require burning.

9. To mitigate potential off-site glare, any street lighting within the subdivision shall meet the outdoor lighting standards of BIMC 18.15.040, including general standards (D) & figures of acceptable shielding and direction of outdoor lighting fixtures (F).

10. To mitigate impacts to area residences, construction activities shall meet the requirements of BIMC 16.16.025 including a) it shall be prohibited between the hours of 7:00 p.m. and 7:00 a.m. on weekdays that do not constitute legal holidays, b) it shall be prohibited before 9:00 a.m. and after 6:00 p.m. on Saturdays that do not constitute legal holidays and c) it shall be prohibited on Sundays and all legal holidays except that work on the inside of an enclosed structure may occur between the hours of 10:00 a.m. and 4:00 p.m. A noise variance shall be required for any deviation from these time limitations.

11. The proposed trail connection shall be located within the easement depicted on the preliminary plat and developed to a minimum width of 4 feet. A homeowners association shall be established for the maintenance and liability of the trail unless another entity assumes maintenance and liability of the trail.

12. To mitigate temporary impacts to the open space area, the developer shall provide a replanting plan to the Department of Planning and Community Development prior to any work within the open space area. The plan shall identify the trees and ground cover to be removed and include a replanting plan for the disturbed area. The replanting plan shall include a combination of native trees and ground cover.

13. Any non-exempt tree harvesting shall require the appropriate Forest Practices Permit from the Department of Natural resources.

NON-SEPA CONDITIONS

14. The following table indicating the required setbacks and lot coverage shall be recorded on the face of the final plat.

	Minimum
Building to Building	10 feet
Building to exterior subdivision boundary	15 feet
Building to internal street	15 feet
Building to Trail or Open Space	Minimum 10 feet
Maximum Lot Coverage per Lot	4,258 square feet

15. The final plat submittal shall include street names, the location of any traffic regulatory signs and approved mailbox locations from the United States Postal Service. The applicant is responsible for street names signs in accordance with the Manual on Uniform Traffic Control Devices and City requirements.

16. An approved Open Space Management Plan shall be recorded with the final plat that indicates the maintenance and allowed uses within each of the open space tracts.

17. Open space easements or covenants shall be recorded together with the land division and represented on the final plat and title.

18. Prior to final plat approval, the applicant shall install one sign on lot 1 and fencing on lots 2-7 along the appropriate open space boundaries. In accordance with BIMC 17.28.020. 37, the signs shall be a minimum of 64 square inches and made of metal, hard plastic or engraved wood. In accordance with BIMC 17.28.020.030, low impact fencing includes two-or-three tier split rail not exceeding five feet in height, four inch by four inch wooden posts with two or three strands of cable in between, or other fencing with similar visual, barrier, and access characteristics as determined by the Director.

19. Prior to final plat submittal, all lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes, or other approved method. All property corners and right-of-way centerlines shall be monumented, including the center of the cul-se-sac. A survey of the property must be completed and submitted with the final plat application.

20. A plat certificate shall be provided with the final plat application.

21. School impact fees may be required. If school impact fees are in effect at the time of submittal for the final plat, the applicant shall pay one half of the impact fees for the 7 single family units. The remaining half of the fees shall be paid at the time of building permit issuance for the single-family units.

If the fees are in effect at the time of building permit submittal rather than subdivision submittal, then each applicant applying for a single family residential building permit shall pay the full impact fee prior to building permit issuance. The pertinent condition shall be provided on the face of the plat.

22. All on-site storm water facilities shall remain privately owned and maintained. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Annual inspection and maintenance reports shall be provided to the City. A Declaration of Covenant for storm water system operation and maintenance will be required to be recorded before final plat submittal. The approved language for the Declaration of Covenant is found in BIMC Chapter 15.21.

23. Prior to final subdivision submittal, the applicant shall provide for review and approval by the City a plan and profile for water connections.

24. Prior to final subdivision submittal water lines, including meters to each property, shall be installed or an assurance device shall be provided.

25. 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 subdivision submittal. Approval of public facilities will be shown by a formal letter of acceptance from the City Engineer. A surety 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 City to be life, health, or safety related items. Any such surety device shall be in place prior to final plat submittal, shall enumerate in detail the items being assured and shall require that all such items 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 for the completion of certain necessary facilities. Building permits may not be issued or occupancy granted 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."

26. Prior to any construction activities on individual lots, the applicant shall obtain the appropriate permits from the City, including but not limited to building, clearing, and/or grading permit. This note shall be listed on the face of the final plat.

27. As-built civil construction plans will be provided by the applicant prior to final subdivision approval.

28. At the time of building permit application for the individual lots, demonstration of compliance with applicable stormwater management requirements shall be required in accordance with BIMC 15.20. The following note shall be placed on the face of the final plat:

"Onsite infiltration of 100% of stormwater is required for each lot, the feasibility of which shall be demonstrated at building permit review. A rain garden or equivalent infiltration facility meeting the applicable requirements of the state Department of Ecology's Stormwater Management Manual for Western Washington will need to be constructed. A future rain garden area has been prospectively identified for each lot, which area may be reduced, enlarged or relocated pursuant to City review based on a determination of site-specific lot infiltration requirements."

29. The developer's engineer shall certify that there is adequate entering sight distance at the site entrances and within the access driveways. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the COBI Design and Construction Standards.

30. Transportation facilities shall be reviewed and approved by fire officials during the civil construction design.

31. It shall be the responsibility of the applicant to verify the adequacy of the proposed water main to meet fire flow requirements pursuant to the City of Bainbridge Island Municipal Code 13.10.065. Fire flow requirements to neighboring property must be maintained. Plans and calculations showing how this level of pressure will be maintained will be provided to the city.

32. The applicant and the water service provider, Kitsap PUD, shall verify that the proposed water main extension provides for future extension to other properties within the service area.

33. A right-of-way (ROW) construction permit will be required prior to any construction activities within the right-of-way. The ROW permit will be subject to separate conditions and bonding requirements.

    The plans submittal for clearing and grading approval shall include a designation of adequate areas for staging, storing and parking onsite all equipment and vehicles associated with plat construction. No offsite parking of equipment or vehicles shall be permitted except on private property specifically leased for such purpose.

34. A binding Water Availability Commitment is required prior to building permit issuance.

35. The following note shall be placed on the face of the final plat:

    "Prior to issuance of a building permit for residential construction on any lot, the adequacy of available fire and emergency response facilities and services shall be reviewed by the fire marshal, who may require installation of building sprinklers, upgraded fire walls or other safety measures."

36. Before final plat approval road improvements and maintenance activities shall be completed onsite and along the site access routes on Sunset Drive north to Albertson Road and Hyla

Avenue south to Manitou Beach Drive sufficient to comply with Table 7.2 of the City's "Design and Construction Standards and Specifications" as elaborated in the City Engineer's 2-21-97 revised roadway standards memo pertaining to providing "minimally adequate" access via a substandard public roadway (exhibit 14). This shall include at least the following:

a) Prior to site work the applicant shall clear vegetation from the site access points at Hyla Avenue and Sunset Drive out 170 feet along the sides of the roadways to achieve over the entire distance a minimum of 12 feet of driving width and 13.5 feet of overhead clearance. Each 170 foot offsite terminus shall be measured and remain clearly marked for the duration of project construction. Inspection and approval by the City must be completed before further work may commence.

b) The applicant shall maintain a sight distance clearance of 170 feet along the access roadways for the duration of plat construction activities. Monthly inspection reports shall be provided by the applicant to the City documenting that the sight distance is being maintained.

c) The signage recommended by the Heath & Associates report dated May 26, 2015, (exhibit 23) shall be installed prior to commencement of site work.

d) A turnout meeting COBI Standard Detail 7-067 shall be installed on Sunset Drive. Location and design of the turnout will be included in the plat utility application submitted after preliminary subdivision approval. Any turnout location will be reviewed by the City and the City's transportation engineering consultant to ensure that it meets sight distance and safety requirements along Sunset Drive while taking into account the need to minimize impacts to adjacent properties to the maximum extent practicable. The turnout shall be installed prior to submittal of any site building permit application and verification of such installation provided with the first building permit application.

37. Storm water management plans for the plat shall comply with Minimum Requirements #1 through #10 of the state Department of Ecology's 2005 Stormwater Management Manual for Western Washington ("the DOE Manual"). Prior to engineering plan submittal, a geotechnical assessment of site subsurface conditions shall be performed to determine the infiltration rate of the native sandy loam soils, the soil depths to less permeable layers that will not support infiltration, and winter groundwater levels. These values shall be modeled in conjunction with the total impervious surfaces projected for ultimate development of the entire site to determine site infiltration facilities requirements, consistent with DOE Manual standards. Plans shall be revised, as necessary, to assure that flows will receive required water quality treatment and facilities are provided capable of infiltrating 100% of site runoff in a manner compliant with Minimum Requirement #7 of the DOE Manual. Infiltration facility setbacks to septic drainfields shall comply with health department requirements. Each lot shall be designed and sized in the final plans to accommodate, and the final plans shall depict, a required septic drainfield area, a building envelope meeting City dimensional standards and a rain garden space. Unless review of the geotechnical assessment establishes a different dimension, each lot rain garden shall be presumptively sized at 400 square feet based on an assumption of 2000 square feet of residential roof area and 1000 square feet of driveway. Lot lines, access drive locations and open space boundaries may be adjusted to meet these requirements.

38. Storm water review for each individual lot shall be performed at residential building permit issuance. The following note shall be placed on the face of the final plat:

"Onsite infiltration of 100% of stormwater is required for each lot, which shall be demonstrated at building permit review. A rain garden or equivalent infiltration facility meeting the applicable requirements of the state Department of Ecology's Stormwater Management Manual for Western Washington will need to be constructed. A future rain garden area has been prospectively identified for each lot, which area may be reduced, enlarged or relocated pursuant to City review based on a determination of site-specific infiltration requirements."

ORDERED September 21, 2015.

Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The Hearing Examiner is authorized to make the City of Bainbridge Island's final decision on a preliminary subdivision application. A party with standing may seek judicial review of this decision by filing a timely suit in Kitsap County Superior Court under the Land Use Petition Act.

The exhibit list prepared by the Clerk of the Hearing Examiner's Office is attached.

EXHIBIT LIST
BGH, LLC – Rolling Sunrise
SUB18840

Staff Contact:

Josh Machen
Planning Manager

Public Hearing: July 23 and August 21, 2014
Reopened Hearing: September 4, 2015

Hearing Examiner: Stafford L. Smith

NO.	DOCUMENT DESCRIPTION	DATE
1	Application (together with the following documents) • Statutory Warranty Deed • Open Space Management Plan • Plat of Rolling Sunrise Lot Closures • Daves Septic Services Letter Re Soil Logs Dated 07/03/2013 • Kitsap PUD Letter Re Non-Binding Water Availability Dated 07/01/2013 • Vicinity Map	12/03/2013 Received
2	Site Plans	12/02/2013 (Dated)
3	Bainbridge Island Fire Department Memorandum	12/16/2013 (Dated)
4	Kitsap Public Health District Approval	12/19/2013 (Dated)
5	Notice of Application/SEPA Comment Period with Environmental (SEPA) Checklist (together with Distribution List, Affidavit of Publishing and Affidavit of Posting)	01/10/2014 (Published)
6	Citizen Comments	01/17/14 – 07/16/14
7	City of Bainbridge Island Development Engineer Conditions for Approval	04/04/2014 (Dated)
8	Notice of Public Hearing and Certification of Distribution	07/04/2014 (Published)
9	Transmittal from Kelsey Laughlin, P.E. of Browne Wheeler Engineers	03/24/2014 (Dated)
10	Public Participation Meeting Notes	10/08/2013 (Dated)
11	Notice of Mitigated Determination of Nonsignificance (MDNS)	06/06/2014 (Dated)
12	Staff Project Report	07/18/2014 (Dated)
13	Planner's PowerPoint Presentation	07/23/2014 (Presented)
14	Memorandum from Sean Conrad Re Rolling Sunrise Subdivision Access	08/15/2014 (Dated)
15	Letter from Dennis Reynolds Re Limits on Off-Site Traffic Mitigation	08/15/2014 (Dated)
16	Citizen Comments Received by 8/15/14 in Response to Continuance	08/21/2014 (Admitted)
17	Citizen Comments Received after 8/15/14	08/21/2014 (Admitted)
18	Letter and Photos from Barb and Pat Ebert	08/21/2014 (Admitted)
19	Public Comments (3) Submitted in Response to Remand Order	09/04/2015 (Admitted)

EXHIBIT LIST
BGH, LLC – Rolling Sunrise
SUB18840

Staff Contact:

Josh Machen
Planning Manager

Public Hearing: July 23 and August 21, 2014
Reopened Hearing: September 4, 2015

Hearing Examiner: Stafford L. Smith

NO.	DOCUMENT DESCRIPTION	DATE
20	City Development Engineer's Response to Remand Order dated 06/08/2015	09/04/2015 (Admitted)
21	Letter to Michel Girard from Browne Wheeler Re Soil Infiltration dated 11/06/2014	09/04/2015 (Admitted)
22	Transmittal Letter from Browne Wheeler Enclosing Revised Report for Preliminary Plat dated 05/11/2015	09/04/2015 (Admitted)
23	Letter from Heath & Associates Re Sight Distance dated 05/26/2015	09/04/2015 (Admitted)
24	Email from Assistant Chief Carpenter, Fire Marshal dated 09/03/2015	09/04/2015 (Admitted)
25	N.L. Olson & Associates Technical Memorandum Re Stormwater dated 08/26/2015	09/04/2015 (Admitted)
26	GTC Memorandum to Alan Wallace Re Roadway Review dated 09/03/2015	09/04/2015 (Admitted)
27	Resume of R.A. Merritt – Fire Service Professional	09/04/2015 (Admitted)
28 A-E	Photos of Roads at Site Submitted by Patrick Ebert	09/04/2015 (Admitted)
29	Photo of Road Showing Narrow Access	09/04/2015 (Admitted)
30	Comments received after the September 4, 2015, hearing and prior to the closing of the record on 09/11/2015.	09/08/2015 through 09/11/2015 (Received)