

May 31, 2016

**CITY OF BAINBRIDGE ISLAND, WASHINGTON
HEARING EXAMINER**

REPORT AND DECISION

Project: Roost Subdivision

File number: PLN50076SUB

Applicants: Jeb & Belinda Thornburg
Roost Land Co, LLC
Blue Moon Land Co, LLC

Location: 4559, 4563 and 4569 Point White Drive
7651, 7663 and 7676 Baker Hill Road

Request: Preliminary long lot subdivision approval to create five single-family lots plus one commercial lot for future development.

\SEPA Review: A Mitigated Determination of Non-Significance was issued on April 1, 2016, with the 14-day appeal period ending on April 15, 2016. No appeals were filed.

FINDINGS OF FACT

A. Site Characteristics

1. Tax Assessor Information:
Tax Lot Numbers: 042402-1-046-2006, 042402-1-058-2001, 042402-1-056-2003,
042502-1-057-2002, 042402-1-059-2000
Owners of Record: Jeb & Belinda Thornberg, Roost Land Co LLC, Blue Moon Land Co
LLC
Lot Size: 4.89 acres or 213,001 square feet
Land Use: Single-family residential and vacant.
2. Terrain: The site is located on a relatively flat property that peaks at the northeast corner and slopes gently down to the south.
3. Soils: Soil mapping indicates that the site has several different soils, including Kapowsin gravelly loam (Soil Survey of Kitsap County Area, Washington; U.S. Department of Agriculture, Soil

Conservation Service, 1977). A geotechnical investigation report provided by the applicant dated April 21, 2015, indicates that the site is underlain by uncontrolled fill and zones of loose, saturated sand that are prone to liquefaction and differential settlement.

4. Existing Site Development: Three of the five lots are developed, with one having a single family residence and storage shed, and the other having two single family homes.
5. Proposed Access: The applicant is proposing public access from Baker Hill Road for the single family homes, with a road possibly continuing south through to Point White Drive to serve future development plus utility connections to sewer and water services.
6. Public Services and Utilities: The property is serviced by City of Bainbridge Island Sewer and South Bainbridge Water System.
7. Onsite Zoning/Comprehensive Plan Designation: The subject property is zoned as R-2, two units per acre and Neighborhood Service Center. The Comprehensive Plan Designation is OSR-2, 2 units per acre, and Neighborhood Service Center. The southernmost portion of the property also lies within shorelines jurisdiction.
8. Surrounding Zoning and Comprehensive Plan Designations and Uses:
 - North: R-1, OSR-1 unit per acre (vacant)
 - South: Neighborhood Service Center (multi-family; commercial)
 - East: Neighborhood Service Center , R-12 (commercial)
 - West: R-2, OSR-2 units per acre (single-family residential)

B. Procedural History.

9. A pre-application conference was conducted on January 6, 2015, and a public participation meeting held on January 26, 2015. The subdivision application was submitted on May 20, 2015, and deemed complete on July 17, 2015. The project was noticed for public comment on August 14, 2015, with the comment period ending on August 28, 2015. Many public comments were received. Revisions to the application were submitted to the application on February 8 and 12, 2016.
10. A Mitigated Determination of Non-Significance (MDNS) was issued by the City pursuant to SEPA on April 1, 2016, with the 14-day appeal period ending on April 15, 2016. No appeals were received. The preliminary plat hearing held on May 11, 2016, was continued by the Hearing Examiner for two weeks to allow briefing of issues related to the proposed vacation of an underlying short plat.
11. The applicants are seeking to vacate an existing four lot short plat created in 1993 (Bainbridge Island Short Plat No. BI-6, recorded at AF #9310110094) and subdivide the resultant two parcels into six lots. The land is split-zoned between Neighborhood Service Center (NSC) on the south and R-2 to the north, comprising 4.89 acres overall. The Roost Subdivision proposal will create six lots, five single family lots with R-2 zoning and one multifamily/commercial lot with NSC zoning. The lots are located between Point White Drive NE and NE Baker Hill Road.
12. A well-attended public participation meeting was held on January 26, 2015 during the pre-application phase of the project. The scope of the pre-application meeting was not limited to the

subdivision of the property and residential development of the northern lots but also included commercial development plans for the NSC portion of the site. In general, the concerns voiced were more focused on the proposed commercial site plan and design process than on the residential subdivision. The current application proposes to create the NSC-zoned commercial lot now but will defer its actual design and review to a later stage.

13. Pursuant to the agency review process, the Fire Marshal submitted a comment letter on August 5, 2015, containing conditions regulating fire flow, hydrants, parking, street naming and addressing. The Fire Marshal also met with staff on February 29, 2016 to review the revised preliminary utility plans. The Fire Marshal accepted the proposed turnaround for the residential development proposed for the R-2 portion of the site. The Fire Marshal recommendations have been included as project conditions (Conditions 30-32).

14. The City's Development Engineer has been working with the applicants to review proposed plat utility work, including coordination on the development of the road, and to ensure adequate and available sewer conveyance for the project. The City's Development Engineer collaborated with the planner to draft the staff-recommended conditions of approval for this project and reviewed its stormwater, traffic and geotechnical studies.

15. On June 5, 2015, the City received an email from the Parks Department describing efforts being made by it and adjoining property owners to provide east/west connectivity through the project site. This trail connection could link Schel Chelb west through private property to a terminus at Lynwood Center. The applicants expressed an interest in providing a trail connection through the site but balked at employing a formal easement. Staff's proposed condition only requires that the applicants revise their open space management plan to reflect that trails are a permitted use in Open Space Tracts 3 & 4 (Condition 11).

16. Staff's public notice issued for the May 11, 2016, plat hearing before the Examiner also undertook to accomplish vacation of the underlying short plat within the same procedure. The City's Municipal Code, however, contains no provision authorizing the Hearing Examiner to conduct a plat vacation hearing, which means that the proposed vacation is entirely governed by the basic provisions of RCW 58.17.212. This section of the state subdivision statute authorizes vacation of an existing plat by the City's "legislative authority", that is, the City Council. The City Council via an appropriate code provision likely could delegate its vacation hearing function to the Hearing Examiner but, as noted, has not done so. Under RCW 58.17.212 the Council receives the plat vacation application, issues the public notice and holds the public hearing.

17. The continuance of the May 11, 2016, hearing allowed the parties to further review the legal relationship between the current preliminary plat approval request and the ancillary short plat vacation process, particularly to investigate whether any sequencing requirement exists mandating that the vacation occur before preliminary approval. The applicants' attorney, Bruce Weiland, suggested that it would be sufficient to impose a condition requiring completion of the vacation before final plat approval, a contention that on its face seemed logical and sensible. The continuance provided an opportunity to actually research this assumption.

18. The City Attorney submitted instead a brief arguing that a separate vacation procedure was not indeed required at all, citing two 1980 state Attorney General Opinions. The first, AGO 1980 No. 5,

discussed whether the proposed later division of an existing lot into four or fewer smaller lots should be regarded as a resubdivision or a short plat. The factual hypothesis underlying this AGO opinion differs from our situation in a number of important respects, the most fundamental being that it postulates an example where no existing lot lines will be altered or removed. In our situation, the internal lot lines of Bainbridge Island Short Plat No. BI-6 will all be removed and replaced by new lot lines in new locations.

19. The second Attorney General Opinion cited by the City Attorney, AGO 1980 No. 12, bears some superficial similarity to the Roost situation in that one of the hypotheticals contemplated “a change in existing lot lines”. The problem here is that this AGO focused exclusively on the lingering effects of two long-repealed platting statutes, the Territorial Code of 1881 (last codified at RCW Chapter 58.11), and Chapter 92 of the Laws of 1903 (last codified at RCW Chapter 58.11, with a few remnants still appearing at RCW Chapter 58.10).

20. While these ancient provisions once supported a lively real estate legal practice focused on the vexing intricacies of transitioning from one platting regime to its rather different successor, now these matters are mainly of interest only to history buffs. Suffice it to say, vacating a 1993 short plat created under more recent statutory authority does not require consideration of the 1903 era issues discussed in AGO 1980 No. 12. Further, AGO 1980 No. 12 itself posits as a context for its discussion that the land owner will be “in addition...complying with the requirements of chapter 58.17 RCW relating to subdivisions,” which broad reference includes RCW 58.17.212. A condition will be added to this subdivision decision requiring, prior to final plat approval, City Council vacation of Bainbridge Island Short Plat No. BI-6 pursuant to the provisions of RCW 58.17.212.

21. Finally on a procedural note, some neighborhood residents raised the question of whether the stated intention of the applicants to eventually build accessory dwelling units (ADUs) on the residential lots under condominium ownership would violate the City's zoning standards. A 2015 legal memo from Mr. Weiland to the City Planning Commission argued that differential legal treatment of ADUs by the City based solely on condominium ownership would violate RCW 64.34.050 and that, in any event, the form of ownership does not affect the total number of units that can be legally built under the zoning. As presented in this proceeding, the ultimate forms of residential ownership contemplated do not appear to raise issues requiring determination within a preliminary subdivision approval review.

C. Regulatory Compliance

22. The applicable standards for Hearing Examiner approval of a preliminary subdivision application are stated at BIMC 2.16.125.H:

H. Decision Criteria for Preliminary Long Subdivisions. The hearing examiner's decision shall include findings of fact that the application meets all the requirements of the following subsections:

- 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.

23. All single-family subdivisions are to be designed consistent with the flexible lot design process and the flexible lot standards. The proposed R-2 residential subdivision element meets these minimum standards. For parcels to be served by a public sewer system, 5,000 square feet is the minimum lot area allowed. The proposed R-2 lots will exceed this minimum requirement; no lot size minimum exists for the NSC zone. Base density is one unit per 20,000 square feet in the R-2 zoning district. The gross area of the R-2 single family subdivision is 2.30 acres, or 100,188 square feet. The density allows five units, and five lots are proposed in the R-2 zoned portion of the property. Compliance with lot dimensional, coverage and setback standards will be required.

24. BIMC 17.12.030 states the applicable open space requirements for Residential Subdivisions in the R-2 zone. Meeting one or more of eight open space objectives is mandated. The proposed open space meets four such objectives, providing:

- Conservation and enhancement of natural or scenic resources, including wildlife habitat through the protection of the wetland;
- Conservation of soils, wetlands, beaches or tidal marshes through the protection as open space of the wetland and its buffer;
- Preservation of visual qualities along Baker Hill Road by providing a 40’ buffer; and
- Enhancement of recreational activities by providing an easement for a trail to the Schel Chelb Sanctuary.

25. The highest value open space features as defined within the regulatory scheme are critical areas and their associated buffers. Protection will be provided to an onsite wetland and its associated buffer as well as a 40 foot roadside buffer along NE Baker Hill Road. The valued open space features of the wetland and roadside buffer are to be contained in Open Space Tracts 1 and 2, while Open Space Tracts 3 and 4 will be used for trail connectivity. For the R-2 portion of the subdivision, approximately 12% of the total lot area will be preserved as open space (26,302 square feet). Required fencing and signage will be installed as part of the plat utility permit process. The lot layout and design will adequately protect the valued open space features of the roadside buffer and the wetland.

26. A neighborhood effort led by abutting property owners resulted in an initiative to secure easements for construction of trail through the subject property east to Lynwood Center and west to Schel Chelb Park. As a result of these conversations, the applicants have agreed to provide a trail that

bisects the property running east and west through proposed Open Space Tracts 3 & 4. While a requirement to provide a trail is not a condition of the plat, the applicants have agreed to revise their open space management plan to specify a trail as a permitted use (Condition 11).

27. Water will be provided by the South Bainbridge Water System to the proposed five residential lots. Later development on the NSC-zoned parcel will require the applicants to secure additional water capacity. The project is located within the City's sewer district boundary and has received six binding commitment letters from the City's Department of Public Works. These will allow each lot to construct one single family home and an accessory dwelling unit. Any proposed additional development will need to obtain sufficient binding sewer commitment letters prior to the issuance of a building permit or site plan review approval. The recently constructed Pleasant Beach Village pool (summer 2015) caused the sewer system to temporarily overload by utilizing all existing conveyance capacity before the pool had modified its filter system to control maximum outflow rates. The City Council has authorized the Department of Public Works to begin pre-design studies for an upgrade to the sewer system for completion by 2017, with an interim immediate increase in conveyance capacity now being implemented.

28. Roads and access complying with the "City of Bainbridge Island Design and Construction Standards and Specifications" will be provided to all proposed lots. The first phase of the road system serving the site will be constructed as a public right-of-way to access the five single family lots located off NE Baker Hill Road and will terminate at a temporary hammerhead at its south end. If a through road is not completed on proposed Lot 6 within 12 months from the date of final plat approval, a permanent cul-de-sac shall be constructed by the applicants to replace the temporary hammerhead. The design of the second phase roadway connecting the phase one northern portion south to Point White Drive will require coordination with and approval from the City's Development Engineer, and the Planning and Public Works Departments. Existing roadway character along Baker Hill Road is proposed to be maintained by retaining roadside vegetation and limiting access curb cuts.

29. Transportation concerns have been voiced by Lynwood area residents, particularly the proximity of the site to a blind curve to the west on Point White Drive that leads to a new park and beach access, and also because Point White Drive, a two lane road with no shoulders, experiences many pedestrian and bicycle users. Two Traffic Impact Analysis (TIA) reports were performed for the site, the first one including potential build-out of lot 6 with a mixture of residential and commercial development and the second focused exclusively on development of residential lots 1-5. The second TIA performed in January, 2016, reflects the applicants' current plans to develop the road in phases and defer commercial development of lot 6. Thus the City currently does not have before it an active application for lot 6, and the conditions of approval for the subdivision only address the lesser level of traffic impacts to be generated by the five new residential lots.

30. The January, 2016, TIA provided analysis of the existing level of service at the Lynwood/Baker Hill and Lynwood/Point White intersections, determining the lowest level of current service at 'B' and the highest at 'A'. In addition, the report observed pedestrian and bicycle activity as well as public transit. The TIA found that no decreases in LOS are expected to result from traffic generated by the proposed five residential lots. The project is conditioned to complete improvements along Baker Hill Road. Later, when a development application for the NSC lot is submitted, increased traffic impacts may warrant improvements along the Point White Drive street frontage.

31. BIMC 17.12.050 controls approval of multifamily and nonresidential subdivision proposals. The NSC lot will be conditioned to comply with applicable Title 18 Zoning standards, including those

for lot areas, dimension, design, mobility, access, landscaping, screening and vegetative buffer requirements. The NSC lot area is 112,820 square feet and subject to a 35% maximum lot coverage limitation. No critical areas exist on the proposed NSC parcel, and provision of open space is optional.

32. Turning to BIMC Title 18 Zoning requirements, the BIMC 18.09.020 Permitted Use Table lists single-family dwelling units as a permitted use in the R-2 zone. The single NSC lot is capable of accommodating a mixture of allowed uses, including commercial, single-family, multi-family residential and inns. Developing multifamily homes on a NSC lot requires submittal of a site plan and design review approval. Absent obtaining an approved site plan and design review incorporating the two residences now existing on the lot, the applicants will need to relocate or demolish one of them.

33. BIMC 18.15.010 deals with landscaping and related requirements. The R-2 and NSC portions of the site have different buffer requirements due to their differing uses. A 20 foot full screen perimeter buffer is required where an NSC parcel abuts residential development that is not zoned NSC. This buffer would apply to the western and northern borders of the NSC lot. A 10 foot filtered screen is required along Point White Drive. Where feasible, trees and tree stands located in the perimeter areas are to be retained and protected. Perimeter landscape widths may be averaged to save significant trees. Residential subdivisions in the R-2 district require a 25 foot vegetative full screen buffer. The R-2 portion of the site abuts Baker Hill Road. The proposed access road from Baker Hill will intersect this frontage, with its western side providing a buffer greater than 25 feet due to the existing wetland.

34. Tree preservation requirements do not apply to the R-2 lots but must be met for the NSC portion of the site prior to approval of any development proposed. The applicants have provided a survey of all the existing trees to be retained as part of the proposed NSC-zoned development. The applicants will need to submit a landscaping plan showing preservation of either 40 regulatory tree units per acre following the plat utility work or as many tree units after development as existed before.

35. Regarding critical areas regulated by BIMC Chapter 16.20, the site contains a Class IV wetland that lies parallel to Blakely Harbor Drive NE. The wetland and its 50 foot buffer are proposed to be protected within Open Space Tract 1. The southern portion of the NSC-zoned lot lies within shorelines jurisdiction and any development proposed therein will need to comply with the City's Shorelines Master Program.

36. A geotechnical investigation performed by Coastal Solutions, LLC, for the phase one residential portion of the site reported encountering "variable thicknesses of uncontrolled fill overlying very loose to dense sand interpreted as estuary and beach deposits." The report further observed that "[t]he fill material consisted mainly of sand and gravel...likely placed with no engineering oversight," with the consequence that "the condition of the fill is unknown and is considered unsuitable for foundation support." These "estuary and beach deposits would liquify during the design seismic event" and will require installation of a pile foundation system consisting of "4-inch or 6-inch steel pipe piles driven into the bearing layer encountered at a depth of about 21 to 31 feet below the existing ground surface." In addition, high groundwater levels were observed in all six test holes drilled, resulting in geotechnical recommendations for construction sloping, footing drains, backfilling basement walls, and discharging roof and surface runoff away from the footing drains. In support of SEPA condition no. 13, staff condition no. 52 has been expanded to further reference these requirements.

37. In May, 2015, the City undertook a neighborhood stormwater pipe project bisecting the lower portion of the site and discharging flows to Rich Passage across the street to the west. This project removed a restriction in the pipe, replaced and reoriented it, and installed a tidal valve at the pipe's terminus. The project, completed in July, 2015, has resolved some localized flooding on Point White

Drive as well as eliminated odors from the backing up of unsavory materials. The project also necessitated creation of a stormwater easement across the lower southeast corner of the site. In addition, the proposed road for the single family homes, as well as each single family building permit, will be required to demonstrate compliance with the City's stormwater regulations.

38. The project is located in the Lynwood Center Special Planning Area and was reviewed for consistency with both the Comprehensive Plan and the Lynwood Master Plan. Any new development or expansion of existing development in Lynwood Center is required to connect to public sewer when such is available. As noted, the proposed subdivision has secured six binding sewer commitments, and improvements will be made to the sewer system to connect the site to public sewer when the plat utility permit improvements are constructed. The Lynwood Center Special Planning Area Report and Recommendations will be met by the proposed trail connection across the site and by improvements to the south side of the Baker Hill Road right-of-way.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this subdivision proceeding and is authorized under City ordinances to make a final decision on the Roost preliminary subdivision application. Subdivision public hearing notice requirements have been met. Conversely, the Hearing Examiner has no jurisdiction under the Municipal Code to conduct a hearing and recommend a decision for vacation of the existing underlying Bainbridge Island Short Plat No. BI-6. Under state law this vacation will need to be effected by the City Council. As provide in the conditions below, final subdivision approval can only be conferred after the requisite legal vacation has occurred.

2. As documented with the findings stated above, the plat application for the Roost Subdivision meets the decisional criteria stated at BIMC 2.16.125.H for preliminary approval. It complies with the applicable land use and subdivision development standards of BIMC Titles 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.

3. The residential lots proposed within the preliminary long subdivision conform to the requirements of the flexible lot design process. The open space set aside will ensure the long term protection of wetland and buffer critical areas while providing adequate space for residential development at the density allowed by the zoning. Except for specified infrastructure improvements, approval of future new uses on the NSC-zoned parcel will require further applications and review.

4. The City Engineer's recommendation for preliminary approval contains determinations that the City's decisional criteria for drainage, streets and pedestrian ways, road standards and utilities can be met, and such determinations are supported by substantial evidence within the record.

DECISION

The preliminary plat application for the Roost Subdivision (file no. PLN50076SUB) as depicted on the plans submitted February 8, 2016, is APPROVED, subject to the following conditions of final plat approval:

SEPA CONDITIONS

1. A stormwater management plan 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.
2. Prior to construction activities, the applicant shall apply for a Construction Stormwater General Permit (NPDES) through the Washington State Department of Ecology.
3. A Temporary Erosion and Sediment Control Plan shall be approved prior to construction of both plat infrastructure and the individual lot development. The final plat shall contain a note for future property owners of the individual lot development requirement.
4. The applicant shall construct or bond for Design Standard C (shoulder facility) improvements to the south side of Baker Hill Road right-of-way as part of the plat utility permit. Frontage improvements may be required along Point White Drive when there is an intensification of use.
5. Prior to any construction activities on the Neighborhood Service Center (NSC) portion of the lot, the applicant shall submit a valuation of all trees to be retained, using the valuation standards of the International Society of Arboriculture.
6. To ensure the protection of significant trees during construction in the NSC zoned portion of the site, the applicant shall identify areas of prohibited disturbance, generally corresponding to the dripline or critical root zone (as identified by a consulting arborist) of the significant trees to be retained, buffers, areas of existing vegetation to be maintained, future rain gardens, and future planting areas larger than 400 square feet. This information shall be provided prior to final plat submittal. Changes to the proposed road alignment may be required to protect required significant trees and shall be finalized prior to applying for final plat submittal.
7. 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. To protect significant trees in the perimeter buffer, the applicant shall install chain link construction fencing at the edge of the areas of prohibited disturbance.
8. The first phase of the road servicing the site will be constructed as a public right-of-way to serve the five single family lots off of NE Baker Hill Road and will terminate with a temporary hammerhead in accordance with City of Bainbridge Island Public Works "Street End Standards drawing 8-110" for a period not to exceed 12 months from the date of final plat approval. In the events that a through road is not constructed on proposed Lot 6 within 12 months from the date of final plat approval, the permanent cul-de-sac road end requirement shall be constructed by the applicant, dedicated and accepted by the City in accordance with City of Bainbridge Island Public Works "Street End Standards Drawing 8-010". Construction plans and specifications for the cul-de-sac shall be included with the Plat Utilities permit. Bonding for the cul-de-sac road end is required prior to final plat submittal pursuant to BIMC 2.16.160.L. This condition shall be noted on the face of the final plat.

9. Dedication of utilities and roadway to the City shall occur through the City's Utilities Extension Agreement process.
10. The design of the second phase of the road connecting the site from NE Baker Hill Road to Point White Drive NE shall be coordinated with Public Works, the Development Engineer and Planning prior to commencing the construction of the road on Lot 6. This condition shall be noted on the face of the final plat.
11. The applicant shall revise their open space management plan prior to final plat submittal to 1) put Open Space Tracts 3 & 4 under common ownership and 2) to allow pedestrian access for future trail connectivity through the site to Lynwood Center and Schel Chelb Park.
12. The wetlands are proposed for protection in Open Space Tract 1. The applicant shall revise their open space management plan prior to final plat submittal to incorporate the development standards for wetlands as found in BIMC 16.20.160.
13. The applicant submitted a report from Coastal Solutions, LLC that identified the site as having liquefaction and differential settlement. The recommendations of the geotechnical engineer shall be followed including: 1) piling foundations used for building support and 2) re-use of near-surface fill soils only if at or near optimum moisture content and free of organic material and 3) performing earth work activities during the drier season. These recommendations shall be included on the face of the plat.
14. To ensure historic and cultural resource preservation, a completed Washington State Historic Property Inventory Field Form shall be recorded with the State Department of Archeology and Historic Preservation prior to the demolition of either of the two historic homes on the property. This condition shall be noted on the face of the final plat.
15. The contractor is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Department of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.
16. The applicant has been issued a binding commitment letter for sewer availability by the City's Public Works Department (six total, one for each lot to serve a single family home and an accessory dwelling unit). Any additional development shall provide the required amount of binding sewer letters prior to the issuance of a building permit/and or site plan review. This condition shall be noted on the face of the final plat.
17. On site mobile fueling from temporary tanks are 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)

18. 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.
19. 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.
20. 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).
21. 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.

STAFF CONDITIONS

22. Prior to submitting for final plat submittal, the applicant shall apply for demolition permits or an assurance device to reduce the homes on the NSC lot to not exceed one single-family home and accessory dwelling unit.
23. The following table indicating the required setbacks and lot coverage shall be recorded on the face of the final plat for the R-2 northern portion of the site. The applicant shall also allocate lot coverage for each lot, not to exceed the maximum for the R-2 district.

	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
Building to Baker Hill Road	40 feet
Maximum Lot Coverage per Lot	TBD at final

24. The NSC setbacks, lot coverage and landscaping requirements shall be included on the face of the plat with language to include the following: A 20' full screen buffer is required when NSC abuts residential development that is not zoned NSC (western and northern borders of lot 6). The site will be reviewed for these buffer and setback requirements when there is a proposed intensification of use.
25. The applicant shall revise proposed Lot six so that the lot is only NSC. The applicant may place a landscape easement on the abutting R-2 property to accommodate the entire or portions of the 20' full screen buffer requirement.

26. All lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes. A survey of the property must be completed and submitted with the final plat application.
27. The Baker Hill Road roadside and perimeter buffers shall be maintained for the life of the project. All plant material along these buffers shall be managed by pruning so that plant growth does not conflict with public utilities, restrict pedestrian or vehicular access, or create a traffic hazard.
28. 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.
29. A plat certificate shall be provided with the final plat application.
30. 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 each single or multifamily residential unit. The remaining half of the fees shall be paid at the time of building permit issuance for the single-family units.

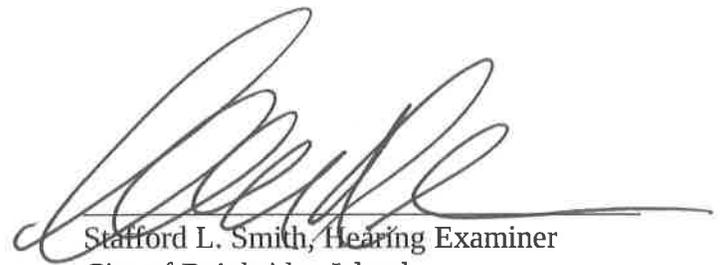
If the fees are in effect at the time of building permit submittal rather than subdivision submittal, then each applicant applying for a single or multifamily residential building permit shall pay the full impact fee prior to building permit issuance. This condition shall be provided on the face of the plat.
31. Fire flow is required for this project and the amount depends on the type of development proposed.
32. The applicant shall coordinate with the Fire Marshal to determine the location for required fire hydrants. Hydrants shall be installed or bonded for prior to the submittal of the final plat.
33. Areas not used for parking shall be identified as NO PARKING-FIRE LANE.
34. An open space management plan that meets Titles 16, 17 & 18 shall be submitted with the final plat application.
35. Fencing and signage that meets the requirements of BIMC Section 17.12.030 shall be installed or assured as part of the plat utility permit.
36. The applicant shall provide either 40 tree units per acre on the NSC lot following the plat utility work or as many tree units after the proposed development as it had before the development. The trees used to meet these requirements shall be identified on the face of the final plat.
37. All landscaping shall be installed, or a performance assurance device shall be submitted and approved, prior to final inspection on the plat utility permit. The installation of landscaping shall be verified by the Landscape Professional or owner and a landscaping declaration shall be signed.
38. Landscape buffers shall be maintained with a maintenance assurance device for a period of three years. All plant material along these buffers shall be managed by pruning so that plant growth does not conflict with public utilities, restrict pedestrian or vehicular access, or create a traffic hazard. Other than routine maintenance and trimming, no vegetation within the buffers shall be disturbed without approval of the Department of Planning and Community Development through an

approved clearing, grading or civil plan. This note shall be included in the open space management plan and included on the face of the plat.

39. Civil construction plans, sections, and profiles for the road, roadway storm drainage facilities, sewer and water facilities and appurtenances, prepared by the developer's engineer shall be submitted with the plat utility permit for review and final approval.
40. 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.
41. The proposed roadway will meet the COBI Residential Suburban Street Standard, Drawing No. 7-060 found in the COBI Design and Construction Standards and Specifications.
42. Any work within the shoreline jurisdiction shall meet the requirements of the Bainbridge Island Shoreline Master Plan and require a shoreline permit or shoreline exemption prior to commencing work. The applicant shall delineate the shoreline jurisdiction on the final plat submittal sheet(s).
43. Prior to final subdivision submittal the following conditions for the internal road shall be met:
 - a. The first phase of the internal roadway must be constructed or performance assurance submitted;
 - b. Regulatory signing for the internal roadway is the responsibility of the developer and it must meet standards of the Manual on Uniform Traffic Control Devices (MUTCD) and City signing requirements; and
44. The applicant shall submit documentation from a qualified engineer noting 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.
45. Transportation facilities shall be reviewed and approved by the fire official during the civil construction design.
46. Water lines, including meters to each property shall be installed or performance assurance for prior to submittal of the final subdivision application.
47. Sewer, including side sewers, shall be installed or performance assurance for prior to prior to submittal of the final subdivision application.
48. Stormwater connections to each property shall be installed or performance assurance for prior to submittal of the final subdivision application.
49. In lieu of completion of improvements with conditions of a preliminary plat approval, the city engineer may accept an assurance device, in an amount and in a form determined by the City, but not to exceed 125 percent of the established cost of completing the infrastructure that secures and provides for the actual construction and installation of the improvements or the performance of the conditions within one year, or such additional time as the city engineer determines is appropriate after final plat approval.
50. Unless an assurance device is provided, engineer certified as-built civil construction plans shall be provided by the applicant prior to final plat approval.

51. Prior to final plat submittal, the applicant shall submit an operation and maintenance plan for the on-going maintenance of the storm drainage system.
52. At the time of building permit application for the individual lots, demonstration of compliance shall be required with SEPA condition no. 13 and applicable stormwater management requirements specified by BIMC 15.20 and 15.21. Unless superseded by later geotechnical recommendations approved by the City, foundation installations, construction sloping, footing drains, basement wall backfilling, and discharge of roof and surface runoff away from the footing drains shall all be implemented according to the standards, procedures and inspection protocols stated in the Coastal Solutions, LLC, preliminary geotechnical investigation dated April 21, 2015, for phase one project construction. This note shall be listed on the face of the final plat.
53. The wetland and 50' buffer shall be protected with a restrictive easement or covenant. Such easement or covenant shall be recorded together with the land division and represented on the final plat and title.
54. Additional sewer & water capacity needed for the development of the NSC lot shall be secured prior to the issuance of a building permit or the submittal of a site plan and design review application.
55. The following conditions shall be noted on the face of the plat: 8, 10, 13, 14, 16, 22, 23, 24, 30, 38 & 52.
56. Vacation of the underlying Bainbridge Island Short Plat No. BI-6 (recorded at AF #9310110094) shall be effected pursuant to the provisions of RCW 58.17.212 and completed prior to final plat approval. State law requires the vacation application to be submitted to the City Council, which shall provide the notice of and conduct the public hearing on the vacation application and issue the vacation decision.

ORDERED May 31, 2016.



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
Roost Subdivision & Plat Vacation
PLN50076SUB & PLN50076SVAC

Staff Contact:
 Heather Beckmann Wright, Senior Planner

Public Hearing:
 May 11, 2016

Hearing Examiner: Stafford L. Smith

NO.	DOCUMENT DESCRIPTION	DATE
1	Application (together with the following documents) A. Sewer Availability Plan & Site Plans B. Title Report C. Roost Wetland Delineation Report dated 04/21/2015 D. Utility Report E. Coastal Solutions, LLC Preliminary Geotechnical Investigation dated 04/21/2015 F. Applicant's SEPA Checklist G. COBI Open Space Management Plan (unsigned) H. Preliminary Plat of the Roost – Lot Closures I. Water/Sewer Availability Request J. South Bainbridge Water System letter dated 05/18/2015 K. Masland as Seller and Roost as Purchasers Agreement L. Pre-Application Conference Letter dated 04/01/2015	05/20/2015 Received
2	Emails From BIMPRD Granting Easement	05/08/2015 To 06/05/2015
3	Bainbridge Island Fire Department Memo	06/08/2015
4	Notice of Incomplete Application	06/11/2015
5	COBI Letter Denying Plat Utility Permit	08/10/2015
6	Notice of Application/SEPA Comment Period & Affidavit of Publication	08/14/2015
7	Citizen Comments	08/28/2015
8	Development Engineer Project Review	09/17/2015
9	Public Participation Notes	
10	Development Engineer Project Review	03/01/2016
11	Binding Unlimited Reservation and Approval to Connect for Sewer Availability Letter	09/30/2015
12	Parking Summary	02/04/2016
13	Utility Plan and Site Plans	02/08/2016 (Received)
14	Notice of Determination of Nonsignificance (MDNS)	04/01/2016
15	Ordinance 97-16	1997
16	Four Lot Short Plat, Auditors File #9310110094 – Recorded on October 11, 1993	
17	Traffic Impact Analysis	04/2015
18	Traffic Impact Analysis (Updated)	01/2016
19	Notice of Public Hearing, Certification of Distribution, Certificate of Posting Signs and Affidavit of Publication	04/22/2016 (Published)
20	Project Report	05/05/2016
21	Citizen Comment Email (Gulliford)	05/11/2016 (Admitted)
22	Email to Planning Commission from Bruce Weiland dated June 9, 2015	05/11/2016 (Admitted)
23	Planner Beckmann's PowerPoint Presentation	05/11/2016 (Admitted)