



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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NOTICE OF HEARING EXAMINER RECONSIDERATION DECISION

October 13, 2010

To: Interested Parties and Parties of Record

RE: Project Name: **Walgren Cottages Performance Based Development Alteration**
Applicant: **AMALANI LLC & IBBO LLC**
Barry Mangolese
108 S. Jackson Street #300
Seattle, WA 98104
Central Kitsap County, Commissioner District #3
Application: **Performance Based Development Alteration**
Case Number: **100826-014 (902501-3-061-2002; 062-2001) LIS#10 92628**

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED, AS PROVIDED UNDER WASHINGTON LAW AND BY KCC 21.04.120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES.

The complete case file will be available for review at the Department of Community Development, Monday through Thursday, except holidays, 10:00 a.m. to 3:45 p.m. by calling me at (360) 337-4487 for an appointment.

If you have questions, please contact me at (360) 337-4487.

Sincerely,

A handwritten signature in cursive script that reads "Karen Ashcraft".

Karen Ashcraft
Clerk of the Examiner

C: AMALANI, LLC & IBBO, LLC, c/o Barry Mangolese, 108 S Jackson ST #300, Seattle, WA 98104
Mark Kuhlman, Team4 Engineering, 5819 NE Minder RD, Poulsbo, WA 98370

Interested Parties:

Rick Neumann, 1820 112th ST E., Suite A, Tacoma, WA 98445

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BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

In the Matter of the Application of	)	No. 100826-014
)	
Amalani LLC/ IBBO LLC	)	Walgren Cottages
	)	Performance Based
	)	Development Alteration
)	
	)	RECOMMENDATION
	)	AND ORDER
For Alteration of a Performance Based	)	ON REQUEST FOR
<u>Development</u>	)	RECONSIDERATION

**RECOMMENDATION
UPON REQUEST FOR RECONSIDERATION**

On September 16, 2010, the Office of the Hearing Examiner received a Request for Reconsideration from Mark A. Kuhlman, Applicant Representative, of the Hearing Examiner's September 9, 2010 recommendation to the Kitsap County Board of County Commissioners that a request for alteration of an existing performance based development located at 4710 & 4732 SW Walgren Drive, Kitsap County, Washington, should be approved, with 49 conditions of approval.¹

The Request for Reconsideration references a September 16, 2010 memorandum by County staff supporting a revision to recommended Condition No. 42, which was not available at the time of the open record hearing on the performance based development alteration request. The Request for Reconsideration would change recommended Condition No. 42 from "Ten feet for utility easement shall be provided on each side of all private roadways within the plat" to "Ten feet for utility easement shall be provided along the private roadways as shown on Exhibit 21 Overall Site Plan, dated August 5, 2010."

The Request for Reconsideration was properly filed according to Section 1.9-Request for Reconsideration of the Rules of Procedure For Proceedings Before the Hearing Examiner of Kitsap County, Washington. The Office of the Hearing Examiner has received no opposition to the Request. The Applicant alleges no errors of fact or law and does not

¹ Rule 1.9.1 of the Kitsap County Office of the Hearing Examiner Rules of Procedure, adopted by the Kitsap County Board of County Commissioners (BOCC) on June 22, 2009, states that a party may file a motion for Request for Reconsideration within five business days of the Hearing Examiner's decision, and that the motion shall explicitly set forth alleged errors of law or fact, or the discovery of new evidence which was not available at the time of the hearing. *Kitsap County Office of the Hearing Examiner Rules of Procedure, Rule 1.9.1.*

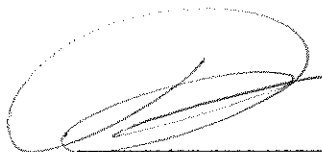
*Recommendation and Order Upon Request for Reconsideration
Kitsap County Hearing Examiner
Walgren Cottages Preliminary Plat/ Performance Based
Development (PBD) Alteration, No. 100826-014*

contest the Hearing Examiner's recommendation to approve the request for alteration of an existing performance based development with conditions.

ORDER

The Hearing Examiner finds that the requested change to Condition No. 42 does not substantively alter the Hearing Examiner's Findings, Conclusions, and Recommendation. Applicant's Request For Reconsideration is therefore **GRANTED** in its entirety. A Revised Findings, Conclusions and Recommendation in the above entitled matter will issue concurrently with this order and shall replace the Findings, Conclusions and Recommendation dated September 9, 2010.

Decided this 7th day of October 2010.



KIMBERLY A. ALLEN
Hearing Examiner
Sound Law Center

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KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of	)	No. 100826-014
)	
Amalani LLC/ IBBO LLC	)	Walgren Cottages
	)	Performance Based
	)	Development Alteration
)	
)	
For Alteration of a Performance Based	)	REVISED FINDINGS,
<u>Development</u>	)	CONCLUSIONS, AND
	)	RECOMMENDATION

The Hearing Examiner's September 9,, 2010 Findings, Conclusions, and Recommendation are hereby revised in accord with the Hearing Examiner's October 7, 2010 Order granting the Applicant's Request for Reconsideration in its entirety. A deletion is indicated by strikethrough; an addition is indicated by bold underline.

SUMMARY OF RECOMMENDATION

The request for alteration of an existing performance based development to allow changes in open space, total number of lots, lot size, housing type, and on-street parking, located at 4710 & 4732 SW Walgren Drive, Kitsap County, Washington, should be **APPROVED**, with conditions.

SUMMARY OF RECORD

Request:

Amalani LLC/ IBBO LLC requests alteration of an existing performance based development to allow changes in open space, total number of lots, lot size, housing type, and on-street parking, located at 4710 & 4732 SW Walgren Drive, Kitsap County, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on August 26, 2010.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Barry Margolese, Applicant Representative
- Dennis Oost, County Planner
- Mark Kuhlman, Team 4 Engineering

*Revised Findings, Conclusions, and Recommendation
Kitsap County Hearing Examiner
Walgren Cottages Preliminary Plat/ Performance Based
Development (PBD) Alteration, No. 100826-014*

Exhibits:

The following exhibits were admitted into the record:

1. GIS Critical Areas Aerial Map, dated October 10, 2006
2. Stream Assessment, Alkai Consultants, LLC, dated March 23, 2007
3. Original Preliminary Plat/Performance Based Development Application, dated July 2, 2007
4. Environmental (SEPA) Checklist, dated July 23, 2007
5. Site Plan, dated July 24, 2007
 - a. Preliminary Storm Drainage Analysis, dated July 2007
6. Mitigated Determination of Non-Significance, dated April 7, 2008
7. Staff Report, dated April 14, 2008
8. Original Power Point Presentation, dated April 24, 2008
9. Revised Condition #7, dated April 24, 2008
10. Memorandum from Rick McNicholas, dated May 7, 2008
11. Revised Site Plan, dated February 15, 2008
12. Hearing Examiner Recommendation, dated June 17, 2008
13. Technical Review Meeting Attendance Sheet Public, dated April 27, 2010
14. Notice of Application, dated July 21, 2010
15. Alteration Preliminary Plat/Performance Based Development Application, dated July 30, 2010
16. Project Narrative, received August 3, 2010
17. Modified Site Plan, dated February 19, 2010
18. Landscaping Plan, dated June 2, 2010
19. Notice of Public Hearing, dated August 10, 2010
20. Affidavit of Publication – Notice of Application, dated July 30, 2010
21. Overall Site Plan, dated August 5, 2010
22. Landscape Plan, dated August 12, 2010
23. Revised Recreational Open Space plan, undated
24. Affidavit of Publication – Notice of Public Hearing, dated August 6, 2010
25. Affidavit of Posting, dated August 10, 2010
26. Certification of Public Notice, dated August 11, 2010
27. Memorandum from Shawn Alire, Development Engineering, dated August 12, 2010
28. Staff Report, dated August 12, 2010
29. Historical Examples of Performance Based Development Site Plans, dated 2005
30. Fire Marshal Negotiated Final Conditions, dated August 26, 2010

FINDINGS

1. Amalani LLC / IBBO LLC (Applicant) requests alteration of an existing performance based development (PBD) to allow changes in open space, total

*Revised Findings, Conclusions, and Recommendation
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Walgren Cottages Preliminary Plat/ Performance Based
Development (PBD) Alteration, No. 100826-014*

number of lots, lot size, housing type, and on-street parking, located at 4710 & 4732 SW Walgren Drive, Kitsap County, Washington.¹ *Exhibit 15.*

2. Kitsap County (County) mailed notice of the PBD alteration request to the Applicant, Applicant Representative, interested parties, and owners of property within 400 feet of the subject property on July 22, 2010, and published notice in the *Port Orchard Independent* on July 30, 2010. The County published notice of the open record hearing associated with the application in the *Port Orchard Independent* on August 6, 2010. On August 11, 2010, the County posted notice of the hearing on the subject property and mailed notice to the Applicant, Applicant Representative, interested parties, and owners of property within 400 feet of the subject property. *Exhibit 26.*
3. The County acted as lead agency and analyzed the environmental impact of the initial preliminary plat and PBD request,² as required by the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The County determined that with one condition concerning road frontage improvements, the PBD would not have a probable significant adverse impact on the environment, and issued a Mitigated Determination of Nonsignificance (MDNS) on April 7, 2008. The County concluded that the PBD alteration request would not require a new or revised SEPA determination under Washington Administrative Code (WAC) 197-11-340(3) (a).³ *Exhibit 6.*
4. The Kitsap County Comprehensive Plan (Comprehensive Plan) designates a portion of the subject property Urban Medium/High Density Residential, and the remainder of the property Urban Low Density Residential. *Kitsap County*

¹ The property subject to the performance based development (PBD) alteration application is identified by Kitsap County Assessor's parcel numbers 202501-3-005-2001 and 202501-3-006-2000. A legal description of the subject property is included with the alteration application. *Exhibit 15.*

² The Kitsap County Hearing Examiner issued a recommendation to the County Board of County Commissioners (BOCC) on an initial request to subdivide the subject property into 64 single-family residential lots and 57,434 of open space as a performance based development (PBD) on June 17, 2008. *Exhibit 12.*

³ Washington Administrative Code (WAC) 197-11-340(3)(a) provides that a lead agency shall otherwise withdraw a Determination of Nonsignificance (DNS) if: (i) there are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts; (ii) there is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or (iii) the DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant. The County determined that none of the conditions of WAC 197-11-340(3)(a) have been met, and did not withdraw the MDNS issued on April 7, 2008. *Exhibit 6; Exhibit 28, Staff Report, page 3.*

Comprehensive Plan, Land Use Element, Figure 2-1 Comprehensive Plan Land Use Map – North (December 2006). The Urban Medium/High Density Residential designation focuses on multifamily residential units and innovative housing types but may also include single-family housing. This designation encourages development at densities that make efficient use of public investments in infrastructure, facilitate public transit, and promote pedestrian and other non-motorized transportation. The Urban Low Density residential designation focuses on single-family dwellings but also may include innovative types such as clustered housing. It also includes regulated environmentally critical areas within the UGAs and other areas identified for low-density urban development. *Comprehensive Plan, Land Use Element, page 2-20 – 2-21.*

5. Comprehensive Plan Land Use policies are relevant to the proposed PBD alteration.⁴ Relevant policies include policies that encourage innovative, high quality infill development on vacant and underused lands within Urban Growth Areas (UGAs) while addressing pedestrian access, usable open space, design variety through clustering, setbacks and mixed housing types. Policies also require all new residential development within the UGA to achieve minimum densities except where low densities are appropriate for critical areas. *Comprehensive Plan, Land Use Element, pages 2-16 – 2-17, 2-22, 2-25 – 2-26.*
6. A portion of the subject property is located within the County’s Urban Medium-Density Residential zoning district, and the remainder of the property is located in the County’s Urban Low Residential zoning district. The Urban Low Residential (UL) zone is intended to recognize, maintain, and encourage urban low density residential areas by including a full range of urban services and facilities that are adequate at the time of development. The zone is also intended to create cost-efficient residential areas which are capable of allowing the provision of community services in a more economical manner. *Kitsap County Code (KCC) 17.330.010.* The Urban Medium Residential (UM) zone is intended to provide for higher densities where a full range of community services and facilities are present or will be present at the time of development. This zone is also intended to create energy-efficient residential areas by allowing common wall construction, as well as to facilitate residential development which utilizes cost-efficient design. *KCC 17.340.010.* Development of single-family detached dwelling units is an allowed use in the UM and UL zoning district. *KCC Table 17.381.040(A).*
7. Residential lots within the UL zoning district may be developed at a density of four to nine dwelling units per acre, and lots with the UM zoning district may be

⁴ County staff identified the following Comprehensive Plan policies as relevant to the PBD alteration proposal: Land Use (LU)-14, LU-21, LU-22, LU-43, LU-53, LU-59, LU-60, LU-61, and LU-62. *Exhibit 28, Staff Report, pages 7-8.*

developed at 10 to 18 dwelling units per acre.⁵ Lots within the UL zone must be a minimum of 3,600 square feet in size and at least 60 feet wide and deep. Lots within the UM zone must also be at least 60 feet wide and deep, but there is no minimum lot size within the UM zone. As depicted on the overall site plan and landscape plan for the requested PBD alteration, the Applicant would develop 61 single-family residential lots on the subject property, with lot widths ranging from approximately 34 feet wide to 45 feet wide. *KCC 17.382.060; Exhibit 12; Exhibit 21; Exhibit 22; Exhibit 28, Staff Report, pages 8 – 9.*

8. PBD provisions within the County Code allow for flexibility in design and creative site planning, while providing for the orderly development of the county. A performance based development (PBD) allows for the use of lot clustering in order to preserve open space, encourage the creation of suitable buffers between differing types of development, facilitate the residential densities allowed by the zone, provide for increased efficiency in the layout of the streets, utilities and other public improvements and to encourage the use of low-impact development techniques and other creative designs for the development of land. Standard regulations that may be modified through use of a PBD include: lot size; lot width and depth; structure height within designated urban growth areas; and front, side, and rear yard setbacks. Uses permitted in a PBD are those allowed in the underlying zone. *KCC 17.425.010; KCC 17.425.030.*
9. On June 17, 2008, the Kitsap County Hearing Examiner (Hearing Examiner)⁶ recommended that the County Board of County Commissioners (BOCC) approve a request for subdividing the subject property into 64 single-family residential lots as a PBD, including 57,434 square feet of open space within the proposed PBD, with 46 recommended conditions of approval. The Hearing Examiner concluded that with recommended conditions of approval, the request would meet all preliminary plat and PBD review criteria found within the Kitsap County Code (KCC). *Exhibit 12.*
10. Dennis Oost, County Planner, testified that the proposed PBD alteration would alter the initial preliminary plat and PBD. The Applicant's PBD alteration narrative states that the request would alter the initial preliminary plat and PBD by eliminating all proposed attached dwelling units for only single-family detached dwelling units within the plat; increasing lot width to 40 feet minimum adjacent to neighboring properties; increasing the density of housing at the interior of the subject property rather than the exterior, as initially proposed;

⁵ As initially proposed, the plat and PBD would have been developed at a density of 7.7 dwelling units per acre within the portion of the subject property located in the UL zone, and at 9.6 dwelling units per acre within the portion of the property located in the UM zone. *Exhibit 12.*

⁶ Kitsap County Hearing Examiner Stephen K. Causseaux, Jr. issued the recommendation on June 17, 2008. *Exhibit 12.*

changing the stormwater management system on the subject property from a buried detention vault to a dispersed infiltration system; reducing the total number of proposed dwelling units from 64 to 61 units; increasing on-street parking spaces within the PBD from 39 to 45 spaces, with covenants, conditions, and restrictions (CC&Rs) that garages remain available for parking vehicles; and decreasing common open space within the PBD to 47,094 square feet, for increased lot size. *Exhibit 16; Testimony of Mr. Oost.*

11. Mr. Oost testified that the proposed PBD alteration would reduce overall development density within the PBD, and reduce impact on surrounding property owners with fewer lots proposed on the subject property perimeter. Mr. Oost also testified that as proposed, County staff has verbally approved a technical deviation for use of infiltration trenches within the PBD for stormwater control and drainage. Mr. Oost added that the proposed plat alteration would result in reduced traffic impact totaling approximately 30 vehicle trips, with the proposed reduction in the number of residential lots within the PBD.⁷ *Testimony of Mr. Oost.*
12. The proposed PBD would obtain wastewater treatment service from Kitsap County Public Works and domestic water supply from the Silverdale Water District. *Exhibit 28, Staff Report, page 13.*
13. A memorandum from Shawn Alire, County Development Engineering, states that stormwater runoff on the subject property would be managed for water quality through on site infiltration, except for bypass areas within the proposed development. Mr. Oost testified that bypass areas would be tight-lined to the existing storm drain system in Walgren Drive. According to the memorandum, the proposed stormwater management systems and roads internal to the proposed development would be privately maintained. The memorandum states that construction plans and profiles for all roads, storm drainage facilities, and appurtenances shall be submitted for County review and plan acceptance prior to construction. *Exhibit 27; Testimony of Mr. Oost.*
14. The proposed PBD would be accessed from Walgren Drive, located south of the proposed development. Walgren Drive contains a paved 20 foot wide surface

⁷ The Hearing Examiner's recommendation on the initially proposed plat and PBD, issued June 17, 2008, concluded that the proposed development made appropriate provision for streets, roads, alleys, and other public ways, citing a Traffic Impact Analysis prepared for the Applicant by MIRAI Transportation Planning and Engineering. According to Hearing Examiner findings, the TIA, dated July 2007, found that the proposed PBD access at Walgren Drive would operate at Level of Service (LOS) A following proposed development and the Walgren Drive/Provost Road intersection would operate at LOS B eastbound and LOS A northbound following proposed development. As initially proposed, the development would have generated 430 average weekly vehicle trips, with 41 trips occurring in the P.M. peak hour. *Exhibit 12.*

with rolled curbs and five foot wide thickened asphalt edge sidewalk on the south side of the drive. Proposed conditions of PBD alteration approval require the Applicant to construct curb, gutter, and sidewalk on the north side of Walgren Drive along the subject property boundary and provide for parallel parking along Walgren Drive. Proposed PBD internal roads would be improved with curbs, gutters, sidewalks, and street trees. As depicted on the Applicant's Landscape Plan, the south boundary of the subject property and areas adjacent to proposed lots 42 and 43 would be landscaped, as well as open space located in the east portion of the subject property. *Exhibit 18; Exhibit 21; Exhibit 22; Exhibit 28, Staff Report, pages 5 and 17 – 18.*

15. Under County Code PBD standards and requirements, at least 15 percent of the gross acreage of the subject property must be set aside as common open space, for a minimum of 47,078 square feet of common open space within the proposed PBD. In addition, at least five percent of gross acreage must be set aside as recreational open space. As depicted on the overall site plan and revised recreational open space plan, the Applicant would provide 47,112 square feet of common open space within the proposed PBD. Within the proposed common open space, County staff determined approximately 16,195 square feet is suitable for active recreational use, and the remainder suitable for landscaped open space associated with stream and associated buffer protection and required setback. The Applicant's proposed landscape plan and revised recreational open space plan depicts pathways and recreational facilities within the open space that would be located in the east portion of the subject property. *KCC 17.425.040B.1; KCC 17.425.040C.1; Exhibit 21; Exhibit 22; Exhibit 23; Exhibit 28, Staff Report, pages 6 and 9.*
16. Property located adjacent to the north and west of the subject property is located within the County's UL zoning district. The Honeysett Subdivision single-family residential plat is located adjacent to the north, and the Towns Summit Divisions 1 and 2 single-family residential plat is located adjacent to the west. Property adjacent to the east contains property located within the UM and UL zoning district, and property adjacent to the south is located in the UM zoning district. Property adjacent to the south contains multi-family residences, and property to the east contains some vacant land and some single-family residential development. *Exhibit 28, Staff Report, pages 4 - 5.*
17. The County staff report states that the County received two public comments on the proposed PBD alteration by phone, and that the phone communications received expressed concerns raised during consideration of the initial preliminary plat and PBD request, including a concern for fencing along the subject property's north, west, and east property boundaries. County staff proposed a condition of PBD alteration approval that the Applicant shall install a six-foot tall, three-rail,

solid board fence along the entire length of the north and west property boundary of the subject property and along the east boundary of proposed lots 25 – 28. *Exhibit 28, Staff Report, pages 11 and 13.*

18. Mr. Oost testified that County staff reviewed the PBD alteration request and recommended approval by the County BOCC, with 49 proposed conditions of approval, including three negotiated final conditions of approval submitted by the County Fire Marshal (Ex. 30). The three conditions submitted by the Fire Marshall are:

1. Where buildings are constructed on lots created by this application with more than two dwelling units or when buildings are constructed with side yard setbacks of less than five feet such that the distance between buildings is less than ten feet, automatic fire sprinklers shall be provided throughout the affected buildings.
2. Based on a residential development, fire flow is required in the amount of 500 gpm at 20 psi for 30 minutes. The fire flow system shall meet all requirements of the Kitsap County Fire Marshal.
3. NO PARKING TOWAWAY ZONE signage on both sides of the street shall be provided for streets up to 28 feet wide, and on one side of the street if the street is 28 to 36 feet wide. For maintenance of the access width, each property shall have a condition stating the emergency apparatus access is to be kept clear at all times. A condition shall be added to the Conditions, Covenants and Restrictions for each affected lot that parking is not allowed on the street in order to allow emergency access. The parking plan and NO PARKING signage shall be included on the face of the plat when the plat receives final approval. Note: The posting of signage may be eliminated until such time as the parking restrictions are no longer heeded and parking on the street creates a problem. A centerline painted on all of the access roads within the plat will service as notice to the actual drive line.

Exhibit 28, Staff Report, pages 13 - 19; Exhibit 30; Testimony of Mr. Oost.

19. Mark Kuhlman, Team 4 Engineering, testified that the Applicant would comply with all proposed conditions of approval of the PBD alteration request, including proposed conditions of approval submitted by the County Fire Marshal (Ex. 30). Barry Margolese, Applicant Representative, testified that some construction on the subject property has already occurred.⁸ Mr. Kuhlman testified that the Applicant has conferred with owners of property neighboring the subject property about the PBD alteration request, and the County has received no written public comment on the request. Mr. Kuhlman added that vehicle access to proposed

⁸ The County staff report states that the subject property is currently cleared and graded with underground utilities in place, under Site Development Activity Permit (SDAP) No. 08-59546, granted in July 2010. *Exhibit 28, Staff Report, page 3.*

residences would be from alleys within the proposed PBD, proposed residences would be architecturally designed for the subject property, and many proposed residences would not have garages on the street but would have front entrances adjacent to the street. *Testimony of Mr. Kuhlman; Testimony of Mr. Margolese.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and recommend approval, approval with conditions, disapproval, or revocation of performance based developments according to Kitsap County Code (KCC) 17.425.020 and KCC 21.04.030. *KCC 17.425.020; KCC 21.04.030.*

Criteria for Review

In recommending approval of the preliminary development plans for a performance based development, conditionally or otherwise, the Hearing Examiner shall first make a finding that all of the following conditions exist:

- A. The site of the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping, and other features are adequate, as required by Kitsap County Code Title 17;
- B. The design of the PBD is compatible with neighboring land uses;
- C. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
- D. The proposed and/or existing public facilities and utilities are adequate to serve the project; and
- E. The establishment, maintenance, and/or conduct of the use for which the development plan review is sought will not, under the circumstances of the particular case, be detrimental to the health, safety or welfare of persons residing or working in a neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare, injurious to property or improvements in said neighborhood, or contrary to orderly development.

KCC 17.425.050.

Conclusions

*Revised Findings, Conclusions, and Recommendation
Kitsap County Hearing Examiner
Walgren Cottages Preliminary Plat/ Performance Based
Development (PBD) Alteration, No. 100826-014*

- A. With conditions, the site of the proposed use would be adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping, and other features are adequate, as required by Kitsap County Code Title 17.** As modified under County Code performance based development (PBD) provisions, the proposed development would contain lots smaller in size and width than otherwise required in the County's Urban Low Density Residential (UL) and Urban Medium Density Residential (UM) zoning districts. Development of single-family residential detached dwelling units is allowed within the UL and UM zoning districts; uses permitted in a PBD are those allowed in the underlying zone. The proposed performance based development (PBD) would contain on-street parking, internal roads, open space, landscaping, and fencing along some areas of the property boundary. Conditions of approval are necessary to ensure County landscaping plan approval, adequate open space protection, and fencing to buffer adjacent properties from proposed development. *Findings 1, 6 – 8, 10, 14, 15, 18, 19.*
- B. With conditions, the design of the PBD would be compatible with neighboring land uses.** The proposed PBD would contain single-family detached residential dwellings, which are compatible with neighboring residential land uses and zoning. Conditions of approval are necessary to ensure fencing to buffer adjacent properties from proposed development, adequate open space protection, internal sidewalk construction, addition of street trees within the proposed development, and Walgren Drive frontage improvements. *Findings 1, 7, 9 – 11, 14 – 19.*
- C. With conditions, the site for the proposed use would relate to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.** The proposed use would be accessed from Walgren Drive, and the reduction in number of lots associated with the proposed PBD alteration would result in lesser vehicle trips on surrounding roadways, including Walgren Drive and Provost Road. A 2007 traffic impact analysis found that as initially proposed, the proposed PBD access at Walgren Drive would operate at Level of Service (LOS) A following proposed development and the Walgren Drive/Provost Road intersection would operate at LOS B eastbound and LOS A northbound following proposed development. Reduced vehicle trips under the PBD alteration request would further reduce traffic impact on surrounding roadways. Conditions of approval are necessary to ensure construction of Walgren Drive frontage improvements. *Findings 1, 10, 11, 14.*
- D. The proposed or existing public facilities and utilities would be adequate to serve the project.** The proposed PBD would obtain wastewater treatment service from Kitsap County Public Works and domestic water supply from the Silverdale

Water District. Stormwater runoff from a portion of the subject property would be tight-lined to existing storm sewer within Walgren Drive; stormwater runoff from the remainder of the property would infiltrate on site. Conditions of approval are necessary to ensure County review and approval of the proposed stormwater runoff management system for the PBD. *Findings 1, 10 – 13, 18, 19.*

- E. With conditions, the establishment, maintenance, and/or conduct of the use for which the development plan review is sought would not, under the circumstances of the particular case, be detrimental to the health, safety or welfare of persons residing or working in a neighborhood of such use and would not, under the circumstances of the particular case, be detrimental to the public welfare, injurious to property or improvements in said neighborhood, or contrary to orderly development.** Single-family detached residential development is encouraged under the County Comprehensive Plan designation for the site and an allowed use within the UL and UM zoning districts. The County provided adequate notice and opportunity to comment on the proposed PBD alteration. The County acted as lead agency and found that with one condition concerning road frontage improvements, the PBD would not have a probable significant adverse impact on the environment. The County received two public comments on the proposed PBD alteration by phone, and that the phone communications received expressed concerns raised during consideration of the initial preliminary plat and PBD request, including a concern for fencing along the subject property’s north, west, and east property boundaries. Conditions of approval are necessary to ensure fencing along the entire length of the north and west property boundary of the subject property and along the east boundary of proposed lots 25 – 28. *Findings 1 – 6, 17 – 19.*

RECOMMENDATION

Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that the request for alteration of an existing performance based development to allow changes in open space, total number of lots, lot size, housing type, and on-street parking, located at 4710 & 4732 SW Walgren Drive, Kitsap County, Washington, should be **APPROVED**, with the following conditions:⁹

1. Approval of the Preliminary Plat/Performance Based Development shall not be construed to mean approval of the total number of lots or configuration of the lots and tracts. These parameters may be required to be revised for the final design to meet all requirements of Kitsap County Code Titles 11, 12, 16, 17 and 19.
2. The landscaping plans dated “received August 12, 2010” are acceptable to the Department.

⁹ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by County Code.

3. A Final Landscaping Plan for construction shall be submitted to Kitsap County DCD prior to construction or Final Plat recording and shall include the irrigation system design.
4. The applicant shall install a 6-foot, 3 rail, solid board fence along the entire length of the north and Western property line and on the wall along the east boundary on lots 25 through 28.
5. The applicant shall include in the development's Covenants, Conditions, and Restrictions, a statement that the guest parking shall not be used as permanent parking for the residents. Signs to that effect shall be installed in the guest parking areas.
6. The applicant shall develop a Homeowners' Association that shall be responsible for maintenance of the internal roads, the guest parking areas, open space landscaping, street trees, the community garden irrigation system and shed, and any recreational equipment in the common open spaces.
7. The applicant shall complete an application for street names for the internal streets according to the requirements of the Department's Addressing System.
8. Where buildings are constructed on lots created by this application with more than two dwelling units or when buildings are constructed with side yard setbacks of less than five feet such that the distance between buildings is less than ten feet, automatic fire sprinklers shall be provided throughout the affected buildings.
9. Based on a residential development, fire flow is required in the amount of 500 gpm at 20 psi for 30 minutes. The fire flow system shall meet all requirements of the Kitsap County Fire Marshal.
10. NO PARKING TOWAWAY ZONE signage on both sides of the street shall be provided for streets up to 28 feet wide, and on one side of the street if the street is 28 to 36 feet wide. For maintenance of the access width, each property shall have a condition stating the emergency apparatus access is to be kept clear at all times. A condition shall be added to the Conditions, Covenants and Restrictions for each affected lot that parking is not allowed on the street in order to allow emergency access. The parking plan and NO PARKING signage shall be included on the face of the plat when the plat receives final approval. Note: The posting of signage may be eliminated until such time as the parking restrictions are no longer heeded and parking on the street creates a problem. A centerline painted on all of the access roads within the plat will service as notice as to the actual drive line.
11. A Sewered Building Clearance approval is required prior to issuance of a Building Permit. Binding Sewer and Water Availability Letters are required with the Building Clearance Application.

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12. Prior to final land use approval, existing septic tanks and existing wells must be properly abandoned with certification to the Kitsap County Health District.
13. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to plan acceptance.
14. A technical deviation was requested for the use of infiltration trenches in residential developments as indicated on the Drawings. The use of infiltration trenches in residential developments is not allowed unless a deviation from this requirement is granted by the Director. (Kitsap County Stormwater Design Manual, section 5.3.5). Staff is in process of reviewing this request. If the technical deviation cannot be supported, the stormwater design will need to be re-designed to meet the Kitsap County Stormwater Design Manual or an approved Technical Deviation.
15. The information provided demonstrates this proposal is a Major Development as defined in Kitsap County Code Title 12, and as such will require a Site Development Activity Permit (SDAP) from Development Engineering.
16. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Preliminary Plat application was deemed complete (August 6, 2007). The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.
17. Should the proponent propose phasing of the project, a phasing plan shall be submitted to Development Engineering for review and approval. The phasing plan shall, as a minimum, address the following items:
 - Time tables indicating the anticipated time between initial site grubbing/grading activity and the completion of construction, including site stabilization of that specific phase.
 - The extent of drainage improvements to be installed during the various phases.
18. Kitsap County Code Title 12 classifies all water quality BMPs other than wet ponds/vaults, oil/water separators, and biofilters as experimental. The design engineer shall provide the required information as described in Section 6.6 of the Kitsap County Stormwater Design Manual with the SDAP application in order to gain approval from Development Engineering to use the experimental BMP. This requirement may be waived if the Washington State Department of Ecology (Ecology) has approved the specific BMP and the BMP is being utilized in accordance with the Ecology approval parameters. The water quality BMP shall be sized to provide treatment of the post-developed peak flow rate from the 6-month, 24-hour storm event per KCSDM Section 6.2.

26. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before the final SDAP inspection for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum amount allowed by law.
27. Kitsap County will not be responsible for any damage to any private roads, tracts, and/or easement areas that may occur during routine maintenance activities and that in Kitsap County's judgment occur, in whole or in part, because of any construction materials or techniques, or any maintenance materials or techniques. This includes, but is not limited to, damage to pavement or vegetated areas caused by maintenance trucks.
28. The impervious area per lot accounted for in the overall drainage facilities installed shall be indicated on the face of the final plat. Additional impervious surfaces created on an individual lot beyond the amount accounted for in the overall drainage facilities shall be mitigated in accordance with Kitsap County Code Title 12.
29. At Building Permit application, submit (KCPW Form 1601) for issuance of a Concurrency Certificate, as required by KCC Section 20.04.030 Transportation Concurrency.
30. Roads shall not exceed 12% grade.
31. The following note shall appear on the face of the final plat map. "All interior roads shall remain private as proposed by the applicant. Should the applicant or his successors or assigns choose to dedicate these roads to Kitsap County, it shall be subject to a further review by Kitsap County Development Engineering and Public Works. For roads to be dedicated to Kitsap County, they must meet all the requirements of the Kitsap County Code as adopted at the time of dedication. All improvements necessary to bring said roads to the then current Kitsap County standards shall be done at no expense to the County prior to being accepted into the Kitsap County road system for maintenance."
32. Wheelchair sidewalk ramps shall conform to the current requirements of the Americans with Disabilities Act per WSDOT standard plans at the time of construction.
33. Frontage improvements shall be constructed for the entire property width along NW Walgren Drive. Frontage improvements shall include curb, gutter and sidewalk to meet Kitsap County Road Standards (KCRS) and associated stormwater mitigation improvements.
34. The property owners (within the plat) shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other

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19. Any project that includes offsite improvements that create additional impervious surface such as lane widening, sidewalk or shoulder installation or intersection channelization shall provide stormwater mitigation in accordance with Kitsap County Code Title 12 effective at the time the Preliminary Plat application was deemed complete (August 6, 2007).
20. The site plan indicates that greater than 1 acre will be disturbed during construction. This threshold requires a National Pollutant Discharge Elimination System (NPDES) Stormwater Construction permit from the State Department of Ecology. More information about this permit can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> or by calling Josh Klimek at 360-407-7451, email jokl461@ecy.wa.gov. This permit is required prior to issuance of the SDAP.
21. The Washington State Department of Ecology (Ecology) may require registration of infiltration trenches as Underground Injection Control (UIC) wells in accordance with the Underground Injection Control Program (Chapter 173-218 WAC). The applicant shall contact Ecology to determine if the facilities are regulated under the UIC program.
22. The design of the infiltration facilities will be according to Section 5.3.5 of the Kitsap County Stormwater Design Manual. Soils exploration shall be performed at the proposed location of the facilities before final design to determine the infiltration rate and depth to seasonal high ground water table and/or impermeable layer. The soil report shall include Particle-Size Analysis performed by ASTM Test Method D-422-63, soil log elevation, and location. The storage volume of the facility shall be adjusted to reflect the true infiltration rates with a safety factor of two applied. A Soils Engineer shall prepare the above information.
23. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities.
24. During the construction of the proposed infiltration facilities, the Project Engineer shall perform inspections to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Engineering.
25. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering report. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

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than roadway, storm drainage facilities, and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas. A note to this effect shall appear on the face of the final plat map and the accepted construction plans. In addition, Development Engineering reserves the right to require that covenants be recorded to address special maintenance requirements depending on final design.

35. Provide surveyed cross-sections at 50-foot intervals on NW Walgren Drive. The cross-sections should show existing and proposed pavement, shoulders, ditches and slopes. The cross-sections should also depict centerline of pavement and right-of-way, the right-of-way lines, and easements.
36. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the Kitsap County Code. Please denote the design vehicle on the plan set if different than the Kitsap County design vehicle. Existing approaches may need to be improved to meet current standards.
37. Any required sidewalk shall be constructed prior to roadway paving. This note shall appear on the face of the final construction drawings.
38. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of Road A and NW Walgren Drive. 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 Kitsap County Road Standards. The certification shall also note necessary measures to correct and maintain the minimum sight triangle.
39. Should a County Road Improvement District (CRID) for the construction of road improvements be formed, which includes this property within the CRID boundary, the owners of this property shall be obligated to participate. A covenant shall be recorded before plat recording indicating participation in the future CRIDs.
40. Any work within the County right-of-way shall require a permit to perform work on County right-of-way and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.
41. A Final Plat prepared by a licensed Land Surveyor in compliance with Kitsap County Code Title 16.16.
- ~~42. Ten feet for utility easement shall be provided on each side of all private roadways within the plat.~~
- 42. Ten feet for utility easement shall be provided along the private roadways as shown on Exhibit 21 Overall Site Plan, dated August 5, 2010.**

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43. All potential park areas, common open space, buffers, storm water management areas, and private roads shall be labeled as separate tracts. The ownership and maintenance shall be addressed on the face of the final plat as well as in the CC&Rs.
44. All existing easements that benefit neighboring properties shall be maintained or properly extinguished prior to recording the Final Plat.
45. Access to all Lots shall be from interior roads only. This note shall be placed on the face of the Final Plat.
46. The existing access for Lot 29 onto NW Walgren Drive shall be removed prior to recording the Final Plat.
47. Construction of rock walls or other retaining facilities that exceed four feet in height shall require a building permit.
48. Rock and retaining walls shall meet all applicable setback requirements of KCSDM 4.7.5.

Decided this 7th day of October 2010.



KIMBERLY A. ALLEN
Hearing Examiner
Sound Law Center

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