



Kitsap County Hearing Examiner

ADMINISTRATION BUILDING, 619 DIVISION ST, MS-36
http://www.kitsapgov.com/dcd/lu_env/he/

PORT ORCHARD, WA 98366
(360) 337-5777
cblackburn@co.kitsap.wa.us

NOTICE OF HEARING EXAMINER RECOMMENDATION

June 24, 2016

To: Interested Parties and Parties of Record

RE: Project Name: Woodbridge Crossing
Applicant: Kitsap LLC
PO Box 1009
Mukilteo, WA 98227
Application: Development Agreement
Permit Number: 16 02288

Enclosed is the Recommendation to the Board of County Commissioners issued by the Kitsap County Hearing Examiner in the above-referenced matter.

The complete case file will be available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:30 PM and Friday 9:00 AM to 1:00 PM, except holidays.

Please call Constance Blackburn at (360) 337-4487 if there are any questions or for an appointment to review the case file.

Cc Applicant and/or Rep:

Kitsap LLC: billg@klbconstruction.com

Donna Markwick: Dcmarkwick1@live.com

NL Olson & Associates Inc.: mzawlocki@nlolson.com & nlolson2@nlolson.com

Interested Parties:

None

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 16 02288
)	
Kitsap LLC & Donna Markwick)	Woodbridge Crossing
)	Development Agreement
)	
For Approval of a)	FINDINGS, CONCLUSIONS,
<u>Development Agreement</u>)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the proposed Development Agreement among Kitsap County, Kitsap LLC, and Donna Markwick be **APPROVED** by resolution of the Kitsap County Board of Commissioners. The proposed Agreement addresses project phasing, timing, vesting, and construction restrictions related to the proposed subdivision of approximately 122 acres for the Woodbridge Crossing development at the northeast corner of Silverdale Way NW and NW Waaga Way.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request for approval of the proposed Development Agreement on June 9, 2016.

Testimony:

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

Jeff Smith, County Senior Planner
Norm Olson, Applicant Representative

Exhibits:

The following exhibits were admitted into the record at the open record hearing:

1. Staff Report for Conditional Use Permit and Performance Based Development (No. 090625-015) applications, dated July 9, 2008
2. Notice of Hearing Examiner Decision, dated July 23, 2009, with attached decision, *In re Kitsap LLC (Woodbrige Crossing #1)*, dated July 10, 2009.
3. Notice of Application and Public Hearing for Woodbridge Crossing Major Alteration to Performance Based Development (No. 141211-028), dated September 9, 2014
4. Revised Mitigated Determination of Nonsignificance, dated November 20, 2014

*Findings, Conclusions, and Recommendation
Kitsap County Hearing Examiner
Woodbridge Crossing Development Agreement, No. 16 02288*

5. Staff Report for Major Alteration to Performance Based Development (No. 141211-028), dated November 20, 2014
6. Notice of Hearing Examiner Decision, dated December 31, 2014, with attached decision, *In re Kitsap LLC (Woodbridge Crossing #2)*, dated December 24, 2014
7. Notice of Application and Public Hearing for proposed Development Agreement, dated May 26, 2016
8. Public Comments:
 - a. Email from Christine DeGeus to Jeff Smith, dated April 7, 2016, with email string
 - b. Email from Jonathon Brand to Jeff Smith, dated April 6, 2016, with email string
9. Resolution Delegating Authority to the Hearing Examiner, dated May 23, 2016
10. Draft Development Agreement, undated
11. Certification of Public Notice, dated May 26, 2016
12. Staff Report for Development Agreement (No. 16 02288) application, dated June 1, 2016
13. Staff PowerPoint presentation (5 slides), dated June 9, 2016

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Background

1. Norm Olson, on behalf of Kitsap LLC and Donna Markwick (Applicant), requests that the Hearing Examiner recommend approval of a proposed Development Agreement among Kitsap County (County), Kitsap LLC, and Donna Markwick addressing project phasing, timing, vesting, and construction restrictions related to the proposed subdivision of approximately 122 acres for the Woodbridge Crossing development at the northeast corner of Silverdale Way NW and NW Waaga Way.¹ *Exhibit 10; Exhibit 12, Staff Report, pages 1 and 3.*
2. The Hearing Examiner first considered the Woodbridge Crossing project in 2009. On July 10, 2009, the Hearing Examiner approved the underlying Conditional Use Permit (CUP) and Performance Based Development (PBD) applications related to the proposal, with 63 conditions. The proposal called for segmenting the project into six separate project areas, generally, as follows:
 - P-1: development and maintenance of 38 acres of open space.
 - P-2: development of a large, multi-unit apartment complex.

¹ The property is identified by Assessor's Tax Account Nos. 092501-4-094-2006, 092501-4-095-2005, and 162501-1-002-2004. *Exhibit 12, Staff Report, page 2.* A legal description of the subject property is included as an attachment to the proposed Development Agreement. *Exhibit 10.*

- P-3: development of a 54-lot plat for single-family development.
- P-4: development of a 120-lot plat for single-family development.
- P-5: development of a 150-unit condo/apartment/duplex.
- P-6: development of a 185-unit multi-family/assisted living/cottage development.

Exhibit 2.

3. The Hearing Examiner’s 2009 decision recognized that development of the Woodbridge Crossing proposal would be phased, that the Applicant submitted a “General Phasing Plan” with its CUP/PBD applications, and that the duration of approvals for project phasing would be subject to the requirements of Title 21 of the Kitsap County Code (KCC). *Exhibit 2.*
4. The Hearing Examiner again considered the Woodbridge Crossing project in 2014, when the Applicant sought major revisions to the approved PBD. At that time, the Applicant requested changing project area “P-2” from development of a large, multi-unit apartment complex to development of 35 to 42 single-family residences. On December 24, 2014, the Hearing Examiner approved the revisions. The 2014 decision retained the original 63 approval conditions² of the initial decision and added a 64th condition requiring an active recreational facility in the P-2 project area. *Exhibit 6.*
5. The proposed Development Agreement does not alter or amend the approval conditions on the underlying permits from the 2009 and 2014 decisions. The proposed Agreement addresses the strategic plan for project phasing, timing, vesting, and construction restrictions related to the proposed development (discussed in more detail below). *Exhibit 10.*

Notice and Environmental Review

6. On May 23, 2016, the Board of County Commissioners passed Resolution No. 087-2016, delegating to the Hearing Examiner authority to hold a public hearing on the proposed Development Agreement. Development agreements are authorized by RCW (Revised Code of Washington) 36.70B.170 through .210 and KCC 21.04.220, and are intended to establish development standards and other provisions for the implementation of complex and long-range development projects. The proposed Development Agreement is premised upon implementation and full compliance with the 2009 and 2014 CUP/PBD permit approvals (and any future amendments to them), the Hearing Examiner’s required 64 mitigation conditions, the Agreement itself, and all applicable federal, state, and local laws, regulations, and required permits. *Exhibit 2; Exhibit 6; Exhibit 10; Exhibit 12, Staff Report, pages 1 through 9.*

² The 2014 decision slightly revised Condition 7 of the original approval, requiring that an association of owners be formed and continued for the purpose of maintaining separate tracts for Critical Area Buffers. *Exhibit 6.*

7. On May 26, 2016, the County mailed notice of the Development Agreement application and the associated public hearing to the Applicant, Applicant Representative, interested parties, and owners of property within 400 feet of the property. The same day, the County also published notice of the open record hearing in the County's publishing newspaper of record and posted notice at the site address. *Exhibit 7; Exhibit 11.*
8. The County received one response to its notice materials. On April 6, 2016, County Engineer Jonathon Brand emailed the County to express concerns about aspects of the proposal and Development Agreement related to road connectivity, trail connectivity, and traffic mitigation. County Traffic Operations Supervisor Christine DeGeus responded to Mr. Brand's concerns in an email the next day. She indicated that the draft Development Agreement would be altered to address concerns over road connectivity, trail connectivity, and traffic mitigation. County Senior Planner Jeff Smith testified that the draft Development Agreement was altered to address these concerns. *Exhibit 8; Testimony of Mr. Smith.*
9. In 2009, when addressing the underlying CUP and PBD, the County acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. After reviewing the Applicant's environmental checklist and other available information, the County determined that, with conditions, the proposal would not have a probable significant adverse impact on the environment and issued a Mitigated Determination of Nonsignificance (MDNS) on May 21, 2009. The MDNS conditions require:
 - Construction of traffic improvements, including a pedestrian amenity from the proposed development's northern property line along Silverdale Way NW to the south on the east side of Silverdale Way NW;
 - Construction of an eastbound right-turn lane on Silverdale Way NW;
 - Construction of an upgrade to the NW Randall Way/Silverdale Way NW intersection;
 - Widening of the SR-303 NW Waaga Way northbound off-ramp to Silverdale Way NW;
 - Construction of a sidewalk on Silverdale Way NW;
 - Construction and operation of a new traffic signal at the east bound ramp of NW Waaga Way/Ridgetop Boulevard NW, according to occupancy levels within the proposed development.

The MDNS was not appealed. *Exhibit 2.*

10. After receiving the Applicant's plans for a major revision to the PBD, the County again analyzed the project under SEPA and issued a revised MDNS on November 20, 2014. The revised MDNS did not materially alter any of the mitigation conditions of the original MDNS. The revised MDNS was not appealed. *Exhibit 4.*
11. The proposed Development Agreement does not change the scope of the previously approved project. The proposed Agreement satisfies the MDNS requirements addressing traffic mitigation and project phasing. Accordingly, further environmental review under SEPA is not required. *Exhibit 12, Staff Report, pages 2 and 3.*

Proposed Development Agreement

12. As previously discussed, the proposed Development Agreement addresses the strategic plan for project phasing, timing, vesting, and construction restrictions related to the proposed development. Specifically, the Agreement provides that:
 - The project shall be vested to and governed by applicable land use development standards of the Kitsap County Code effective June 26, 2008, the date the initial CUP/PBD application was deemed complete.
 - Despite vesting to the 2008 land use development standards, all applications for building permits shall conform to the most current version of the International Building Code and International Fire Code, as adopted by the County.
 - Despite vesting to the 2008 land use development standards, all permit applications within the project shall be subject to County fees in effect on the date each application is submitted, all applications shall be subject to impacts fees in accordance with Chapter 4.110 KCC on the date of application submittal, and all utility connection fees and other fees not specifically addressed shall be paid in accordance with rules in effect on the date the fee-generating activity occurs.
 - The Agreement calls for a 10-year term from the date of execution, with one optional five-year extension approved in accordance with KCC 21.04.220.
 - Phase 1 of the project would involve: construction of development area P-2, along with stormwater and utilities to support it; construction of Roads, A, B, and C, and the Spine Road from Silverdale Way NW to approximately the midpoint of the project; sprinkler systems on all homes; and construction of an 8,857 square foot active recreational facility. Improvements to development area P-1, the 38-acre open space tract, would be ongoing and complete within 10 years from the date of execution. Development of area P-1 would, in coordination with Kitsap County, involve extending the Clear Creek Trail.

- Final approval for construction all other development areas (P-3 through P-6) shall be obtained within the terms of the Agreement. The order of construction for Phase 2 shall be determined by market conditions and the discretion of the developer subject to the following conditions:
 - a. Street improvements, potable water and fire flow facilities, sanitary sewer facilities, utilities and active recreational amenities (excluding those addressed in Phase 1) shall be constructed to serve the associated development area;
 - b. Channelization and widening of Silverdale Way NW shall occur to accommodate a right turn/deceleration lane at the intersection with the Spine Road in the proposed development;
 - c. Construction of a pedestrian amenity from the most northern property line of the development on Silverdale Way NW to the south on the east side of Silverdale Way shall occur. This amenity shall connect to the crosswalk at the existing northbound off-ramp intersection;
 - d. The SR 303/NW Waaga Way northbound off-ramp to Silverdale Way NW shall be widened to accommodate two southbound Silverdale Way NW lanes when required by the Washington State Department of Transportation (WSDOT);
 - e. A sidewalk on Silverdale Way NW between the two ramp intersections of SR 303 on the west side of Silverdale Way NW and connecting to the existing sidewalk on Silverdale Way NW south of SR 303 shall be constructed when required by WSDOT. Pedestrian signals and a marked crosswalk shall also be installed at the existing northbound off-ramp intersection on the north Silverdale Way NW leg;
 - f. The developer shall construct the main access road to Ridgetop Blvd NW or design and construct a traffic signal at the Silverdale Way and Main Access Road (the Spine Road) intersection prior to construction of any portion of P-3, P-4, P-5, or P-6 located on Parcels 092501-4-095-2005 and 162501-1-002-2004 that results in new site traffic exceeding 70 PM peak hour trips exclusive of the P-2 site traffic.

Exhibit 10.

13. The proposed Development Agreement includes a reservation of authority, protecting the County's right under RCW 36.70B.170(4) to impose new or different regulations to the extent required by the federal or state government, or by a serious threat to public health and safety. *Exhibit 10.*

Comprehensive Plan and Local
Development Regulations

14. The property is designated Urban Restricted (UR) and Urban Medium (UM) under the Kitsap County Comprehensive Plan. Property to the north is designated Urban Low, and to the east, UM. The northern part of the site is zoned Urban Medium Residential (UM) and the south part is zoned Urban Restricted (UR). The 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. The zone is also intended to create energy-efficient residential areas by allowing common-wall construction, as well as to facilitate residential development that utilizes cost-efficient design. *Kitsap County Code (KCC) 17.340.010*. The UR zone applies to areas within urban growth areas that have been identified as having a significant concentration of critical areas regulated pursuant to Title 19 KCC, or are planned as greenbelts, and are therefore appropriate for lower-density development. These areas may include significant salmon spawning streams, wetlands, and/or steep slopes. Actual densities allowed will be determined at the time of land use approval, following a site-specific analysis and review of potential impacts to the on-site or adjacent critical areas. *KCC 17.325.010. Exhibit 6*.
15. The Hearing Examiner considered the consistency of the proposal with the Comprehensive Plan during the CUP/PBD review processes in 2009 and 2014. In both decisions, the Hearing Examiner determined that the proposal would be consistent with the County's Comprehensive Plan. *Exhibit 2; Exhibit 6*.
16. County staff determined that the proposed Development Agreement is generally consistent with local development regulations, especially because the Agreement would not change or alter the scope of the previously approved proposal. *Exhibit 12, Staff Report, pages 3 through 9*.

Public Hearing

17. At the hearing, County Senior Planner Jeff Smith testified that he reviewed the proposed Development Agreement and that it complies with all of the requirements of RCW 36.70B.170 through .210 and with the development agreement criteria of Chapter 21.04 KCC. He noted that the primary purpose of the Agreement is to vest project approval for the underlying CUP/PBD for an additional 10 to 15 years. Mr. Smith stressed that the Development Agreement would not alter or amend the underlying CUP/PBD applications previously approved by the Hearing Examiner and that all 64 approval conditions from the Hearing Examiner's 2014 decision would remain in effect moving forward. *Testimony of Mr. Smith*.

18. Applicant Representative Norm Olson testified generally about the proposed Development Agreement. He also explained that the Markwick property has always been a part of the proposal (since the initial 2009 decision) and, because of this, Donna Markwick must be a party to the Development Agreement. Mr. Olson acknowledged that the proposed Development Agreement would not impact the conditions of approval related to the underlying permits. *Testimony of Mr. Olson.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to recommend approval, approval with conditions, or disapproval of a proposed development agreement when the Kitsap County Board of County Commissioners delegates the public hearing process, under KCC 21.04.220.C, as it did for this application. *KCC 2.10.070; Exhibit 5.*

Criteria for Review

RCW 36.70B.170 authorizes local governments to enter into development agreements with a person having ownership or control of real property within its jurisdiction. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. *RCW 36.70B.170(1).*

In recommending approval of a development agreement, the Hearing Examiner shall first make a finding that all of the following conditions exist:

1. The proposed agreement is consistent with the goals and policies of the Comprehensive Plan;
2. The proposed agreement is consistent with the local development regulations; provided, that standards may be modified only if the board makes further findings that:
 - a. Variation of the standard provides a public benefit; and
 - b. The proposal subject to the modified standard remains consistent with the Comprehensive Plan; and
 - c. All adverse impacts are mitigated;
3. The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided, that if the development is not defined at the project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts at the time of project development; and

4. The proposed agreement reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

KCC 21.04.220.D.

Conclusions Based on Findings

1. **The proposed Development Agreement is consistent with the goals and policies of the Comprehensive Plan.** The Hearing Examiner's CUP/PBD decisions addressed the proposal's consistency with the goals and policies of the Comprehensive Plan. The proposed Development Agreement does not alter the CUP/PBD proposal and, accordingly, remains consistent with the goals and policies of the Comprehensive Plan. Additionally, all CUP/PBD mitigation measures remain in force through the proposed Development Agreement, further ensuring consistency with Comprehensive Plan goals and policies. *Findings 1 – 5, 12 – 18.*
2. **The proposed Development Agreement is generally consistent with local development regulations; modifications to such standards provide a public benefit, remain consistent with the Comprehensive Plan, and mitigate for adverse impacts.** County staff determined that the proposed Development Agreement is generally consistent with local development regulations. The Applicant has not requested specific modifications to applicable local regulations or standards. *Findings 1 – 18.*
3. **The proposed Development Agreement provides for adequate mitigation of adverse environmental impacts.** The Development Agreement requires compliance with the approved CUP/PBD and mitigation conditions, including traffic mitigation conditions required by the revised MDNS. The proposed Development Agreement would enable the Applicant to implement the traffic mitigation required by the MDNS and the Hearing Examiner's 2008 and 2014 decisions. *Findings 1, 6 – 18.*
4. **The proposed Development Agreement reserves County authority to impose new or different regulations to the extent required by a serious threat to public health and safety.** The Development Agreement explicitly includes a reservation of authority retaining the County's right, under RCW 36.70B.170(4), to impose new or different regulations to the extent required by serious threats to public health and safety. *Finding 13.*

RECOMMENDATION

Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that the proposed Development Agreement among Kitsap County, Kitsap LLC, and Donna Markwick, addressing project phasing, timing, vesting, and construction restrictions related to the proposed subdivision of approximately 122 acres for the Woodbridge Crossing development at the

*Findings, Conclusions, and Recommendation
Kitsap County Hearing Examiner
Woodbridge Crossing Development Agreement, No. 16 02288*

northeast corner of Silverdale Way NW and NW Waaga Way, be **APPROVED** by the Kitsap County Board of Commissioners. The Development Agreement requires compliance with all previously established SEPA, CUP, and PBD conditions.

Recommended this 23rd day of June 2016.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center