BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD

In the Matter of the Application of
Thair Jorgenson, for
Rush Design, Inc.

No. CUP 035-12
Sedgwick Landing Apartments

FINDINGS, CONCLUSIONS,
AND DECISION

SUMMARY OF DECISION
The request for a conditional use permit to construct 106 apartment units in eight buildings on a
4.3 acre site on the northwest corner of Sidney Road SW and SW Sedgwick Road, in Port
Orchard, Washington is GRANTED. Conditions of approval are necessary to mitigate specific
project impacts.

SUMMARY OF RECORD
Request:
Thair Jorgenson, on behalf of Rush Design, Inc., requests a conditional use permit to
construct 106 apartment units in eight buildings on a 4.3 acre site. The property is located on the
northwest corner of Sidney Road SW and SW Sedgwick Road, in Port Orchard, Washington.

Hearing Date:
The Hearing Examiner held an open record hearing on the request on April 26, 2012.

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

   Tom Bonsell, City Planner
   Mark Dorsey, City Engineer
   Thair Jorgenson, P.E., for Applicant
   Paul Casey, Project Architect, for Applicant
   Cinde’ Gardner-Gillispie

Exhibits:
The following exhibits were admitted into the record:
2. Application submittal, including the following documents:
   A. CUP Application, received February 3, 2012
   B. Contact Information, dated January 23, 2012
   C. Letter authorizing Thair Jorgenson as agent for project, dated January 25, 2012
   D. Name change announcement letter, dated October 20, 2011
E. Property Owners List verification statement, map, and list, received February 3, 2012
F. Legal description and tax parcel numbers, received February 3, 2012
G. Project narrative, addressing code criteria for Conditional Use Permit, and Figures, dated January 25, 2012
K. Environmental Checklist with supporting documents, dated February 3, 2012
L. Drawings:
   1. Preliminary Site Plan (P1), dated February 2, 2012
   2. Building 1 elevations (P2), dated February 2, 2012
   5. Building 4 elevations (P5), dated February 2, 2012
   6. Building 5 elevations (P6), dated February 2, 2012
   8. Building 8 elevations (P8), dated February 2, 2012
   9. Grading and storm plan (Sheet C-1), dated February 1, 2012
  10. Utility Plan (Sheet C-2), dated February 1, 2012
  11. Overall Preliminary Landscape Plan (Sheet L-1), dated February 2, 2012
  12. Preliminary Landscape Plan (Sheet L-2), dated February 2, 2012
  13. Preliminary Landscape Plan (Sheet L-3), dated February 2, 2012
  14. Plant & Site Furnishing Schedule (Sheet L-4), dated February 2, 2012
  15. Planting Notes and Details (Sheet L-5), dated February 2, 2012

5. Comment memo from Greg Rogers, Fire Prevention Manager, South Kitsap Fire & Rescue, dated February 16, 2012
8. SEPA Checklist & NOA/SEPA Threshold Determination distribution record, dated March 14, 2012
10. Affidavit of Mailing & Posting, dated March 15, 2012
11. Email comment from Paul and Cinde’ Gardner-Gillespie, dated March 30, 2012
13. Distribution list for MDNS, dated April 4, 2012
15. Affidavit of Publication: Hearing notice published in the Kitsap Sun, dated April 12, 2012

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16. Affidavit of Mailing and Posting: Hearing notice sent to surrounding property owners and posted on the property, dated April 12, 2012
17. Letter regarding Sedgwick Landing Active Open Space (revised) from Paul J. Casey, Principal Architect & Manager, Casey + Dechert Architects LLC, with excerpt from Port Orchard City Parks Plan and Active Recreation Area Plan, dated April 10, 2012
18. Staff Report prepared by Associate Planner Tom Bonsell, for Hearing on April 26, 2012
19. Staff Report updated for Hearing on April 26, 2012
20. Ordinance No. 008-12
21. Staff Report with updated page 1 for Hearing on April 26, 2012
22. Kitsap County Parcel Search, printed April 26, 2010
23. Six photos, dated May 6, 2008
24. Site plan, undated, with Exhibit 23 photo locations marked

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

FINDINGS

1. Thair Jorgenson, P.E., for Rush Design, Inc. (Applicant)\(^1\) requests a conditional use permit (CUP)\(^2\) to construct 106 apartment units in eight three-story buildings on 4.3 acres.\(^3\) The property is located within an 18.4 acre site, partially developed with office and retail space, on the northwest corner of Sidney Road SW and SW Sedgwick Road, in Port Orchard, Washington.\(^4\) Exhibit 2.A; Exhibit 2.G; Exhibit 2.L; Exhibit 19. Staff Report, page 1; Exhibit 24.

2. The City of Port Orchard (City) received the CUP application on February 3, 2012, and determined it was complete on March 7, 2012. On March 15, 2012, the City mailed notice of the application and threshold environmental determination to surrounding property owners; posted notice on the property; and published notice in the Kitsap Sun. On April 11, 2012, the City emailed the notice of open record hearing associated with the application to the Applicant and to interested parties. On April 12, 2012, the City posted

\(^{1}\) Thair Jorgenson is authorized to act as agent for South Sidney Plaza, LLC, property owner. Exhibit 2.B; Exhibit 2.C.

\(^{2}\) On September 1, 2010, the Hearing Examiner granted a CUP (No. CUP 034-10) to Thair Jorgenson to construct 13 residential duplex structures on the same site. The current application requests a CUP for apartment buildings rather than duplex structures. Findings, Conclusions, and Decision, City of Port Orchard Hearing Examiner, Sedgwick Landing Multi-family CUP 034-10 (September 1, 2010).

\(^{3}\) While the Staff Report, MDNS and Notice of Public Hearing reference a 3.7 acre site, Thair Jorgenson, P.E., Applicant Representative, testified that the site is 4.3 acres with the inclusion of an area previously set aside for future development. Exhibit 12; Exhibit 15; Exhibit 19, Staff Report, page 1; Testimony of Mr. Jorgenson.

\(^{4}\) The subject properties are identified by tax parcel numbers 8503-001-001-0002, 8503-001-004-0405, and 8503-001-004-0207. Exhibit 21. A legal description of the property is provided in Exhibit 2.F.

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notice of open record hearing; mailed notice to surrounding property owners; and
published notice in the Kitsap Sun. Exhibit 6; Exhibit 7; Exhibit 9; Exhibit 10; Exhibit
14; Exhibit 15; Exhibit 16; Exhibit 21.

3. The City acted as lead agency to analyze the environmental impact of the proposed use,
as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The
City reviewed the environmental checklist and other information on file with the City,
and determined that, with conditions, the proposed project would not have a probable
significant adverse impact on the environment. The City issued a Mitigated
Determination of Nonsignificance (MDNS) with 13 mitigation conditions on April 4,
2012. Mitigation conditions address stormwater drainage; traffic impacts; water and
sewer improvements; recreation areas; and vehicle and pedestrian access for residents
and the public, including providing a nature walking trail into the adjacent wetland buffer
and providing a sidewalk or path on one side of the proposed residential access drive. No
appeal of the MDNS was filed. The MDNS conditions are incorporated into the
proposed conditions for the CUP. Exhibit 2 K; Exhibit 8; Exhibit 12; Exhibit 13; Exhibit
19, Staff Report, page 2.

4. MDNS Condition No. 12 requires recreation mitigation. The City noted in its February
22, 2012 pre-application letter to the Applicant that at least 8,085 square feet of active
recreation must be provided. City Associate Planner Tom Bonsell testified that the
Applicant’s Active Recreation Area Plan, prepared by Casey + DeChant Architects, LLC,
would meet this condition. The plan identifies over 18,000 square feet of open lawn
areas and a play structure area. Exhibit 1; Exhibit 12; Exhibit 17; Testimony of Mr.
Bonsell.

5. The property is designated Commercial under the City Comprehensive Plan. Adjacent
property to the west and north is likewise designated Commercial. Property to the south
is designated High Density Residential, while property to the east is designated Rural
Protection. Exhibit 19, Staff Report, page 2.

6. The December 2009 Final Comprehensive Plan recognizes that the economic centers of
the City provide centralized retail, professional office facilities, tourist and related
services. The commercial zoning designation includes the most comprehensive list of
uses to support the goals and policies of economic and housing sections. The
Comprehensive Plan promotes multi-family housing within the Commercial zone as a
planning tool that supports pedestrian access to retail businesses. Land Use goals and
policies encourage a wide variety of housing types, and walkable mixed-use areas to
reduce traffic. The Comprehensive Plan emphasizes community centers - including at
the Sidney/Sedgwick intersection - which provide goods and services to several
neighborhoods through a mix of land uses. Housing goals and policies encourage

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flexible development standards for housing proposed near critical areas.\textsuperscript{5} The City reviewed the proposed use and determined that it would further the general health, safety and welfare of the community, consistent with the Comprehensive Plan. \textit{City Comprehensive Plan, Chapter 2, Land Use, pages 2-10, 2-11, 2-23, 2-24, 2-25; Comprehensive Plan, Chapter 3, Housing, pages 3-6 and 3-10; Exhibit 19, Staff Report, page 2.}

7. The property is located within the City’s Commercial retail and office zoning district (Co), as is adjacent property to the north and west. Property to the south is zoned Multi-Family (R-20). Property to the east is zoned Rural Protection. Adjacent property to the north and south are undeveloped. Property to the east is developed for retail commercial and health clinic uses. \textit{Exhibit 19, Staff Report, page 2.}

8. The purpose of the Co zone is to provide for the broadest mix of retail, service, office, and commercial recreation/cultural uses serving the Port Orchard and surrounding market areas and offering significant employment opportunities. \textit{Port Orchard Municipal Code (POMC) 16.13.150(1).} Multi-family residential developments are allowed within the Co zone and permitted as part of mixed use development with approval of a conditional use permit (maximum R-20 density).\textsuperscript{5} \textit{POMC 16.30.080; POMC Table 16.30.080.} The purpose of a conditional use permit is to allow certain uses deemed necessary to the public convenience but possessing characteristics not easily identified with any particular zone classification. The conditional use permit is a mechanism by which special conditions may be placed on development or to ensure that designated uses or activities are compatible with other uses in the vicinity. \textit{POMC 16.35.010(1) and (2).}

9. The proposed building area is undeveloped pasture and is relatively flat, with an average slope between two and eight percent. Land to the north, west, and south -- within the overall mixed-use development -- is set aside as wetland mitigation and buffer areas. The proposed eight three-story apartment buildings would be located in the western and northern portion of an 18.4-acre mixed-use development area of which 8.62 acres are set aside as wetland associated buffers. The mixed-use development area includes Tracts A-H and Units 1, 2 (medical office building); Units 3A, C, D (retail buildings); Unit 3B (fast food restaurant); and Units 4A-C. The proposed eight apartment buildings would be constructed within Unit 1 and portions of Units 4A and C. Future development of Unit 4B would require a separate permit application. \textit{Exhibit 2.G; Exhibit 2.H, page 2; Exhibit 2.L; Exhibit 24.}

\textsuperscript{5} The City identifies the following goals and policies as particularly relevant to the proposed use Land Use Policies POLU-22, POLU-34, POLU-37, and POLU-38, Housing Policies HS-9 and HS-38. \textit{Exhibit 19, Staff Report, page 2.}

\textsuperscript{6} Tom Bonsell, City Associate Planner, testified that the City calculated density based on the entire 18.4 acres. \textit{Testimony of Mr. Bonsell.}

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10. SW Sedgwick Road runs generally east/west along the southern edge of the mixed-use
development area. Sidney Road SW runs north/south along the eastern edge of the
overall development. Existing private access roads extend through the mixed-use
development, connecting to SW Sedgwick Road and Sidney Road SW. Access roads for
the apartment buildings would be connected to existing roads within the mixed-use

11. Heath & Associates, Inc. prepared a Traffic Impact Analysis (TIA) for the Applicant
dated February 2012. It reviewed a design layout for 90 apartment units in six buildings
with either a 10,000 square-foot office building or an additional 15 apartment units. The
TIA determined that the existing development entrances onto both SW Sedgwick Road
and Sidney Road SW provide adequate sight distances. The TIA reviewed traffic delays
at the intersections of Sidney Road SW / SW Sedgwick Road, Sidney Road SW /
development entrance, and SW Sedgwick Road / entrance to determine existing traffic
levels. The TIA found that the intersections currently operate at Level of Service (LOS)
C and above. The TIA estimated that the proposed development would produce roughly
62 additional AM peak hour trips; 71 additional PM peak hour trips; and up to 709 total
additional daily trips. The TIA concluded that traffic would continue to operate at LOS C
or better with the proposed residential development. No additional mitigation to adjacent
road infrastructure or additional intersection turn lanes is required. *Exhibit 2.G, page 6:
Exhibit 2.J, pages 15 and 16.*

12. John Laufenberg, for Wetland Resources, Inc. (WRI), prepared a Wetland Report,
Wetland Mitigation Plan, and Habitat Management Plan on behalf of the Applicant, dated
March 30, 2005. The report and plans were part of the initial development proposal for
the now-existing medical office and retail buildings. Six wetlands were delineated on the
property at that time. The Applicant mitigated impacts to the wetland buffers through
buffer enhancement and restoration. WRI reviewed the wetland boundaries as part of the
Sedgwick Landing Mixed Use Project in a letter dated January 27, 2012. WRI
determined that no significant wetland boundary changes have occurred. The proposed
apartment buildings would be setback 15 feet from the wetland buffer edges, as required
by City code. The proposed apartment buildings would not create any new direct
wetland or buffer impacts. *Exhibit 2.I.*

13. The Applicant would construct a walking trail within the outer 25 percent of the wetland
buffers and construct a playground area. The Applicant would also construct sidewalk

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7 Capacity analysis is used to determine level of service (LOS), which is an established measure of
congestion for transportation facilities. LOS A represents primarily free-flow operations at average travel
speeds. LOS C represents stable operations, with longer queues and lower average travel speeds. LOS F
characterizes arterial flow at extremely low speeds, with intersection congestion likely, with long delays
and extensive queuing. *Exhibit 2.J, pages 6, 8, 18 – 20.*

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connections to the rest of the mixed-use development and pedestrian pathways to SW Sedgwick Road and Sidney Road SW. Exhibit 2.G. City code requires 1.3 to 2.0 parking spaces depending on the number of bedrooms for each living unit. POMC 16.45.250. Each proposed unit would meet or exceed the minimum parking requirements. Exhibit 2.G; Exhibit 19, Staff Report, page 6.

14. The Applicant prepared a Conceptual Drainage Analysis dated February 1, 2012. All stormwater runoff from the site ultimately discharges into Ruby Creek, which flows into BlackJack Creek. Both are identified as salmon-bearing streams, requiring all runoff to receive enhanced treatment. The proposed project would utilize the detention/wetpool facilities constructed with previous phases of development. Catch basins and conveyance pipe already in place would be used to the extent possible. Runoff from roof areas, driveway areas, and road in the southwest portion of the apartment development would be collected in catch basins and conveyed to a detention pond before being discharged into a media filter treatment manhole for enhanced water quality treatment. Runoff from the roof areas, driveways, access road, and the future medical building and parking areas in the northeast portion of the apartment development would be collected in catch basins, conveyed to an underground detention vault, and then discharge into a media filter treatment manhole for treatment. Stormwater quantity control, quality treatment, and erosion and sedimentation control would be designed in accordance with the approved City Stormwater Manual. The proposed apartment development would add 2.85 acres of impervious area and 1.46 acres of lawn/landscape area. Exhibit 2.H; Exhibit 8.

15. An existing ditch runs north/south onsite. A portion of this ditch is within a culvert. The proposed project would relocate and install a new culvert. Applicant Representative Thair Jorgenson, P.E., testified that the state Department of Fish and Wildlife has issued a Hydraulics Project Approval (HPA) for the proposed ditch relocation. Exhibit 19, Staff Report, page 2; Testimony of Mr. Jorgenson.

16. The Applicant submitted a draft architectural landscape plan with the application. The City reviewed the plan and generally supported its provisions. The Applicant would submit a final landscape plan for City review prior to the issuance of a site development permit. Exhibit 19, Staff report, page 7.

17. Chapter 16.55 POMC provides recommended design guidelines for development of commercial projects. However, the City Staff Report notes that the guidelines are not mandatory, and cannot and should not be inflexibly applied to every development project. The existing commercial development would buffer the proposed residential development from the adjacent public streets. The Project Narrative states that the visual seclusion from the major roads would not be desirable for a commercial development, but is desirable in a residential development. The proposed residential structures and landscaping would be designed to complement the existing mixed-use development. The residential structures would be generally oriented towards the wetland buffer areas to the

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west and north to provide the units with an open rural feel. *Exhibit 2.G; Exhibit 19, Staff Report, pages 3 – 7.*

18. The City would provide water and sewer service to the proposed apartment buildings. Off-site improvements and the installation of adequate system improvements would be required to facilitate the service of the proposed project. Sanitary sewer system improvements would comply with City standards. Mark Dorsey, City Engineer, testified that the City anticipates that adequate water supply is available to the proposed project. *Exhibit 19, Staff Report, pages 8 and 10; Testimony of Mr. Dorsey.*

19. The South Kitsap Fire and Rescue’s Prevention Office reviewed the Applicant’s plans and proposed conditions requiring the installation of residential sprinkler systems in each building, a demonstration that adequate water flow would be available from fire hydrants, and the installation of a fire department access road before the commencement of construction. *Exhibit 5.*

20. Mr. Jorgenson testified that the Applicant agrees with the proposed conditions, but raised concerns about MDNS Condition No. 6, which would require him to provide to the City a copy of a reciprocal easement providing access over the driveway to the west of a future restaurant site. Mr. Dorsey agreed with Mr. Jorgenson that this condition could be met by providing a condominium map amendment showing the access. *Testimony of Mr. Jorgenson.*

21. Cinde’ Gardner-Gillispie, a neighboring resident to the west, testified that her property contains a tree farm, pond and trails. She testified that her concerns about stormwater drainage into the pond on her land have been resolved, but that she remains concerned about access to her property from the wetland buffer. MDNS Condition No. 10 requires that all pedestrian access and nature trail facilities be made available for public access. Paul Casey, Project Architect, testified that the project’s proposed nature trail is approximately 300 to 500 feet from the Gardner-Gillispie property line. Mr. Jorgenson agreed to work with Ms. Gardner-Gillispie to address her concerns about apartment residents and children exploring the wetland buffer and entering her property. Methods such as ‘no trespassing’ signs, suitable fencing where appropriate, restricting access to the wetland buffer through CCRs, or posting of the wetland buffer along the nature trail were discussed. Mr. Jorgenson agreed that the Applicant would help construct a fence on the Gardner-Gillispie property if requested to do so and an agreement could be reached. *Exhibit 12; Exhibit 22; Testimony of Ms. Gardner-Gillispie; Testimony of Mr. Casey; Testimony of Mr. Jorgenson.*

22. A Site Development Activity Permit is required prior to construction activities and all development is required to conform to the most recent copy of the City’s Developers Handbook. The Planning Department determined that, with conditions, the proposal would be consistent with the Comprehensive Plan, the Municipal Code, and other

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applicable City regulations. The Department recommended approval of the CUP with conditions. *Exhibit 19, Staff Report, pages 10 and 11.*

**CONCLUSIONS**

**Jurisdiction**

The City of Port Orchard Hearing Examiner is authorized to hold a hearing on the conditional use permit application. Based on the evidence in the record, the Hearing Examiner may grant, grant with conditions, or deny the application. *Port Orchard Municipal Code (POMC) 2.76.080; POMC 2.76.100; POMC 2.76.110; POMC 16.01.021(3).**

**Criteria for Review**

A conditional use permit shall be granted only if the applicant demonstrates that the proposed use:

(a) Will be designed in a manner which is compatible with the character and appearance with the existing, or proposed development in the vicinity of the subject property;

(b) Will not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties due to the location, size, and height of buildings, structures, walls and fences, and screening vegetation of the proposed use;

(c) Will be designed in a manner that is compatible with the physical characteristics of the subject property;

(d) Will mitigate impacts in a manner equal to or greater than the standards of this code;

(e) Will not conflict with the health and safety of the community;

(f) Will not create pedestrian and vehicular traffic that will be hazardous or conflict with existing and anticipated traffic in the neighborhood; and

(g) Will provide adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities.

*POMC 16.35.010(3).*

The criteria for review adopted by the Port Orchard City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

**Conclusions**

1. The proposed project will be designed in a manner compatible with the character and appearance with the existing or proposed development in the vicinity of the subject property. The existing commercial development was intended to include a residential development. Although previously designed for 13 residential duplex structures, the current request is to construct eight three-story apartment buildings. The Applicant has designed the current residential development proposal to complement the
existing and future commercial development. The existing commercial development will buffer the residential use from Sydney Road SW and SW Sedgwick Road. *Findings 9, 16 and 17.*

2. **The proposed project will not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties.** Access to the proposed residential development will be provided through the existing commercial development. Heath & Associates, Inc. prepared a new traffic impact analysis for the Applicant to summarize traffic impacts from a full residential apartment buildout. No traffic mitigation is required. Development of the proposed use will provide a pedestrian nature trail and pedestrian connection to the existing commercial areas. The proposed development is not connected to adjacent property developments, and will not interfere with other developments. The Applicant agreed to work with a property owner to the west to address possible trespass from the pedestrian nature trail or from the surrounding wetland buffer area. *Findings 7, 10, 11.*

3. **The design is compatible with the physical characteristics of the subject property.** The property is generally flat. The proposed development will not impact wetlands and associated buffers located west and north of the proposed residential area. The apartment buildings will provide adequate parking to accommodate apartment residents. The City reviewed a draft landscape plan, prepared by the Applicant, and generally supports the proposed design. A pedestrian trail along the bordering wetlands will accompany the development, as will a park. *Findings 8 - 13, 16, 17.*

4. **With conditions, impacts will be mitigated in a manner equal to or greater than the standards of the City code.** The City reviewed the Applicant’s environmental checklist and issued an MDNS with conditions that are included with this decision. A traffic impact analysis was prepared and no traffic mitigation for increased traffic is necessary. The Applicant will provide adequate parking spaces. The City has reviewed the draft landscape plan provided by the Applicant. Conditions are necessary to ensure that the proposal conforms to the most recent copy of the City’s Developers Handbook; that a Site Development Activity Permit is obtained prior to construction; that all sanitary sewer systems comply with City standards; and that stormwater quantity control, quality treatment, and erosion and sedimentation control is designed in accordance with the approved City Stormwater Manual. *Findings 3 - 22.*

5. **With conditions, there will be no conflict with the health and safety of the community.** The City provided adequate public notice of the CUP application and associated open record hearing. The proposal is allowed with a conditional use permit in the Co zone and is not expected to affect health or safety of surrounding land uses. The South Kitsap Fire & Rescue reviewed the proposal and provided recommended conditions of approval. The City will provide water and sewage connections. Conditions are necessary to ensure that the proposal conforms to the most recent copy of the City’s

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Developers Handbook; that a Site Development Activity Permit is obtained prior to construction; that off-site water and sewer improvements are completed; and that stormwater control and treatment are designed in accordance with the City’s Stormwater Manual. Findings 1 - 22.

6. **With a condition, there will be no pedestrian and vehicular traffic that would be hazardous or conflict with existing and anticipated traffic in the neighborhood.** A Traffic Impact Analysis concluded that no traffic mitigation for increased traffic is needed. A MDNS condition requires a sidewalk or pedestrian path to be constructed on one side of the proposed residential access drive. Findings 10 - 12.

7. **With conditions, the proposed project will provide adequate public facilities or services and will not adversely affect public services to the surrounding area.** The South Kitsap Fire & Rescue reviewed the proposal and recommended conditions of approval. The City will provide water and sewage connections to the residential development. The City Public Works department provided comments on the proposal. Conditions are necessary to ensure that the proposed use conforms to the most recent copy of the City’s Developers Handbook; that a Site Development Activity Permit is obtained prior to construction; that off-site water and sewer improvements are completed; and that stormwater control and treatment are designed in accordance with the City’s Stormwater Manual. Findings 14 – 19, 22.

**DECISION**

Based on the above findings and conclusions, a conditional use permit to construct 106 apartment units in eight buildings on a 4.3 acre site on the northwest corner of Sidney Road SW and SW Sedgwick Road, in Port Orchard, Washington is **GRANTED**, subject to the following conditions:

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**A. SEPA Mitigation**

1. The applicant shall provide an updated required Storm Drainage Analysis, and Traffic Study.

2. In conjunction with the 2009 Comprehensive Sanitary Sewer Plan Update, sanitary sewer service is available to your parcel(s) with the provision that off-site improvements shall be required to facilitate the service of your proposed project. Please note that the installation of adequate system improvements to serve the aforementioned parcel(s), or a proportionate share of these improvements, will be required as part of the entitlement process. The determination of your project’s impact to the sanitary sewer system and consistency with the proposed capital facility plan is best determined via review by BHC Consulting Engineers, Inc. The cost of this review service is to be provided by the project proponent.

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*This decision includes conditions required to reduce project impacts as well as conditions required to meet City Code standards.*

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3. In conjunction with the 2009 Water System Plan, water service is available to your parcel(s) with the provision that off-site improvements shall be required to facilitate the service of your proposed project. Please note that the installation of adequate system improvements to serve the aforementioned parcel(s), or a proportionate share of these improvements, will be required as part of the entitlement process for any project on these parcels. The determination of your project's impact to the water system and consistency with the proposed capital facility plan is best determined via review by PACE Engineers. The cost of this review service is to be provided by the project proponent.

4. This project includes the construction of a detention vault, which requires a building permit issued by the Department of Community Development. A Structural Engineer, registered in the State of Washington, shall prepare the construction drawings. In addition, a geotechnical engineering analysis of the vault design is required. 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.

5. The owner or homeowners association (HOA) shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of Occupancy Permits 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 Associated with Maintenance and Operation of Storm Drainage Facilities that guarantees the City that the system will be properly maintained. Wording must be included in the covenant that will allow the City 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 or HOA and giving him/her a reasonable time to do the necessary work. Should City forces be required to do the work, the owner or HOA will be billed at the current City rates.

6. A copy of reciprocal easement providing access over the driveway to the west of the future restaurant site for the housing and the restaurant will need to be provided before the SDAP Permit will be issued.

7. Submit a Geotechnical Report to include, but not limited to soil compaction, fill and rockeries.

8. As preliminarily depicted on Map A1.1, received and stamped July 9, 2010, a minimum 3 foot wide nature walking trail shall be constructed adjacent to the wetlands and creek, and may meander into or through the associated buffers. The trail must be extended to provide at a minimum of two ends clear connections with proposed or existing paved

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pedestrian circulation facilities, and must provide clear pedestrian access to the Public Right-of-Way. Trail design and specifications shall be included on final landscape plans submitted for approval prior to SDAP issuance.

9. The applicant shall provide documentation of the approved JARPA permit from the Department of Fish and Wildlife, prior to issuance of SDAP.

10. In order to insure pedestrian safety, a minimum 5’ wide sidewalk or separated hardscape (asphalt, pavers, etc.) pedestrian path shall be constructed on one side of the proposed residential access drive with associated ADA access facilities. All pedestrian access and nature trail facilities shall be made available for public access.

11. The applicant shall be responsible for citywide impact fees, if any, that may be enacted by the City Council prior to the issuance of the Certificate of Occupancy (C of O), consistent with Port Orchard Municipal Code Section 16.70.

12. The applicant shall offset the direct impacts of the onsite residential density in accommodation of recreation requirements for the number of housing units in a proportionate amount for families and residents of the project. Direct project mitigation may take the form of on-site parks, trails, and/or other recreation amenities, or other agreed upon recreation mitigation.

13. The owner or homeowners association (HOA) shall be responsible for ownership and maintenance of the parks, trails, and/or recreational amenities provided on site.

B. PLANNING CONDITIONS

14. Prior to commencing any construction activities the applicant is required to obtain a Site Development Application Permit (SDAP) or a grading permit. In addition, the applicant must obtain a building permit prior to commencement of any building activities.

15. The required SDAP/Grading plan shall include a landscape plan in conformance with POMC Chapter 16.50. The applicant is required to post a two-year performance bond including provisions for irrigation bonding.

C. SOUTH KITSAP FIRE DISTRICT CONDITIONS

16. A minimum of 1,500 gallons of water per minute, measured at a residual pressure of 20 p.s.i., shall be required to provide adequate fire flow for a building of 9,000 square foot, if the construction type consist of Type V-B.

17. Hydraulic calculations or a On-Site fire flow test conducted shall be provided to the Fire District showing that adequate fire flow can be severed. This information will need to be provided and approved by the Fire District before the District can approve any building permits.

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18. All of the buildings are required to have a fire sprinkler system, plans for the fire sprinkler system must be reviewed and approved by South Kitsap Fire & Rescue’s Fire Prevention Office prior to installation. Submittals for review shall include specifications on all devices to be installed.

19. Before construction may begin on any lot, fire department vehicle access shall be provided. Access roads shall be provided for all structures more than 150 feet from a public access road. Access roads shall be a minimum of 20 feet in unobstructed width, be designed and maintained to support the imposed loads of fire apparatus (45,000 pounds) and must have a surface that provides all-weather driving capabilities.

D. PUBLIC WORKS/ENGINEERING CONDITIONS

General
20. All of the development shall conform to the most recent copy of the City of Port Orchard’s Developers Handbook at the time of complete application.

21. Following land use approval, a Site Development Activity Permit (SDAP) will be required prior to construction activities. Submit seven (7) copies of plans with SDAP Application.

22. Provide a copy of all compaction and materials testing reports to the Assistant Engineer upon completion and before the Certificate of Occupancy will be issued.

23. Applicant shall submit two sets of as-built blueprints and one electronic media copy at the end of the project.

24. Prior to approval of the construction plans, all off-site easements must be recorded and submitted to the City.

Water
25. Prior to approval of the construction plans, all off-site easements must be recorded and submitted to the City.

26. Copy of the report/review from PACE Engineers shall be submitted with the Site Development Activity Permit (SDAP) Application.

Sewer
27. All sanitary sewer system improvements shall comply with City of Port Orchard Standards. Provide testing for sewer to the building per the Developer’s Handbook.

28. Copy of the report/review from BHC Consulting Engineering, Inc. shall be submitted with the Site Development Activity Permit (SDAP) Application.
Stormwater

29. Stormwater Permits are only good for three years from issuance per City of Port Orchard Municipal Code 15.32.030(5)(c):

   A stormwater management permit shall, at the time of its issuance, specify a maximum expiration date, not to exceed three years from the date of issuance. A stormwater management permit shall expire upon approved completion of construction, or upon the specified maximum expiration date, whichever comes first. In the event that a stormwater management permit expires prior to the completion of construction, all construction activity must cease. A new stormwater management permit application must be submitted, and the issuance of a new stormwater management permit shall be, at the discretion of the director, subject to city site development standards in force at the time of the new permit application.

30. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with the approved City of Port Orchard Stormwater Manual. 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 City of Port Orchard Ordinances in effect at the time of application.

31. The project proponent shall be responsible for installing any necessary off-site downstream drainage improvements as identified within the downstream capacity analysis. Procurement of any permits and/or easements necessary to install said off-site improvements shall be the responsibility of the project proponent. As indicated above, prior to approval of the construction plat, all easements must be recorded and submitted to the City.

32. 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 any construction permits.

Traffic and Roads

33. Construction of handicap access facilities within existing or proposed City right-of-way shall conform to the requirements of the Americans with Disabilities Act.

34. The sight distance shall meet the requirements of the City of Port Orchard Road Standards. The sight distance certification shall also note necessary measures to correct and maintain the minimum sight triangle.

35. Any work within the City right-of-way shall require a permit to perform work on City

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right-of-way and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted separately. The need for and scope of bonding will be determined at that time.

Decided this 8th day of May 2012.

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center