BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD

In the Matter of the Application of

Thair Jorgensen, P.E., on behalf of Rush Design, Inc.

For a Conditional Use Permit

No. CUP 037-12
Southwest Sidney Plaza
Mixed Use Development
FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to construct a mixed-use development, including a 14,000 square foot retail building; nine, three-story apartment buildings; recreational building; pool; and associated parking on property 13.78 acres in size at the southwest corner of the Sedgwick/Sidney Road intersection, in Port Orchard, Washington is APPROVED. Conditions of approval are necessary to mitigate specific project impacts.

SUMMARY OF RECORD

Hearing Date:
The Hearing Examiner held an open record hearing on the request on March 21, 2013.

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

Tom Bonsell, City Planner and Acting Director, City Planning Department
Mark Dorsey, City Engineer
Thair Jorgensen, P.E., Applicant Representative
Paul Casey, Applicant Architect
Dan Balmelli, Applicant Engineer
Jerry Gaudette
Terry Cousins

Exhibits:
The following exhibits were admitted into the record:
1. Pre-Application letter, dated July 25, 2012
2. Application submittal, including the following documents:
   A. CUP Application, received November 28, 2012
   B. Contact Information, dated September 4, 2012
   C. Letter authorizing Thair Jorgenson as agent for project, dated August 30, 2012
   D. Property Owners List verification statement, map, and mailing list, dated September 21, 2012
   F. Legal description and tax parcel numbers, received November 28, 2012
G. Project narrative, dated November 2012
I. Review letter of Wetland Analysis and site visit report, Marc E. Boulé, dated September 10, 2012
J. Conceptual Wetland Mitigation Plan, dated October 30, 2012
K. Traffic Impact Analysis, dated October 2012
L. Joint Aquatic Resources Permit Application (JARPA) for ditch realignment, dated November 27, 2012
M. Environmental Checklist, dated November 16, 2012
N. Preliminary Stormwater Site Plan, including Geotech Report, dated November 15, 2012
O. Color Site Plan, dated November 16, 2012
6. Comment memorandum from Gary Rogers, South Kitsap Fire and Rescue, dated December 5, 2012
7. Email from Andrea Archer-Parsons, Assistant City Engineer, City Stormwater Manager, dated December 13, 2012
8. SEPA Conditions memorandum from Andrea Archer-Parsons, dated January 14, 2013
15. Comments from Jerry A. and Alice L. Gaudette, dated January 30, 2013
16. Comments from Dean Cooper, dated February 9, 2013
17. Tree Conservation Plan – 1 sheet, dated February 14, 2012
23. Staff Report, received March 21, 2013
24. Proposed Common Recreation Areas Site Plan, dated March 21, 2013

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26. Letter from Thair Jorgensen, P.E., to Tom Bonsell, Acting Director, City Planning Department, dated March 18, 2013

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

**FINDINGS**

**Application and Notice**

1. Thair Jorgenson, P.E., for Rush Design, Inc. (Applicant)\(^1\) requests a conditional use permit (CUP) to construct a mixed-use development, including a 14,000 square foot retail building; nine, three-story apartment buildings; recreational building; pool; and associated parking on property 13.78 acres in size at the southwest corner of the Sedgwick/Sidney Road intersection, in Port Orchard, Washington.\(^2\) *Exhibit 2.A.*

2. The City of Port Orchard (City) determined the CUP application was complete on December 11, 2012. *Exhibit 5.* On January 25, 2013, the City mailed notice of the application to surrounding property owners, posted notice on the subject property, and published notice in the City newspaper of record. *Exhibit 13.* On March 8, 2013, the City mailed notice of the open record hearing associated with the application to surrounding property owners and posted notice on the subject property. On March 15, 2013, the City published notice in the City newspaper of record. Tom Bonsell, City Planner and Acting Director, City Planning Department, testified that notice of the hearing was published in the City newspaper of record nine days before the hearing. *Exhibit 21; Exhibit 22; Testimony of Mr. Bonsell.*

**State Environmental Policy Act**

3. The City acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The City reviewed the Applicant’s SEPA Environmental Checklist and other available information. The City determined that, with 31 conditions, the proposal would not have a probable significant adverse impact on the environment, and issued a Mitigated Determination of Nonsignificance (MDNS) on February 22, 2010. Mr. Bonsell testified that the MDNS was issued on February 22, 2013, not February 22, 2010, which was a typographic error. The 31 conditions include conditions concerning plans and fees, landscaping, wetland buffer enhancements, trail completion, a restriction on uses within the future Commercial Development area, approved JARPA permit, stormwater control, traffic and roads, sewer, and water. The City staff report states that the MDNS was not

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

\(^2\) The subject properties are identified by tax parcel numbers 102301-4-058-2009, 102301-4-019-2007, 102301-4-059-2008, 102301-4-024-2000, and 102301-4-018-2008. *Exhibit 2.A; Exhibit 23, Staff Report, page 1.* A legal description of the property is provided in Exhibit 2.E.
appealed. Exhibit 2.M; Exhibit 18; Exhibit 23, Staff Report, page 1; Testimony of Mr. Bonsell.

4. According to the City staff report, the City received two comments in response to the MDNS. A letter from Jerry A. and Alice L. Gaudette, received February 1, 2013, inquired how the stormwater system of the proposed development would be designed and what mitigation factors would be employed; how the water system of the proposed development would be constructed; how the developer will avoid unsightly, empty commercial space, referencing the existing development at the northwest corner of the Sidney Road/Sedgwick Road intersection; and whether there are surface indications of a history of unstable soils in the immediate vicinity. An email from Dean Cooper, owner of property across the street from the subject property, dated February 9, 2013, expressed concern that stormwater runoff from the proposed development would travel onto his property and inquired how the stormwater system of the proposed development would be designed to avoid this impact. Exhibit 15; Exhibit 16; Exhibit 23, Staff Report, page 2.

5. Mr. Bonsell testified that the City modified landscaping requirements and modified a MDNS condition governing the proposed development in response to the comments received on the MDNS. Mr. Bonsell testified that MDNS conditions stand alone and should not be considered conditions imposed through the CUP review process. Testimony of Mr. Bonsell.

6. A letter from Thair Jorgensen, P.E., Applicant Representative, dated March 18, 2013, responded to comments submitted to the City. The letter states the proposed stormwater system would be sized based on the 2005 Washington Department of Ecology Stormwater Management Manual (2005 Ecology Design Manual). According to the letter, the runoff flow rate from the entire site would be lower than it is under current site conditions, and the post-development runoff rate would be equivalent to the site being covered in old growth forest, which has very little runoff. The letter states that soils on the subject property do not support infiltration or retention of stormwater runoff on the subject property. Large detention ponds would be constructed on the subject property to store runoff from the developed site, and release of runoff from the ponds would be timed to occur so release rates do not exceed runoff rates under old growth forest conditions. With the lower post-development runoff rate than current site conditions, the letter states that there should be no increase in runoff rates to the drainage system downstream of the proposed development site and no measurable impact on the downstream drainage system. Exhibit 26.

7. Dan Balmelli, Applicant Engineer, testified that, under the proposal, approximately 63 percent of the subject property would be developed, and of that, approximately 75 percent of developed area would consist of impervious surface. Mr. Balmelli testified that the subject property drains to the north and south under existing conditions. Mr.
Balmelli added that the proposed detention ponds would be sized as if no infiltration would occur on the subject property. *Testimony of Mr. Balmelli.*

8. Mr. Balmelli testified that fencing is required around the detention ponds for safety and to avoid liability. Mr. Balmelli testified that cedar fencing would be constructed, and landscaped berms would be used to limit visual impacts of the ponds and fencing. Jerry Gaudette inquired whether the landscaping would be located on top of the berm or between the fence and slope of the berm. Mr. Balmelli responded that landscaping would be located between the fence and the bottom of the berm, not on top of the berm. *Testimony of Mr. Balmelli; Testimony of Mr. Gaudette.*

9. The March 18, 2013, letter from the Applicant Representative notes that adding new on-site wells is not a proposed or feasible option to provide required water service. As proposed, looped water mains throughout the subject property would connect to existing City water mains within Sedgwick Road and Sidney Road. The Applicant anticipates that, at minimum, a new water main would need to be extended by the project owners east along Sedgwick Road from the Sidney Road/Sedgwick Road intersection to connect to the existing water main. *Exhibit 26.*

10. According to the March 18, 2013, letter from the Applicant Representative, the owners of the subject property do not intend to move forward with a building development on the commercial pad within the subject property until a user is interested in leasing or constructing a new building on the site. The letter states that the retail spaces currently vacant within the existing development at the northwest corner of the Sidney Road/Sedgwick Road intersection had secured tenants at the time of construction, but the tenants dropped out with the recent economic downturn. As proposed, the development will provide frontage improvements on Sidney Road and Sedgwick Road, including lane widening, curbs, gutters, sidewalks, planting strips, and street lighting. The Applicant conducted a Traffic Impact Analysis to analyze traffic impact of the proposed development and prepared a soils analysis for the proposed development, dated October 27, 2011, and submitted them with SEPA review materials to the City. *Exhibit 26.*

**Comprehensive Plan and Zoning**

11. The subject property is designated Commercial by the City Comprehensive Plan (Comprehensive Plan). *City 2013 Comprehensive Plan Map.* The intent of the Commercial designation is to create a compact, pedestrian-oriented shopping and employment district with a variety of urban and social activities. Uses should meet the high standards for design and appearance. Within the Commercial designation, the City should ensure that multi-family housing is developed at densities that provide affordable housing opportunities for the city’s citizens. *Comprehensive Plan, Land Use Element, pages 2-10 to 2-11.*

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12. Comprehensive Plan goals and policies are relevant to the proposed development. Land Use Element goals and policies call for creating a wide range of housing types for affordable housing and opportunities to retrofit single-use commercial and retail developments into walkable, mixed-use areas served by transit, thereby reducing the need for people to drive to every destination. Land Use goals and policies also encourage community centers that provide goods and services to several neighborhoods, including the intersection of major arterials at Sidney/Sedgwick, and provide for a mix of uses, including commercial retail, office, residential, and public, with the predominant use being commercial retail. Comprehensive Plan Housing Element goals and policies encourage and facilitate development of a variety of housing types, including single-family residential, multi-family homes, and manufactured homes, and encourage implementation of flexible development standards for housing being proposed in the vicinity of critical areas to meet both goals of housing targets and environmental protection. Comprehensive Plan, Land Use Element, pages 2-23 to 2-25; Comprehensive Plan, Housing Element, pages 3-6 and 3-10.

13. The subject property is located in the City’s Commercial zoning district. The purpose of the commercial retail and office (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. These purposes are accomplished by providing for office uses as well as a wider range of the retail, professional, governmental, and personal services than are found in neighborhood and community business areas, and by encouraging planned developments that incorporate aesthetic as well as functional concerns. Port Orchard Municipal Code (POMC) 16.13.150(1) and (2). Multi-family housing is allowed within the Co zoning district with a CUP. Multi-family housing is permitted as part of a mixed-use development with approval of a CUP and is limited to a maximum development density of 20 dwelling units per acre (du/ac). POMC 16.30.080, Note 7.

14. The City staff report states that the Southwest Sidney Plaza Mixed Use Development will also include a commercial-use element that is not part of this CUP application. Exhibit 23, Staff Report, page 3. Mr. Bonsell testified that the commercial use is not specifically identified at this time, but review, for purposes of analyzing stormwater and traffic impacts for the proposal, focused on a “generic mixed use” development. Mark Dorsey, City Engineer, proposed a condition of approval that, if the proposed commercial use has a greater impact than a drugstore/drive-through use, then additional traffic analysis and mitigation may be required. Testimony of Mr. Bonsell; Testimony of Mr. Dorsey.

15. Common development standards under chapter 16.40 POMC are applicable to the proposed development. The proposed development must adhere to standards requiring 10-foot-wide public street right-of-way, 85 percent maximum covered surfaces, and a 33-foot building height limitation. There are no required side yard or rear yard setbacks.
POMC 16.40.025. The City staff report states that the development proposal conforms to these common development standards. Exhibit 23, Staff Report, page 6.

Existing Conditions and Surrounding Property

16. The subject property consists of five parcels that together measure 13.79 acres in size. The main portion of the subject property is roughly rectangular in shape with a pie-shaped extension in the west portion of the property. A series of small wetlands and depressions bisect the property in a generally north-south direction. The property is mostly flat or gently sloping and was recently used for farming and grazing. Exhibit 2.O; Exhibit 23, Staff Report, page 2.

17. Sedgwick Road is located adjacent to the north and west of the subject property, and Sidney Road is located adjacent to the east of the property. The Sedgwick/Sidney Road intersection is located adjacent to the northeast corner of the subject property. The northwest corner of the intersection contains the existing Sedgwick Landing mixed-use development, where an apartment development is currently under construction. The apartment development consists of three-story, garden-style buildings, with up to 21 units per building, residentially scaled exterior siding, windows, and sloping shingle roof tops. Adjacent property, to the west across Sedgwick Road and south of the subject property, contains residential development. Adjacent property to the east, across Sidney Road, contains retail/commercial development. And adjacent property to the north, across Sedgwick Road, contains retail/commercial development with a health clinic. Exhibit 23, Staff Report, pages 2 to 3; Exhibit 2.O; Exhibit 2.P.

Proposed Development

18. As proposed, a future commercial/retail development area would be located in the northeast corner of the subject property, adjacent to the Sedgwick/Sidney Road intersection. A main multi-family residential portion of proposed development would be located adjacent to the south of the future commercial/retail development site and adjacent to the west of Sidney Road. The main residential portion of the proposed development would include a community recreation building. Seven multi-family residential buildings would be constructed within the main residential portion of the proposed development, which would be accessed through an internal road. The internal road would extend south from Sedgwick Road through the proposed development (west of the future commercial/retail development area), then turn east to connect to Sidney Road. A second area of multi-family residential development would be located within the northwest portion of the subject property. This northwest residential portion of the proposed development would contain two multi-family residential buildings and would be accessed by an internal road extending east from Sedgwick Road. An internal maintenance road extending across wetland area in the central portion of the subject property would connect the two areas of multi-family residential development on the subject property. As proposed, 126 multi-family residential units would be constructed.
for a development density of approximately 9.14 du/ac. According to the City staff report, the proposed multi-family residential buildings would be three-story, garden-style apartment buildings containing up to 24 units per building. The buildings would have residentially scaled exterior siding, windows, and sloping shingled roof tops. Parking area would be located adjacent to both areas of multi-family residential development within the subject property. The City staff report states that the Applicant has provided parking calculations in accord with POMC 16.45.250 parking standards and that the proposal meets or exceeds required parking. Exhibit 2.O, Exhibit 2.P, Exhibit 23, Staff Report, pages 1, 4, and 6.

Wetlands and Critical Areas

19. The Applicant’s Jurisdictional Wetlands Analysis, dated May 31, 2007, delineated four wetlands on the subject property: Wetland A, Wetland B, Wetland C, and Wetland D. All wetlands are Category IV wetlands. Wetland A is a small, less than 0.15-acre, isolated Category IV slope wetland that discharges below the surface to the roadside ditch on the west side of Sidney Road. Wetland A is located in the east portion of the subject property along Sidney Road. Wetland B is the largest wetland on the subject property at two acres in size. Wetland C is located immediately upstream of Wetland B, and two poorly functioning, 12-inch-diameter culverts link the two wetlands under an existing access driveway. Wetland B and C are located in the central portion of the subject property. Wetland D is a small, less than 0.15-acre, isolated depression wetland located in the southeast portion of the subject property. Exhibit 2.H.

20. Category IV wetlands that are isolated and less than 10,000 square feet in size are not regulated under the City critical areas code. POMC 18.04.030(2)(b). Category IV wetlands 10,000 square feet in size or greater are regulated under the City critical areas code. POMC 18.04.030(1)(d). Under the City critical areas code, regulated Category IV wetlands must be protected by a 25-foot-wide buffer, with a minimum 15-foot-wide building setback beyond the buffer. POMC 18.04.040(3). Wetland and buffer enhancement, wetland and buffer restoration/revegetation, and trails and trail-related facilities are allowed within the wetland and buffer area subject to development standards and the underlying CUP. POMC 18.04.050(1) and (2). The City staff report states that, as proposed, approximately 15,475 square feet of wetland and wetland buffer would be disturbed through construction of an access road from Sedgwick Road to the proposed development. As proposed, approximately 17,120 square feet of new wetland would be created on the subject property to replace lost wetland/buffer area in accord with POMC 18.04.100. POMC 18.04.100(c)(iii) provides for mitigation by replacing, enhancing, or providing alternative resources or environments within the same drainage basin. As proposed, the new, created wetland area would be located within the currently upland areas of the subject property adjacent to Wetlands B and C. This currently upland area would be re-graded to elevations similar to the existing wetlands, planted with native

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3 The calculation is: 126 dwelling units / 13.79 acres = 9.14 du/ac.

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wetland vegetation, and charged with roof runoff and other clean discharge to restore wetland hydrology. A 25-foot-wide buffer adjacent to Wetlands B and C would be planted with native vegetation. Mr. Bonsell testified that the ratio of impacted wetland and buffer area to new, created buffer would be approximately 1:1 and that proposed mitigation complies with City code. Exhibit 2.J; Exhibit 23, Staff Report, page 7; Testimony of Mr. Bonsell.

21. A proposed five-foot-wide trail would be located within wetland buffer and building setback area on the west and east sides of the wetland area located within the central portion of the subject property. One trail would be located adjacent to the east of the northwest residential portion of the proposed development, and the other trail would be located west of the main residential portion of the proposed development. Exhibit 2.O; Exhibit 2.P.

Stormwater, Utilities, and Public Services

22. The proposed development would contain three stormwater detention ponds. Two ponds would be located adjacent to the north (Pond C) and east (Pond B) of the northwest portion of multi-family residential development on the subject property. One pond (Pond A) would be located south of the main portion of multi-family residential development on the subject property. Pond C would be surrounded by a landscaped berm on the east side of the pond. Pond A would be surrounded by a landscaped berm on the north, east, and south sides of the pond. Pond A would be approximately 40,199 square feet in size, Pond B would be approximately 3,102 square feet in size, and Pond C would be approximately 12,424 square feet in size. Exhibit 2.O; Exhibit 2.P.

23. In response to the comment submitted by Mr. Gaudette, Mr. Dorsey testified that the southerly drainage course in the Applicant’s Preliminary Drainage Plan must address the capacity of the culvert to handle drainage, and there will be onsite mitigation to address this issue, if possible. Mr. Jorgensen testified that use of the 2005 Ecology Design Manual should result in less volume of offsite flow than currently exists, addressing Mr. Gaudette’s comment. Testimony of Mr. Dorsey; Testimony of Mr. Jorgensen.

24. Mr. Balmelli testified that runoff from rooftop areas would be directed into wetland areas on the subject property to aid in recharging wetland hydrology, and that construction activities would incorporate techniques to reduce sediment loading into wetlands during

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4 The Applicant’s Preliminary Site Plan, Sheet P1, and Preliminary Grading and Storm Drainage Plan, Sheets C2 and C3, appear to switch the name of the detention pond located on the north side of the proposed northwest portion of multi-family residential development and the pond located on the south side of the main portion of multi-family residential development. The Preliminary Site Plan states the north pond is named “Pond A” and the Preliminary Grading and Storm Drainage Plan states the north pond is named “Pond C”. Assuming the Preliminary Grading and Storm Drainage Plan is the more specific of the two, for purposes of this decision “Pond C” is the pond north of the northwest portion of proposed multi-family residential development and “Pond A” is the pond south of the main portion of proposed multi-family residential development. Exhibit 2.P.
construction. Mr. Balmelli added that sedimentation of runoff should be reduced after the subject property is developed because the sediment would settle within proposed detention ponds. Testimony of Mr. Balmelli.

25. Paul Casey, Applicant Architect, testified that a utility corridor would be located along the west edge of the subject property, south of the northwest portion of proposed multi-family residential development, as depicted on Exhibit 2.O. Exhibit 2.P also depicts a minimum five-foot-wide landscape buffer with filtered screening in this area, along the south and west boundary of the northwest portion of proposed multi-family development. In addition, a minimum 10-foot-wide buffer with “see through vegetation” would be established along the north and east boundary of the subject property, and a minimum five-foot-wide landscape buffer with filtered screening would be established along the south boundary of the subject property, adjacent to proposed detention Pond A and surrounding berm. Exhibit 2.O; Exhibit 2.P; Testimony of Mr. Casey.

26. Mr. Dorsey testified that comments and stipulations proposed by South Kitsap Fire & Rescue (Exhibit 6) should be included as conditions governing the CUP proposal. Mr. Jorgensen testified for the Applicant that he agrees these comments and stipulations are required by City code and should be included as conditions governing the CUP proposal. Mr. Bonsell testified that comments and stipulations within Exhibit 6 are required by City code. Testimony of Mr. Dorsey; Testimony of Mr. Jorgensen; Testimony of Mr. Bonsell.

27. According to the Applicant’s Project Narrative (Exhibit 2.F), the City owns an easement over an existing sanitary sewer pump station and gravity sewer main extending to the Sidney Road right-of-way. The Project Narrative states that the most feasible option for providing sanitary sewer service to the proposed development is by extending the existing sewer main from its current location across Sidney Road and through the proposed development. The Applicant’s Preliminary Sanitary Sewer Extension Plan depicts new sanitary sewer extensions from Sidney Road serving the main portion of proposed multi-family residential development and new sanitary sewer extensions serving the northwest portion of proposed multi-family residential development through a connection located within the proposed maintenance road linking the main and northwest portions of proposed multi-family residential development. An MDNS condition requires the Applicant to submit its sewer report showing analysis of the existing sewer system and proposed sewer system capacity to the City for review and approval. Exhibit 2.F; Exhibit 2.P; Exhibit 18.

28. The Applicant’s Preliminary Water Main Extension Plan (Exhibit 2.P) depicts water main extensions from a 12-inch water main in Sidney Road and Sedgwick Road serving the proposed development. The Plan depicts water mains extending though Sidney Road and Sedgwick Road all the way to the Sedgwick/Sidney Road intersection. A December 13, 2012, email from Andrea Archer-Parsons, Assistant City Engineer/Stormwater Manager, to Tom Bonsell and Mark Dorsey states that plans for the proposed development depict a
12-inch-diameter water main when the existing water main is only eight inches in diameter. The email also states that the water main does not currently extend as far as the Sedgwick/Sidney Road intersection. *Exhibit 2.P; Exhibit 7.*

29. Mr. Dorsey testified that the water/sewer extension shall continue west to Sedgwick Road. Mr. Jorgensen testified that a water/sewer extension is acceptable to provide connection to the west, to connect with proposed residential development, rather than along Sedgwick Road, if subject to a latecomer’s agreement if appropriate. *Testimony of Mr. Dorsey; Testimony of Mr. Jorgensen.*

### Landscaping and Recreation Area

30. Under POMC 16.40.025, 15 percent of the development site must contain softscape landscaped area. Softscape area may include perimeter buffers, parking lot plantings, and other landscape with soil or other natural surfaces. *POMC 16.40.025, Note 5.* The City staff report states that specific landscaping and tree retention provisions for uses established through a CUP must be determined during the applicable review process. According to the City staff report, the Applicant has submitted a draft architectural landscape plan to the City as part of the CUP application, and prior to issuance of a Site Development Permit Application (SDAP), a final landscape plan must be submitted to the City for review under chapter 16.50 POMC. The CUP application includes an Existing Tree and Vegetation Protection Detail plan, dated February 14, 2012 (Exhibit 17) and a Preliminary Landscape Plan, dated December 21, 2012 (Exhibit 9). The Preliminary Landscape Plan generally depicts landscaping around the perimeter and throughout the proposed development. The Preliminary Landscape Plan also depicts play equipment within the northwest portion of proposed multi-family residential development and within the main portion of proposed multi-family residential development. *Exhibit 23, Staff Report, page 7; Exhibit 9; Exhibit 17.*

31. Mr. Casey testified that Exhibit 24 depicts common recreation areas within the proposed development as play lots, which total approximately 11,500 square feet in size, or approximately 91 square feet per occupant. Exhibit 25 depicts exercise area and a community party plaza within the proposed community recreation building. Mr. Casey testified that building design would be similar to building design within the existing Sedgwick Landing development. *Exhibit 24; Exhibit 25; Testimony of Mr. Casey.*

### Traffic Impacts

32. Mr. Casey testified that the proposed development would include three access driveways to the development. One driveway would access the development from Sedgwick Road, another driveway would access the development from Sidney Road, and an access for emergency vehicles only would access the development from Sidney Road south of the other Sidney Road access. The proposed development would include sidewalks along the south side of Sedgwick Road, along the west side of Sidney Road, along both sides of the internal road accessing the main portion of proposed multi-family residential
development, and along the north portion of the internal road accessing the northwest portion of proposed multi-family residential development. *Exhibit 2.O.*

33. The Applicant’s Traffic Impact Analysis (TIA) (Exhibit 2.P) states that by 2017, with the proposed development, level of service (LOS) at the proposed westbound access from Sidney Road would deteriorate to LOS “E,” and LOS at the proposed southbound access from Sedgwick Road would deteriorate to LOS “D.” LOS for all other intersections analyzed in the surrounding area would be LOS “C,” or better, with the proposed development. Mr. Dorsey testified that the City does not collect traffic impact fees; instead, channelization would address traffic impacts of the proposed development. Mr. Dorsey testified that channelization can occur within Sedgwick Road or Sidney Road if needed. *Exhibit 2.K; Testimony of Mr. Dorsey.*

34. A cart path would extend from the northwest residential portion of the proposed development to the main residential portion of the proposed development. The gravel driveway would be constructed within a 20-foot-wide easement, County Recording No. 200502280229, which is the site of an existing access road. Mr. Casey testified that golf carts used for maintenance purposes would travel over the proposed gravel driveway. As depicted on the Applicant’s Preliminary Site Plan, the cart path would be constructed of asphalt or crushed rock. *Exhibit 2.O; Exhibit 2.P; Testimony of Mr. Casey.*

**Staff Recommendation and Public Comment**

35. Terry Cousins, owner of property in the vicinity of the subject property, testified in support of the proposed development. Mr. Bonsell testified that City staff recommends approval of the proposed CUP request, as conditioned. *Testimony of Mr. Cousins; Testimony of Mr. Bonsell.*

**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;

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(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.** As proposed, the project’s site layout and multi-family residential building design would be similar to the site layout and design of the existing Sedgwick Landing mixed-use development adjacent to the north of the subject property at the northwest corner of the Sedgwick/Sidney Road intersection. Findings 1, 17, 18.

2. **The proposed project will not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties.** Any traffic impact resulting from the proposed development on the surrounding road network will be addressed through channelization within existing roadways to the north, west, and east of the subject property. MDNS conditions address required frontage and road improvements, and require that property owners within the proposed development are responsible for maintenance of all roadway improvements and landscaping within the existing and proposed right-of-way. Stormwater runoff would be discharged to downstream drainage areas off-site at rates less than the existing condition of the subject property. In this way, discharge of runoff would not have an adverse impact on the use of neighboring properties. MDNS conditions address stormwater control requirements and design, installation of any downstream drainage improvements as necessary, and maintenance of storm drainage facilities by the owner or homeowners association. Findings 1, 3 – 8, 10, 17, 32, 33.

3. **The design is compatible with the physical characteristics of the subject property.** The design avoids construction within Wetlands B and C, which comprise the central portion of the subject property, except for an access road between the main portion and northwest portion of proposed multi-family residential development. The proposed

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development would collect stormwater runoff in three detention ponds on the subject property because the property’s soils and high groundwater table during the wet season render conditions not conducive to on-site infiltration. Exhibit 1, 3 – 8, 10, 16, 18 – 24.

4. **With conditions, impacts will be mitigated in a manner equal to or greater than the standards of the City code.** Wetland, stormwater, and traffic impacts would be mitigated in compliance with City code. Conditions are necessary to ensure compliance with comments and stipulations of South Kitsap Fire & Rescue, which are required by City code. Findings 1, 3 – 8, 10, 18 – 24, 26, 32, 33, 35.

5. **With conditions, there will be no conflict with the health and safety of the community.** Wetland, stormwater, and traffic impacts would be mitigated in compliance with City code. MDNS conditions address wetland, stormwater, and traffic impacts. Conditions are necessary to ensure compliance with comments and stipulations of South Kitsap Fire & Rescue, which are required by City code. MDNS conditions address required frontage and road improvements, and require that property owners within the proposed development are responsible for maintenance of all roadway improvements and landscaping within the existing and proposed right-of-way. Stormwater runoff would be discharged to downstream drainage areas off-site at rates less than the existing condition of the subject property. In this way, discharge of runoff would not have an adverse impact on the use of neighboring properties. MDNS conditions address stormwater control requirements and design, installation of any downstream drainage improvements as necessary, and maintenance of storm drainage facilities by the owner or homeowners association. MDNS conditions also address provision of sanitary sewer and water service to the proposed development through extension of sewer and water mains within surrounding roads. A condition is also necessary to ensure a latecomer’s agreement is in place for those who benefit by the sizing of the proposed extension. Findings 1, 3 – 10, 17 – 29, 32 – 35.

6. **There will be no pedestrian and vehicular traffic that would be hazardous or conflict with existing and anticipated traffic in the neighborhood.** MDNS conditions address required frontage and road improvements and require that property owners within the proposed development are responsible for maintenance of all roadway improvements and landscaping within the existing and proposed right-of-way. Sidewalks would be constructed along the frontages of the proposed development and along internal roads within the proposed development. Any traffic impact resulting from the proposed development on the surrounding road network will be addressed through channelization within existing roadways to the north, west, and east of the subject property. Findings 1, 3 – 8, 18, 32, 33, 35.

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 proposed development would include a community recreation building, trails, and play

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areas. MDNS conditions address stormwater control requirements and design, installation of any downstream drainage improvements as necessary, and maintenance of storm drainage facilities by the owner or homeowners association. MDNS conditions also address provision of sanitary sewer and water service to the proposed development through extension of sewer and water mains within surrounding roads. A condition is also necessary to ensure a latecomer’s agreement is in place for those who benefit by the sizing of the proposed extension. Conditions are also necessary to ensure compliance with comments and stipulations of South Kitsap Fire & Rescue. Findings 1, 3 – 9, 17, 18, 22 – 31, 35.

DEcision

Based on the above findings and conclusions, a conditional use permit to construct a mixed-use development, including a 14,000 square foot retail building; nine, three-story apartment buildings; recreational building; pool; and associated parking on property 13.78 acres in size at the southwest corner of the Sedgwick/Sidney Road intersection, in Port Orchard, Washington, is APPROVED, subject to the following conditions:

A. SEPA MITIGATION CONDITIONS

1. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer’s engineer shall be submitted to City of Port Orchard for review and acceptance. No construction shall be started prior to said plan acceptance.

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

3. Transportation and Parks Impact Fees shall be due at the time of Building Permit Application.

4. The Preliminary Landscape Plan dated December 21, 2012 shall be used as a guide to install landscaping on the site. A final Landscape Plan shall be submitted with the application for the SDAP. Two year landscape performance bonding shall be required prior to the Certificate of Occupancy issuance.

5. The future Commercial Development area in the northeast portion of the site shall be restricted to commercial uses only.

6. Wetland buffer enhancements as depicted in the Wetland mitigation plan by Port Madison Associates LLC dated October 30, 2012 shall be completed and a five year performance bond in place prior to issuance of the first building permit for the project.

7. Prior to commencement of construction activities it is the applicant’s responsibility to obtain an approved JARPA Permit. Conditions on the approved JARPA will also be conditions of approval for this proposal.

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

6 Conditions Nos. 1 – 31, SEPA Mitigation Conditions, appear as written within the City’s MDNS, issued February 22, 2010.

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8. Prior to issuance of a certificate of occupancy for each phase or building, the developer shall complete the adjacent trail section. In addition, where the wetland buffer abuts either residential units or walking trails, a split rail fence with wetland buffer signage shall be installed. The applicant shall submit a fencing location plan for review by the Director of Community Development with the SDAP application.

9. The information provided demonstrates this proposal is a Major Development as defined in the most current City of Port Orchard Developer’s Handbook at the time of complete application, and as such will require a Stormwater Permit from Public Works.

10. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with the most current City of Port Orchard Developer’s Handbook. 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.

11. The Washington State Department of Fish and Wildlife (WDFW) may require a Hydraulic Project Approval. The proponent is responsible to comply with all requirements set forth by WDFW.

12. 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.

13. 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 Klinek at 360-407-7451, email jokl461@ecy.wa.gov. This permit is required prior to issuance of the Stormwater Permit.

14. The design of the infiltration facilities will be according to the current City of Port Orchard adopted Stormwater Management 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.

15. 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/them 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.

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required to provide adequate fire flow for a building of 9,000 square feet, if the construction type consists of Type V-B.

33. Hydraulic calculations or an On-Site fire flow test conducted shall be provided to the Fire District showing that adequate fire flow can be provided. This information is needed to be provided and approved by the Fire District before the District can approve any building permits.

34. Fire hydrants are not indicated on the plans. Before Fire District approval, plans shall be submitted indicating fire hydrant locations. Plans shall indicate current fire hydrant locations as this will impact hydrant locations within the project. Maximum spacing of fire hydrants is 400 feet between hydrants. The minimum required fire flow is based on the square footage and type of construction of the building in accord with the Port Orchard Fire Code.

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

36. Before construction can 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 road 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 shall have a surface that provides all-weather driving capabilities.

37. Split rail or cedar fencing and a landscaped berm may surround detention ponds in lieu of black vinyl/cyclone fencing. Landscaping subject to City review and approval shall be located between the cedar fencing and the bottom of the berm.

38. If the proposed commercial use has a greater impact than a drugstore/drive-through use, then the City may require additional traffic analysis and mitigation.

39. The Preliminary Drainage Plan shall address the capacity of the culvert within the southern drainage course to handle drainage. If there is not enough capacity within the culvert, then the City may require stormwater analysis and mitigation.

40. Any water/sewer extension to the west to connect with proposed residential development, rather than along Sedgwick Road, is subject to a latecomer’s agreement if appropriate.

Decided this 6th day of April 2013.

THEODORE PAUL HUNTER
City of Port Orchard Hearing Examiner
Sound Law Center

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